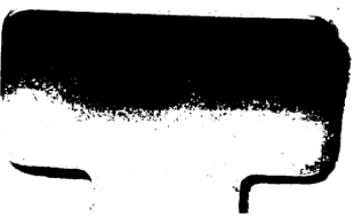


~~110303~~



VW 943 132

British Liberties,

OR THE

Free-born Subject's Inheritance ;

CONTAINING

The Laws that form the Basis of those Liberties;
with OBSERVATIONS thereon;

A L S O

An Introductory E S S A Y

O N

POLITICAL LIBERTY

A N D A

Comprehensive View of the

C O N S T I T U T I O N

O F

G R E A T B R I T A I N.

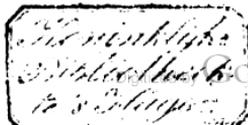
Les Anglois, pour favoriser la liberté, ont ôté toutes les puissances intermédiaires qui formoient leur Monarchie. Ils ont bien raison de conserver cette liberté ; s'ils venoient à la perdre, ils seroient un des peuples les plus esclaves de la terre.

Montesquieu !

L O N D O N :

Printed by H. WOODFALL and W. STRAHAN,
Law-Printers, to the King's Most Excellent Majesty ;

For EDWARD and CHARLES DILLY, in the *Poultry*.
M. DCC. LXVI.



P R E F A C E.

WITH respect to the following collection of laws, the editor freely acknowledges he is beholden to Mr. *Care*, for the design, method and much of that part of the work which relates to *Positive law*.

For the rest, except the new statute-laws, and the introduction, he is principally indebted to Lord *Coke*.

As to that introductory essay, the editor desires permission to say, he has taken great pains to select from the best authors, materials for its composition.

He hopes not any apology is necessary, for prefixing an essay, differing so much from *Positive law*, before the following collection.

P R E F A C E.

The editor need not quote Mr. *Locke*, or any other great author to justify him. The impartial public will form its own judgment.

He has endeavoured to throw together in one view those laws that form the basis of our liberties, with comments on the most essential; and as introductory thereto, may he add, a *comprehensive view of the BRITISH CONSTITUTION?*

In a course of *English* education the LANGUAGES *antient* and *modern*, PHYSICS in general, perhaps the MATHEMATICS in particular engage our attention.

The *power* of *numbers* and the *properties* of figures strike every one. The *universal properties* of being, the *powers* of the *human mind*, the *attributes* of an *omnipotent first-cause*, are engaging themes, that have infinite charms, for the busy mind of man, ever in pursuit of *something*

P R E F A C E.

thing undiscovered still, and doubtless prevent many from enquiring into our happy form of government, which may perhaps be considered as a subject of too dry a nature to charm us in our juvenile days.

The editor would farther observe, that (except in the statute-law) he has endeavoured to *modernize* the language, where it was *absolutely necessary*, and it could *with safety* be done.

As to the *introduction*, he hath endeavoured to convey to the Reader *clear ideas*, without attempting any thing farther, with respect to the language.

The Editor submits the work in general to the Public. Should it not be found adequate to expectation, he hopes his *intention* will be considered, as some apology for the *attempt*.

P R E F A C E.

He flatters himself it will be of some service to his countrymen: Should it happen according to his wish, and, (as Mr. *Harris* in his preface to *Hermes* says,) should this service be a reason for the following work to survive, it would not be an unpleasing event: Should the contrary happen, he must acquiesce in its fate, and let it peaceably depart to those destined regions, where the productions of modern wit are every day departing.

— *in vicum vendentem tus & adores.*

G O N-

CONTENTS

OF THE

INTRODUCTION

ON

POLITICAL LIBERTY

AND THE

BRITISH CONSTITUTION, &c.

O N POLITICAL LIBERTY generally	Page i
Of the manner of governing in monarchies	viii
Of the manners of a monarch	ix
On taxes	<i>ibid.</i>
On the augmentation of troops	x
Of the BRITISH CONSTITUTION	xii
Some observations, applicable to <i>Political Liberty</i> , and the <i>British Constitution</i>	xl
Observations on some of the most essential of the fol- lowing laws	lxiii

Contents of the subsequent work.

M AGNA CHARTA	i
Notes on ditto	21
Confirmation of <i>Magna Charta per 25 Ed.</i> 1.	46
<i>Sententia lata super chartas</i>	50
Notes	51
The sentence or curse pronounced by the bishops against the breakers of the Great Charter	<i>ibid.</i>
	Notes

CONTENTS of the WORK.

	Page
Notes thereon	52
The statute <i>de tallagio</i> made 34 <i>Ed.</i> 1.	54
Comment thereon	56
A declaration which offences shall be adjudged treason, 25 <i>Ed.</i> 3. <i>st.</i> 5.	60
Comment	62
The substance of the above act, divided into classes, methodically <i>per</i> Lord Coke	63
Continuation of the comment	64
Other offences made treason	70
The first of <i>Mary</i> , <i>sess.</i> 1. <i>c.</i> 1. taking away certain treasons, felonies and cases of <i>præmunire</i>	72
First <i>Mary</i> , <i>sess.</i> 2. <i>c.</i> 6. Counterfeiting strange coins, currant here, the Sign-manual, Signet, or Privy seal, to be adjudged treason	75
First and second <i>P. & M.</i> <i>c.</i> 10. <i>§.</i> 7, 8, 11, 12, concerning trial for treason, &c.	76 & seq.
Thirteenth <i>Car.</i> 2. <i>c.</i> 1. For the preservation of the government, &c.	78
Notes thereon	85
The judgment for high treason	88
The reasons of this judgment	89
On challenging jurors, upon trial for treason	90
On petitioning or addressing the king	91
The 13 <i>Car.</i> 2. <i>st.</i> 2. <i>c.</i> 5. directing the method of presenting public petitions or other addresses to the king or parliament	92
Stat. of 2 <i>Ed.</i> 3. <i>c.</i> 2. In what cases pardons of felony shall be granted, &c.	94
Comment thereon	95
Stat. 1 <i>William & Mary</i> , <i>sess.</i> 2. <i>c.</i> 2. (36.) declaring the RIGHTS and LIBERTIES of the SUBJECT	99
Farther provisions for securing RELIGION and LIBERTIES by 12 & 13 <i>William</i> 3. <i>c.</i> 2.	393
ON APPEALS	102
The	

CONTENTS of the WORK.

The form of an appeal of murder,	Page 104
Notes,	105
An analysis of the doctrine of appeals &c. composed from <i>Hawkins</i>	109

On Parliaments.

4 <i>Ed. 3. 14.</i> a parliament to be held once a year	116
The like by 36 <i>Ed. 3. c. 10.</i>	<i>ibid.</i>
A comment	<i>ibid.</i>
5 <i>R. 2. st. 2. c. 4.</i> to compel attendance in parliament	119
6 <i>W. & M. c. 2.</i> a parliament to be held within 3 years, &c. and to have continuance for 3 years only	120
Abstract of other acts	121
11th <i>Geo. 2. c. 24.</i> directing the methods and times of proceeding at law, or in equity, against persons intitled to privilege of parliament,	<i>ibid.</i>
Abstracts of acts,	125
2d & 3d <i>Ann. c. 18.</i> for regulation of privilege of parliament in relation to persons in public offices,	<i>ibid.</i>
9 <i>Ann. c. 5.</i> qualifications of members,	127
1 <i>Geo. 1. st. 2. c. 38.</i> parliaments to continue for seven years,	130
1 <i>Geo. 1. st. 2. c. 56.</i> Disabling pensioners for years,	131
2 <i>Geo. 2. c. 24.</i> for preventing BRIBERY and CORRUPTION,	132
9 <i>Geo. 2. c. 38.</i> directing prosecutions on the above act,	138
Freeholders oath <i>per 18 Geo. 2. c. 18.</i>	139
19 <i>Geo. 2. c. 28.</i> regulating elections in cities and towns that are counties of themselves,	140
On	

CONTENTS of the WORK.

On the <i>antiquity, use and power</i> of PARLIAMENTS, and the qualifications of such as are fit to be chosen the PEOPLE's representatives, —	Page 145
Of the <i>name and antiquity</i> of parliaments,	145
Of the three estates in parliament, —	147
Touching the power of the parliament,	149
The particular business of parliaments, —	151
Directions concerning the choice of members and their qualifications, —	164
1 <i>Hen. 5. c. 1.</i> what sort of people shall choose and be chosen members, —	174
8 <i>Hen. 6. c. 7.</i> to the same purpose, —	<i>ibid.</i>
10 <i>H. 6. c. 2.</i> certain things required in the electors, — — —	176
The PETITION OF RIGHT, 3 <i>Car. I. c. I.</i>	177
Observations, the king's two answers, &c. 182 & seq.	
31 <i>Car. 2. c. 2.</i> for the better securing the liberty of the subject, and for preventing imprisonment beyond sea, or the HABEAS CORPUS ACT,	186
A comment thereon, —	198
13 <i>R. 2.</i> concerning the king's castles and gaols, and the not sending any person prisoner out of <i>England</i> ,	201
Abstracts from 22 & 23 <i>Car. 2. c. 28.</i> to prevent the oppression of prisoners, —	<i>ibid.</i>
16 <i>Car. I. c. 10.</i> the STAR CHAMBER act which prevents the erection of any such courts hereafter,	205
A comment thereon, —	213
A clause in 31 <i>Car. 2. c. 1.</i> against billeting of soldiers, — — —	215
25 <i>Eliz. c. 23.</i> for the due execution of the writ <i>de excommunicato capiendo</i> , —	<i>ibid.</i>
Necessary for every one to be acquainted with,	
A comment thereon, with a discourse on the nature of excommunication, and how to prevent or take off the writ, — — —	224
	As

CONTENTS of the WORK.

As necessary to be known as any of the laws relative to	
LIBERTY,	
Of the bishop, &c. administering oaths to churchwardens or fidesmen,	Page 240
ON PROTESTANT DISSENTERS,	— 242
17 <i>Car. 2. c. 2.</i> restraining non-conformists from inhabiting in corporations,	255
22 <i>Car. 2. c. 1.</i> to prevent and suppress seditious conventicles,	260
Notes thereon,	269
1 <i>Will. & M. sess. 1. c. 18.</i> exemption of dissenters from the penalties of certain laws,	272
10 <i>Ann. c. 2.</i> further provisions for preserving the protestant religion,	283
5 <i>Geo. 1. c. 4.</i> for strengthening the protestant interest,	287
Mention made of other acts	289
The statute-laws concerning PAPISTS,	
3 <i>Car. 1. c. 3.</i> to restrain the sending of any beyond sea to be <i>popishly</i> bred,	290
25 <i>Car. 2. c. 2.</i> for preventing dangers which may happen from <i>popish recusants</i>	292
30 <i>Car. 2. st. 2.</i> disabling <i>papists</i> from sitting in parliament,	301
1 <i>W. & M. c. 9.</i> for removing <i>papists</i> and <i>reputed papists</i> from London and Westminster, &c.	309
1 <i>W. & M. c. 15.</i> to disarm <i>papists</i> and <i>reputed papists</i> ,	312
Abstract from 1 <i>Geo. 1. st. 2. c. 20. §. 16.</i> as to <i>papists</i> in Scotland,	316
1 <i>W. & M. c. 26.</i> vesting in the universities the presentation of <i>benefices</i> belonging to <i>papists</i> ,	317
11 & 12 <i>W. 3. c. 4.</i> for further preventing the growth of <i>popery</i> ,	321
11 <i>Geo. 2. c. 17.</i> for securing the estates of <i>papists</i> conforming, and for rendering more effectual the acts	for

CONTENTS of the WORK.

for vesting the presentation of benefices belonging to <i>papists</i> , in the <i>universities</i> , —	Page 326
1 <i>Geo. 1. st. 2. c. 55.</i> to oblige <i>papists</i> to register their names and real estates, —	332
3 <i>Geo. 1. c. 18.</i> to explain the above, enlarge the time of registering, and secure purchases made by protestants, — — — — —	344
2 <i>Geo. 2. c. 31. §. 9.</i> in favour of the king or queen's sworn servants, — — — — —	348
4 <i>Geo. 3. c. 2. §. 56 & 113.</i> (the land-tax) 349 & seq.	
4 <i>Geo. 3. c. 38.</i> allowing further time for enrolment of deeds and wills made by <i>papists</i> , and for relief of protestant purchasers, — — — — —	353
Notes, on the great number of <i>Jesuits</i> , and popish priests, now in his majesty's dominions,	357
Abstract of the penalties, &c. inflicted by statute-law against those that remain therein,	358
Substance of other acts against <i>papists</i> , &c.	364

On J U R I E S.

<i>Sett. 1.</i> Of the advantages <i>Englishmen</i> enjoy from this trial by juries, above any other nation,	368
Of the villainous judgment if the jury give a false verdict, and the reasons, — — — — —	372
<i>Sett. 2.</i> What persons ought to be jurymen and how qualified, — — — — —	374
<i>Sett. 3.</i> Of grand juries, their duty, and the great importance of their office, — — — — —	376
<i>Sett. 4.</i> That juries are judges of <i>law</i> , in some respect, as well as <i>fact</i> , — — — — —	384
<i>Sett. 5.</i> That juries are not fineable, or any way to be punished, under pretence of going contrary to evidence, or against the judge's direction,	388

BRITISH

A GENERAL
INTRODUCTION
O N
POLITICAL LIBERTY
AND THE
BRITISH CONSTITUTION, &c.

THE great *Montesquieu* in his *L'Esprit des Loix*, books 11, 12 and 13, which he has expressly assigned to POLITICAL LIBERTY, is very copious on that subject, and to the honour of our constitution, his 6th chap. in *B. 11.* is expressly dedicated to that constitution.

His eleventh book opens with a *General idea*, wherein he informs us, that he makes a distinction between the laws that form POLITICAL LIBERTY *with regard to the CONSTITUTION*, and those by which it is formed *in respect to the CITIZEN*.

The former is the subject of the 11th *B.* the latter he examines in the 12th. The 13th is on the relation which the levying of taxes, and the greatness of the public revenues, have to liberty.

We shall refer the reader to that inestimable work, and shall only here, occasionally mention a few of his sentiments, and give his general plan, of the 11th and 12 *B.* excepting what relates to our excellent constitution, on which subject, we shall borrow from *Montesquieu*

Montesquieu every thing we think necessary, to give the reader what is here proposed, *viz.* a *concise view of the British constitution as it at present exists*, adding a few observations which we have intermixed, with *Montesquieu's* system, and some quotations from our own great countryman *Locke*.

Various have been the significations that have been given to the word LIBERTY.

It does *not* consist in *an unrestrained freedom*. No, In societies directed by laws, liberty can consist only *in the power of doing what we ought to will, and in not being constrained to do, what we ought not to will*.

We must continually present to our minds the difference between *independence* and *liberty*.

Liberty is a right of doing whatever the laws permit, and if a citizen could do what they forbid, he would no longer be possessed of liberty, because all his fellow subjects would have the same power.

Political liberty is to be met with only in moderate governments; of this more, when we treat particularly on our constitution.

Montesquieu in *Ç. 5.* after shewing the end or view of different governments says, "*One nation there is also in the world, that has for the direct end of its constitution POLITICAL LIBERTY.*" He adds, "We shall presently examine the principles on which this liberty is founded; if they are found, liberty will appear as in a mirror."

"To discover Political liberty in a constitution, no great labour is requisite. If we are capable of seeing it, where it exists, why should we go any further in search of it?" Thus he closes *chap. 5.* and *chap. 6.* as before observed, he has expressly dedicated to *the constitution of ENGLAND*.

Through this chapter we shall presently endeavour to pursue him, with some additional observations, as
mentioned

mentioned before, but will here, for the sake of connection, pursue the subject of LIBERTY generally.

Montesquieu in *B. 12.* opens with this observation agreeable to that made at the beginning of *B. 11. viz.* That it is not sufficient to have treated of Political liberty as relative to the CONSTITUTION, it must be examined likewise in the relation it bears to the SUBJECT

He observes that in the *first* case it is formed by a certain distribution of the three powers, *i. e.* the legislative, the executive power of the state, and the judiciary; but that in the *second* it must be considered under another idea.

That it consists in security, or in the opinion people have of their security.

The constitution may happen to be free, and the subject not. The subject may be free, and not the constitution. In those cases, the constitution will be free by right and not in fact, the subject will be free in fact and not by right.

It is the disposition only of the laws, and even of the fundamental laws, that constitutes liberty in its relation to the constitution. But as it relates to the subject; moral customs, or received examples may give rise to it, and particular civil laws may favour it.

Philosophical liberty consists in the free exercise of the will: Or in an opinion that we have that free exercise.

Political liberty consists in security, or at least in the opinion that we enjoy security, as before observed.

This security is never more dangerously attacked than in public or private accusations. It is therefore on the goodness of criminal laws that the liberty of the subject principally depends.

The knowledge already acquired in some countries, or that may be hereafter attained in others, in regard to the surest rules that can be observed in criminal judgments, is more interesting to mankind, than any other thing in the universe.

Liberty can only be founded on the practice of this knowledge; and supposing a state to have the best laws imaginable, in this respect, a person tried under that state, and condemned to be hanged the next day, would have much more liberty, than a bashaw enjoys in *Turkey*.

As to public crimes, though they are all public, yet we must distinguish between those which more nearly concern the *mutual communication of citizens*, and those which more nearly *interest the state in the relation it has to its subjects*. The first are called *private* the second *public*.

Those laws which condemn a man to death on the deposition of a single witness are fatal to liberty. In right reason there should be two, because a witness who affirms, and the accused who denies, make an equal balance, and a third must incline the scale.

Liberty is in its highest perfection, when criminal laws derive each punishment from the particular nature of the crime. There are not then any arbitrary decisions; the punishment does not flow from the caprice of the legislator, but from the very *nature of the thing*; and man uses not any violence to man.

There are four sorts of crimes. Those of the first species are prejudicial to *religion*, the second to *morals*, the third to the *public tranquillity*, and the fourth to the *security of the subject*. The punishments inflicted for these crimes ought to proceed from the nature of each of these species.

In the class of crimes that concern *religion*, *Montesquieu* ranks only those which attack it directly, such as all simple sacrileges. For as to crimes that disturb the

INTRODUCTION.

the exercise of it, they are of the nature of those which prejudice the tranquillity or security of the subject, and ought to be referred to those classes.

In order to derive the punishment of simple sacrileges from the *nature of the thing*, it should consist in depriving offenders of the advantages conferred by religion, in expelling them out of the temples, in a temporary or perpetual exclusion from the society of the faithful, in shunning their presence, in execrations, detestations, and excommunications.

In things that prejudice the tranquillity or security of the state, secret actions are subject to human jurisdiction. But in those that offend the deity, and where there is not any public action, there cannot be any point in question, as to a criminal matter; the whole passes between God and man, who knows the measure and time of his vengeance. Now if magistrates, confounding things, should also enquire into hidden sacrileges, we introduce an inquisition upon a kind of action that does not at all require it; the liberty of the subject would be subverted by arming the zeal of timorous, as well as of presumptuous consciences against him.

The mischief arises from an opinion which some have entertained of revenging the cause of the Deity. But we must honour the Deity, and leave him to avenge his own cause. In effect, were we to be directed by such notions, where would be the end of punishments? If human laws are to avenge the cause of an infinite Being; they will be directed by his infinity, and not by the weakness, the ignorance and caprice of man.

The second class consists of those crimes which are prejudicial to *morals*. Such is the violation of public or private continency, that is, of the policy directing the manner in which we ought to enjoy the pleasures resulting from the use of the senses, and the union of
bodies.

bodies. The punishment of those crimes ought to be also derived from the *nature of the thing*; the privation of such advantages as society hath attached to the purity of morals, fines, shame, necessity of concealment, public infamy, expulsion from home and even from society, and in fine all such punishments as belong to a corrective jurisdiction, are sufficient to repress the temerity of the two sexes. In effect, these things are less founded on wickedness, than on the forgetting and despising ourselves.

We speak not here of any crimes but those that relate merely to morals, for as to those that are also prejudicial to the public security, such as *rapes* and *ravishments*, they belong to the fourth species.

The crimes of the third are those that *disturb the public tranquillity*. Their punishments ought therefore to be derived from the *nature of the thing*, and to be relative to this tranquillity; such as imprisonment, exile, corrections, and other like chastisements, proper for reclaiming turbulent spirits, and reducing them to the established order.

Those crimes that injure the public tranquillity should be confined to things that imply a *simple transgression against the civil administration*; for as to those which, by disturbing the public tranquillity, attack at the same time the *security of the subject*, they ought to be ranked in the *fourth class*.

The punishments inflicted upon the latter crimes are such as are properly distinguished by that name, they are a kind of retaliation, by which the society refuses security to a member, who has actually or intentionally deprived another of his security. These punishments are derived from the *nature of the thing*, founded on reason, and drawn from the very source of good and evil. A man deserves death when he has violated the public security so far as to deprive, or to attempt to deprive another man of his life. This punishment

nishment of death is the remedy, as it were, of a sick society. When there is a breach of security in respect to property, there may be some reasons for inflicting a capital punishment; but it would be perhaps much better, and more natural, that crimes committed against the *security of property* should be punished with the *loss of property*; and this ought indeed to be the case if mens fortunes were common or equal. But as those who have no property are generally the readiest to attack the property of others, it has been found necessary, instead of a *pecuniary*, to substitute a *corporal* punishment.

All that's here advanced, is founded *in nature*, and extremely favourable to the *liberty of the subject*.

Our plan will not permit us to enter into the detail, by following *Montesquieu*, nor do we think his observations (though extremely curious) so immediately adapted to our constitution as to require it; therefore we take the liberty of referring to the author's work, at large, so far as relates to this subject.

In countries where liberty is most esteemed, there are laws by which a single person is deprived of it, in order to preserve it for the whole community. Such are in *England* what they call *bills of attainder*. These are relative to those *Athenian* laws, by which a private person was condemned, provided they were made by the unanimous suffrage of six thousand citizens. They are relative also to those laws which were made at *Rome* against private citizens, and were called *privileges*. These were never passed, unless in the great meetings of the people. But in what manner soever they are enacted, *Cicero* is for having them abolished, because the force of a law, consists in its being made, for the whole community. I must own, notwithstanding, that the practice of *the freest nation that ever existed*, induces me to think that there are cases in which a veil should be drawn for a while over li-

berly, as it was customary to veil the statues of the gods.

We hope the reader will not be dissatisfied with the insertion of the following chapters, before we close this part of the subject. Our reasons for so doing, will appear obvious.

B. 12. C. 25.

Of the manner of governing in monarchies.

TH E royal authority is a great spring that ought to move easily and without noise. The *Chinese* boast of one of their emperors, who governed, they say, like heaven, that is, by his example.

There are some cases in which a sovereign ought to exert the full extent of his power; and others in which he ought to reduce it within its proper limits. The sublimity of administration consists in knowing perfectly the proper degree of power, that should be exerted on different occasions.

The whole felicity of our monarchies consists in the opinion people have of the lenity of the government. A wrong headed minister always wants to remind us of our slavery. But granting even that we are slaves, he ought to endeavour to conceal our miserable condition from us. All he can say or write, is that *the prince is uneasy*, that *he is surpris'd*, and that *he will set things to rights*. There is a certain *ease* in commanding; the prince ought only to *encourage*, and leave the *menacing* part to the law.

C. 27.

Of the manners of a monarch.

TH E manners of a prince contribute as much as the laws themselves to liberty; like these he may transform men into beasts, and beasts into men. If he likes free and noble souls, he will have *subjects*; if he likes base dastardly spirits, he will have *slaves*. Does he want to know the great art of ruling? Let him call *honour* and *virtue* around his person, let him invite personal merit: he may even sometimes cast an eye on *talents* and *abilities*. Let him not be afraid of those rivals who are called men of merit; *he is their equal as soon as he loves them*: let him gain the hearts of his people without bringing their spirits into subjection. Let him render himself popular: he ought to be pleased with the affection of the lowest of his subjects, for they too are MEN. The common people require so very little deference, that it is fit they should be humoured; the infinite distance between the sovereign and them will surely prevent them from giving him any uneasiness. Let him be exorable to supplication, and resolute against demands; let him be sensible in fine, that his people have his refusals, while his courtiers enjoy his favours.

In another place, *viz. c. 28. Montesquieu* observes, That monarchs ought not to offer a notorious insult to any of their subjects; kings were instituted to *pardon*, and to *punish*, but never to *insult*.

When they insult their subjects, their treatment is more cruel than that of the *Turk*, or the *Moscovite*. The insults of the latter are an *humiliation*, not a *disgrace*; but *both must follow* from the insults of the former.

Such

x I N T R O D U C T I O N .

Such is the prejudice of the eastern nations, that they look upon an affront coming from the prince, as the effect of *paternal goodness*; and such on the contrary is our way of thinking, that to the cruel vexation of being affronted, we join the despair of ever being able to wipe off the disgrace.

Princes ought to be overjoyed to have subjects to whom *honour* is dearer than *life*, an incitement to *fidelity* as well as to *courage*.

They should remember the misfortunes that have happened to princes for insulting their subjects, the revenge of *Cbarea*, of the eunuch *Narses*, of count *Julian*, and in fine of the dutchess of *Montpensier*, who being enraged against *Henry the Third* for having published some of her private failings, plagued him all his life.

As to the relation which the levying of taxes and the greatness of the public revenues have to liberty, we must refer the reader to *Montesquieu*, B. 13. as being on the whole too extensive and general, to be admitted here within the bounds of our confined plan.

We would mention two of his observations and recite one chapter. The reason will be evident.

Chap. 14. *That the nature of the taxes is relative to the government*, he says.

“ A capitation is more natural to slavery; a duty on merchandize is more natural to liberty, because it hath not so direct a relation to the *person*.”

“ Chap. 15. *On the abuse of liberty*, he says, “ Liberty produces excessive taxes; but the effect of excessive taxes is to produce slavery in their turn, and slavery produces diminution of tribute.”

Ergo it's in every respect the true interest of the monarch and his ministers, in every sense of the word, to be very cautious, as to the *quantum* of the taxes, that are imposed on the subject, in any shape whatever,

ever, and equally interesting is the mode of levying them.

The chapter we desire to quote is the 17th in *B. 13. of the augmentation of troops.*

He says. "A new distemper has spread itself over EUROPE; it has infected our princes, and induces them to keep up an exorbitant number of troops. It has its recouplings, and of necessity becomes contagious. For as soon as one prince augments what he calls *bis troops*, the rest of course do the same, so that nothing is gained thereby but the public ruin. Each monarch keeps as many armies on foot as if his people were in danger of being exterminated; and they give the name of peace to this general effort of *all against all*. Thus EUROPE is ruined to that degree, that were private people to be in the same situation as the three most opulent powers of this part of the world, they would not have necessary subsistence. We are poor with the riches and commerce of the whole universe; and soon, by thus augmenting our troops, We shall have nothing but soldiers, and be reduced to the very same situation as the *Tartars*.

Great princes not satisfied with hiring or buying troops of petty states, make it their business on all sides to pay subsidies for alliances, that is, almost generally, to *throw away their money*.

The consequence of such a situation is the *perpetual augmentation of taxes*; and the mischief which prevents all future remedy, is, that they reckon no more upon their revenues, but go to war with their whole capital. It is not an unusual thing to see governments mortgage their funds *even in time of peace*, and to employ what they call *extraordinary means* to ruin themselves; means *so* extraordinary indeed, that such are hardly thought on, by the *most extravagant young spendthrift*.

Here

Here we close as to the general subject of *liberty*. We will now proceed to a view of the *British Constitution*, where the subject of *Political Liberty*, as relative to our *constitution*, &c. will be more particularly elucidated.

On the British Constitution.

WE would premise that our form of government is compounded of the *Monarchical* or *Royal*, the *Aristocratical* and the *Democratical*. Each hath, by long experience, been found imperfect. *Polybius* and many other great men have supposed a combination of the three must in a great measure remedy the inconveniences of each *. Our constitution in

* As to the best form of government, *vide Sidney* on government, c. 2. §. 16. & *seq.* one particular passage we'll quote, in his own words, 'If I should undertake to say, there never was a good government in the world, that did not consist of the three simple species of *Monarchy*, *Aristocracy* and *Democracy*, I think, I might make it good.

For a general idea at one view of the argument on this subject, *vide the Nouvelles de Republique des Letters*, [Avril 1700. p. 444. &c. See also the *Parrhasiana*, Tom. 2. p. 161. &c.

Sir *William Temple* in his essay on popular discontents, now published in the third vol. of his works, says, — As the life of all laws is the due execution of them, so the life and perfection of all governments is the due administration; and that by the different degrees of this, the several forms of the other are either raised or debased more than by any difference in their original institutions: So that perhaps it may pass among so many other *maxims* in the politic, *That those are the best governments, that are best administered, and where all offices are supplied by persons chosen to them with just distinction of merit and capacity for discharging them, and of application to do it honestly and sufficiently*, p. 17.

And in p. 41. of the same essay he says, It may perhaps be concluded, with as much reason as other themes of the like nature, that those

in a long course of time, hath, by small gradations, at length arrived to an happy temperament of those three forms. It may be attributed, as we apprehend, in part to chance, in part to design. But, by design we do not mean, that any of our ancient legislators ever formed a perfect idea of the model of our present form of government before its existence. *Montesquieu*, B. 11. c. 8. says "The first plan of the monarchies we are acquainted with, was thus formed. The *German* nations that conquered the *Roman* empire, were, as is known to every one, a free people. Of this we may be convinced only by reading *TACITUS on the manners of the Germans*. The conquerors spread themselves all over the country; living mostly in the fields, and very little in towns. When they were in *Germany*, the whole nation was able to assemble. This they could no longer do, when they were dispersed through the conquered provinces. And yet as it was necessary that the nation should deliberate on public affairs, pursuant to their usual me-

those are generally the best governments where the best men govern; and, let the sort or scheme be what it will, those are ill governments where ill men govern; and are generally employed in the offices of state.

Yet each of the principal forms, have severally their peculiar inconveniencies, which are remedied as far as human abilities will permit in our happy temperament, as will evidently appear from a perusal of the following essay. And if Sir *William Temple's* rule of governing by the best men, were always followed as far as possible, ours would be the best government in the known world.

That Sir *William Temple* was of nearly the same opinion, we would observe in his Preface to the Introduction of the *History of England*, he says, they (the *English*) are *abroad*, applauded and envied for their *wise institutions at home*.

For Sir *William Temple's* opinion on the best form of government, considered as a general topic, and *abstractedly*, if we may so term it, *vide* his essay on the origin and nature of government. *Vol. 1. especially p. 50. & seq.*

thod

thod before the conquest; they had therefore recourse to representatives. Such is the origin of the *Gotbic* government amongst us. At first it was mixt with aristocracy and monarchy; a mixture attended with this inconveniency, that the common people were bond men. The custom afterwards succeeded of granting letters of enfranchisement, and was soon followed by so perfect an harmony between the civil liberty of the people, the privileges of the nobility and clergy, and the prince's prerogative, that I really think there never was in the world a government so well tempered, as that of each part of *Europe*, so long as it lasted. Surprising, that the corruption of the government of a conquering nation, should have given birth to the *best species of constitution that could possibly be imagined by man**.

But here to trace particularly and at large the origin or history of our form of government, is beyond the design of this work. We shall only give a concise view of our constitution, as it at present exists, only observing, that let its origin or history be what it will, its real existence at present is what essentially concerns us.

In our government, as in all others, there are three sorts of power, the *legislative* the *executive* in respect to things dependent on the *law of nations*, and the *executive* in regard to things that depend on the *Civil law*.

By virtue of the first, the prince or magistrate *enacts* temporary or perpetual *laws*, and *amends* or *abrogates* those that have been already enacted.

By the second he makes *peace* or *war*, sends or receives *embassies*, establishes the *public security*, and provides against *invasions*. By the third he *punishes crimes*,

* It was a good government that had in itself a capacity of growing better.

or determines the *differences* that arise between *individuals*. The latter may be called the *judiciary power* and the other simply the *executive power* of the state.

Locke * in his essay on government, Part 2. c. 12. of the *legislative, executive and federative power of the commonwealth*, treats this subject very judiciously, and is extremely concise, for which reason we will here beg leave to introduce his sentiments in the author's own words, and then we will pursue *Montesquieu*.

“ The legislative power is that which has a right to direct how the force of the commonwealth shall be employed for preserving the community and the members of it.”

But because those laws which are constantly to be executed, and whose force is always in being, not having business always to do, and because it may be too great temptation to human frailty, apt to grasp at power, for the same persons who have the power of *making laws*, to have also in their hands the power to *execute them*, whereby they may exempt themselves from obedience to the laws they make, and suit the law, both in its *making* and *execution*, to their own private advantage, and thereby come to have a *distinct interest* from the rest of the community, contrary to the end of society and government : Therefore in well ordered commonwealths, where the *good of the whole* is considered *as it ought*, the legislative power is put into the hands of divers persons who duly assembled, have by themselves, or jointly with others, a power to make laws, which when they have done, being separated again, *they are themselves subject to the laws they have made* ; which is a new and near tie upon

* In justice to our countryman, we would observe that the great *Montesquieu*, and *Rousseau* also in his social contract, and some of his other works, have borrowed many excellent thoughts, and we may with justice add, fundamental principles from *Locke's* work on government and on the human understanding.

them

them to take care that they make them for the *public good*."

"But because the laws that are at once and in a short time made, have a *constant* and *lasting force*, and need a *perpetual execution*, or an *attendance thereunto*; therefore it is necessary there should be a power *always in being*, which should see to the execution of the laws that are made and remain in force; and thus the *legislative* and *executive* power come often to be *separated*."

"There is another power in every commonwealth, which one may call *natural*, because it is that which answers to the power every man naturally had before he entred into society. For though in a commonwealth the members of it are distinct persons still in reference to one another, and as such are governed by the laws of the society, yet in reference to the rest of mankind, they make *one body*, which is, as every member of it before was, still in the state of nature, with the rest of mankind. Hence it is that the controversies that happen between any man *of the society* with those that are *out of it*, are managed by the *public*; and an injury done to a member of their body, engages the whole in the reparation of it. So that under this consideration, the *whole community* is *one body* in the state of nature, in respect of *all other states* or *persons out of its community*."

"This therefore contains the power of *war* and *peace*, *leagues* and *alliances*, and all transactions, with all persons and communities without the commonwealth, and may be called *fæderative*; If any one pleases, so the thing be understood, I am indifferent as to the name."

"These two powers, the *executive* and *fæderative*, though they be really distinct in themselves, yet one comprehending the execution of the *municipal laws* of the society *within* itself, upon all that are *parts* of it; the

the other the management of the security and interest of the *public without*, with all those that it may receive *benefit* or *damage* from, yet they are always almost united. And though this *fæderative* power in the well or ill management of it be of great moment to the commonwealth, yet it is much less capable to be directed by antecedent, standing, positive laws, than the *executive*; and so must necessarily be left to the prudence and wisdom of those whose hands it is in, to be managed for the *public good*. For the laws that concern *subjects* one amongst another, being to direct *their actions*, may well enough precede them. But what is to be done in reference to *foreigners*, depending much upon *their* actions, and the *variation of designs* and *interests*, must be left in great part to the prudence of those who have this power committed to them, to be managed by the best of their skill for *the advantage of the commonwealth*.”

“ Though, as I said, the *executive* and *fæderative* power of every community be really distinct in themselves, yet they are hardly to be separated and placed at the same time in the hands of distinct persons. For both of them requiring the *force of the society* for their exercise, it is almost impracticable to place the force of the commonwealth in *distinct*, and not *subordinate* hands; or that the *executive* and *fæderative* power should be placed in persons that might *act separately*, whereby the force of the public would be under *different commands*, which would be apt sometime or other to cause disorder and ruin.”

So far *Locke*, and now we return to *Montesquieu*; according to that author.—The *Political Liberty* of the subject is a tranquillity of mind, arising from the opinion each person has of his safety. In order to have *this liberty*, it is requisite the government be so constituted that one subject need not fear another. *Mr. Locke* says, “ The liberty of man in society, is

to be under no other *legislative* power, but that established, by *consent* in the commonwealth, nor under the dominion of any will, or restraint of any law, but what the legislative shall enact, *according to the trust put in it.*"

"Freedom of men, under government, is to have a *standing rule* to live by, *common to every one* of that society, and *made by the legislative power, erected in it.* A liberty to follow my own will in all things, where the rule prescribes not, not to be subject to the inconstant, uncertain, unknown, arbitrary will of another man, as freedom of *nature* is to be under no other restraint, but the law of nature."

"This freedom, from absolute, arbitrary power, is so necessary to, and closely joined with a man's preservation, that he cannot part with it, but by what forfeits his preservation and life together *." To proceed

In our government the *legislative* and *executive* powers are in different hands, for were they united in the same person or in the same body of magistrates, there could not be any liberty, as apprehensions might arise lest the same monarch, or senate should enact tyrannical laws, to execute them in a tyrannical manner. Mr. *Locke's* reasons we have before given.

There is not any liberty, if the power of *judging* be not separated from the *legislative* and *executive* powers, were it joined with the *legislative*, the life and liberty of the subject would be exposed to arbitrary controul; for the *judge* would then be the *legislator*; were it joined to the *executive* power, the judge might behave with all the violence of an oppressor.

In the *English* constitution the power of judging is separated from the *legislative* and *executive* powers.

There would be an end of every thing, were the same man or the same body, whether of the nobles,

* Part II. c. 4. §. 22, 23.

or of the people, to exercise those three powers, that of *enacting laws*, that of *executing the publick resolutions*, and that of *judging the crimes or differences of individuals*.

In this happy constitution the execution of those powers is placed in different hands, for that best of purposes, the *preservation of the subject's liberty*.

The *judiciary* power ought not to be given to a standing senate, it should be exercised by persons taken from the body of the people, at certain times of the year, and pursuant to a form and manner prescribed by law, in order to erect a tribunal that should last only as long as necessity requires.

By this means the power of *judging*, a power so terrible to mankind not being annexed to any particular state or profession, becomes as it were, invisible, people have not then the judges continually present to their view, they fear the office, but not the magistrate.

In *England* the *judiciary power* is not given to a *standing senate*, nor does our constitution admit of *such a senate*. The power of *judging* is exercised by persons taken *from the body of the people*, for from them are our *juries* taken, and it is at certain times of the year, *viz.* in *Middlesex* and *London*, the metropolis of the kingdom, during four certain and established times called terms. In the other counties twice a year, *viz.* at the *assizes*, when the judges visit all the counties in the kingdom, for the administration of justice. As to the *form* and *manner*, they are according to laws established for that purpose, they have been of long duration and held sacred by all the sages of the law. To return to *Montesquieu*.

In accusations of a deep or criminal nature, it is proper the person accused should have the privilege of chusing in some measure his judges, in concurrence with the law; or at least he should have a right

xx INTRODUCTION.

to except, against so great a number, that the remaining part may be deemed his own choice. That such is a part of our constitution is evident from the liberty a prisoner for a criminal offence hath on his trial to challenge not only with cause, but even many without, as appears in the *Essay on Juries*, sect. 1. with which essay this work is concluded.

The other two powers, *Montesquieu* says, may be given, rather to the magistrates or to permanent bodies, because they are not exercised on any private subject; one being no more than the *general will of the state*, and the other the *execution of that general will*.

But according to his own principles where the prince is invested with those two powers, the government is only moderate, *i. e.* the subjects are not perfectly free, and how could they be free if those two powers were united in the same person or in the same body?

As to enacting of laws, one of the greatest advantages the *English* enjoy, is, that not any law can be made but by their representatives, in concurrence with the lords and sovereign. The privileges of the lords cannot be affected, without their own consent, as they may pass a negative on any bill that is offered.

In like manner the king's just prerogative, intended for the good of the people can never be diminished, whilst he has faithful counsellors to advise him, who understand the constitution of the state, and the *original end* and *true extent* of the prerogative.

But to return to our immediate subject.

As to the tribunals, though they ought not to be fixed, yet the judgments ought, and to such a degree as to be always conformable to the exact letter of the law. Were they to be the private opinion of the
the

the judge, men would then live in society without knowing exactly the obligations it lays them under.

Our judgments are fixed, and that conformable to the exact letter of the law in general, and wherever occasion requires are referred to, and quoted by the gentlemen of the long robe, as precedents.

Where the letter of the law is *severe*, and where in particular cases, its determinations would be contrary to *equity*, We have courts of equity that will mitigate its severity, and give relief to those whom the law cannot relieve.

The judges ought likewise to be in the same state as the accused, or in other words, his *peers*, to the end he may not imagine he is fallen into the hands of persons inclined to treat him with rigor.

We have already mentioned our *juries*, and that this work is closed with a particular essay thereon.

If the *legislature* leaves the *executive* power, in possession of a right to imprison those subjects, who can give security for their good behaviour, there is an end of liberty; unless they are taken up, in order to answer, without delay, to a capital crime; in which case they are really free.

The *Habeas Corpus* act, was intended to render the subject safe in this particular.

Why a suspension of it hath ever been granted, politicians best can answer: of the reasons they assign, every one can easily judge. *James the Second*, when *Monmouth* was in actual rebellion against him, did not demand it. *William the Third*, and some of his successors, made the demand, and succeeded.

Does this require a comment?

Should the *legislature* think itself in danger, by some secret conspiracy against the state, or by a correspondence with a foreign enemy, it might authorize the *executive* power, for a short and limited time, to im-

prison suspected persons, who in that case would lose their liberty only for a time, to preserve it for ever.

Montesquieu knew, an *English* parliament had more than once permitted a temporary suspension of the *Habeas Corpus* act.

Immediate danger is certainly the *best* excuse.

As in a free state, every man who is supposed a free agent, ought to be his own governor, so the *legislative* power should reside in the whole body of the people. But since this is impossible in large states, and in small ones is subject to many inconveniencies; it is fit the people should do by their representatives, what they cannot perform by themselves.

The inhabitants of a particular town are much better acquainted with its wants and interests, than with those of other places; and are better judges of the capacity of their neighbours, than of that of the rest of their countrymen. The members therefore of the legislature, should *not* be chosen from the *general body* of the nation; but it is proper that in every considerable place, a representative should be elected by the *inhabitants* *.

How true the principles, but how great the deviation! The freeholders of the counties, and freemen of the cities, towns and boroughs of this kingdom, who perhaps are not a tenth part of its respective inhabitants, chuse the representatives of a whole nation.

Locke, c. 13. §. 157. says, Things of this world are in so constant a flux, that nothing remains long in the same state. Thus people, riches, trade, power,

* Notwithstanding *Montesquieu's* reasonings here, and notwithstanding all *Europe* acknowledged his abilities, an author, who called himself the Count de CATANEO, a noble Venetian, in the service of the King of Prussia, in a piece called the Source the Strength and the true Spirit of Laws, has among many other particulars, called *Montesquieu's* judgment in question on this subject. *Vide* his 13th Chapter, if the reader thinks it worthy his notice.

change

change their stations, flourishing mighty cities come to ruin, and prove in time neglected, desolate corners; whilst other unfrequented places grow into populous countries, filled with wealth, and inhabitants. But things not always changing equally, and private interest often keeping up customs and privileges, when the reasons of them are ceased, it often comes to pass, that in governments where part of the legislative consists of representatives, chosen by the people, that in tract of time, this representation becomes very unequal, and disproportionate to the reasons it was at first established upon. To what gross absurdities the following of custom, when reason has left it, may lead, we may be satisfied, when we see the bare name of a town, of which there remains not so much as the ruins; where scarce so much housing as a sheep-coat, or more inhabitants than a shepherd is to be found; send as many representatives to the grand assembly of law-makers, as a whole county numerous in people, and powerful in riches. This strangers stand amazed at, and every one must confess needs a remedy. Though most think it hard to find one, because the constitution of the legislative being the original and supreme act of the society, antecedent to all positive laws, in it; and depending wholly on the people, no inferior power can alter it. And therefore the people, when the legislative is once constituted, having in such a government as we have been speaking of, no power to act as long as the government stands; this inconvenience is thought incapable of remedy.

§. 158. *Salus populi suprema lex*, is certainly so just and fundamental a rule, that he who sincerely follows it, cannot dangerously err. If therefore the executive, who has the power of convoking the legislative, observing rather the true proportion than fashion of representation, regulates not by old custom, but true

reason, the number of members in all places that have a right to be distinctly represented, which no part of the people, however incorporated, can pretend to; but in proportion to the assistance which it affords to the public, it cannot be judged to have set up a new legislative, but to have restored the old and true one, and to have rectified the disorders which succession of time had insensibly as well as inevitably introduced; for it being the interest as well as intention of the people to have a fair and equal representative; whoever brings it nearest to that, is an undoubted friend to, and establisher of the government, and cannot miss the consent and approbation of the community. Prerogative being nothing but a power in the hands of the prince, to provide for the public good, in such cases, which depending upon unforeseen and uncertain occurrences, certain and unalterable laws could not safely direct; whatsoever shall be done manifestly for the good of the people, and establishing the government upon its true foundations, is, and always will be just prerogative; the power of erecting new corporations, and therewith new representatives, carries with it a supposition, that in time the measures of representation might vary, and those places have a just right to be represented which before had none; and by the same reason, those cease to have a right, and be too inconsiderable, for such a privilege, which before had it. It is not a change from the present state, which perhaps corruption or decay has introduced, that makes an inroad upon the government, but the tendency of it to *injure or oppress the people*, and so set up one part, or party, with a distinction from, and an unequal subjection of the rest. Whatsoever cannot but be acknowledged to be of advantage to the society and people in general, upon just and lasting measures, will always, when done, justify itself; and whenever

the people shall chuse their representatives, upon just and undeniably equal measures fuitable to the original frame of the government, it cannot be doubted to be the will and act of the society, whoever permitted or proposed to them so to do.

We may add to Mr. *Locke's* reasoning, it would be extremely easy to obviate the objections, which may be made, against the *executive* power, extending the Royal prerogative so far, by observing that the consent of parliament might be taken, and a law enacted for the purpose. And as a great statesman said, *I do not know what an act of parliament cannot do.*

With respect to the choice of our representatives, so far from choosing *residentiaries* who best know the interest of their constituents, *strangers* whom the greatest part of the electors know not, are, by what means we need not mention, often, to our eternal shame be it said, chosen to take care of a *people* they never saw, and of *interests* with which they are wholly unacquainted; but on this subject more hereafter.

The great advantage of representatives is their being capable of discussing affairs; for this the people *collectively* are extremely unfit, which is one of the greatest inconveniencies of a *Democracy*.

In confirmation of what we hinted at above, we will mention *Montesquieu's* observation, which is, "That all the inhabitants of the several districts ought to have a right of voting at the election of a representative, except such as are in so mean a situation, as to be deemed to have no will of their own." It may be objected who is to judge? We answer, the law may readily distinguish them; an act of parliament would easily determine that matter.

The representative body ought not to be chosen for *active resolutions*, for which it is not fit, but for the *enacting of laws*, or to see whether those already enacted
are

xxvi INTRODUCTION.

are duly executed, a thing they are very capable of, and which none indeed but themselves can properly perform.

In every state there are always persons distinguished by their birth, riches, or honors; but were they to be confounded with the common people, and so have only the weight of a single vote, like the rest, the common liberty would be their slavery, and they would not have any interest in supporting it, as most of the popular resolutions would be against them. The share therefore, which they have in the legislature, ought to be proportioned to the other advantages they enjoy in the state, which happens only when they form a body that has a right to put a stop to the enterprizes of the people, as the people have a right to put a stop to theirs.

Such is the power of our nobles, in their right to a negative, as before mentioned.

The *legislative* power is committed to the body of the nobles, and to the body chosen to represent the people, who have each their assemblies and deliberations apart, each their separate views and interests.

Of the three powers above-mentioned, the *judiciary* is in some measure next to nothing. There remains therefore only two; and as these have need of a regulating power to temper them, the part of the *legislative* body composed of the nobility is extremely proper for this very purpose.

The body of the nobility ought to be *hereditary*. In the first place it is so in its own nature, and in the next there must be a considerable interest to preserve its privileges. Privileges that in themselves are obnoxious to popular envy, and of course in a free state are always in danger.

But as an hereditary power might be tempted to pursue its own particular interests, and forget those of the people, it is proper that where they may reap a
singular

singular advantage from being corrupted, as in the laws relating to the supplies, they should not have any other share in the legislation, than the power of *rejecting*, and not that of *resolving*.

By the *power of resolving*, is meant the right of *ordaining* by their *own* authority, or of *amending* what has been ordained by *others*. By the *power of rejecting*, is intended the right of *annulling* a resolution taken by another; which was the power of the tribunes at *Rome*. And though the person possessed of the privilege of *rejecting*, may likewise have the right of *approving*, yet this *approbation* passes for no more than a declaration that he intends not to make any use of his privilege of *rejecting*; it is derived from that very privilege.

Such is the Right, such the power of a *British* peer. But as to the representatives of the people, called the *house of commons*, they cannot, even as to supplies, make any grant, law, or ordinance, that will be binding on the peers, or on their own constituents, without the joint concurrence of the house of peers, and of the sovereign. The commons can only frame a bill, and give their assent to it, by passing it through their own house. When sent up to the lords it may be there rejected, or if passed through that Right honourable house, the Sovereign may refuse the Royal assent. If either of these is wanting, there is an end of the bill. The assent of any two of the *three estates* *

* It is customary to call them the *three estates* in Parliament, "As to their order, see what an eminent author says: *L'arrondissement de l'amour de la Patrie, l'activité de l'intérêt privé, l'immensité des états, les conquêtes, les abus du gouvernement, ont fait imaginer la vogue des députés ou représentans du peuple, dans les assemblées de la nation. C'est ce qu'en certains pays on oze appeller le Tiers-Etat. ainsi l'intérêt particulier de deux ordres est mis au premier & au second rang l'intérêt public n'est qu'au troisieme.*" Rousseau Soc. Con. L. 3. c. 15.

without

without the *third*, cannot give to any bill whatever the least coercive power or obligatory force. As to the reasons *vide* hereafter.

The *executive* power ought to be in the hands of a monarch; because this branch of government, which always requires expedition, is better administered by one than many; whereas, whatever depends on the *legislative* power, is oftentimes better regulated by many than by a single person.

But if there was not any monarch, and the *executive* power should be committed to a certain number of persons, selected from the *legislative* body, there would then be an end of liberty; because the two powers would be united, as the same persons would actually sometimes have, and would moreover be always able to have, a share in both.

How careful ought we to be that our constitution, as at present established, should be so preserved, and that it does not, by slow and imperceptible degrees, change into an *Aristocracy*.

Have we not as much or perhaps more to fear, for the constitution from the ambition of some great subjects, than from that of any sovereign whatever?

Ought not the one to be as much guarded against as the other?

Is the marriage-act in every respect compatible with our form of government, and which is not an *Aristocracy* only, but as before observed compounded of the *Monarchical* or *Royal*, the *Aristocratical* and *Democratical* form.

It has been formerly feared that an *English* monarch would introduce the same religion and government with the *French*. It was supposed *Charles the Second* designed it. Sir *William Temple* observed to him, in person, that it was very difficult, if not impossible:

* I believe the learned and judicious Mr. *Hampton*, and many others are of the same opinion.

that

that the universal bent of the nation was against both. That many who were indifferent as to religion, conceived, it could not be changed here but by force of an army. That the same force which made the king, master of their religion, made him master of their liberties and fortunes. That in *France* there were not any to be considered, but the nobles and the clergy. That if a king could engage them in his designs, he had no more to do; for the peasants not having any land, were as insignificant in the government as the women and children are here. That on the contrary the great quantity of land in *England*, lay in the hands of the yeomanry or lower gentry, and their hearts high by ease and plenty, as those of the *French* peasantry were wholly dispirited by labour and want. That the kings of *France* were very great in possessions of lands, and in dependencies by such vast numbers of offices, both military and civil, as well as ecclesiastical; whereas those of *England* having FEW OFFICES to bestow, having parted with their lands, their court of wards and knights services, have not means to raise or keep armies on foot, but by supplies from their parliaments, nor revenues to maintain any foreign war by other ways. That if they had an army on foot, yet, if composed of *English*, they would never serve ends that the people hated and feared: that the Roman catholics in *England* were not the hundredth part of the nation, and in *Scotland*, not the two hundredth, and it seemed against all common sense to think by one part to govern ninety-nine that were of contrary minds and humours. That for foreign troops, if they were few, they would signify nothing but to raise hatred and discontent; and how to raise, to bring over at once, and to maintain many, was very hard to imagine; that the force seeming necessary to subdue the liberties and spirits of
this

xxx . I N T R O D U C T I O N .

this nation, could not be esteemed less than an army of threescore thousand men; since the *Romans* were forced to keep twelve legions for that purpose, the *Normans* to institute sixty-two thousand knights fees, and *Cromwell* left an army of near eighty thousand men. That he (*Sir William*) never knew but one foreigner that understood *English* well which was *Gourville* (whom he knew the king esteemed the fountest head of any *Frenchman* he had ever seen) that when he (*Sir William*) was at *Brussels* in the first *Dutch* war, and he (*Gourville*) heard the parliament grew weary of it, he said, the king had nothing to do but to make the peace; that he had been long enough in *England*, seen enough of our court and people, and parliaments to conclude,

Qu'un Roy d'Angleterre, qui veut être l'homme de son peuple, est le plus grand Roy du monde; mais s'il veut être quelque chose d'avantage, par Dieu il n'est plus rien.

The king heard him very attentively, but seemed a little impatient at first: yet at last he said, *Sir William* had reason in all, and so had *Gourville*; and laying his hand upon *Sir William's*, added, *Et je veux être l'homme de mon peuple.* [And I will be the man of my people.] *Memoirs* 263. & seq. 2d vol. of the works.

We believe *Charles* made the declaration, *because* he was convinced *he could not succeed*, as there is great reason to imagine he had some time before planned a scheme for the purpose, in which he failed. And though according to what we have before said, the extension of prerogative, beyond due bounds or farther than necessary for the *public good*, be not the

* That a king of *England*, who will but be the man of his people, is the greatest king in the world, but if he will be something more, by G-d he is nothing at all.

only

I N T R O D U C T I O N. xxx

only object of attention for those who ought to watch as faithful guardians over the liberties of the people, yet we don't mean that their affections should be lessened even to this object, which is extremely important. And we would beg leave to observe, that the inconveniency attending the want of *lands, offices, &c.* mentioned by Sir *William*, may be pretty amply remedied, by pensions, old places, and new establishments, in the several departments of government.

To return to the chain of our subject, were the *legislative* body to be a considerable time without meeting, this would likewise put an end to liberty, for one of these two things would naturally follow, either that there would no longer be any *legislative* resolutions, and then the state would fall into *Anarchy*; or that these resolutions would be taken by the *executive* power, which would render it *absolute*.

From hence evidently appears the reason why it is absurd and impolitic in the highest degree, to settle, in free states, a permanent provision of consequence, on a sovereign, or give to the supreme ruler an extensive vote of credit, much more to leave in the sovereign's hands, power to raise money, under any pretence whatever, though for exigencies of state. The want of supplies will render a parliament necessary. The *Stuart* family, whilst they held the reins of government, experienced it, more than once.

It would be needless for the *legislative* body to continue always assembled, this would be troublesome to the representatives, and moreover would cut out too much work for the *executive* power, so as to take off its attention from *executing*, and oblige it to think, only of defending its own prerogatives and the right it has to execute.

To the above we may add some very excellent reasons from *Locke*, on government, *Part 2d. Ch. 17. §. 138.* where treating of property, he says, "I have
" truly

“ truly no property in that, which another can by
 “ right take from me, when he pleases, against my
 “ consent. Hence it is a mistake to think, that the
 “ *supreme* or *legislative* power of any commonwealth,
 “ can do what it will, and dispose of the estates of
 “ the subject arbitrarily, or take any part of them at
 “ pleasure.” To this he adds, “ This is not much
 “ to be feared in governments where the *legislative*
 “ consists wholly, or in part in assemblies *which are*
 “ *variable*, whose members upon the dissolution of
 “ the assembly, are subjects under the Common laws
 “ of their country, equally with the rest. But in go-
 “ vernments, where the legislative is in *one lasting as-*
 “ *sembly always in being*, or in *one man*, as in absolute
 “ monarchies, there is danger still, that they will
 “ think themselves, to have a distinct interest from
 “ the rest of the community, and so will be apt to
 “ increase their own riches, and power, by taking
 “ what they think fit from the people. For a man’s
 “ property is not at all secure though there be good
 “ and equitable laws, to set the bounds of it, between
 “ him and his fellow subjects, if he who commands
 “ those subjects, hath power to take from any private
 “ man what part he pleases of his property, and use
 “ and dispose of it, as he thinks good.”

A farther reason to be assigned, is, That if the *le-*
gislative body was to be always assembled, they might
 perhaps supply new deputies in the place of those who
 should die; and in this case, should the *legislative* body
 become once corrupted, the evil would be without
 remedy.

Where divers *legislative* bodies succeed each other,
 the people who have a bad opinion of that which is
 actually sitting, may reasonably entertain hopes of re-
 lief from a future. But was it to be *always* the *same*
body, the people seeing them once corrupted, could
 no longer hope for any thing from their laws, and
 would

would either become furious, or fall into a state of indolence*.

Each of these would be equally destructive to the state. Ours are elected for a certain term: formerly for *three* years, now for *seven*. This change was made by an *act of parliament* of the 1 Geo. 1. *st.* 2. *c.* 28. (*vide post* 130.)

A body of representatives, elected for *three* years, assumed the power of constituting themselves the representatives of the commons of *England*, for *seven*, being *four* years longer than the time for which they were elected. Does it require a comment?

But to proceed. The *legislative* body ought not to assemble of itself, for a body is not supposed to have any will, but when it is assembled, and if it assembles not itself unanimously, it cannot be determined, which is truly the *legislative* body, that which assembles, or that which does not assemble. If the right of proroguing this body, was in the body itself, it might happen that it never would be prorogued; this would be extremely dangerous, in case they chose to attempt any thing against the *executive* power. Besides, there are seasons some of which are more proper than others, for assembling the *legislative* body. It is necessary therefore, that the *executive* power, should regulate the time of holding, and the duration of those assemblies, according to the circumstances and exigencies of state, which are best known to the *executive* power. This is vested in the king.

If the *executive* power had not a right to stop the encroachments of the *legislative* body, the latter would become despotic, for as it might assume to itself what authority it pleased, it would soon destroy all the other powers.

* *Vide post.* a quotation from *Rousseau's contract Social, ou principes du Droit Politique.*

xxxiv INTRODUCTION.

The king of *Great Britain* hath by his prerogative, a negative voice which fully secures all his power and privileges, for the ultimate end of civil society, the *public good*. Of this more hereafter.

It is not proper on the other hand, that the *legislative* power, should have a right to stop the *executive*, for as *execution* hath its natural limits, it is useless to confine it; besides the *executive* power is generally employed in momentary operations.

But if the *legislative* power in a free government, ought not to have a right to stop the *executive*, it has a right and ought to have the means of examining, in what manner it's laws have been executed.

However, let the result of that examination be what it will, the *legislative* body ought not to have a power of judging the *person*, nor of course the *conduct* of him who is intrusted with the *executive* power. His person * should be *sacred*, because as it is necessary for the good of the state, to prevent the *legislative* body from rendering themselves arbitrary, the moment he is accused or tried, there is an end of liberty.

In this case the state would be no longer a *monarchy*, but a kind of a *republican*, not a *free* government. But as the person intrusted with the *executive* power cannot abuse it, without bad counsellors, and such as hate the laws, as ministers, though the laws

* The sovereign is a political being whose person is scarce known in the constitution, he is a kind of invisible entity, the spring, that gives motion to the political machine.

The adage, *that the king can do no wrong*, is certainly true, in the most extensive sense of the words.

He is *constitutionally* bound to act by the advice of his ministers.

He can do nothing of himself. The royal signature *alone* does not complete any regal act. They must all be countersigned by the proper officer of state, in the proper department. He is to act *according to the laws*. The *public good* is for ever the standing rule of his conduct, and if any one under him acts contrary thereto, *they must* bear all the consequences.

Many attempts to find shelter behind the throne have proved fruitless.

favour them as subjects ; these men may be examined and punished.

Examples of this kind, the *English* have often seen, notwithstanding they once broke through all order, and decorum, in the trial, condemnation and execution of *Charles the First*.

Though in general the *judiciary* power ought not to be united, with any part of the *legislative*, yet this is liable to three exceptions founded on the particular interest of the party accused.

The great are always obnoxious to popular envy ; and were they to be judged by the people, they might be in danger from their judges, and would moreover be deprived of the privilege which the meanest subject is possessed of in a free state, that of being *tried by their peers*. The nobility for this reason, ought not to be cited before the ordinary courts of judicature, but before that part of the legislature, which is composed of their own body.

Peers of this realm are to be tried for treason, murder, or felony, by their peers in parliament, *Co. Lit.* 156. b. * Every man is to be tried by his peers or equals. *Vide Magna Charta, c. 29.* which is general, as to all the king's subjects ; *vide Lord Coke, cap. 14. per pares.*

By the 1 *Ed. 6. c. 12. §. 15.* Peers indicted of any of the offences mentioned in that act, are to be tried by their peers, as used *theretofore* in cases of high treason. So the 27 of *Eliz. c. 2. §. 11.* makes the same provision ; *vide post 361.* and such is the antient and established usage of the law.

By the 20 *H. 6. c. 9.* Peereffes are to be tried as peers of the realm are.

By 7 *William 3. c. 3. §. 11.* On trial of a peer all the peers are to be summoned.

* Bishops are not to be tried by the *peers*, but by a common jury.

xxxvi INTRODUCTION.

It is possible that the law, which is clear sighted in one case, and blind in another, might in some cases be too severe. But as we have already observed, the national judges are no more than the mouth that pronounces the words of the law, mere *passive* beings, incapable of moderating either its force or rigour. That part therefore of the *legislative* body, which we have just now observed to be a necessary tribunal on another occasion, is also a necessary tribunal in this: it belongs to its supreme authority, to *moderate the law* in favour of the law itself, by mitigating the sentence. With respect to the decrees of a court of equity, they are not final, if the party who supposes himself aggrieved chuses to appeal. He may carry that appeal before the house of lords. Their determination is *final*.

It might also happen that a subject intrusted with the administration of public affairs, might infringe the rights of the people, and be guilty of crimes which the ordinary magistrates either could not, or would not punish. But in general, the *legislative* power cannot judge; and much less can it be a judge in this particular case, where it represents the *party concerned*, which is the *people*. It can only therefore *impeach*. But before what court shall it bring its impeachment?

Must it go and abase itself, before the ordinary tribunals, which are its inferiors, and being composed moreover of men who are *chosen from the people* as well as itself, will naturally be swayed by the authority of an accuser so powerful? No; in order to preserve the *dignity of the people*, and the *security of the subject*, the *legislative* part which represents the PEOPLE, must bring in its charge before the *legislative* part which represents the NOBILITY, who have neither the same interests nor the same passions.

This

This is the case with the *English*, whose representatives impeach wicked ministers, before the house of peers.

Here is an advantage which this government hath over most of the antient republicks, where there was this abuse, that the people were at the same time both *accuser* and *judge*.

The *executive* power, pursuant to what has been already said, ought to have a share in the *legislature* by the power of *rejection*, otherwise it would soon be stripped of its prerogative. But should the *legislative* power usurp a share of the *executive*, the latter would be equally undone; nor are they fit for active resolutions, which is the province of the *executive* power, as before observed.

If the prince were to have a share in the *legislature* by the power of *resolving*, liberty would be lost. But as it is necessary he should have a share in the *legislature* for the *support of his own prerogative*, this share must consist in the power of *rejection*.

Here then is the fundamental constitution of the government we are treating of. The *legislative* body being composed of *two* parts, one checks the other, by the mutual privilege of *rejection*. They are both checked by the *executive* power, as the *executive* is by the *legislative*.

These three powers should naturally form a state of repose, or inaction. But as there is a necessity for movement in the course of human affairs, they are forced to move, but still to move in concert.

As the *executive* power has no other part in the *legislative* than the privilege of *rejection*, it can have no share in the public debates *.

* Our *English* monarchs seldom attend them, for the best of reasons. *Charles* the *Second* once attended on a particular occasion, but, his attendance did not answer his expectations. It turned out greatly to his mortification.

It is not even necessary that it should *propose*; because, as it may always disapprove of the resolutions that shall be taken, it may likewise reject the decisions on those proposals which are made against its will.

Were the *executive* power to ordain the raising of *public money*, otherwise than by giving its *consent*, liberty would be at an end; because it would become *legislative* in the most *important point* of legislation.

If the *legislative* power was to settle the subsidies, not from year to year, but for *ever*, it would run the risque of losing its liberty, because the *executive* power would no longer be *dependent*; and when once possessed of such a *perpetual right*, it would be a matter of indifference, whether it held *of itself*, or *of another*. The same may be said if it should fix, not from year to year, but for ever, the *sea and land forces*, with which it is to intrust the *executive* power.

To the honour of our legislature, it has in general taken great care of these essential articles, especially of the latter.

To prevent the *executive* power from being able to *oppress*, it is requisite that the *armies*, with which it is intrusted, should consist of the *people*, and have the same spirit as the *people*; as was the case at *Rome*, 'till the time of *Marius*.

To obtain this end there are only two ways, either that the persons employed in the army, should have sufficient property to answer for their conduct to their fellow subjects, and be enlisted only for a year, as was customary at *Rome*; or if there should be a standing army, composed chiefly of the most despicable part of the nation, the *legislative* power should have a right to disband them as soon as it pleased; the soldiers should live in common with the rest of the people; and *no separate camps, barracks, or fortresses should be suffered*.

We

We may with justice say in the great essential articles, our legislature in general retain the power, but whether in every particular must be left to others to determine. Certain it is, if they part with any of their power, it is seldom for ever, and even where that has been the case, in the first institution of a law, they have afterwards shewn the nation some examples of *resumption*.

When once an army is established, it ought not to depend immediately on the *legislative*, but on the *executive* power; and this from the very nature of the thing; its business consisting more in *action*, than in *deliberation*.

From a manner of thinking among mankind, they set an higher value on courage than timorousness, on activity than prudence, on strength than counsel, Hence the army will ever despise a senate, and respect their own officers. They will naturally slight the orders sent them by a body of men, whom they look upon as not possessed of sufficient courage, and therefore not proper to command them; so that as soon as the army depends on the *legislative* body, the government becomes a military one; and if the contrary has ever happened, it has been owing to some extraordinary circumstances. Perhaps because that army was always kept divided; because it was composed of several bodies, that depended each on their particular province; because the capital towns were strong places, defended by their natural situation, and not garrisoned with *regular troops*. HOLLAND for instance, is still safer than VENICE: she might drown or starve revolted troops; for as they are not quartered in towns capable of furnishing them with necessary subsistence; this subsistence is of course *precarious*.

Montesquieu says, Whoever shall read the admirable treatise of *Tacitus*, on the manners of the *Ger-*

mans, will find that it is from them, the *English* have borrowed their idea of their Political government. This *beautiful system* was first invented in the woods.

As all human things have an end, the state we are speaking of will lose its liberty, it will perish. *Have not ROME, SPARTA, and CARTHAGE* perished? It will perish when the *legislative* power shall be more corrupted than the *executive*.

Montesquieu further says, “ It is not my business to “ examine whether the *English* actually enjoy this liberty, or not. It is sufficient for my purpose to “ observe, that *it is established* by their *laws*; and I “ enquire no further.”

We shall conclude this part with a quotation from *Rousseau's Soc. Con.* before referred to, *lib. 3. c. 15.* *Le peuple Anglois pense être libre; il se trompe fort, il ne l'est que durant l'élection des membres du parlement; sitôt qu'ils sont élus, il est esclave, il n'est rien. Dans les courts momens de sa liberté, l'usage qu'il en fait mérite bien qu'il la perde.*

So far as to a *general view of our constitution.*

We would add a few *observations*, which we flatter ourselves are immediately applicable to the principal part of our subject *Political Liberty* and the *British Constitution.*

From the preceding we think it is extremely evident, that true *Political liberty*, including that which relates to the *constitution*, and the *subject*; constitutes the universal good of civil society, and is in itself inestimable *.

* It is certain, that as nothing damps or depresses the spirits like great subjection or slavery, either of body or mind; so nothing nourishes, revives and fortifies them like great liberty. *Sir William Temple of health and long life, V. 3. p. 279.* Admitting this, what can be of so great consequence to civil society, in every respect, as liberty?

With

With respect to the *English*, well does *Montesquieu* observe “*that they ought to take the greatest care of their liberty, because were they to lose it, they would be the most enslaved people on earth.*”

The ultimate end of government, in its original institution certainly was, as it still ought to be, the good of the whole society :

If the authority of *Locke*, *Montesquieu* and *Natural reason* are not sufficient to prove this position, and any one desires farther satisfaction on a point, which has been disputed by many, we would refer them to *Puffendorf*, lib. 7. c. 5. §. 22. To Sir *William Temple's* works, vol. 3. p. 64. He says the public safety or good, is the end of all public institutes, as it was of the *Roman laws*; *Salus populi suprema lex esto.* To this all different opinions, passions and interests, should strike fail, &c.

We would also refer to his essay *upon the original and nature of government*, vol. 1.

And to *Puffendorf*, lib. 7. c. 1. §. 7. being the same with our sentiments.

To the king of *Prussia's Memoirs*, and to his reasons for the enacting and repealing of laws.

To *Cumberland's* law of nature, which relates to the common good of all mankind. Certainly the good of each distinct society, that constitutes a part of the great whole, is to be considered, or how can the common good of the whole be obtained ?

To *Burlamaqui* in his *Principes du Droit Politique*.

To Mr. *Fetiplace Bellers's* *Delineation of Universal law*. To *Plato*. To *Cicero*. To *Domat*. In short,

To every author, antiént and modern, that hath wrote on the *law of nature*, of *nations*, or *civil society*, if men of understanding and candor; not to such as *Filmer*, &c.

The preservation of the subjects property, according to *Locke* includes that of their lives and their liberty ;

berty ; and to which, as he justly observes in his treatise on government, *Part 2. c. 9. §. 124.* “ There
 “ are in the state of nature, many things wanting,
 “ *First*, There wants an established, settled, known
 “ law, received and allowed by common consent, to
 “ be the standard of *right* and *wrong*, and the com-
 “ mon measure to decide all controversies between
 “ them. For though the law of nature be plain and
 “ intelligible to all rational creatures ; yet men being
 “ biassed by their interest, are ignorant for want of
 “ studying of it, and are not apt to allow of it as a
 “ law binding to them in the application of it to
 “ their particular cases.

“ *Secondly*. In the state of nature, there wants a
 “ known and indifferent judge, with authority to de-
 “ termine all differences according to the established
 “ law. For every one in that state, being both judge
 “ and executioner of the law of nature, men being
 “ partial to themselves, passion and revenge is very
 “ apt to carry them too far, and with too much heat
 “ in their own cases, as well as negligence and uncon-
 “ cernedness, which makes them too remiss in other
 “ mens.

“ *Thirdly*. In the state of nature there often wants
 “ power to back and support the sentence when right,
 “ and to give it due execution. They who by any
 “ injustice offend, will seldom fail, where they are
 “ able, by force to make good their injustice ; such
 “ resistance many times makes the punishment dan-
 “ gerous, and frequently destructive to those who
 “ attempt it.”

Each individual surrendered a part of his natural rights and liberty, to enjoy the protection, and obtain the assistance of his fellow creature man, under mutual *compact*, tacit, or expressed *; not to become sub-

* We don't mean any thing contrary to Mr. *Fettilplace Beller's* sentiments, for though men were by nature, in a great measure

subservient to the will of any one man, or any particular number of men.

But as *Locke* observes §. 131. "Though men when they enter into society, give up the equality, liberty, and *executive* power they had in the state of nature, into the hands of the society, to be so far disposed of by the *legislative*, as the good of the society shall require; yet it being only with an intention in every one the better to preserve himself, his liberty and property, (for no rational creature can be supposed to change his condition with an intention to be worse) the power of the society, or *legislative*, constituted by them, can never be supposed to extend farther than the *common good*; but is obliged to secure every one's property by providing against those three defects above mentioned, that made the state of nature so unsafe and uneasy. And so whoever has the *legislative* or supreme power of any commonwealth, is bound to govern by *established standing laws*, promulgated, and *known* to the people, and not by extemporary decrees; and that by indifferent and upright judges; who are to decide controversies by *those laws*; and to employ the force of the community at home, only in the execution of *such laws*, or abroad to prevent or redress foreign injuries, and secure the community from inroads and invasion. And all this to be directed to *no other end*, but the *peace, safety and public good of the people.*"

This globe, and the whole of its uncultivated produce, was at first free to all. Men were nature's commoners unconfined by boundaries of human invention; free from human laws.

compelled to enter into society, yet, they would sooner have submitted to any inconveniencies, resulting from an opposition to their Natural sentiments, than have entered into society, for the good of their governors only, and not for their own.

Did

Did man acquire *property* in any thing, it arose from his own labor.

If he exerted that labor in cultivation, an idea, of inherent right, arose in his mind, and he esteemed the spot cultivated as his property *.

He whose bodily powers, or mental faculties were superior to the laborer's desirous of possessing the cultivated spot, by force or cunning obtains the possession. Hence the idea of *injustice*.

Hence also (including *Locke's* reasons) man sees the necessity of associating with his fellow creatures; for mutual defence; for the preservation of his property, as before observed, and to procure something more than the simple necessaries of life.

Speculative arguments are useless to prove positions that may be called *self-evident*. Many drawn from the religions of Sophistry may be used on the opposite side. To enumerate them, would require some volumes: To refute them a few lines.

As to sovereign power, how is it supported, in civilized states?

By the assistance of men, fellow-creatures, to that sovereign, to whom they give a political being or capacity.

Why do they lend their assistance? For a peculiar advantage to themselves, not to the governor. If any combine with the sovereign to plunder the rest, it is for their own advantage only. Such a combination constitutes, not a *government*, but a *tyrannical* and *despotic state*, and (unless of long continuance) the other subjects will rise when opportunity offers, and throw off the yoke.

I leave the indolent *Asiatics*, out of the question; I write of Northern states, whose subjects are MEN.

* *Roussseau* treats this subject judiciously in his *Emilius*. *Locke* is very particular and judicious also on the same, in the second part of his treatise on government, c. 5. of *Property*.

Superstition, the principal support of *Eastern* governments, I also wholly omit.

The Northern people, in the present age, regard *religion* as conducive to the *good of society*, not as the support of *tyrannical rule*.

An enlightened and manly people are not to be subdued, or deluded, by the fear of invisible and inexplicable powers, that never existed, but in the imagination of fools.

The present age knows more of the Creator of the world, and the great and sublime truths of the Christian religion, than has been known for many centuries, perhaps since the first ages of Christianity.

To return to our more immediate subject. A standing *army* compells obedience in despotic states.

In most *civilized* and *moderate* the laws. In the state of original liberty, individuals considered *themselves*: Each acted, every one laboured, and the principal concern of each was, for his own advantage only.

Self-preservation was the reigning principle originally. It was so intended by the author of our being. It is a fundamental law of nature, as such it still subsists, in its full force, invariably the same.

Men are naturally led to make choice of good, to avoid evil; it may be objected not always, nay seldom; admit it, yet their passions, want due reflection, and a greediness of present gain, which many suppose, *a good*, as well as the gratification of any other passion, leads men into error.

Instance in every man that accepts a bribe, to vote for a person to represent the commons of *England* in parliament, when the candidate may be a traitor to that country he would represent. When if the elector reflected but one moment, on the procedure of the candidate, he must think other motives than the service

vice of this fellow citizens, induce him to spend a fortune, for obtaining a seat in parliament.

What is the true end of government, if it is not the *good of society*? What right have we to expect from our children, from posterity, submission to the laws we make, unless directed to that end?

What obligatory force can be laid on our children yet unborn? Possible beings, according to *Montesquieu*, and according to reason, have possible rights.

Beings in embryo, then have certainly existing rights; who can deprive them of those privileges?

Suppose the rising generation should find, we had given up that invaluable *liberty*, our ancestors transmitted to us, should ask the reason of the few survivors, and not receiving a satisfactory answer, should think proper to retire from a land of slavery, and leave the adorers of despotic power, to their adorations, what right would the latter have to attempt restraining the former?

As to a despotic state, there must be some laws to govern the actions of individuals among themselves*,
or

* We would observe here we mean the same with *Montesquieu*, B. 19. c. 12. In these states, there are not any laws, that can be properly so called, but *Manners and Customs*. And as he also says, *laws are established; manners inspired*. These proceed from a *general spirit*, those from a *particular institution*. Again fixed and established customs, have a near resemblance to laws. Yet in B. 3. c. 9. he says, under despotic governments it is necessary that the people should be judged by *laws*, and the great men by the *caprice of the prince*. But by laws, he certainly means, the customs above mentioned. Again, B. 5. c. 14. *Montesquieu* observes, The principle of Despotic government is *fear*, but a timid, ignorant and faint spirited people, have no occasion for a great number of laws. Every thing ought to depend here on two or three ideas; therefore there is not any necessity for an addition of new notions. To this we may add, the uncertainty of their possessions, and the succession of property, render few laws necessary. In B. 6. c. 1, *Montesquieu* enlarges on that

or else the people can never know how to act. In *Turkey* there must be certain known laws or rules (though perhaps few) by which the judges in the ad-
mini-

that subject: after assigning some principal reasons for the multiplicity of laws, in monarchies, he says, "Far different is the case of people under despotic governments. In those countries I can see nothing that the legislator is able to decree, or the magistrate to judge. As the lands belong to the prince, it follows, that there are scarce any civil laws concerning the *property of lands*. From the right the sovereign has to succeed to estates. It follows likewise that there are none relating to *inheritances*. The monopolies established by the prince for himself in some countries, render all sorts of *commercial laws* quite useless. The marriages which they usually contract with the slaves, are the cause that there are scarce any civil laws relating to *Dowries*, or to the particular advantage of married women. From the prodigious multitude of slaves, it follows likewise that there are very few who have any such thing as a *will of their own*, and of course are answerable for their conduct before a judge. Most moral actions that are only in consequence of a father's, a husband's, or a master's will, are regulated by them and not by the magistrates.

I forgot to observe, that as what we call *honor*, is a thing hardly known in those countries, the several points relating to this *honor*, which are of such importance with us, are with them quite out of the question. Despotic power is of itself sufficient: round it there is an absolute *vacuum*. Hence it is, that when travellers favour us with the description of countries where arbitrary sway prevails, they seldom make mention of *Civil laws*.

All occasions therefore of wrangling and of law suits are here removed. And to this in part it is owing that litigious people in those countries are so roughly handled; as the injustice of their demand is neither screened, palliated, nor protected by an infinite number of laws, of course it is immediately discovered. C. 2. He says,

In *Turkey* where little regard is shewn to the honor, lives, or estates of the subject, all causes are one way or other quickly decided. The method of determining them is a matter of indifference, provided they are determined. The bashaw, after a quick hearing, orders which party he pleases to be bastinadoed, and then sends them about their business.

Here it would be dangerous to have the passion of litigiousness; this supposes a violent desire of obtaining *justice*, a strong aversion, a hurry of mind, and an obstinacy in pursuing *revenge*. All this should

ministration of justice must govern themselves, or with what propriety can the Grand Signior have a window reserved for himself, that commands the *aula regis* or principal court of justice in *Constantinople*, at which during the trial of causes, he can be an eye witness to the behaviour of the judge, without being himself seen? If their judgments are unjust he instantly orders them the bow string, as I think I have read in *Rycaut*. I say, if the laws are unknown could not any judge who acted wrong, alledge that he considered the evidence laid before him, and determined according to the best of his judgment? Would not that be a sufficient excuse? Despotic indeed must be that state, where judicial ministers are punished for *an error in judgment*, and especially where there are not any laws, for the regulation of their judgments.

But in despotic states, where it is said the sovereign's will is the only law, that principally relates to the *police of the state*, to levies, quartering of soldiers, serving in the army, &c.

The people are to assist with their lives and fortunes their sovereign in war, and in time of peace submit patiently, and with a good grace to quarter his army, to such levies as he directs, to leave him

should be avoided in a government, where *fear* ought to be the only prevailing sentiment, and in which the least popular disturbances are frequently attended with sudden and unforeseen revolutions. Here every man ought to know that the magistrate must not hear his name mentioned, and that his security depends entirely on his being reduced to a kind of *annihilation*. C. 3. He expressly says, in despotic governments there are no laws; the judge himself is his own rule. There are laws in monarchies; and where these are explicit, the judge conforms to them; where they are otherwise, he endeavours to follow their spirit; in republics the very nature of the constitution requires the judges to keep to the letter of the law. Here there is no citizen against whom a law can be interpreted, in cases where either his honor, property, or life is concerned.

sole heir of their property, their children wholly at his mercy, and the life of each individual, ever subjected to his will and pleasure.

A sister may lose a brother; a father his child; a wife her husband; children their parents; for the least offence, for none, strangled by the bowstring at a moment's warning, the unhappy wretches plunged instantaneously and unprepared into eternity, the whole family totally ruined, and none dare to complain, to murmur, or even to shew the least signs of sorrow: a sigh would be a rebuke, a tear impertinence; the consequence, a forfeiture of the life of that person, who expressed the least symptoms of grief.

As *Montesquieu* B. 3. c. 9. observes, *fear* is the principle of this government; it is in such a state, absolutely necessary.

The government could not subsist without this principle. c. 10. He says, man's portion here is like that of beasts, *instinct*, *compliance*, and *punishment*; and little does it avail to plead the sentiments of nature, Respect for a father, tenderness for a wife and children, the laws of honor, or an ill state of health: they are of no avail.

The reader will observe this is only a faint idea of *Turkish police*: Here is not a single line that relates to this happy island.

As to the natural freedom of man, and the injustice and absurdity of a despotic state, *vide Locke* on government, especially Part 2. c. 7. on *Political or Civil society*; §. 40. & *seq.* he says, "And hence (referring to his former reasoning) it is evident, that absolute monarchy, which by some men is counted for the only government in the world, is indeed inconsistent with *Civil society*, and so can be no form of

d

Civil

I I N T R O D U C T I O N .

Civil government at all. For the end of *Civil society*, being to avoid and remedy those inconveniencies of the state of nature, which necessarily follow from every man's being judge in his own case, by setting up a known authority, to which every one of that society may appeal upon any injury received, or controversy that may arise, and which every one of the society ought to obey: Wherever any persons are who have not such an authority to appeal to, for the decision of any difference between them, there those persons are still in the state of nature. And so is every absolute prince in respect of those who are under his *dominion*. For he being supposed to have all, both *legislative* and *executive* power in himself alone, there is no judge to be found: no appeal lies open to any one who may fairly and indifferently, and with authority decide, and from whence relief and redress may be expected, of any injury or inconveniency that may be suffered from him, or by his order: so that such a man, however intitled, *Czar*, or *Grand Signior*, or how you please, is as much in the state of nature, with all under his dominion, as he is with the rest of mankind. For wherever any two men are, who have no standing rule, and common judge, to appeal to on earth for the determination of controversies of right betwixt them, there they are still in the state of nature, and under all the inconveniencies of it, with only this woful difference to the subject, or rather slave of an absolute prince, That in the ordinary state of nature, he has a liberty to judge of his right, and according to the best of his power, to maintain it; but whenever his property is invaded by the will and order of his monarch, he has not only no appeal, as those in society ought to have, but as if he were degraded from the common state of rational creatures, is denied a liberty to judge of, or to defend his right,
and

I N T R O D U C T I O N. R

and so is exposed to all the misery and inconveniences that a man can fear from one, who being in the unrestrained state of nature, is yet corrupted with flattery, and armed with power."

"For he that thinks absolute power purifies men's blood, and corrects the baseness of human nature, need read but the history of this, or any other age to be convinced of the contrary. He that would have been insolent and injurious in the woods of *America*, would not probably be much better on a throne, where perhaps learning and religion shall be found out, to justify all that he shall do to his subjects, and the sword presently silence all those that dare question it. For what the protection of absolute monarchy is, what kind of fathers of their countries it makes princes to be, and to what a degree of happiness and security it carries *Civil society*, where this sort of government is grown to perfection, he that will look into the late relation of *Ceylon* *, may easily see."

In

* *Knox* in his history of *Ceylon* hath the following passage, and which is quoted by a sensible author, in his essay on *Civil government*. Speaking of the conduct of an arbitrary prince of *Ceylon*, the author says, "He sheds a great deal of blood, and gives no reason for it; nor is he content to take away men's lives, but he puts them to long and lingering torments; for when he is displeased with any, he will command to cut and pull away their flesh with pincers, and burn them with hot irons, to confess their accomplices; which to rid themselves of the torments, they will readily do and accuse many they never knew nor saw. Then he will order their hands to be tied about their necks, that they may eat their own flesh, and so lead them through the city to execution, the dogs who are used to it, following them to devour their flesh. At the place of execution, which is always in the largest highway, that all may see and stand in awe, there are always some sticking upon poles, others hanging up in quarters upon trees, besides what lie upon the ground, killed by

In absolute monarchies indeed, as well as other governments of the world, the subjects have an appeal to the law, and judges to decide any controversies, and restrain any violence that may happen betwixt the subjects themselves, one amongst another. This every one thinks necessary, and believes he deserves to be thought a declared enemy of society and mankind, who should go about to take it away. But whether this be from a true love of mankind and society, and such a charity as we owe all one to another, there is reason to doubt. For this is no more than what every man who loves his own power, profit, or greatness, may, and naturally must do, keep those animals from hurting or destroying one another who labour and drudge only for his pleasure and advan-

elephants, or otherwise. He hath a great many prisoners, whom he keeps in chains; some in gaol, others in the custody of great men, and for what, or how long, no man dare enquire. Some are allowed food, others not; and if they do any work to relieve their want, if he knows it, he will not permit them; because, as he says, he puts them there to torment and punish them, and not to work and be well maintained; yet this is connived at, and there are shops by the prisons to sell their wares. When the streets by the palace are to be swept, the prisoners in their chains are let out to do it. When they have been long in prison, at his pleasure, without any examination, they are led to execution; nor is his anger appeased, by the death of the malefactor, but he oftentimes punishes all his generation; sometimes killing them all together, and sometimes giving them all away for slaves; and thus he usually deals with those whose children are his attendants; for after they have been at court a while, and know his customs and manners, he cuts off their heads, and puts them in their bellies, no man knowing for what crime. When they are killed, they are called rebels and traitors, and their fathers houses, lands and estates seized on for the king's use, which are sometimes redeemed, by giving fees to the courtiers, but often the whole family and generation perish.

tage

I N T R O D U C T I O N. liii

tage, and so are taken care of, not out of any love the master has for them, but love of himself, and the profit they bring him. For if it be asked what security, what fence is there in such a state, against the violence and oppression of this absolute ruler? The very question can scarce be born. They are ready to tell you, that it deserves death only to ask after safety. Betwixt subject and subject they will grant there must be measures, laws, and judges for their mutual peace and security. But as for the ruler, he ought to be absolute, and is above all such circumstances; because he has a power to do more hurt and wrong 'tis right when he does it; to ask how you may be guarded from harm, or injury on that side where the strongest hand is to do it, is presently the voice of *faction* and *rebellion*. As if when men quitting the state of nature entered into society, they agreed that all of them *but one*, should be under the restraint of laws, but that *he* should still retain all the liberty of the state of nature, increased with power and made licentious by impunity. This is to think that men are so foolish that they take care to avoid what mischiefs may be done them by *pole-cats*, or *foxes*, but are content, nay think it safety to be *devoured* by *lions*."

"But whatever flatterers may talk to amuse people's understandings, it hinders not men from *feeling*; and when they perceive that any man, in what station soever, is out of the bounds of the Civil society they are of, and that they have no appeal on earth against any harm they may receive from him, they are apt to think themselves in the state of nature, in respect of him whom they find to be so; and to take care as soon as they can to have that safety and security in Civil society, for which it was first instituted, and for which only they entered into it. And therefore,

though perhaps at first some one good and excellent man having got a præheminency amongst the rest, had this deference paid to his goodness and virtue, as to a kind of natural authority, that the chief rule, with arbitration of their differences, by a *tacit* consent devolved into his hands, without any other caution, but the assurance they had of his uprightness and wisdom; yet when time giving authority, and, as some men would persuade us, sacredness to customs, which the negligence and unforeseeing innocence of the first ages began, had brought in successors of another stamp, the people finding their properties not secure under the government as then it was, (whereas government has no other end but the *preservation of property*) could never be safe nor at rest, nor think themselves *in Civil society*, until the legislative was placed in collective bodies of men, call them senate, parliament, or what you please, by which means every single person became subject equally with other the meanest men to those laws, which he himself, as part of the legislative, had established; nor could any one, by his own authority avoid the force of the law, when once made, nor by any pretense of superiority, plead exemption, thereby to licence his own, or the miscarriages of any of his dependants; no man in *Civil society* can be exempted from the laws of it. For if any man may do what he thinks fit, and there be no appeal on earth for redress or security against any harm he shall do; I ask, whether he be not perfectly still in the state of nature, and so can be no part or member of that *Civil society*, unless any one will say, the *State of Nature* and *Civil society* are one and the same thing, which I have never yet found any one so great a patron of *Anarchy* as to affirm." And in C. 15. §. 172. He says, "Despotical power is an absolute, arbitrary power one man has over another, to take away his life whenever he pleases; and this is a
power

I N T R O D U C T I O N. ly

power which neither nature gives, (for it has made no such distinction between one man and another,) nor compact can convey. For man not having such an arbitrary power over his own life, cannot give another man such a power over it, but it is the effect only of forfeiture, which the aggressor makes of his own life, when he puts himself into the state of war with another. For having quitted reason, which God hath given to be the rule betwixt man and man, and the peaceable ways which that teaches, and made use of force to compass his unjust ends upon another, where he has no right, he renders himself liable to be destroyed by his adversary, whenever he can, as any other noxious and brutish creature that is destructive to his being. And thus captives, taken in a just and lawful war, and *such only*, are subject to a despotal power, which as it arises not from *compact*, so neither is it *capable of any*, but is the state of *war continued*. For what *compact* can be made with a man that is not *master of his own life*? What condition can he perform? And if he be once allowed to be master of his own life, the despotal, arbitrary power of his master ceases. He that is master of himself, and his own life, has a right too to the means of preserving it; so that as soon as *compact* enters, *slavery* ceases, and he so far quits his absolute power, and puts an end to the state of war, who enters into conditions with his captive."

In §. 174. *Locke, inter alia*, says, "Absolute dominion, however placed, is so far from being one kind of *Civil society*, that it is as inconsistent with it, as slavery is with property; *paternal* power is, only where minority makes the child incapable to manage his property; *political* where men have property in their own disposal; and *despotal* over such

“such as have no property at all.” To proceed with our subject,

As to our legislators and ministers, they are in general men of birth, fortune and great abilities.

None but men of great abilities ought to interfere in matters of government. And sublime geniusses will reflect before they act: Before they consent to any thing that may affect a constitution, which hath for so many ages stood the rude shocks of foreign invasions, of domestic feuds, of civil commotions, and of time itself.

Not any of the liberties, the rights, or the privileges of BRITONS can be surrendered, or a foundation laid for their destruction, without the consent of the highest order of subjects, our *peers*, who are born COUNSELLORS of STATE. *

Not any thing in the form of present interest, can tempt them, like ignorant electors to surrender their most valuable privileges, which alone render life worth enjoying; they will doubtless transmit *to their own children*, the rights they derived from their ancestors, nor can they ever for any consideration give up the very security by which they must enjoy any reward offered them, for the most infamous sacrifice. But see what *Locke* says with respect to the legislative, Part 2. c. 19. on the dissolution of government. §. 222.

“The reason why men enter into society, is the preservation of their property, and the end why they chuse and authorize a legislative, is, that there may be laws made, and rules set as guards and fences to the properties of all the members of the society: they limit the power, and moderate the dominion of every part and member of the society. For since it can never be supposed to be the will of the

* *Machiavel*, l. 1, c. 5. seems to think, they are the safest guardians of the public liberty.

society,

I N T R O D U C T I O N. lvii

society, that the legislative should have a power to *destroy* that, which every one designs to *secure*, by entering into society, and for which the people submitted themselves to the legislators of their own making; whenever the legislators endeavour to take away, and destroy the property of the people, or to *reduce them to slavery under arbitrary power*, they put themselves into a state of war with the people, who are thereupon absolved from any farther obedience, and are left to the common refuge, which God hath provided for all men, against force and violence. Whensoever therefore the legislative shall transgress this *fundamental rule* of society; and either by *ambition, fear, folly or corruption*, endeavour to grasp to themselves, or *put into the hands of any other* an absolute power over the lives, liberties, and estates of the people; by this *breach of trust* they forfeit the power the people had put into their hands for *quite contrary* ends, and it *devolves to the people*, who have a *right to resume their original liberty*, and, by the establishment of a new legislative (such as they shall think fit) provide for their own safety and security, which is the end for which they are in society. What I have said here, concerning the *legislative* in general, holds true also concerning the *supreme executor*, who having a double trust put in him, both to have a *part in the legislative*, and the *supreme execution of the law*, acts also against *both*, when he goes about to set up his own *arbitrary will*, as the *law* of the society. He acts contrary to his *trust*, when he employs the force, treasure, and offices of the society, to *corrupt the representatives*, and gain them to his purposes: When he openly pre-engages the electors, and prescribes to their choice, such whom he has by solicitations, threats, promises, or otherwise won to *his* designs; and employs them to bring in such who

who have promised beforehand what to vote, and what to enact. Thus to regulate candidates and electors, and new model the ways of election, what is it but to *cut up the government by the roots*, and poison the very fountain of public security? For the people having reserved to themselves the *choice* of their representatives, as the *fence* to their properties, could do it for no other end, but that they might always be *freely chosen*, and so chosen, *freely act* and *advise*, as the necessity of the commonwealth, and the public good should, upon *examination*, and *mature debate*, be judged to require. This, those who give their votes before they *bear* the debate, and have *weighed* the reasons on all sides, are not capable of doing. To prepare *such an assembly* as this, and endeavour to set up the declared abettors of *bis own will*, for the *true representatives* of the people and the *lawmakers* of the society, is certainly as great a breach of trust, and as perfect a declaration of a design to *subvert the government*, as is possible to be met with. To which if one shall add *rewards* and *punishments* visibly employed *to the same end*, and all the *arts of perverted law* made use of to *take off* and *destroy* all that stand in the way of such a design, and will not comply and consent to *betray* the LIBERTIES OF THEIR COUNTRY, it will be past doubt what is doing. What power they ought to have in the society who thus employ it *contrary* to the *trust* that went along with it in its *first institution*, is easy to determine; and one cannot but see, that he who has once attempted any such thing as this, cannot any longer be trusted *.”

* N. B. These observations of *Locke* were intended against those actions of *James the Second* that laid the foundation for his ruin.

As

As to *judicial ministers* according to the observation made by the *Father of Candor*, "Should any one in that station of high trust and dignity temporize or ever join those in power, he must be despised by every one, as it is the POWER, not the PERSON he courts."

Suppose any man base enough for a pecuniary satisfaction or dishonourable title * to concur in the introduction of arbitrary power into a free state. By what tenure will he hold his illegal acquisition? What reasonable hope can he entertain that his posterity will enjoy the acquisition which he would transmit? Will he leave his children *tenants at will* to his hereditary and acquired fortune? It is said the profligate and the needy have not any reflection; true. But—will *Britons* make choice of such to be the guardians of their property, their lives, and their liberties?

Or in the house of lords, can there be a majority of such men?

Will government and the ministers of it interfere that such may be chosen the people's representatives, or created counsellors of state?

* When honors of any sort are prostituted, they are changed into marks of infamy and disgrace; and will be looked upon, by every honest mind with horror and disdain; they are no longer badges of dignity, but yokes of servitude; no longer the price of virtue, but the bribes of vice. They degenerate into the accoutrements of knaves and fools, and become the signs and tokens to distinguish the corrupt from the incorrupt, the *Catilines* from the *Catos*. But on the other hand, when honors, as in the days of *TRAJAN*, flow in a pure channel, and spring from a fountain, that is clear and unfilled, who is not glad to approach the stream?

Lord *Oreary's* notes on *Pliny's* 7 epistle, lib. 2. p. 115, 116.

Mr. *Melmoth* in his elegant translation, has not given any notes on this epistle, doubtless he thought, the noble lord's sufficient.

But

lx INTRODUCTION.

But as the subject of *representatives* is, in the following work particularly considered, we shall here only observe that as they are the body to whom the *people* trust the whole of their *legislative power*, from them we must expect the preservation of our *liberty*, which is, as before observed, of the utmost consequence. For, as the author of the *Essay on Civil government*, before-mentioned saith at the conclusion of his work, "LIBERTY receives strength and vigor by *wholesome laws*, and a punctual observance of them; not by contemning or treading them under foot. *Justice, equity and regularity*, are all friends to LIBERTY: She cannot subsist without them; and, in a word, courts *Virtue* as her chief and bosom friend, and abhors *Vice* as her greatest enemy.

The Reader will excuse us for closing this part of our subject, with some quotations from Sir *William Temple*, some lines from *Addison*, who was, as well as Sir *William*, a minister of state, and a few from *Longinus*.

The *first* safety of princes and states lies in avoiding all councils or designs of innovation, in antient and established forms and laws, *especially those concerning LIBERTY, PROPERTY and RELIGION*, (which are the possessions men will ever have most at heart;) and thereby leaving the channel of *known* and *common justice* clear and undisturbed.

The *second*, in pursuing the *true* and *common* interest of the state they govern, without espousing those of any party or faction; or if these are so formed in a state, that they must incline to one or other, then to choose and favour that which is most popular, or wherein the greatest or strongest part of the people appear to be engaged. For, as the end of govern-

INTRODUCTION. xi

government seems to be *Salus populi*, so the strength of the government is the consent of the people; which made that maxim of *Vox populi vox Dei*; that is, the governors who are few will ever be forced to follow the strength of the governed, who are many, let them be either people or armies, by which they govern.

A *third* is the countenancing and introducing, as far as it is possible, the customs and habits of industry and parsimony into the countries they govern; for frugal and industrious men are usually safe and friendly to the established government, as the idle and expensive are dangerous from their humours or necessities.

The *last* consists in preventing dangers from abroad; for foreign dangers raise fears at home, and fears among the people raise jealousies of the prince or state, and give them ill opinions, either of their abilities, or their good intentions. Men are apt to think well of themselves, and of their nation, of their courage and their strength; and if they see it in danger, they lay the fault upon the weakness, ill-conduct, or corruption of their governors, the ill orders of state, ill choice of officers, or ill discipline of armies; and nothing makes a discontent or sedition so fatal at home, as an invasion, or the threats and prospect of one from abroad.

Sir *William Temple* on popular discontents, *Vol. 3.* of his works, p. 46. & seq.

And Sir *William* in his essay upon the Original and Nature of Government, says, *Opinion* is the true ground

ground and foundation of all government, and that which subjects *power* to *authority*. For *power* arising from *strength*, is always in those that are *governed*, who are *many*; but *authority* arising from *opinion* is in those that *govern* who are *few*. p. 34.

And p. 35. He says *AUTHORITY* arises from the opinion of *wisdom*, *goodness* and *valour*, in the persons who possess it.

So far as to this part of our subject, we have only here to add the following lines from *Addison*.

HOW has kind heav'n adorn'd the happy land, *
 And scatter'd blessings with a wasteful hand!
 But what avail her unexhausted stores,
 Her blooming mountains, and her sunny shores,
 With all the gifts that heav'n and earth impart,
 The smiles of nature and the charms of art,
 While proud oppression in her vallies reigns,
 And tyranny usurps her happy plains?
 The poor inhabitant beholds in vain,
 The red'ning Orange and the swelling grain:
 Joyless he sees the growing oils and wines,
 And in the myrtles fragrant shade repines:
 Starves in the midst of nature's bounty, curst;
 And in the loaden vineyard dies for thirst.
 Ob! LIBERTY thou Goddess heav'nly bright,
 Profuse of bliss, and pregnant with delight,

* Italy.

Eternal

*Eternal pleasures in thy presence reign,
And smiling plenty leads thy wanton train!
Eas'd of her load, subjection grows more light,
And poverty looks chearful in thy sight;
Thou mak'st the gloomy face of nature gay,
Giv'st beauty to the sun, and pleasure to the day.*

And we beg leave to subjoin a few words from Longinus. He says, It is LIBERTY that is formed to nurse the sentiments of great geniusses; to inspire them with hope, to push forward the propensity of contest one with another, and the generous emulation of being the first in rank.

De Subl. Sect. 44.

OBSER-

OBSERVATIONS

On some of the

MOST ESSENTIAL

Of the following L A W S.

MAGNA CHARTA. Before we come immediately to the statute so called, it may not be improper, here to observe, That previous to the reign of *Ed. 3.* before what is called *the Conquest* of *William* (and which *Edward* obtained the surname of the *Confessor*) the countries of *Wessex*, *Mercia* and *Northumberland*, were governed by their *own peculiar laws* *, but he reduced them all into one body and ordained they should be observed *in common* through the *whole* kingdom: These were called *Edward's Laws*, in contradistinction to those of the *Norman* kings, which were introduced in the sequel.

Sir *William Temple* in his introduction to the history of *England* quotes the *Litchfield* chronicle which relates that *William* called *the Conqueror* in the fourth

* *Spelman* thinks they all held an uniformity in substance, differing rather in their *Multæ* than in their *Caneæ*, that is, in the quantity of fines and amerciaments, than in the course and frame of Justice.

And, that *Edward the Confessor* made his alteration famous, rather by the new name than by the new matter.

Of the antient government of *England*, p. 49.

N. B. Wherever I refer to *Spelman*, except the glossary is mentioned, it is the *Bishop of London's* curious edition of his *English works*, I mean.

year of his reign, summoned out of every county, the *nobles*, the *wise men*, and such as were learned in their *own law*, that he might from them learn, what were their *antient laws and customs*. After which the laws of *St. Edward* were conserved, and by him confirmed throughout the *whole kingdom*. V. 3. 187.

P. 134. Sir *William* says, He appointed justices to *preserve the peace and administer justice*, in every county, *pursuant to that which was used in the Saxon reigns*.

And in p. 118. is another passage, which it is unnecessary here to quote, that shews Sir *William* was of opinion he did *confirm the antient laws, &c.*

To this we may add, what Mr. *Blackstone* in his learned and elaborate history of the charters says, *viz.* It is agreed by all our historians that the Great charter of king *John* was for the most part compiled from the *antient customs of the realm*, or the laws of king *Edward the Confessor*, by which they usually mean the *old Common law*, which was established under our *Saxon* princes, before the rigors of feudal tenure and other hardships were imported from the continent by the kings of the *Norman line*." p. xii.

To this may be also added the authority of *Dugdale* in his *Origines juridiciales*, 96. who says the charter of *Hen. 1.* contained all those that were granted by king *Edward the Confessor*.

To proceed, we would refer those that are desirous of seeing an accurate history of the charters of liberties, and the various readings of the same, to Mr. *Blackstone's* history.

As in p. 23. of the following work, a revocation of the charter is mentioned, it is here proper to observe that a parliament being summoned to meet at *Westminster* on the 20th of *January* 1236, when the government had a necessity for a large supply, the nation

tion took that opportunity to demand a *confirmation of the two charters*, now the king was undoubtedly of full age.

He complied with their request by a charter dated the 28th of *January*, of which there is an original extant under seal in the *Bodleian* library among Mr. *Turney's* collection, perfectly fair and complete. There is also an enrolment of it in the charter-roll. *Vide* Mr. *Blackstone's* introduction, p. lxxx.

Vide also a copy of this charter in that gentleman's work, p. 104.

In the year 1253. the parties complaining much of the infractions of the Great charter, the charters were republished; and the sentence of excommunication, which had before been more privately denounced, *A. D.* 1224 & 1237, was again renewed on the 13th of *May* with very great magnificence and solemnity in *Westminster Hall*, the king himself and his nobles attending in person.

In 1264, the 49th of *H. 3.* the king was obliged to set his seal to a charter of confirmation, of the 14th of *March*, a copy of which *vide* in Mr. *Blackstone*, p. 114.

This new charter contains a clause giving liberty to the king's subjects to rise against and distrain him to the utmost of their power, notwithstanding the allegiance they owed him, in case he should transgress the conditions therein agreed to.

The 5th chapter of the statute made at *Marleberge*, 18 *November* 1267, contains a general provision for the observance of the charters, *Blackstone*, p. 123.

Edward's confirmation of the charter is set forth in the following work, p. 46. & seq.

Vide an authentic copy in the *Norman French*, *Black*, 124.

The statute *DE TALLAGIO*, *v.* Mr. *Blackstone's* introduction, p. xcvi. for some account of the dispute relative to it, and for a latin copy from *Hemingford*.

In the case of Mr. *Hampden*, concerning ship-money, *A. D.* 1637. v. State Trials, 510, 536, 551, &c. as Mr. *Blackstone* observes, it was learnedly debated, and the judges determined it to be a *separate act of parliament*.

About *Whitsontide* 1298, a demand was made of *Ed. 1.* to renew his *confirmation of the charters at home*, lest as the former was sealed in a foreign country, a pretence should be thence formed for breaking through it, and he confirmed the charter in a parliament held the *8th March at London*, with a saving of *the rights of his crown*.

But finding the people discontented at this *partial and reserved* confirmation, he is said to have at length confirmed the two charters, *absolutely and without any restriction* in another parliament holden about the beginning of the ensuing *May*. Mr. *Blackstone* refers to 2 *Brady* 65. *Trivet Hemingsford* and *Walsingham*.

In the next spring, at another parliament held at *London* the 16th of *March*, the two charters were again confirmed by the statute called *Articuli Super cartas*.

Some time after the boundaries of the forests were finally established, *viz.* 29 *Ed. 1.* the king by his letters patent again confirmed the two charters, with a special proviso, that, if any thing had been enacted contrary to their true sense and meaning, it should be remedied or even annulled by the common consent of the realm.

Vide a copy of the same, *Black.* 131.

As Mr. *Blackstone* says, This seems to have been the final and complete establishment of the two charters of liberties and of the forest: which from their first concession under king *John*, *A. D.* 1215, had been often endangered and undergone very many mutations, for the space of near a century; but were now fixed upon an eternal basis, having in all, before

lxviii . O B S E R V A T I O N S .

and since this time, (as Sir *Edward Coke* observes) been established, confirmed, and commanded to be put in execution, by two and thirty several acts of parliament.

Introduction cxii. & seq'.

Sir *Henry Spelman* says *fifteen* times is this charter (M. C.) confirmed by parliament, in *Ed. the Third's* time; *eight* times in *Richard the Second's* reign; and *six* times in *Hen. the Fourth's*.

Large work of Tythes, 131.

25 *Ed. 3. st. 5. c. 2.* declaring what offences are treason, was made on a representation of the commons to the king, that the judges had in their trials, condemned many persons, as traitors, for divers causes, which the commonalty did not know to be *treason*.

Vide Hist. of England in 1351.

The 1st *M. sess. 1. c. 1.* and *sess. 2. c. 6.* and the 1st and 2d *P. & M.* concerning trials of treasons, shew themselves.

But the administration of *Mary*, the modes of trial pursued in her reign, and the many, that were condemned in the most arbitrary, and suffered in the most cruel manner, do not the least honor, to her, or to her institutions.

13 *Car. 2. c. 1.* was made by a complaisant parliament that had been in general returned under the influence of the court, yet it was at such a critical juncture, just after the restoration, that some few particulars excepted, little fault can be found with it: as great care was therein taken, not to subject any one to the punishment inflicted by the act, without *legal trial* and *conviction*.

C. 5.

C. 5. The preamble shews the reason, and does not require farther observation.

² *Ed. 3. c. 2.* Was made at *Northampton* with a confirmation of the charters, &c. The preamble to *c. 2.* shews the cause of making it.

¹ *Will. & M. sess. 2. c. 2.* (36.) was obtained after the abdication of *James*, when *William* came first to the crown, as the only time for obtaining a confirmation of the subject's liberties; and is founded on the declaration of *rights*, presented by lords and commons, on the 13th of *February* 1688, to the king and queen, then prince and princess of *Orange*, and which declaration is set forth in the act.

As Dr. *Smollet* observes, the constitution of *England* had now assumed a new aspect. The maxim of hereditary indefeasible right, was at length renounced by a free parliament. The power of the crown was acknowledged to flow from no other fountain than that of a contract with the people. Allegiance and protection were declared reciprocal ties, depending upon each other. The representatives of the nation made a regular claim of rights in behalf of their constituents; and *William* the *Third* ascended the throne in consequence of an express capitulation with the people.

The Dr. also with equal justice observes, that on this occasion, the zeal of the parliament towards their deliverer, seems to have overshot their attachment to their own liberty and privileges: or at least they neglected the fairest opportunity that ever occurred, to retrench those prerogatives of the crown to which they imputed all the late and former calamities of the kingdom. Their new monarch retained the old regal power over parliaments, in its full extent. He was left at liberty to convoke, adjourn, prorogue, and dissolve them at pleasure. He was enabled to influence elections and oppress corporations. He

possessed the right of chusing his own council ; of nominating all the great officers of the state, and of the household, of the army, the navy, and the church. He reserved the absolute command of the militia : so that he remained master of all the instruments and engines of corruption and violence ; without any other restraint than his own moderation, and prudent regard to the *claim of rights*, and *principle of resistance on which the revolution was founded*. In a word, the settlement was finished with some precipitation, before the plan had been properly digested and matured ; and this will be the case in every establishment formed upon a sudden emergency in the face of opposition. It was observed, That the king, who was made by the *people*, had it in his power to rule without them, to govern *jure divino*, though it was created *jure humano* ; and that, though the change proceeded from a republican spirit, the settlement was built upon tory maxims ; for the execution of his government continued still independent of his commission, while his own person remained sacred and inviolable.

Doubtless most if not all the Doctor's observations on that subject, are right. Yet, in a state like ours, on which we have before so largely expatiated, it remains a question, we shall not here attempt to determine, how far the *executive* power, and the *prerogative*, could have been limited, consistent with the nature of our constitution. Perhaps the reader may be enabled to answer the question, after having perused and duly weighed, what we have before wrote on *Liberty*, and the *Constitution*.

12 & 13 *William 3. c. 2.* was made principally to settle the succession of the crown, and nothing could be more natural under the circumstances of those times, than to take care of the subject's liberties, and
again

again renew the confirmation of them, and especially of religion, which had been in the reign of *James the Second* so much endangered, and which might again, unless the greatest care was taken that a Protestant prince should succeed to the throne.

The death of the duke of *Gloucester*, son to *Anne* princess of *Denmark*, was an event that as the king said rendered it absolutely necessary for the parliament to make provision for the succession of the crown, in the Protestant line, and that act was accordingly passed. The historian observes that the king was extremely mortified at the preliminary limitations, which he considered as an open insult on his own conduct and administration; not but that they were necessary precautions, naturally suggested by the experience of those evils to which the nation had been already exposed, in consequence of raising a foreign prince to the throne of *England*.

APPEALS. That the king should pardon murder, and yet, that the offender after such pardon may be hanged, upon conviction on an appeal, may appear something strange, if the *reason* whereon the doctrine is founded, should not be considered.

Mr. *Locke* in his second essay on government. C. 2. *Of the state of nature* says, "There are two distinct rights, the one of *punishing a crime for restraint*, and *preventing the like offence*, which right of punishing is in every body *; the other of *taking reparation*, which belongs only to *the injured party* †."

"From these two distinct rights, it comes to pass that the magistrate, who by being magistrate, hath the common right of punishing put into his hands,

* That is whilst in a state of nature.

† Which belongs to him, in civil society, but he is to apply to the laws for relief.

can often where the public good demands *not* the execution of the law, remit the *punishment* of criminal offences by his own authority, but yet, cannot remit the *satisfaction* due to any private man, for the damage he has received."

He who has suffered the damage has a right to demand satisfaction in his own name, and he alone can remit.

We may with propriety say, hereon is founded the law of appeals, and the king in whom the *executive* power is vested, is to be considered as chief *magistrate*, in this particular, whose pardon can only extend to offences so far as they relate to the *public*, but cannot affect the *party's* right. It is for such satisfaction as the law can give, *viz.* *life for life, &c.* that the *party injured*, such as a *wife, &c.* brings an appeal which is ever at the suit of the party.

PARLIAMENTS. We shall not notice any of the acts preceding 6 *W. & M. c. 2.* but refer to the comment and the acts. As to that statute it is supposed that the king bargained for the condescension of the house, by agreeing to it. Mr. *Harley* brought it in by order of the lower house, immediately after their first adjournment; and it kept pace with the consideration of *supplies*.

A sensible author supposes, the commons found the people could not as yet, be brought to digest long parliaments, and that they endeavoured to make their peace with the people (whom they had much offended) by the *triennial* bill.

The 12th & 13th *W. 3.* which the 11th *Geo. 2. c. 24.* was made to amend, was passed at the beginning of a session of a new parliament, that succeeded one which the king had first prorogued by commission, without a speech, and afterwards dissolved; (not being sufficiently complaisant to him) in hopes that this unexpected exertion of the prerogative would teach their successors more complaisance. The

The act was intended to set bounds to that growing evil *parliamentary privilege* which the people had long found great reason to complain of.

The 11th Geo. 2. c. 24. was made to amend the other, as expressed in the title: Those amendments may be seen by the act itself.

2 & 3 Anne, c. 18. In the preceding year the *Whigs* to serve a present turn, did themselves the honor to introduce a bill for purging the house of commons of *placemen*, the majority, who had then the upper hand at court, thought it for their interest to throw it out.

And yet the same majority, in the last session, in resentment to some who had apostatized, and taken places, brought in the same, or the like bill again, which passed one house and was rejected in the other.

Use and abuse of Parliaments, 1 V. 148.

9 Anne, c. 5. for qualification of members, was intended to exclude *trading people* from the house of commons, and to lodge the legislative power with the *landholders*.

1 Geo. 1. st. 2. c. 38. for *septennial* parliaments: at the time of passing this very extraordinary act, there was an universal disaffection in the nation, and the ministry dreaded the revolution of a new parliament, which might wrest the power from their faction, and retort upon them, the violence of their own measures: therefore, as the historian expresses it, they formed a resolution equally odious and effectual, to establish their administration, by a scheme to repeal the *triennial* act, and by a new law, to extend the term of parliaments to *seven* years.

We may add, and to continue themselves for four years beyond the term, for which they were elected.

lxxiv OBSERVATIONS.

Many members in the house of commons, as well as many peers in the house of lords *, had sufficient honesty and spirit to oppose the act to the utmost.

A part of Mr. *Snell's* argument against it was to the following purport, *This would be to destroy the sense of all their † freedom; for if we have a right to continue ourselves for one year, one month, a day, beyond our triennial term, it will unavoidably follow, we have it in our power to make ourselves PERPETUAL.*

Use and abuse of parliaments, V. 1. 205.

1 *Geo. 1. st. 2. c. 56.* To disable pensioners for years from sitting in parliament. We can only refer to the act, especially the preamble.

2 *Geo. 2. c. 24.* against *Bribery and Corruption*, and the other acts relative thereto. Also the acts, appointing the freeholders oath and regulating elections, We can only say, they were made on urgent and pressing reasons, when perhaps regulations of that kind were never more wanting.

It is sufficient to observe they were in general made, during the time of Sir *Robert Walpole*, notwithstanding all his power and influence.

ANTIQUITY of PARLIAMENTS. *Dugdale* from *Cæsar* and *Tacitus* collects, that before the coming of the *Romans*, into *Britain*, they had parliaments or assemblies, conventions, or great and common councils. And in a general view of government in *Europe*, said to be wrote by *Algernan Sidney*, and published in a work, called *The use and abuse of parliaments*, which I have several times quoted, reference is had to *Cæsar* for proof of such a common council. And those who look into *Cæsar* for that purpose, will find

* A very home protest was entered against it, by 30 lords.

† The people's.

many

many passages which shew, that every thing of moment was determined in these councils among the Britons, the Gauls, &c. and also among all the German people. To prove that the people had their share in debating and directing all affairs of moment, Sidney quotes two passages from Tacitus. In one he says, *In lesser matters the principal men only, in the greater affairs all consult.*

In the other passage he says, *Where the king or prince are heard for the reason they bring to persuade, rather than for any authority to command.*

Lambard in his *Archion*, p. 243. refers to Tacitus, and is of the same opinion, as to the antiquity of parliaments.

One would apprehend, that with the unbiassed, those passages determine the long agitated question, as to what is called the right of the commons, or people, to sit in parliament. Supposing, in subsequent times, some encroachment upon their rights and privileges as men; they have long since recovered them, and have now, as constituting the essential part of the state, a right, by their representatives, to make laws, for the regulation of their own conduct, &c. of which sufficient hath been already said.

As to the *three estates*, the *power and business of parliaments* and the *qualifications of members*, we must refer to the work, enough being there said on those subjects.

PETITION OF RIGHT. Charles the First had dissolved his first parliament as refractory. They had refused to grant supplies without redress of some grievances. Charles, after the dissolution, to supply his wants, had set on foot a loan throughout the kingdom. Many gentlemen that refused were imprisoned, or sent abroad by order of the king and his privy council, and the judges refused to sever that applied for it,
the

the privilege of the *Habeas Corpus*, to which they were intitled by the antient Common law of the realm.

Charles's necessities at length compelled him to call a new parliament, which instead of granting supplies made remonstrances of grievances. The king and his ministers used many artful means to sooth them, in order to obtain the supplies they wanted, and some means to intimidate; such as ruling without parliaments, &c. At length they began to consider of supplies, but in that business proceeded very slowly, and their laws and liberties having been lately publickly and most shamefully violated, they thought it necessary to demand a public reparation for the sake of themselves and their posterity. This among other things, produced the *petition of right*.

The two houses resolved to present the petition, and beseech his majesty to vouchsafe an answer in full parliament, that it might be registred as a *fundamental constitution*.

The king's behaviour is noticed; in a comment on the petition.

HABEAS CORPUS ACT. This statute was passed by a parliament over which *Charles the Second* had not any influence, though by history it appears, he had used his utmost endeavours at the elections. The historian says, that almost all the active men in the kingdom, were enemies to the court.

Certain it is that in his and almost every preceding reign, especially in that of his father, many occasions had been given, even at the time of obtaining the *petition of right*, for having such an excellent law passed.

We need only with the historian observe; *This law is one GREAT BULWARK OF BRITISH LIBERTY.*

STAR-CHAMBER ACT. This was obtained of *Charles the First*, when he had done many unpopular acts; and

and his subjects had been greatly injured by that and many other similar courts; to abolish which several courts, and prevent any such for the future, this excellent-law was made.

BILLETING OF SOLDIERS. The subject had long experienced many grievances from billets, which had often been complained of, but not any redress could be had, 'till the 31st *Car. 2.* and we are sorry to add his father was compelled to appease the people to pass the Star-chamber act, as was the case by this, as well as several other good laws, passed in the reign of each.

5 *Eliz. c. 23. De excommunicato capiendo.* As this is a law, greatly in favor of the subject's liberty, we scarce need observe, it's being passed in her reign, is a sufficient reason; as she was a very excellent sovereign, and seemed ever ready to favour the subject.

The reformation might be also an inducement.

As to the several statute-laws concerning **PROTESTANT DISSENTERS** and **PAPISTS**, we can only say that sometimes reformation, sometimes the preservation of religion, or the security of the constitution, have been the principal inducements. Sometimes faction, and that to give an account of the reasons for establishing each of those laws, would require a volume, therefore we can only refer to history; should any be so curious as to enquire whether any other reasons induced the legislators, to pass them, than such as are mentioned in their respective preambles.

JURIES. As to their antiquity *Spelman* in his glossary, speaks of them in the time of the *Anglo-Saxons*, and *Dugdale* as well as *Spelman*, mentions the law of *Ethelred*, which says, *Let there be in each hundred a court, and therein 12 of the chiefest men, together with the provost, (i. e. the bailiff of the hundred)*
sworn

*sworn according to their evidence, to condemn the guilty and acquit the innocent.**

Orig. Jud. 64. b.

Bacon, chapter 38, has a note, that trial by inquest appears among the *Britons*.

According to *Dugdale*, *Wormius* derives this form of trial from the *Danes*, and *Olaus Magnus* to the *Danes* derives it from the *Goths*.

We may here with *Rapin* observe, *That this privilege of trial by juries, is the most considerable a nation can enjoy: it protects the inferior people from the violence of the Great, and from the passion and caprice of the Sovereign himself.*

Tom. 1. p. 516.

Vide many excellent things on this subject, too copious here to insert, in Dr. *Ellis* Part 2. Tract. of *Liberty in judicial proceedings*.

Much antient learning concerning juries, may be seen in Mr. *Selden's* notes on *Fortescue*, in the edition published in 1741. *Cb. 25, 26, &c.*

Sir *William Temple* in his introduction to the history of *England*, V. 3. p. 130. mentions this trial as a fundamental law of the *Saxon*, or *English* kingdom. He farther says, I think it evident to have been an institution very antient among the *Saxons*, and to have been

* In *Bacon on Government*, part 1. c. 38. this passage is thus translated: *In every county or hundred let there be a court; and let twelve ancient freemen, together with the Lord of the hundred, be sworn that they will not condemn the innocent, nor acquit the guilty.*

Dr. *Ellis*, from *Tyrrel*, gives the same translation.

Dugdale and *Bacon* refer to *Lambard*. The editor does not apprehend the variation in the translation material, to the present purpose, the antiquity of the trial being the only point, he would establish. He has not had an opportunity of consulting *Lambard*, nor did he, for the above reason, think it necessary.

He hopes the authors he hath quoted are sufficient authority.

derived

derived and observed during the whole succession of the *English* kings, and even in the *Danish* reigns without any interruption. Nor does there want some traces or appearances of it, from the very first institutions of *Odin* the first great leader of the *Asiatic Goths*, or *Getæ* into *Europe*, and the founder of that mighty kingdom round the *Baltic sea*, from whence all the *Gothic* governments, in these north-west parts of the world were derived, by the spreading conquests of those northern regions.

He farther adds, that *Odin*, upon the beginning of his expedition, ordained a council of 12 men, who should judge and decide all matters that came in question, &c. p. 131.

Here we finish our observations, and finally conclude our introductory essay, wishing that all princes would strictly adhere to the golden rule of *Demosthenes*, viz.

Bene gubernare, recte judicare, & justè facere.

E R R A T A.

It's hoped the candid Reader will excuse, and correct with his Pen, the few following Errata, especially in the *French Quotation from Rousseau*, Page xxvii. The only one the Editor forgot to correct himself.

I N T R O D U C T I O N.

Page i. in *L'Esprit* dele *L'*.

Page xxvii. Note Line 4. for *les abus* read *l'abus*,

Line 5. for *voge* read *voye*.

Line 7. for *oze* read *ose*.

Last for *Rosseau* read *Rousseau*.

Page xlvii. Note Line 7: A Comma, instead of a full stop.

Page 23. Line 10. for *19th* read *9th*.

Page 92. for *ſ. 2.* read *ſ. 1.*

British

British Liberties, &c.

Magna Charta, the Great Charter made in the ninth year of King Henry the third, and confirmed by King Edward the first, in the five and twentieth year of his reign.

“ **E**Dward by the grace of God, king of Eng-
“ land, lord of Ireland, and duke of Guyan:
“ To all * archbishops, bi- * Orig. to whom these
“ shops, &c. We have seen the great presents, shall come
“ charter of the lord Henry, some- greeting.
“ times King of England, our fa-
“ ther, of the liberties of England, in these Words.”
“ Henry, by the grace of God king of England,
“ lord of Ireland, duke of Normandy and Guyan, and
“ earl of Anjou: to all archbishops, bishops, abbots,
“ priors, earls, barons, sheriffs, provosts, officers, and
“ to all bailiffs, and other our faithful subjects, which
“ shall see this present charter, greeting. Know ye,
“ that we, unto the honour of Almighty God, and
“ for the salvation of the souls of our progenitors and
“ successors, * kings of England, to * Not in orig.
“ the advancement of Holy church
“ and amendment of our realm, of our meer and free
“ will, have given and granted to all archbishops, bi-
“ shops, abbots, priors, earls, barons, and to all free-
“ men of this our realm, these liberties following to
“ be kept, in our kingdom of England for ever.”

B

CAP.

C A P. I.

A confirmation of liberties.

‘ **F**IRST, we have granted to God, and by this
 ‘ our present charter have confirmed for us and
 ‘ our heirs for ever; that the church of England shall
 ‘ be free and shall have all her whole rights and liber-
 ‘ ties inviolable. (2) We have granted also, and given
 ‘ to all the freemen of our realm, for us and our
 ‘ heirs for ever, these liberties underwritten, to have
 ‘ and to hold to them and their heirs of us and our
 ‘ heirs for ever.’

C A P. II.

The relief of the king's tenant of full age.

‘ **I**F any of our earls or barons, or any other which
 ‘ hold of us in chief by knights service, die, and
 ‘ at the time of his Death, his heir be of full age,
 ‘ and oweth to us relief, he shall have his inheritance
 ‘ by the old relief, that is to say, the heir or heirs of
 ‘ an earl for a whole earldom, by one hundred pound:
 ‘ the heir or heirs of a baron for an whole barony,
 ‘ by one hundred marks; the heir or heirs of a knight,
 ‘ for one whole knight's fee, one hundred shillings
 ‘ at the most. And he that hath less shall give less
 ‘ according to the old custom of the fees.’

C A P.

C A P. III.

The wardship of an heir within age, the heir a knight.

BUT if the heir of any such be within age, his lord shall not have the ward of him nor of his land, before that he hath taken of him homage, (2) and after that such an heir hath been in ward (when he is come to full age) that is to say, to the age of one and twenty years, he shall have his inheritance without relief, and without fine; so that if such an heir being within age be made knight, yet nevertheless his land shall remain in the keeping of his lord unto the term aforesaid.

C A P. IV.

No waste shall be made by a guardian in wards lands.

THE Keeper of the land of such an heir being within age, shall not take of the Lands of the heir but reasonable issues, reasonable customs, and reasonable services, and that without destruction and waste of his men and his goods. (2) And if we commit the custody of any such land to the Sheriff, or to any other, which is answerable unto us for the issues of the same land, and he make destruction or waste of those things, that he hath in custody, we will take of him amends,* * not in orig. and recompence therefore. (3)

And the land shall be committed to two lawful

4 BRITISH LIBERTIES, &c.

‘ and discreet men of that fee, which shall answer
‘ unto us for the issues of the same land, or unto
‘ him whom we will assign. (4) And if we give or
‘ sell to any man the custody of any such land, and
‘ he therein do make destruction or waste, he shall
‘ lose the same custody. And it shall be assigned to
‘ two lawful and discreet men of that fee, which also
‘ in like manner shall be answerable to us as afore
‘ is said.’

C A P. V.

*Guardians shall maintain the inheritance of their
wards; and of bishopricks, &c.*

‘ **T**HE keeper, so long as he hath the custody
‘ of the land of such an heir, shall keep up the
‘ houses, parks, warrens, * ponds, †
‘ mills, and other things pertaining
‘ to the same land, with the issues
‘ of the said land: and he shall de-
‘ liver to the heir, when he cometh
‘ to his full age, all his land stored with ploughs
‘ and all other things, at the least as he received it.
‘ All these things shall be observed in the custodies
‘ of archbishopricks, bishopricks, abbeys, priories,
‘ churches and dignities vacant, which appertain to
‘ us: except this, that such custody shall not be sold.’

* Add fish.

† Add pools; no waste
shall be committed
in wards lands.

CAP:

C A P. VI.

Heirs shall be married without disparagement.

‘ **H**EIRS shall be married without disparagement.’

C A P. VII.

A widow shall have her marriage, inheritance and quarentine; the king's widow, &c.

‘ **A** Widow after the death of her husband, incontinent and without any difficulty, shall have her marriage, and her inheritance. (2) And shall give nothing for her dower, her marriage, or her inheritance, which her husband and she held the day of the death of her husband. (3) And she shall tarry in the chief house of her husband, by forty days after the death of her husband, within which days her dower shall be assigned her, (if it were not assigned her before) or that the house be a castle. (4) And if she depart from the castle, then a competent house shall be forthwith provided for her, in the which she may honestly dwell, until her dower be to her assigned, as it is aforesaid; and she shall have in the mean time her reasonable estovers of the common. (5) And for her dower shall be assigned unto her the third part of all the lands of her husband, which were his during coverture, except she were endowed of less at the church door. (6) No widow shall be distrained to marry herself *: nevertheless she shall find * *while she chooses to live single.* surety, that she shall not marry

B 3

‘ without

6 BRITISH LIBERTIES, &c.

‘ without our license and assent, (if she hold of us)
‘ nor without the assent of the lord, if she hold of
‘ another.’

C A P. VIII.

How sureties shall be charged to the king.

‘ **W**E or our bailiffs, shall not seize any land or
‘ rent for any debt, as long as the present
‘ goods and chattels of the debtor do suffice to pay
‘ the debt, and the debtor himself be ready to satis-
‘ fy therefore. (2) Neither shall the pledges of the
‘ debtor be distrained, as long as the principal deb-
‘ tor is sufficient for the payment of the debt. (3)
‘ And if the principal debtor fail in payment of the
‘ debt, having nothing wherewith to pay, or will not
‘ pay where he is able, the pledges shall answer for
‘ the debt. (4) And if they will, they shall have the
‘ lands and rents of the debtor until they be satisfied
‘ of that which they before payed for him, except
‘ that the debtor can shew himself to be acquitted
‘ against the said sureties.’

C A P. IX.

*The liberties of London, and other cities and towns
confirmed.*

† Read *Their*.

* Not in orig.

‘ used to have.

‘ **T**HE city of London shall
‘ have all † *the* old liberties
‘ and customs, * *which it bath been*
‘ Moreover, we will and grant, that
‘ all

BRITISH LIBERTIES, &c. 7

‘ all other cities, boroughs, towns and barons of the
‘ five ports, and all other ports, shall have all their
‘ liberties and free customs.’

C A P. X.

None shall distrain for more service than is due.

‘ **N**O man shall be distrained to do more service
‘ for a knight’s fee, nor any freehold, than
‘ therefore is due.’

C A P. XI.

Common Pleas shall not follow the king’s court.

‘ **C**Ommon Pleas shall not follow our court, but
‘ shall be holden in some place certain.’ Con-
firmed by 28 Ed. 1. stat. 3., c. 4.

C A P. XII.

*Where and before whom assizes shall be taken. Ad-
journalment for difficulty.*

‘ **A**SSIZES of novel disseisin and of mortdan-
‘ cester, shall not be taken but in the shires,
‘ and after this manner: * if we be out
‘ of this realm, our chief justicers * Read *We, or if we*
‘ shall send our justicers through *be out, &c.*
‘ every county once in the year; which, with the
‘ knights

8 BRITISH LIBERTIES, &c.

‘ knights of the shires shall take the said assizes in
‘ those counties. (2) And those things that at the
‘ coming of our aforesaid justicers, being sent to take
‘ those assizes in the counties, cannot be determined,
‘ shall be ended by them in some other place in their
‘ circuit. (3) And those things which for difficulty
‘ of some articles cannot be determined by them,
‘ shall be referred to our justicers of the bench, and
‘ there shall be ended.’

C A P. XIII.

Assizes of darrein presentment.

‘ ASSIZES of darrein presentment, shall be
‘ always taken before our justices of the bench,
‘ and there shall be determined.’

C A P. XIV.

How men of all sorts shall be amerced, and by whom.

‘ A Freeman shall not be amerced for a small
‘ fault, but after the manner of the fault.
‘ And for a great fault after the greatness thereof,
‘ saving to him his contenment. (2) And a mer-
‘ chant likewise, saving to him his merchandize. (3)
‘ And any other’s villain than ours shall be likewise
‘ amerced saving his wainage, if he fall into our
‘ mercy. (4.) And none of the said Amerciaments
‘ shall be assessed, but by the oath of honest and law-
‘ ful men of the vicinage. (5) Earls and barons,
‘ shall

- ‘ shall not be amerced, but by their peers, and after
 - ‘ the manner of their offence. (6) No man of the
 - ‘ church shall be amerced after the quantity of his
 - ‘ spiritual benefice, but after his lay-tenement, and
 - ‘ after the quantity of his offence.’
-

C A P. XV.

Making of bridges and banks.

- ‘ **N**O town nor freeman shall be distrained to
 - ‘ make bridges nor banks, but such as of old
 - ‘ time, and of right have been accustomed to make
 - ‘ them in the time of king Henry our grandfather.’
-

C A P. XVI.

Defending of banks.

- ‘ **N**O banks shall be defended from henceforth,
 - ‘ but such as were in defence in the time of
 - ‘ king Henry our grandfather, by the same places,
 - ‘ and the same bounds as they were wont to be in
 - ‘ his time.’
-

C A P. XVII.

Holding pleas of the crown.

- ‘ **N**O sheriff, constable, escheator, coroner, nor any
- ‘ other our bailiffs, shall hold pleas of our crown.’

C A P.

C A P. XVIII.

The king's debtor dying, the king shall be first paid.

‘ IF any that holdeth of us lay-fee do die, and our
 ‘ sheriff or bailiff do shew our letters patents of
 ‘ our summons for debt, which the dead man did
 ‘ owe to us: it shall be lawful to our sheriff or bailiff
 ‘ to attach and inroll all the goods and chattels of the
 ‘ dead, being found in the said †
 † Add lay. ‘ fee, to the value of the same debt,
 ‡ Not in orig. ‘ by the sight † and testimony of
 ‘ lawful men; so that nothing thereof shall be taken
 ‘ away, until we be clearly paid off the debt. (2)
 ‘ And the residue shall remain to the executors, to
 ‘ perform the testament of the dead. (3) And if no-
 ‘ thing be owing unto us, all the chattels shall go to
 ‘ the use of the dead, (saving to his wife and children
 ‘ their reasonable parts.)’

C A P. XIX.

Purveyance for a castle.

‘ NO constable, nor his bailiff shall take corn or
 ‘ other chattels of any man, if the man be not
 ‘ of the town where the castle is, but he shall forth-
 ‘ with pay for the same, unless that the will of the
 ‘ seller was to respite the payment. (2) And if he be
 ‘ of the same town, the price shall be paid unto him
 ‘ within forty days.’

C A P.

C A P. XX.

Doing of castle ward.

‘ **N**O constable shall distrain any knight for to
 ‘ give money for keeping of his castle, if he
 ‘ himself will do it in his proper person, or cause it
 ‘ to be done by another sufficient man, if he may
 ‘ not do it himself for a reasonable cause. (2) And
 ‘ if we do lead or send him in an army, he shall be
 ‘ free from castle ward for the time that he shall be
 ‘ with us in fee in our host, for the which he hath
 ‘ done service in our wars.’

C A P. XXI.

Taking of horses, carts and wood.

‘ **N**O sheriff nor bailiff of ours, or any other,
 ‘ shall take the horses or carts of any man to
 ‘ make carriage, except he pay the old price limited,
 ‘ that is to say, for carriage with two horse, x*d.*
 ‘ a day, for three horse, xiv*d.* a day. (2) No demesne
 ‘ cart of any spiritual person or knight, or any lord,
 ‘ shall be taken by our bailiffs. (3) Nor we, nor our
 ‘ bailiffs, nor any other shall take any man’s wood
 ‘ for our castles, or other our necessities to be done,
 ‘ but by the license of him whose the wood is.’

C A P.

C A P. XXII.

How long felons lands shall be bolden by the king.

‘ **W**E will not hold the lands of them that be
‘ convict of felony but one year and one
‘ day, and then those lands shall be delivered to the
‘ lords of the fee.’

C A P. XXIII.

In what places wears shall be put down.

‘ **A**LL wears from henceforth shall be utterly put
‘ down by Thames and Medway, and through
‘ all England, but only by the sea coasts.’

C A P. XXIV.

In what case a præcipe in capite is not grantable.

‘ **T**HE writ that is called præcipe in capite, shall
‘ be from henceforth granted to no person of
‘ any freehold, whereby any freeman may lose his
‘ court.

C A P.

C A P. XXV.

There shall be but one measure throughout the realm.

‘ ONE measure of wine shall be through our realm, and one measure of ale, and one measure of corn, that is to say, the quarter of London, and one breadth of died cloth, ruffets and haberdjects, that is to say, two yards within the lists. (2) And it shall be of weights as it is of measures.’

C A P. XXVI.

Inquisition of life and member.

‘ NOTHING from henceforth shall be given for a writ of inquisition, nor taken of him that prayeth inquisition of life or of member, but it shall be granted freely, and not denied.’

C A P. XXVII.

Tenure of the king in socage, and of another by knights service, petit serjeantry.

‘ IF any do hold of us by fee-farm, or by socage, or burgage, and he holdeth lands of another by knight’s service, we will not have the custody of his heir, nor of his land, which is holden of the fee of another, by reason of that fee-farm, socage or burgage. (2) Neither will we have the custody of such fee farm, or socage, or burgage, except knights service

14 BRITISH LIBERTIES, &c.

‘ service be due unto us out of the same fee-farm. (3)

‘ We will not have the custody of the heir or of any

* Which he holdeth of another by knights service. Obs. This tenure being abolished by 12 Car. 2. c. 24.

‘ land, * by occasion of any petit ser-
‘ jeantry that any man holdeth of
‘ us by service, to pay a knife, an
‘ arrow, or the like.

C A P. XXVIII.

Wager of law shall not be without witness.

‘ **N**O bailiff from henceforth, shall put any man
‘ to his open law, nor to an oath, upon his
‘ own bare saying, without faithful witness brought
‘ in for the same.

C A P. XXIX.

None shall be condemned without trial. Justice shall not be sold or deferred.

‘ **N**O freeman shall be taken, or imprisoned, or
‘ be disseised of his freehold, or liberties, or
‘ free customs, or be outlawed or exiled, or any
‘ otherwise destroyed, nor will we not pass upon him,
‘ nor condemn him, * but by lawful
‘ judgment of his peers, or by the
‘ law of the land. (2) We will sell to no man, we will
‘ not deny, or defer to any man either justice or right.’

C A P.

C A P. XXX.

Merchants, strangers coming into this realm, shall be well used.

ALL merchants (if they were not openly prohibited before) shall have their safe and sure conduct to depart out of England, to come into England, to tarry in and go through England, as well by land as by water, to buy and sell without any manner of evil tolts, by the old and rightful customs, except in time of war. (2.) And if they be of a land making war against us, and
 * be found in our realm at the * Add *such*.
 beginning of the wars, they shall be attached without harm of body, or goods, until it be known unto us, or our chief justice, how our merchants be intreated there in the land making war against us. (3.) And if our merchants be well intreated there, theirs shall be likewise with us.

C A P. XXXI.

Tenure of a barony, coming into the king's hand by escheat.

IF any man hold of any escheate, as of the honour of Wallingford, Nottingham, Boloin, *
 * Add *Lancaster*.
 or of any other escheats, which be in our hands, and are baronies, and die, his heir shall give none other relief, nor do none other service to us than he should to the baron, if it were in the baron's hand. (2.) And we in the same wise shall

16 BRITISH LIBERTIES, &c.

‘ shall hold it as the baron held it, neither shall we
‘ have by occasion of any baron, or escheate, any es-
‘ cheate or keeping of any of our men, unless he that
‘ held the barony or escheate, otherwise held of us in
‘ chief.’

C A P. XXXII.

*Lands shall not be aliened to the prejudice of the
lord's service.*

‘ **N**O freeman from henceforth shall give or sell.
‘ any more of his lands, but so that of the re-
‘ sidue of the lands, the lord of the fee may have the
‘ service due to him, which belongeth to the fee.’

C A P. XXXIII.

*Patrons of abbies, shall have the custody of them in
the time of vacation.*

‘ **A**LL patrons of abbies, which have the king's
‘ charter of England, of advowson, or have
‘ old tenure or possession in the same, shall have the
‘ custody of them when they fall void, as it hath been
‘ accustomed, and as it is afore declared.’

C A P.

C A P. XXXIV.

In what only case a woman shall have an appeal of death.

‘ N O man shall be taken or imprisoned upon the appeal of a woman, for the death of any other than of her husband.’

C A P. XXXV.

At what time shall be kept a county court, sheriff's turn, and a leet.

‘ N O county court from henceforth shall be holden, but from month to month; and where greater time hath been used, there shall be greater. (2.) Nor any sheriff or his bailiff shall keep his turn in the hundred, but twice in the year: and no where but in due place and accustomed, that is to say, once after Easter, and again after the feast of Saint Michael. (3.) And the view of frank-pledge shall be likewise at the feast of Saint Michael without occasion. So that every man may have his liberties which he had, or used to have in the time of king Henry our grandfather, or which he hath purchased since. (4.) * * Add *But*. The view of frank-pledge shall be so done, that our peace may be kept. (5.) And that the tything be wholly kept as it hath been accustomed. (6.) And that the sheriff seek no occasions, and that he be content with so much as the sheriff was wont to have for his view-making in the time of king Henry our grandfather.’

C

C A P.

C A P. XXXVI.

No land shall be given in mortmain.

‘ I T shall not be lawful from henceforth to any to
 ‘ give his lands to any religious house, and to take
 ‘ the same land again to hold of the same house. Nor
 ‘ shall it be lawful to any house of religion to take the
 ‘ lands of any, and to lease the same to him of whom
 ‘ he received it; if any from henceforth give his lands
 ‘ to any religious house, and thereupon be convict,
 ‘ the gift shall be utterly void, and the land shall ac-
 ‘ crue to the lord of the fee.’

C A P. XXXVII.

A subsidy in respect of this charter, and the charter of the forest, granted to the king.

‘ E S C U A G E from henceforth shall be taken,
 ‘ like as it was wont to be in the time of king
 ‘ Henry our grandfather, reserving, to all archbi-
 ‘ shops, bishops, abbots, priors, templers, hospital-
 ‘ lers, earls, barons, and all persons as well spiritual
 ‘ as temporal, all their free liberties and free customs
 ‘ which they have had in time passed; (2.) And all
 ‘ these customs and liberties aforesaid, which we have
 ‘ granted to be holden within this our realm, as much
 ‘ as appertaineth to us * and our
 ‘ heirs, we shall observe. (3.) And
 ‘ all men of this our realm, as well
 ‘ spiritual as temporal (as much
 ‘ as in them is) shall observe
 ‘ the same † against all persons in
 ‘ likewise.

* For and our heirs,
 read with respect to
 ours.

† For against all
 persons, read with re-
 spect to theirs.—

likewise. (4.) And for this our gift and grant of these liberties, and of other contained in our charter of liberties of our forest, the archbishops, bishops, abbots, priors, earls, barons, knights, freeholders, and other our subjects, have given unto us the fifteenth part of all their moveables. (5.) And we have granted unto them on the other part †, that neither we nor our heirs shall procure, or do any thing, whereby the liberties in this charter contained, shall be infringed, or broken. (6.) And if any thing be procured, by any person, contrary to the premisses, it shall be had of no force, nor effect. These being witnesses, lord B. arch-bishop of Canterbury, E. bishop of London, I. bishop of Bathe, P. of Winchester, H. of Lincoln, R. of Salisbury, W. of Rochester, W. of Worcester, I. of Ely, H. of Hereford, R. of Chichester, W. of Exeter, bishops; The abbot of St. Edmonds, the abbot of St. Albans, the abbot of Bells, the abbot of St. Augustines in Canterbury, the abbot of Evesham, the abbot of Westminster, the abbot of Bourgh St. Peter, the abbot of Reading, the abbot of Abingdon, the abbot of Malmesbury, the abbot of Winchcomb, the abbot of Hyde, the abbot of Certesey, the abbot of Sherborn, the abbot of Cerne, the abbot of Abbotebir, the abbot of Middleston, the abbot of Seleby, the abbot of Cirencester, H. de Burgh, justice, H. Earl of Chester and Lincoln, W. Earl of Salisbury, W. Earl of Warren, G. de Clare, Earl of Gloucester and Hereford *, W. de Ferrars, Earl of Darby, W. de Mandeville, Earl of Essex, H. de Bygod, Earl of Norfolk, W. Earl of Albemarle, H. Earl of Hereford, I. constable of Cheiter, R. de Ross, R. Fitzwater, R. de Vypont, W.

† For on the other part, read for us and our heirs.

* For Hereford, read Hertford.

20 BRITISH LIBERTIES, &c.

' de Bruer, R. de Muntefichet, P. Fitzherbert, W. de
 ' Aubenie, F. Gresly, F. de Brens, J. de Monemue,
 ' J. Fitzallen, H. de Mortimer, W. de Beauchamp,
 ' W. de St. John, P. de Manly, Bian de Lisse, Tho-
 ' mas de Multor, R. de Argenteyn, G. de Nevil,
 ' W. de Mandroit, J. de Balun, and others. Given
 ' at Westminster, the 11th day of February in the
 ' 9th year of our reign.

' II. We ratifying and approving these gifts and grants
 ' aforesaid, confirm and make strong all the same for
 ' us and our heirs perpetually; and by the tenour of
 ' these presents do renew the same, willing and grant-
 ' ing for us and our heirs, that this charter, and all
 ' and singular his articles for ever, shall be stedfastly,

* For and if any ar-
 icle, &c. read although
 some articles in the
 same charter contain-
 ed have not hitherto
 perhaps been observed.

' firmly, and inviolably observed *
 ' and if any article in the same
 ' charter contained, yet hitherto
 ' peradventure hath not been kept,
 ' We will, and by authority Royal
 ' command from henceforth firmly,
 ' they be observed. In witness whereof we have cauf-

' ed these our letters patents to be made. T. Ed-
 ' ward our son at Westminster, the
 ' † twenty-eighth day of *March*, in
 ' the twenty-eighth year of our
 ' reign.

† *Twelfth day of*
October in the 25th
year of our reign.

NOTES

NOTES ON MAGNA CHARTA.

THIS excellent law holds the first place in our statute books, for though there were, no doubt, many acts of parliament long before this, yet they are not now extant: it is called Magna Charta, or the Great Charter, in respect to the great importance of the matters, it contains. It is also stiled *Charta Libertatum Regni*, the charter of the liberties of the kingdom, and with very great reason (saith Coke in his proem) is it so called, from the effect, *Quia liberos facit*, because it renders and preserves the people free.

Though it runs in the stile of the king as a charter, yet (as my lord Coke well observes on the 38th chapter) it appears to have passed in parliament; for there was then a fifteenth granted to the king by the bishops, earls, barons, free-tenants, and people; which could not be but in parliament, nor was it unusual in those times, to have acts of parliament in form of a charter; as may be seen in the prince's case, 60 Rep. l. 8.

Farther, though it be said here, that the king hath given and granted these liberties, yet it must not be understood that they were meer emanations of Royal favour, or new bounties granted, which the people could not justly challenge, or had not a right to before; for as lord Coke in divers places asserts, and as is well known to every gentleman professing the law, this charter is, for the most part, only declaratory of the principal grounds of the fundamental laws and liberties of England. Not any new freedom is hereby granted, but a restitution of such as the subject

lawfully had before, and to free them from the usurpations and incroachments of every power whatever. It is worthy observation, that this charter often mentions *sua jura*, their rights, and *libertates suas*, their liberties, which shews they were before intitled to and possessed them, and that those rights and liberties were by this charter not granted as before unknown, but confirmed, and that in the stile of liberties and privileges long before well known.

As to the occasion of this charter it must be noted, that our ancestors, the Saxons, had with a very equal poize and temperament wisely contrived their government, and made excellent provisions for their liberties, thereby to preserve the people from oppression. That when William, the Norman, entred and defeated Harold, though he is commonly called the Conqueror, yet he was not in fact such, and it is well known, that several judges were formerly used to reprehend any gentleman at the bar, who casually gave him that title; for though he killed Harold the usurper, and routed his army, yet he claimed a right to the kingdom, was admitted by compact, and did take an oath to observe the laws and customs of the realm.

William did not keep his oath, and his successors, William Rufus, Stephen, Henry the first, and Richard likewise, made frequent encroachments upon the liberties of the people, but especially John, who made use of so many illegal devices to drain them of money, that wearied with intolerable oppressions, they resolved to oblige him to grant them a confirmation of their liberties, and to make a solemn promise that the same should be observed. This king John did in Runningmead between Stains and Windsor, by two charters, one called *Charta libertatum*, the charter of liberties, (the form of which may be seen in Math. Paris, fol. 246. and is in effect, the same with this here recited) the other the charter of the forest, co-
pies

pies of which he sent into every county, and commanded the sheriffs, &c. to see them fulfilled.

But he by ill counsel soon after began to violate the laws of his kingdom and the liberties of his subjects as much as ever. The people experienced innumerable miseries, and many disturbances arose consequent thereupon, which greatly affected both the king himself and the realm.

Henry the third, the son and successor of John, in the 19th year of his reign, renewed and confirmed those charters, but within two years after cancelled them, by the pernicious advice of his favourites, and particularly of *Hubert de Burgh*, whom he had made lord chief justice; one that had been a well deserving patriot, who was well learned in the laws of his country; but who now, to make the ruin of his country subservient to his ambition, advised the king, to avoid his father's charters as having been obtained by duress, and his own Great charter, and *Charta de Foresta* also, because he was within age, when he made those grants. The king readily took his advice, and in the eleventh year of his reign, being then of full age, got one of the Great charters, and of the forest, into his hands. At a council held at Oxford, principally by the advice of his chief justice, he unjustly cancelled both the charters, (notwithstanding *Hubert de Burgh* was the premier witness of all the temporal lords, to both the charters). *De Burgh* now became in high favour with the king, insomuch that he was soon after (viz, on the 10th of December, in the thirteenth of that king's reign) raised to the highest dignity that in those times a subject possessed, by being created earl of Kent. But soon after (for flatterers and humorists have not any sure foundation) he fell under the king's heavy indignation, and after suffering many very great miseries, was justly, and according to law,

sentenced by his peers in open parliament, to be and was accordingly justly degraded of that dignity which he had so unjustly obtained by his iniquitous counsel, for cancelling of *Magna Charta* and *Charta de Foresta*.

In the ninth chapter of this Great Charter, all the ancient liberties and customs of London are confirmed and preserved, which is likewise done by divers other statutes, as 14 Edw. 3. chap. 2. &c. The 29th chapter says,

No freeman shall be taken, &c. which deserves to be written in letters of gold, and as Mr. Care observes, it is much to be wondered at, that these words are not inscribed in capitals on all our courts of judicature, town-halls and most public edifices; they are the foundation of our English freedoms, and the fundamental of all our liberties. As lord Coke in the second part of his Institutes hath given us many excellent observations on this act; we shall here give the substance and essential part of his comment.

He observes this chapter contains nine several branches.

1. That no man be taken or imprisoned, but *per legem terra*, that is, by the common law, statute law, or custom of England: for these words, *per legem terra*, being near the end of the chapter, refer to all the precedent matters the chapter contains, and this hath the first place, because the liberty of a man's person is more precious to him, than every thing else that is mentioned, and therefore with great reason should a man by law be relieved in that respect, if wronged.

2. No man shall be disseised, that is, put out of seisin, or dispossessed of his freehold, *viz.* of his lands, livelihood, liberties or free customs, i. e. of such franchises, freedoms and free customs, as belong to him by his free birth-right, unless it be by the lawful judgment, that is, verdict of his equals, men of his own

own condition, or by the law of the land, *viz.* by due course and process of law.

3. No man shall be outlawed, made an *exlex*, or put out of the law, that is, deprived of the benefit of the law, unless he be outlawed according to the laws of the land.

4. No man shall be exiled or banished out of his country, i. e. *nemo perdet patriam*, no man shall lose his country, unless he be exiled according to the law of the realm.

5. No man shall be in any sort destroyed (*destruere, id est, quod prius structum & factum fuit penitus evertere & diruere*) unless it be by the verdict of his equals, or according to the law of the land.

6. No man shall be condemned at the king's suit, either before the king in his bench, where the pleas are *coram rege*, (and so are the words, *neo super eum ibimus*, to be understood) nor before any other commissioner or judge whatsoever, and so are the words, *nec super eum mittemus*, to be understood, but by the judgment of his peers, that is equals, or according to the law of the realm.

7. We shall sell to no man justice or right.

8. We shall deny to no man justice or right.

9. We shall defer to no man justice or right.

The genuine sense being distinctly understood, we shall, as my lord Coke says, proceed to shew how the same hath been declared, and interpreted. 1. By authority of parliament. 2. By our books. 3. By precedent.

Nullus liber homo capiatur, aut imprisonetur.] Attached and arrested are comprehended herein.

1. *No man shall be taken.*] (That is) restrained of his liberty, by petition or suggestion to the king or his council, unless it be by indictment, or presentment of good and lawful men, where a fact is committed.

mitted. This branch, and divers other parts of the act, have been very well explained by divers acts of parliament, *several of which are hereafter taken particular notice of.*

2. *No man shall be disseised, &c.]* Hereby is intended that lands, tenements, goods, or chattels shall not be seised into the king's hands, contrary to this great Charter, and the law of the land; nor any man be disseised of his lands or tenements, or dispossessed of his goods or chattels, contrary to that law.

A custom was alledged in the town of C. that if the tenant cease by two years, that the lord should enter into the freehold of the tenant, and hold the same until he should be satisfied the arrears; and it was adjudged a custom against the law of the land, to enter into a man's freehold in that case, without action or answer.

Henry the sixth granted to the corporation of dyers within London power to search, &c. and if they found any cloth died with logwood, that the cloth should be forfeit. And it was adjudged, that this charter concerning the forfeiture, was against the law of the land, and this statute. For not any forfeiture can grow by letters patents.

No man ought to be put from his livelihood without answer.

3. *No man outlawed.]* That is, barred from having the benefit of the law. And note, to this word outlawed these words, unless by the law of the land, do refer.

Of his liberties.] This word hath three Significations.

1. As it hath been said, it signifieth the laws of the realm, in which respect the charter is called *Charta Libertatum.*

2. It signifieth the freedoms that the subjects of this realm have: for example, the company of merchant taylor's

tailors of England having power by their charter, to make ordinances, made an ordinance, that every brother of the same society should put the one half of his cloths to be dressed by some cloth-workers free of the same company, upon pain to forfeit 10s. &c. And it was adjudged, that this ordinance was against law, because it was against the liberty of the subject, for every subject hath freedom to have his cloths dressed by whom he pleases, *Et sic de similibus*. And so it is, if such or the like grant had been made by the king's letters patents.

3. Liberties signify the franchises and privileges which the subjects have of the gift of the king, as the goods and chattels of felons, outlaws and the like; or which the subject claims by prescription, as wreck, waife, stray, &c.

For the same reason, if a grant be made to any one, to have the sole making of cards, or the sole dealing in any other trade, that grant is against the liberty and freedom of the subject, who before did, or lawfully might have used that trade and consequently is against this Great Charter.

Generally all monopolies are against this Great Charter, because they are against the liberty and freedom of the subject, and against the law of the land; and it is hoped that the publication of this opinion of lord Coke's will induce some person of property and spirit, to try the validity of it, by commencing and carrying on with vigour, a prosecution against some one of the many monopolizers that now exist in this kingdom, to the great distress of the poor, the bane of industrious merit, and the total subversion of all order and good government.

4. *No man exiled.*] That is, banished, or forced to depart from or continue out of the realm without his consent. By the law of the land no man can be exiled or banished out of his native country, but either
by

by authority of parliament, or in case of abjuration for felony by the Common law; and when the law books or any of our records mention exile or banishment, other than in case of abjuration, it is and must be intended by authority of parliament, as Belknap and other judges, &c. banished to Ireland, in the reign of Richard the second.

This is a beneficial law, which is, and it is hoped ever will be construed benignly, as my lord Coke expressly declares; the king cannot send any subject of England against his will, to serve him out of this realm, for he would be an exile, and *perdere patriam*: he cannot be sent against his will into Ireland to serve the king as his deputy there, because it is out of the realm of England: for if the king might send him out of the realm to any place whatever, then under pretence of service as ambassador or the like, he might send him into the farthest part of the world, which being banishment is prohibited by this Act.

And although it was accorded in the upper house of parliament, anno 6 E. 3. nu. 6. That such learned men in the law, who should be sent as justices or otherwise to serve in Ireland, should have no excuse; yet that being no act of parliament, it did not bind the subject; and this appears by a record in 44 E. 3. Sir Richard Pembrugh's case, who was warden of the cinque ports, and had divers offices, annuities, and lands granted to him for life, or in fee by the king under the great seal, *pro servitio impenso et impendendo*. The king commanded Sir Richard to serve him in Ireland as his deputy there, which he absolutely refused, whereupon the king, by advice of his counsel, seized all things granted to him, *pro servitio impendendo*, (in respect of that clause) but he was not upon that resolution committed to prison, as by that record it appeareth: and the reason was, because his refusal was lawful, and if the refusal was lawful to serve in Ireland

land parcel of the king's dominions, *a fortiori* a refusal is lawful to serve in any foreign country. And it seemeth, that the said seizure was unlawful, for *pro servitio impenso et impendendo* must be intended lawful service within the realm.

5. *No man destroyed, &c.*] That is, forejudged of life or limb, disinherited, or put to torture or death. The mirror writing of the antient laws of England saith, that our kings were used to do right to all persons by themselves, or by their chief justices; and now kings do the same by the justices, commissaries in eyre, assigned to hold pleas.

In aid of such eyres are sheriffs tornes needful, and views of frank-pledge, and when the people by such inquests were indicted of any mortal offence, the king used to condemn them without answers, which usage still remaineth in Almaine; but of pity and mercy, and because that man, by reason of his frailty, cannot keep himself from sin, it was accorded that no appellee or indittee should be condemned without answer; and kings had no jurisdiction but of mortal offences, and of the rights of the crown, and of their own rights, and of the wrongs of their ministers, and of wrongs done against Common law, and common ordinances, and the articles of eyres. Every oppression against law, by colour of any usurped authority, is a kind of destruction, for *quando aliquid probibetur, probibetur & omne, per quod devenitur ad illud*: and it is the worst oppression that is done by colour of justice. And the words *aliquo modo* (any otherwise) are added to the verb destroyed, and to no other verb in this chapter, and therefore all things, by any means tending to destruction, are prohibited; as if a man be accused or indicted of treason or felony, his lands or goods cannot be granted to any, not even by promise, nor any of his lands or goods seized into the king's hands, before he is attainted; for when a
 2 subject

subject obtains a promise of the forfeiture, undue means, and more violent prosecution is often used for private lucre, tending to destruction, than the quiet and just proceeding of the law would permit; and farther the party ought to live upon his own until attainder.

Nor will we not pass upon him, nor condemn him.] As Mr. Ruffhead observes, those words do not by any means express the sense of the original, the two verbs *ibimus* and *mittemus*, evidently stand in contradistinction to each other, and are indeed much easier expounded than translated; therefore we cannot do better than recur to lord Coke's exposition, which is as follows:—No man shall be condemned at the king's suit, either before the king in his bench, where the pleas are *coram rege*, (and so are the words, *nec super eum ibimus*, to be understood) nor before any other commissioner or judge whatever (and so are the words, *nec super eum mittemus*, to be understood.)

6. *By lawful judgment of his peers.]* That is, by his equals, men of his own rank and condition. The general division of persons by the law of England, is into Noble and Common, viz. those that are noble, and in respect of such nobility, of the lords house of parliament, and those of the commons of the realm, and in respect thereof, of the house of commons in parliament. And as there are divers degrees of nobility, as dukes, marquesses, earls, viscounts and barons, and yet all of them are comprehended within this word *pares* or peers, and are peers of the realm: so of the commons of the realm, there are knights, esquires, gentlemen, citizens, yeomen and burgeses of several degrees, and yet all of them of the commons of the realm. And as every one of the nobles is one a peer to another, though he be of a different and several degree; so it is of the commons. It is the same with respect to noble women either by birth or marriage.

As

As this judgment by a man's peers is called lawful, so it shews the antiquity of this manner of trial: it was the antient accustomed legal course, long before the making of this charter.

Only a lord of parliament of England shall be tried by his peers being lords of parliament: and neither nobleman of any other country, nor others that are called lords, and are not lords of the English parliament, are accounted *pares*, peers, within this statute. As to those who shall be said to be *pares*, peers, or equals, see lord Coke, cap. 14. *per pares*.

It should be noted, as was before observed, that this is to be understood of the king's suit, for the words are, *nec super eum ibimus: nec super eum mittemus, nisi per legale iudicium parium suorum*. Therefore if a nobleman is indicted for murder, he shall be tried by his peers; but if an appeal be brought against him which is the suit of the party, there he shall not be tried by his peers, but by an ordinary jury of 12 men: and that for two reasons, First, Because the appeal cannot be brought before the lord high steward of England, who is the only judge of noblemen, in case of treason, or felony. Secondly, This statute extendeth only to the king's suit.

It extendeth to the king's suit in case of treason, or felony, or of misprision of treason, or felony, or to an accessary in felony before or after, but not to any other inferior offence. It also extendeth to the trial itself, whereby he is to be convicted; but a nobleman ought to be indicted of treason, felony, or of misprision, or being accessary in case of felony, by an inquest under the degree of nobility. The number of the noblemen that are to be triers are, 12, or more.

A peer of the realm may be indicted of treason, or felony, before commissioners of Oyer and Terminer, or in the king's bench, if the treason, or felony, be committed in the county where the king's bench sits; he

he may also be indicted of murder, or manslaughter, before the coroner, &c. But if he is indicted in the king's bench, or the indictment removed thither, a peer may plead his pardon, there, before the judges of the king's bench, and they have power to allow it; but he cannot confess the indictment, or plead Not guilty before those judges, but before the lord steward; and the reason of this diversity, that the trial, or judgment, must be before, or by the lord steward, but that the allowance of the pardon may be by the king's bench, is, because it is not within this statute.

If a nobleman be indicted and cannot be found, process of outlawry shall be awarded against him *per legem terræ*, and he shall be outlawed *per judicium coronatorum*, but he shall be tried *per judicium parium suorum*, when he appears and pleads to issue.

Per legale judicium.] By this word *legale*, among others, three things are implied, 1. That this manner of trial was by law before this statute. 2. That the verdict must be legally given, wherein principally is to be observed. 1. That the lords ought not to hear any evidence, but in the presence and hearing of the prisoner. 2. After the lords are gone together to consider of the evidence, they cannot send to the high steward to ask the judges any question of law, but in the hearing of the prisoner, that he may hear, whether the case be rightly put, for *de facto jus oritur*; neither can the lords, when they are gone together, send for the judges to learn any opinion in law, but the high steward ought to demand it in court in the hearing of the prisoner. 3. When all the evidence is given by the king's counsel, the high steward cannot collect the evidence against the prisoner, or in any sort confer with the lords touching the evidence, in the absence of the prisoner, but he ought to be called to it; and all this is implied in the word, *legale*. For this reason it is necessary, that every such prisoner, after

ter evidence given against him, and before he depart from the bar, require justice of the lord steward and of the other lords, that no question be demanded by the lords, or speech, or conference, had by any with the lords, but in open court in his presence, and hearing, otherwise he shall not take any advantage thereof after verdict and judgment given.

It is here called *judicium parium*, and not *vereditum*, because the noblemen returned, and charged, are not sworn, but give their judgment upon their honour, and liegeance to the king, for so are all the entries on record, and they separately beginning at the puisne lord, and ascending upward.

And though of antient time the lords, and peers of the realm used in parliament to give judgment, in case of treason and felony, against those, that were no lords of parliament; yet at the suit of the lords it was enacted, that albeit the lords and peers of the realm, as judges of the parliament, in the presence of the king, had taken upon them to give judgment, in case of treason and felony, of such as were no peers of the realm, that hereafter no peers shall be driven to give judgment on any others, than on their peers according to the law.

This trial by peers was very antient, for William the Conqueror, in the beginning of his reign, created William Fitzosborne (who was earl of Bretevil in Normandy) earl of Hereford in England, his son Roger succeeded him, and was earl of Hereford, who under colour of his sister's marriage at Erninge, near Newmarket in Cambridgehire, whereat many of the nobility, and others were assembled, conspired with them to receive the Danes into England, and to depose William, (who then was in Normandy) from his kingdom of England: and to bring the same to effect, he with others rose. This treason was revealed by one of the conspirators, *viz.* Walter, earl of Huntingdon,

D

tingdon,

tingdon, an Englishman, son of the great Syward, earl of Northumberland: for which treason the earl of Hereford was apprehended, by Urse Tiptoft then sheriff of Worcestershire, was afterwards tried by his peers, and found guilty of the treason *per judicium parium suorum*, but he lived in prison the remainder of his life. In the exposition of the 14th chapter, it is shewn who are peers. It is provided by the statute of 20 H. 6. That dutchesses, countesses, and baronesses shall be tried by such peers as a nobleman being a peer of the realm ought to be; which act was made in declaration and affirmance of the Common law; for marquesses and viscountesses not named in the act shall be also tried by their peers, and the queen being the king's consort or dowager, shall also be tried, in case of treason, *per pares*, as queen Anne the wife of Henry the eighth was *termino pasch. anno 28 H. 8.* in the tower of London, before the duke of Norfolk then high steward.

If a woman that is noble by birth marries under the degree of nobility, yet she shall be tried by her peers, but if she is noble by marriage, and marries under the degree of nobility, she loseth her dignity; for as by marriage it was gained, so by marriage it is lost, and she shall not be tried by her peers. If a dutchess marry a baron she loseth not her dignity, for all degrees of nobility, as hath been said, are *pares*. If a queen dowager marry any of the nobility or under that degree, yet she loseth not her dignity. Katherine queen dowager of England married Owen ap Meredith ap Theodore, esq; and yet she, by the name of Katherine queen of England, maintained an action of detinue against the bishop of Carlisle.

And the queen of Navarre, who married Edmund the brother of E. 1. sued for her dower by the name of queen of Navarre, and recovered.

But

But by the law of the land.] That is by due process of law, for so the words are expressly expounded by the statute of 37 Ed. 3. chap. 8. And these words are specially to be referred to those foregoing, to which they relate. As no one shall be condemned without lawful trial by his Peers, so no one shall be taken, imprisoned, or put out of his freehold without due process of the law, that is by the indictment, or presentment of good and lawful men of the place, in due manner or by original writ of Common law.

Without being brought in to answer but by due process of the Common law.

No man should be put to answer without presentment before justices, or by some thing on record, or by due process, or by writ original, according to the old law of the land.

And here it is worthy observation, that this chapter is only *declaratory* of the old law of England. Rot. parliament 42 E. 3. n^o. 22, 23. the case of Sir John a Lee, the steward of the king's house.

Per legem terræ.] i. e. *per legem Angliæ*, and hereupon all commissions are grounded, wherein is this clause, *facturi quod ad justitiam pertinet secundum legem, & consuetudinem Angliæ, &c.* And it is not said, *legem & consuetudinem regis Angliæ*, lest it might be thought to bind the king only, nor *populi Angliæ*, lest it might be thought to bind the people only, but that the law might extend to all, it is said *per legem terræ*, i. e. *Angliæ*.

And aptly it is said in this act, *per legem terræ*, that is, by the law of England: for into those places where the law of England runneth not, other laws are allowed in many cases, and not prohibited by this act: for example, If any injury, robbery, felony, or other offence be done upon the high sea, *lex terræ* extendeth not to it, but the admiral hath conusance thereof, and may proceed according to the marine law,

by imprisonment of the body, and other proceedings, as have been allowed by the laws of the realm.

So if two Englishmen go into a foreign kingdom, and fight there, and the one murder the other, *lex terra* extendeth not to this case, but the offence must be heard and determined before the constable and marshal, and such proceedings shall be there, by attaching of the body and otherwise, as the law and custom of that court hath been allowed by the laws of the realm. Against this ancient and fundamental law, an act of parliament was made, that as well justices of assize as justices of peace, (without any finding or presentment by the verdict of twelve men) upon a bare information for the king before them made, should have full power and authority by their discretions to hear and determine all offences and contempts committed or done by any person or persons against the form, ordinance and effect of any statute made and not repealed, &c. By colour of which act, shaking this fundamental law, it is incredible what oppressions and exactions, to the ruin of infinite numbers of people, were committed by Sir Richard Empson and Edmund Dudley justices of peace, throughout England; and upon this unjust and injurious act (as is common in like cases) a new office was erected, and they were made masters of the king's forfeitures.

But at the parliament held in the first year of H. 8. this act of 11 H. 7. is recited and made void, and wholly repealed, and the reason assigned was, that by force of the act many sinister, crafty, feigned, and forged informations, had been pursued against divers of the king's subjects, to their great damage and wrongful vexation: the ill success attending these proceedings, and the miserable ends of those two oppressors ought to deter others from committing the like, and should admonish parliaments, that they ought not ever to attempt to establish or bring in absolute

lute or partial trials by discretion, instead of this
 ntient and most excellent method of trial *per legem
 terra*.

If one is suspected for any crime, whether it is
 treason or felony, &c. and the party is to be ex-
 amined upon interrogatories, he may hear the inter-
 rogatories, and take a reasonable time to answer the
 same with deliberation (in one instance, time of deli-
 beration was ten hours); and the examinant, if he
 will, may put his answer in writing and keep a copy
 thereof; and so it was resolved in parliament by the
 lords spiritual and temporal, in the case of justice
 Richil. See the record at large, Rot. pl. 1 H. 4.
 memb. 2. n^o. 1.

The lord Carew being examined, for being privy to
 the plot, for the escape of *Sir Walter Raleigh* attainted
 of treason, desired to have a copy of his examination,
 and had it, as *per legem terra* he ought.

Here it may be necessary to observe in what cases
 a man by the law of the land may be taken, ar-
 rested, attached or imprisoned in case of treason or
 felony, before presentment, indictment, &c. wherein
 it is to be understood, that process of law is two-fold,
viz. By the king's writ, or by due proceeding, and
 warrant, either in deed or in law without writ.

As first, where there is any witness against the of-
 fender, he may be taken and arrested by lawful war-
 rant, and committed to prison.

When treason and felony is committed, and the
 common fame and voice is, that *A.* is guilty, it is
 lawful for any man that suspects him to apprehend
 him.

This Bracton well describes, *Fama que suspi-
 cionem inducit, oriri debet apud bonos, & graves, non
 quidem malevolos, & maledicos, sed providas & fide dig-
 nas personas, non semel, sed sepius, quia clamor minuit,
 & defamatio manifestat.*

So it is of hue and cry, and that is by the statute of Winchester, which is an affirmance only of the Common law: likewise if *A.* be suspected, and he flieth or hideth himself, it is a good cause to arrest him.

If treason or felony be committed, and one hath *just* cause of suspicion, this is a good cause, and warrant in law, for any man to arrest the person suspected, but he must shew certainly the cause of his suspicion: whether the suspicion be *just* or *lawful*, shall be determined by the justices in an action of false imprisonment brought by the party grieved, or upon an *habeas corpus*, &c.

A felony is committed, and one is pursued upon hue and cry, that is not of ill fame, suspicious, unknown, or indicted; he may be by a warrant in law attached and imprisoned by the law of the land.

A watchman may arrest a night-walker by a warrant in law.

If a man woundeth another dangerously, any one may arrest him by a warrant in law, until it is known, whether the party wounded will die thereof or not.

If a man keep company with a notorious thief, whereby he is suspected, &c. it is a good cause, and a warrant in law to arrest him.

If an affray be made to the breach of the king's peace, any man may by a warrant in law restrain any of the offenders, that the king's peace may be kept; but after the affray ended, they cannot be arrested without an express warrant.

See now the statutes of 1 & 2 Phil. & Mar. cap. 13. and 2 & 3 Phil. & Mar. cap. 10.

As no man can be taken, arrested, attached or imprisoned, but by due process of law, and according to the law of the land, these conclusions necessarily follow.

1, That

1. That a commitment by lawful warrant either in deed or in law, is accounted in law, due process or proceeding of law, and by the law of the land as well as by process, by force of the King's writ.

2. That the person or persons which commit any one must have lawful authority.

3. It is necessary that the warrant or *mittimus* be lawful, and that must be in writing under his hand and seal.

4. The cause must be contained in the warrant, as for *treason, felony, &c.* or for *suspicion of treason, or felony, or the like particular crime*; for if it does not thus specify the cause, and the prisoner bring his *habeas corpus*, he must be discharged, because not any crime appears on the return; nor is it in such case any offence, if the prisoner make his escape; whereas if the *mittimus* contain the cause, the escape would respectively be treason or felony, though in truth the prisoner was not guilty of the first offence.

5. The warrant or *mittimus* containing a lawful cause, ought to have a lawful conclusion, &c. and him safely to keep until he be delivered by law, &c. and not until the party committing doth further order; and this evidently appears by the writs of *habeas corpus* both in the King's Bench, Common Pleas, Exchequer and Chancery.

A writ of *habeas corpus* is to be granted out of the Chancery, either in term time, (as in the King's Bench, &c.) or in the vacation; for the court of Chancery is *officina justitiæ*, is ever open and never adjourned, so that the subject being wrongfully imprisoned, may have justice respecting the liberty of his person, as well in the vacation as in the term.

By these writs it manifestly appeareth, that no man ought to be imprisoned, but for some certain cause: and these words, *ad subjiciend' & recipiend'*, &c. prove

that the cause must be shewn; for otherwise how can the court proceed therein according to law?

But *vide* the petition of right, *anno tertio Caroli regis*, resolved in full parliament by the king, the lords spiritual and temporal, and the commons, which my lord Coke saith hath made an end of this question, if any were.

Imprisonment doth not only extend to false and unjust imprisonment, but for detaining a prisoner longer than he ought to be detained, where he was at the first lawfully imprisoned.

If the king's writ goes to the sheriff, to deliver the prisoner, and he is afterwards detained, this detention is an imprisonment against the law of the land: if a man be in prison, a warrant cannot be made to the gaoler to deliver the prisoner to the custody of any person unknown to the gaoler for two causes; first, the king's writ of *habeas corpus*, or delivery might be thereby prevented. 2. The *mittimus* ought to be 'till he be delivered by law.

If the sheriff or gaoler detain a prisoner in gaol after his acquittal, unless it be for his fees, this is false imprisonment.

In many cases a man may by the law of the land be taken and imprisoned, by force of the king's writ upon a suggestion made.

Against those that attempt to subvert, and enervate the king's laws, there lieth a writ to the sheriff in nature of a commission, *ad capiendum impugnatores juris regis*, & *ad ducendum eos ad gaolam de Newgate*; which may be seen in the Register at large, *ubi supra*: and this is *lex terræ* by process of law, to take a man without answer, or summons in this case: and the reason is, *merito beneficium legis amittit, qui legem ipsum subvertere intendit*.

If any man by colour of any authority, where he hath not an authority in that particular, shall presume
to

to arrest or imprison any man, or cause him to be arrested or imprisoned, it is against this act, and it is, as lord Coke expresses it, most hateful, when done by countenance of justice. Edward VI. incorporated the town of St Albans, and granted them power to make ordinances, &c. they made an ordinance upon pain of imprisonment; and it was adjudged to be against *Magna Charta*; so it had been, if such ordinance had been contained in the patent itself.

All commissions that are consonant to this act, are, as hath been said, *secundum legem, & consuetudinem Angliæ*.

A commission was made under the Great seal to take *J. N.* (a notorious felon) and to seize his lands and goods: this was resolved to be against the law of the land, unless he had been indicted or appealed by the party, or by other due process of law.

It is enacted, if any man be arrested or imprisoned against the form of this Great charter, that he be brought to his answer, and have right.

No man ought to be arrested or imprisoned contrary to the form of the Great charter.

See more of the several laws allowed within this land, in the first part of the institutes, sect. 3.

It may be asked, if a man is taken, or committed to prison *contra legem terræ*, against the law of the land, what remedy hath the party grieved? To this it may be answered, first, that every act of parliament made against any injury, mischief or grievance, doth either expressly or impliedly give a remedy to the party wronged or grieved; as appears in many of the chapters of this Great charter; and therefore the party injured may have an action founded on this charter. There was one particular example, and that in a powerful time, *viz. Pasch. 2 H. 8. coram rege. rot. 538.* against the prior of S. Oswin, in Northumberland. By the statute of 36 E. 3. it is provided

and declared, that if any man feeleth himself grieved, contrary to any article in any statute, he shall have present remedy in Chancery, (that is, by original writ) by force of those articles and statutes.

2. The offender may be indicted upon this statute at the king's suit, a precedent whereof may be seen *Pascb. 3 H. 8. rot. 71. coram rege.* Rob. Sheffield's case.

3. The party imprisoned may have an *habeas corpus* out of the King's Bench or Chancery, though there be no privilege, &c. or out of the court of Common Pleas, or Exchequer, for any officer or privileged person there; and with submission, for any person whatever; upon which writ the gaoler must return, by whom the prisoner was committed, and the cause of his imprisonment; and if it appeareth that his imprisonment be just and lawful, he shall be remanded to the former gaol, but if it appear to the court, that he was imprisoned against the law of the land, it ought by force of this statute to deliver him; if it is doubtful and under consideration, he may be bailed. He may have an action of false imprisonment, 10 H. 7. fol. 17. but it is entred in the court of Common pleas Mich. 11 H. 7. rot. 327. Hilarie Warner's case, and it appears by the record, that judgment was given for the plaintiff: a record worthy of observation.

5. He may have a writ *de homine replegiando*; vide Marlebridge, cap. 8.

6. He might by the Common law have had a writ *de odio & atia*, as may be seen in the comment on cap. 26. that was taken away by stat. but is revived again by statute of 42 E. 3. cap. 1. It is said in W. 2. *Sed ne hujusmodi appellati, vel indictati diu detineantur in prisona, habent breve de odio & atia, sicut in Magna Charta, & aliis statutis dict' est*: and by the said act of 42 E. 3. all statutes made against *Magna Charta* are repealed.

We

We will sell to no man, we will not deny or defer to any man, &c.] This is spoken in the person of the king, who in judgment of law, in all his courts of justice is present: and therefore every subject of this realm, for injury done to him, *in bonis, terris, vel persona*, in person, lands, or goods, by any other subject, ecclesiastical, or temporal, without exception, may take his remedy by the course of the law, and have justice and right for the injury done him, freely, without sale; fully, without denial; and speedily, without delay; for justice must have three qualities, it must be *libera*, free; for nothing is more odious, than justice set to sale: *plena*, full, for justice ought not to be deficient: and *celeris* speedy, for delay is a kind of denial: and when all these meet, it is both justice and right.

We will not deny, or defer to any man, &c.] These words have been excellently expounded by subsequent acts of parliament, that by no means common right, or Common law, should be disturbed, or delayed; no, though it be commanded under the Great seal, or Privy seal, or by order, writ, letters, message, or command whatsoever, from the king, or any other; and that the justices shall proceed, as if no such writs, letters, order, message, or other command were given: all our judges swear to this; for it is part of their oath; so that if any shall be found wresting the law, to serve a court turn, My lord Coke expressly says, they are perjured, as well as unjust. The Common laws of the realm should by no means be delayed, for the law is the surest sanctuary that a man can take, and the strongest fortress to protect the weakest. *Lex est tutissima cassis*, the law is a most safe headpiece, and *sub clypeo legis nemo decipitur*, no man is deceived whilst the law is his buckler; as to the king he may stay his own suit as a *capias pro fine*, for the king may respite his fine, and the like.

All

All protections which are not legal, that do not appear in the Register, nor are warranted in our books, are expressly against this branch, *nulli deferemus*, we will not delay any man; as a protection, under the Great seal granted to any man, directed to the sheriffs, &c. and commanding them that they shall not arrest him, during a certain time, at any other man's suit, which hath words in it, *per prerogativam nostram quam nolumus esse arguendam*; by our prerogative, which we will not have disputed: yet such protections have been argued by the judges, according to their oath and duty, and adjudged to be void; as Mich. 11 H. 7. Rot. 124. a protection granted to Holmes, a vintner of London, his factors, servants and deputies, &c. Resolved to be against law, Pasch. 7 H. 8. Rot. 66. such a protection was disallowed, and the sheriff amerced for not executing the writ, Mich. 13 & 14 Eliz. in Hitchcock's case, and many others of later times: And there is a record worthy note, in antient time, viz. in 22 E. 1. John de Marshall's case, *non pertinet ad vicecomitem de protectione regis Judicare, imo ad curiam*.

As to protections granted by ambassadors, under the stat. of queen Anne, the true meaning of that law must, with submission be, that the real domesticks of ambassadors, and those actually employed in their service, and those only, should be protected, and that on general principles, not of the positive law of the state, but of the law of nations, for the good of nations, not of individuals. All protections granted to others, notwithstanding the stat. of queen Anne, must be void, and so, we are informed, it has been lately determined.

Justice, or right.] We shall not sell, deny, or delay, justice and right; neither the end, which is justice; nor the means whereby we may attain to the end, and that is the law; right is taken here for law,
in

in the same sense that justice often is so called. 1. Because it is the right line, whereby distributive justice is guided and directed; and therefore all the commissioners of Oyer and Terminer, of gaol delivery, of the peace, &c. have this clause, *Facturi quod ad justitiam pertinet secundum legem & consuetudinem Angliæ*; that is to do justice and right, according to the rule of the law and custom of England: and that which is called common right in 2 E. 3. is called Common law in 14 E. 3. &c. and in this sense it is taken, where it is said, *Ita quod stat rectus in curia, id est, legi in curia.*—

2. The law is called *rectum*, because it discovereth that which is crooked, or wrong; for as right signifieth law, so crooked or wrong signifieth injury; and *injuria est contra jus*. Injury is against right: *Recta linea est index sui & obliqui*, a right line is both declaratory of itself and the oblique.

3. It is called right, because it is the best birth-right the subject hath, for thereby his goods, lands, wife and children, his body, life, honour, and estimation are protected from injury and wrong: *Major hereditas venit unicuique nostrum a jure & legibus, quam a parentibus*; a greater inheritance descends to us from the laws than from our progenitors.

Thus far that oracle of our law the sage and learned Coke, who so fully and excellently explains this incomparable law, that it will be superfluous here to add any thing farther on this subject.

C A P. I.

A confirmation of the Great charter, and the Charter of the forest. Made 25 Ed. 1. anno Domini 1297.

C A P. I.

A confirmation of the Great charter and the Charter of the forest.

‘ E D W A R D, by the grace of God king of
 ‘ England, lord of Ireland, and duke of Guyan,
 ‘ to all those that these present letters shall hear, or
 ‘ see, greeting. Know ye, that we to the honour of
 ‘ God, and of the Holy Church, and to the profit of
 ‘ our realm, have granted for Us and Our Heirs, that
 ‘ the Charter of liberties, and the Charter of the fo-
 ‘ rest, which were made by common assent of all the
 ‘ realm, in the time of king Henry our father, shall
 ‘ be kept in every point without breach. (2.) And
 ‘ We will, that the same charter shall be sent under
 ‘ Our seal, as well to our justices of the forest, as to
 ‘ others, and to all sheriffs of shires, and to all Our other
 ‘ officers, and to all Our cities throughout the realm,
 ‘ together with our writs, in the which it shall be con-
 ‘ tained that they cause the aforesaid Charters to be
 ‘ published, and to declare to the people that we have
 ‘ confirmed them in all points. (3.) And that our
 ‘ justices, sheriffs, mayors, and other ministers which
 ‘ under us have the laws of our land to guide, shall
 ‘ allow the said Charters pleaded before them in judg-
 ‘ ment in all their points, that is to wit, the Great
 ‘ charter as the Common law, and
 ‘ the Charter of the forest*, for
 ‘ the wealth of our realm.

*Add according to the
 assise of the forest.

C A P.

C A P. II.

Judgment given against the said Charters shall be void.

‘ AND we will, that if any judgment be given
 ‘ from henceforth contrary to the points of
 ‘ the Charters aforesaid by the justices, or by any other
 ‘ our ministers that hold plea before them, against the
 ‘ points of the Charters, it shall be undone and holden
 ‘ for nought.

C A P. III.

The said Charters shall be read in Cathedral churches twice in the year.

‘ AND we will that the same Charters shall be sent
 ‘ under our seal, to Cathedral churches through-
 ‘ out our realm, there to remain, and shall be read
 ‘ before the people two times by the year.

C A P. IV.

Excommunication shall be pronounced against the breakers of the said Charters.

‘ AND that all archbishops and bishops shall pro-
 ‘ nounce the sentence of excommunication a-
 ‘ gainst all those that by word, deed, or council, do
 ‘ contrary to the foresaid Charters, or that in any point
 ‘ break, or undo them. (2.) And that the said cur-
 ‘ fes

' fes, be twice a year denounced and published by
 ' the prelates aforesaid. (3.) And if the same pre-
 ' lates *, or any of them, be remiss
 * Add *bishops*. ' in the denunciation of the said sen-
 ' tences, the archbishops of Canterbury and York for
 ' the time being, shall compel and distrain them to
 ' the execution of their duties in form aforesaid.

C A P. V.

*Aids, tasks and prises granted to the king shall not
be taken for a custom.*

' **A**ND for so much as divers people of our realm
 ' are in fear, that the aids and tasks which they
 ' have given to us before time towards our wars, and
 ' other business of their own grant, and good will
 ' (howsoever they were made) might turn to a bon-
 ' dage to them and their heirs, because they might
 ' be at another time found in the rolls, and likewise
 ' for the prises taken throughout the realm by our
 ' ministers *; (2.) We have gran-
 * Add *in our name*. ' ted for us and our heirs that we
 ' shall not draw such aids, tasks, nor prises into a
 ' custom, for any thing that hath been done hereto-
 ' fore, be it by roll, or any other precedent that may
 ' be founden.

C A P.

C A P. VI.

The king, or his heirs, will take no aids, or prises, but by the consent of the realm, and for the common profit thereof.

‘ **M**OREOVER, we have granted for us and
 ‘ our heirs, as well to archbishops, bishops,
 ‘ abbots, priors, and other folk of Holy Church, as
 ‘ also to earls, barons, and to all the communalty of
 ‘ the land, that for no business from henceforth, we
 ‘ shall take such manner of aids, tasks, nor prises,
 ‘ but by the common assent of the realm, and for the
 ‘ common profit thereof; saving the ancient aids and
 ‘ prises due and accustomed.’

C A P. VII.

Release of toll taken by the king for wool; and a grant that he will not take the like without common consent, and good will.

‘ **A**ND for so much, as the more part of the
 ‘ communalty of the realm find themselves fore
 ‘ grieved with the malevolent of wools, that is to wit,
 ‘ a toll of forty shillings for every sack of wool, and
 ‘ have made petition to us to release the same: We
 ‘ at their request have clearly released it, and have
 ‘ granted * *for us and our heirs*, that * Not in the orig.
 ‘ we shall not take † *such things* † Read that or any
 ‘ without their common assent and other.
 ‘ good will, saving to us and our
 ‘ heirs the custom of wools, skins and leather,
 ‘ granted

E

‘ granted before by the communalty aforesaid. In
 ‘ witness of which things we have caused these our
 ‘ letters to be made patents. Witness Edward our
 ‘ son, at *London*, the 10th day of *October*, the five
 ‘ and twentieth year of our reign.’

Sententia lata super chartas.

The sentence of the clergy against the breakers of the articles above written.

IN the name of the Father, the Son, and the Holy Ghost, *Amen*. Whereas our sovereign Lord the King, to the honour of God, and of Holy Church, and for the common profit of the realm, hath granted for him and his heirs for ever, these articles above written; Robert, archbishop of Canterbury, primate of all England, admonisheth all his province once, twice, and thrice; Because that shortness will not suffer so much delay, as to give knowledge to all the people of England of these presents in writing: We therefore enjoyn all persons, of what estate soever they be, that they and every of them, as much as in them is, shall uphold and maintain these articles granted by our sovereign Lord the King in all points. And all those that in any point do resist or break, or in any manner hereafter procure, counsel, or any ways assent to resist or break those ordinances, or go aboutit, by word, or deed, openly, or privily, by any manner of pretence, or colour: We the foresaid archbishop by our authority in this writing expressed, do excommunicate and accurse, and from the body of our Lord Jesus Christ, and from all the company of heaven, and from all the sacraments of Holy Church do sequester and exclude.

N O T E S.

THIS curse is left out of our late printed statute-books, though inserted at large in that printed in three volumes, in queen *Elizabeth's* time, *anno 1557*. There is another dreadful curse, solemnly pronounced before in the time of *Henry III.* which being also omitted in our modern statute-books, we shall add here for the reader's satisfaction.

The sentence or curse pronounced by the bishops against the breakers of the Great charter.

IN the year of our Lord one thousand two hundred and fifty-three, the third day of *May*, in the great hall of the king at Westminster, in the presence and by the assent of the lord Henry, by the grace of God, king of England, and the lord Richard earl of Cornwall his brother, Roger Bigot earl of Norfolk and Suffolk, marshal of England, Humphry earl of Hereford, Henry earl of Oxford, John earl Warren, and other estates of the realm of England: William Boniface by the mercy of God archbishop of Canterbury, primate of all England; F. of London, H. of Ely, S. of Worcester, E. of Lincoln, W. of Norwich, G. of Hereford, W. of Salisbury, W. of Durham, R. of Exeter, M. of Carlisle, W. of Bath, E. of Rochester, T. of Saint David's: bishops, apparelled in pontificals with tapers burning, against the breakers of the churches liberties, and of the liberties or other customs of the realm of England, and namely of those which are contained in the Charter of the common liberties of England, and Charter of the forest, have denounced the sentence of excommunication in this form. By the authority of Almighty God, the father, the son, and the holy ghost, and of the glorious mother of

E 2

God,

God, and perpetual Virgin Mary, of the blessed apostles Peter and Paul, and of all apostles, and of all martyrs, of blessed Edward king of England, and of all the saints of heaven: We excommunicate, accurse, and from the benefits of our holy mother the church we sequester all those that hereafter willingly and maliciously deprive or spoil the church of her right: and all those that by any craft or wiliness do violate, break, diminish or change the churches liberties, and free customs contained in the Charters of the common liberties, and of the forest granted by our lord the king, to archbishops, bishops, and other prelates of England, and likewise to the earls, barons, knights, and other freeholders of the realm: and all that secretly or openly, by deed, word or council, do make statutes, or observe them being made, and that bring in customs, or keep them when they be brought in, *against the said liberties*, or any of them, the writers, the law-makers, counsellors, and the executioners of them, and all those that shall presume to *judge* against them. All and every which persons before mentioned that wittingly shall commit any of the premisses, let them well know that they incur the aforefaid sentence *ipso facto* (i. e. upon the deed done.) And those that commit ought ignorantly, and be admonished, except they reform themselves within 15 days after the time of the admonition, and make full satisfaction for that they have done, at the will of the ordinary, shall be from that time forth wrapped in the said sentence; and with the same sentence we burden all those that presume to disturb the peace of our sovereign lord the king, and of the realm. To the perpetual memory of which thing, we the aforefaid prelates have put our seals to these presents.

So zealous were our ancestors to preserve their liberties from encroachments, that they employed all the strength of human policy and religious obligations

tions to secure them intire and inviolate. And since this act is still in as much force as the act against conventicles, why should not our prelates as well hold themselves obliged twice a year to curse the infringers thereof, as to prosecute protestant dissenters: However we may note, that by this statute, chap. 2. it is expressly provided, that if any judgments be given from that time forwards against any of the points of Magna Charta, they shall be annulled and holden for nought; therefore *quare* whether any conviction without trial by a jury, (which is expressly against the 29th chapter of Magna Charta) ought not to be taken notice of and redressed, and the original promoters thereof to be cursed by my lords the bishops? It is worthy observation, that by the second chapter of this act any judgment given contrary to Magna Charta is to be undone and held for nought.

By the fourth, if the bishops do not curse the infringers, the archbishops of Canterbury and York shall compel them.

By the fifth it evidently appears the aids and tasks were granted by the people of their own free will, and by the act the king assures his subjects he will not draw the same into a custom, and by the sixth he gives a further assurance that he will not for the future *on any occasion take any but by the common assent of the realm, and for the common benefit thereof* other than, &c. But this is more particularly expressed in the next statute that is quoted.

The 37th of Ed. the third cap. 1. intituled, a confirmation of former statutes says, "First, that the Great charter, and the charter of the forest, and the statutes and ordinances made in times past, and specially the statutes made at the last parliament, be holden and kept, and duly executed, according to the form and effect of them."

The 2d Ed. 3. c. 1. enacts, that the Great charter and Charter of the forest, be observed in all points.

A statute made anno 34 Edw. I. stat. 4. commonly called de tallagio non concedendo.

C A P. I.

The king or his heirs shall have no tallage or aid without consent of parliament.

‘ **N**O tallage or aid shall be taken or levied by us or our heirs in our realm, without the goodwill and assent of archbishops, bishops, earls, barons, knights, burgessees, and other freemen of the land.’

C A P. II.

Nothing shall be purveyed to the king's use without the owners consent.

‘ **N**O officer of ours, or of our heirs, shall take corn, leather, cattle or any other goods of any manner of person, without the good will and assent of the party to whom the goods belonged.’

C A P. III.

Nothing shall be taken of sacks of wooll by colour of maletolt.

‘ **N**Othing from henceforth shall be taken of sacks of wooll by colour or occasion of maletent.’

C A P.

C A P. IV.

All laws, liberties and customs confirmed.

WE will and grant for us and our heirs, that all clerks and laymen of our land, shall have their laws, liberties, and free customs as largely and wholly, as they have used to have the same at any time when they had them best. (2) And if any statutes have been made by us or our ancestors, or any customs brought in contrary to them, or any manner of article contained in this present charter: We will and grant that such manner of statutes and customs shall be void and frustrate for evermore.

C A P. V.

Pardon granted to certain offenders.

MOREOVER we have pardoned Humphrey Bohun, earl of Hereford and Essex, constable of England, Roger earl of Norfolk and Suffolk, marshal of England, and other earls, barons, knights, esquires, and namely, John de Ferrariis, with all other being of their fellowship, confederacy and bond, and also to all other that hold 20*l.* land in our realm, whether they hold of us in chief or of other, that were appointed at a day certain to pass over with us into Flanders, the rancour and evil will born against us, and all offences if any they have done against us, unto the making of this present charter.

C A P. VI.

*The curse of the church shall be pronounced against
the breakers of this charter.*

‘ AND for the more assurance of this thing, We
‘ will and grant that all archbishops and bi-
‘ shops for ever, shall read this present charter in
‘ their cathedral churches twice in the year, and upon
‘ the reading thereof in every of their parish churches
‘ shall openly denounce accursed all those that wil-
‘ lingly do procure to be done any thing contrary to
‘ the tenor, force and effect of this present charter
‘ in any point and article. (2) In witness of which
‘ thing we have set our seal to this present charter,
‘ together with the seals of the archbishops, bishops,
‘ &c. which voluntarily have sworn, that as much as
‘ in them is, they shall observe the tenour of this
‘ present charter in all causes and articles, and shall
‘ extend their faithful aid to the keeping thereof, &c.

T H E C O M M E N T.

THE word tallage, according to Lord Coke, is derived from the French word *tailer*, to share, or cut out a part, and is metaphorically used for any charge, when the king, or any other, hath a part, or share, out of a man's estate, and being a general word, it includes all subsidies, taxes, tenths, fifteenths, impositions, or other charges whatsoever. Here it is restrained to tallages set or levied by the king, or his heirs.

According to my Lord Coke, not any subsidy, task, tenth, fifteenth, imposition, or other aid, or charge whatsoever, shall by the king, or his heirs, be put or levied without the common council of the realm, that

that is, by the will and assent of the archbishops, bishops, earls, barons, knights, burgesses, and others of the counties, viz. by grant and common assent in parliament.

Within this act are all new offices erected with new fees, or old offices with new fees, for that is a tallage put upon the subject, which cannot be done without common assent, by act of parliament. And this appears by a petition in parliament in *anno 13. H. 4.* where the commons complain, that an office was erected for measuring of cloths and canvas, with a new fee for the same by colour of the king's letters patents, and pray that those letters patents might be revoked, for that the king could not erect any offices with new fees to be taken of the people, who cannot be thus charged but by parliament.

The royal answer of the king in parliament was, that the statutes therefore provided should be observed, which statutes were the 25 *E. 1.* And the 34 *E. 1.* &c. and accordingly judgment was also given in the king's bench, so that this point was resolved in parliament, and adjudged by law according to these statutes; and hereby it appeareth that these were acts of parliament.

Edward III. had granted to Robert Poley a new office for measuring of worsteds, with a new fee, and it was at the petition of the commons resolved in parliament to be void, and afterwards revoked, as void, by authority of parliament; and the same is law, in all similar cases.

Note, That the words of this branch are general, *Nullum tallagium, &c. ponatur, seu levetur sine voluntate, &c.* and saith, *Per nos, & hered' nostros,* but not *Pro nobis, aut ad opus nostrum.* But generally, so as all tallages, burthens, or charges put upon the subject by the king, either to or for the king, or to or for any subject by the king's letters patents, or other command,
or

or order, is prohibited by this act, unless it be by common consent of parliament; and note, That the words are in the disjunctive, [*ponatur seu levetur*] so that if it is set by the king, although it is not levied by him, but by a subject, as it was in the cases before mentioned, it is within the purview of this statute.

The word *maletot* signifies an evil (that is, an unjust) toll, custom, imposition, or sum of money.

The occasion of making this statute was that king Edward being resolved to make war against the French king, required of Humphrey le Bohun, Earl of Hereford and Essex, and constable of England, and Roger Bigot, Earl of Norfolk and Suffolk, and marshall of England; and of all the earls, barons, knights, esquires, and freeholders of 20*l.* land, whether they held of him *in capite*, or otherwise, to contribute towards such his expedition, *viz.* to go in person, or find sufficient men in their places in his army: which the constable and marshall, and many of the knights, and esquires, and especially John Ferrers taking part with them, and all the freemen, as Lord Coke expresses it, stoutly denied, unless it were so ordained, and determined by common consent in parliament, according to law. And it seems the contest grew so hot, that Baker's chronicle, *folio* 99. relates a peculiar dialogue which passed between them, *viz.* That when the earl marshall told the king, that if his majesty pleased to go in person, he would then go with him, and march before him in the van-guard, as by right of inheritance he ought; but otherwise he would not stir; The king told him plainly, he should go with any other, though he, the king, went not in person. I am not so bound, (saith the earl) neither will I take that journey without you. The king swore, By God, sir, earl you shall either go, or hang. And I swear by the same oath, (said the earl) I will neither go, nor hang: upon which the king was obliged to dispatch his expedition.

pedition without them; and yet (saith my Lord Coke) although the king had conceived a deep displeasure against the constable, marshall, and others of the nobility, gentry, and commons of the realm, for denying that which he was so desirous of; yet because they stood in defence of their laws, liberties, and free customs, Edward, who was (as Sir William Herle, Chief Justice of the Common pleas who lived in his time, and served him, said, afterwards in the time of Edward the Third) the wisest king that ever lived; after his return from beyond the seas, not only consented to this statute, whereby all such tallages and impositions are forbidden for the future, but also passed a pardon to those nobles, &c. of all rancor, or ill will, and transgressions, *if any* they had committed; which last words were added, least by acceptance of a pardon of transgression, they should implicitly confess, that they had transgressed; so careful were the lords, and commons in former times, to preserve the antient laws, liberties, and free customs of their country.

But note these words, *Si quas fecerint, if any they have committed*, were formerly left out in all the printed statute books; but they are in this statute recited by Coke, in his second book of Institutes, fol. 535. and specially noted, p. 536, §. 3. which he would never have done, if it had not been so in the rolls. The new editions of the statutes, viz. Mr. Ruffhead's and Mr. Pickering's, each contain the latin, *Si quas &c.* though in English it is not rendered *if any*, but *that*. So the other editions.

Anno

Anno 25 Ed. 3. stat. 5.

C A P. II.

A declaration which offences shall be adjudged treason.

ITEM, Whereas divers opinions have been before this time, in what case treason shall be said, and in what not, (2.) The king, at the request of the lords, and of the commons, hath made a declaration in the manner as hereafter followeth, that is to say, When a man doth compass, or imagine the death of our Lord the King, or of our Lady his Queen, or of their eldest son and heir. (3.) Or if a man do violate the king's companion, or the king's eldest daughter unmarried, or the wife of the king's eldest son and heir. (4.) Or if a man do levy war against our Lord the King, in his realm, or be adherent to the king's enemies in his realm, giving to them aid and comfort in the realm, or elsewhere, and thereof be *provably* * attainted of open deed by the people of their condition. (5.) And if a man counterfeit the king's great or privy seal, or his money. (6.) And if a man bring false money into this realm, counterfeit to the money of England, as the money called Lushburgh, or other, like to the said money of England, knowing the money to be false, to merchandize, or make payment in deceit of our said lord, the king, and of his people. (7.) And if a man slea the chancellor, treasurer, or the king's justices of the one bench, or the other, justices in Eyre, or justices of assize, and all other justices assigned to hear and determine, being in their places

* This word *provably* is right, though in many editions of the Statutes it is erroneously translated *probably*. See the *Comment*.

doing.

doing their offices. (8) And it is to be understood that in the cases above rehearsed, that ought to be judged treason, which extends to our king the king, and his royal majesty. (9.) And of such treason the forfeiture of the escheats, pertaineth to our sovereign Lord, as well of the lands and tenements holden of other, as of himself. (10.) And moreover, there is another manner of treason, that is to say, when a servant slayeth his master, or a wife her husband, or when a man, secular or religious, slayeth his prelate to whom he oweth faith and obedience. (11.) And of such treason the escheats ought to pertain to every lord of his own fee. (12.) And because that many other like cases of treason may happen in time to come which a man cannot think, nor declare at this present time: It is accorded, That if any other case supposed treason which is not above specified, doth happen before any justices, the justices shall tarry without any going to judgment of the treason, till the cause be shewed and declared before the king and his parliament, whether it ought to be judged treason, or other felony. (13.) And if perchance any man of this realm, ride armed covertly or secretly, with men of arms, against any other to slay him, or rob him, or take him, or retain him, 'till he hath made fine, or ransom, for to have his deliverance; it is not the mind of the king, nor his council, that in such case it shall be judged treason, but shall be judged felony, or trespass, according to the laws of the land of old time used, and according as the case requireth. (14.) And if in such case, or other like, before this time any justices have judged treason, and for this cause the lands and tenements have comen into the king's hand as forfeit: the chief lords of the fee shall have the escheats of the tenements holden of them, whether that the same tenements be in the king's hands, or in others by gift, or in other manner. 15. Saving always to our Lord the King the

the year and the waste, and the forfeitures of chattels, which pertain to him in the cases above named.

(16.) And that the writs of *scire facias* be granted in such case against the land tenants, without other original, and without allowing * any

* *the protection of our Lord the King.* *protection* in the said suit. (17.) And that of the lands which be in the

king's hands, writs be granted to the sheriffs of the counties where the lands be, to deliver them out of the king's hands without delay.

THE COMMENT.

TREASON is derived from *Trahir*, which signifies treacherously to betray: *Trabue*, betrayed, and *trabison*, *per contractionem*, treason, is the betraying itself. When it concerns the government and the publick, it is called high treason, but against particular persons, as a wife killing her husband; a servant his master, &c. it is *petit* or petty treason.

High treason in the Civil law, is called *crimen lese majestatis*, a crime wronging majesty, but in our Common law Latin, *alta proditio*, and in an indictment for this offence, when pleadings were in Latin, the word *proditio* was necessary.

Before the making this act, so many things were charged as treason, that no man knew how to behave himself. By this statute the particulars of that grand crime were specified, and all others excluded, 'till declared by parliament. The settling of this affair was esteemed of such importance to the publick weal, that the parliament wherein this act passed, was afterwards called, *Benedictum parliamentum*, The Blessed parliament.

The

The substance of this act is by Lord Coke, in the third part of his Institutes, fol. 3. divided into several classes in the following order, viz.

The first concerneth death.	}	By compassing or imagining the death of the	{	King Queen Prince	}	and declaring the same by some overt deed.
		By killing the	{	Chancellor, Treasurer, Justices of the one Bench, or other. Justices in Eyre. Justices of assize. Justices of Oier and Terminer, &c.	}	In their places executing their offices.

The second concerneth violation, that is to violate, or carnally to know

}	The king's consort, or queen. The king's eldest daughter unmarried. The prince's wife.
---	--

The third is levying war against the king.

The fourth is adhering to the king's enemies within the realm, or without, and declaring the same by some overt act.

The fifth is counterfeiting of

}	The Great seal, The Privy seal, The king's coin.
---	--

The sixth and last, by bringing into this realm counterfeit money to the likeness of the king's coin, &c.

So that treason is *membrum divisum*, and these several classes, or heads are *membra dividenda*. And if the offence is not within one of these classes, or heads, it is not treason.

Now as to the particular exposition of the several parts of this statute,

1. What

1. *What a man doth compass, &c.* In the original it is *Quant Home*, which extends to both sexes; *both* including both. But one that is *non compos mentis*, or an infant within the age of discretion, is not included; but all aliens within the realm of England, being thereby under the king's protection, and owing a local allegiance, if they commit treason, may be punished by this act, but it is otherwise of an enemy.

2. *To compass and imagine*, is to contrive, design, or intend the death of the king: but this must be declared by some overt act. Declaring by an open act, a design to depose, or imprison the king, is an overt act to manifest the compassing his death. For they that will depose their king, will not hesitate to murder him rather than fail of their end, and (as Charles the First excellently observed, and unhappily experienced) 'there are commonly but few steps between the prisons and the graves of princes.'

3. By the word *King* is intended, 1. A king before his coronation, as soon as the crown descends upon him, for the coronation is but a ceremony. 2. A king *de facto*, and not *de jure*, is a king within this act, and treason against him is punishable, though the right heir afterwards obtain the crown. 3. A titular king, as the husband of the queen, is not a king within this act, but the queen is, for the word *king* here includes both sexes.

4. What is to be understood by the king's *eldest son* and *heir* within this act? In answer, *First*, A second son, after the death of the first-born, is within the act, for he is the eldest. *Secondly*, The eldest son of a *queen* regnant, is as well within the statute as of a *king*. *Thirdly*, The collateral heir apparent, or presumptive, is not within this statute. *Roger Mortimer*, earl of *March*, was in 1487. (11 *Rich.* 2.) proclaimed heir apparent. *Anno 39 Hen. 6. Richard*, duke of *York* was likewise proclaimed heir apparent; and so

was

was *John de la Poolen*, earl of *Lincoln*, by *Richard III.* and *Henry*, marquess of *Exeter*, by *Henry VIII.* But not any of these, or the like, are within the purview of this statute, saith *Lord Coke*, 3 *Instit.* fol. 9.

5. As to the words *probably attainted*, which hath been before noticed as an error in the English editions (except *Mr. Pickering's*) the words of the record are, *Et de ceo PROVABLEMENT soit attainit*: and shall be thereof *PROVABLY* attainit: and as *Mr. Care* observes, it is much to be wondered at, that such a gross mistake should be suffered, since *Lord Coke* has to expressly observed the difference, in the following words, 3 *Instit.* fol. 12. *In this branch* (saith he) *four things are to be observed.* 1. *This word* (*Provablement*) *provably*, that is upon direct and manifest proof, not upon conjectural presumptions, or inferences, or strains of wit, but upon good and sufficient proof. And herein the adverb [*provablement*] *provably*, hath a great force and signifieth a direct and plain proof; which word the king, the lords, and commons in parliament did use, for that the offence was heinous, and was so heavily and severely punished, as none other the like; and therefore the offenders must provably be attainted, which words are as forcible, as upon direct and manifest proof. Note, The word is not [*probably*] for then commune argumentum might have served; but the word is [*provably*] be attainted. Secondly, This word [*attaint*] necessarily implieth that he be proceeded with, and attainted according to the due course and proceedings of the law, and not by absolute power, or by other means, as in former times had been used. And therefore if a man doth adhere to the enemies of the king, or be slain in open war against the king, or otherwise die before the attainder of treason, he forfeiteth nothing, because (as this act saith) he is not attainted: wherein this act hath altered that, which before this act in case of treason was taken for law. And the stat. 34 *Edw.* 3. cap. 12. saves nothing

thing to the king but that which was in Esse, and pertaining to the king, at the making of that act. And this appeareth by a judgment in parliament in anno 29 H. 6. cap. 1. That Jack Cade being slain in open rebellion, could no way be punished, or forfeit any thing, and therefore was attainted by that act of high treason. Thirdly, Of open deed, per apertum factum, these words strengthen the former exposition of [provablement] an overt-act must be alledged in every indictment upon this act, and proved. Compassing by bare words is not an overt-act, as appears by many temporary statutes against it. But there must be some open act which must be manifestly proved. As if divers do conspire the death of the king, and the manner how, and thereupon provide weapons, powder, poison, harness, send letters, or the like, for the execution of the conspiracy. If a man be arraigned upon an indictment of high treason and stand mute [that is, refuse to plead] he is not to be pressed to death, but shall have the same judgment and incur such forfeiture, as if he had been convicted by verdict, or had confessed it. For this standeth well with the word [Provablement] for *fatetur facinus qui iudicium fugit*. But otherwise it is in case of petit treason, murder, or other felony. If a subject conspire with a foreign prince, to invade the realm by open hostility, and prepare for the same by some overt-act, this is a sufficient overt-act for the death of the king. Fourthly, The composition, with the connection of the words are to be observed, viz. thereof to be attainted by open deed. This (as was resolved by the justices in Easter term 35 of Eliz.) relateth to the several and distinct treasons before expressed, (and specially to the compassing and imagining the death of the king, &c. for that is a secret in the heart, and therefore one of them cannot be an overt-act for another, as for example: A conspiracy is had to levy war, this (as hath been said and so resolved) is no treason by this act, until it be levied,

vied, therefore it is no overt-act, or manifest proof of the compassing the death of the king within this act, for the words are [*de ceo &c. thereof*] that is of the compassing of the death. Divers later acts of parliament have ordained, that compassing by bare words, or sayings, should be treason, but are all either repealed, or expired. And it was usually said, bare words may make an heretick, but not a traitor, without an *overt-act*. And the wisdom of the makers of this law, would not make words *only* to be treason, seeing such variance commonly among the witnesses is about words, as few of them agree together. But if words be set down in writing, by the delinquent himself, that is a sufficient *overt-act* within this statute.

Hawkins in his Pleas of the crown, B. 1. c. 17. §. 2. says all treasons were settled by the statute of 25 *Edw.* 3. 1. which by 1 *Mar.* *Ses.* 1. *chap.* 1. was reinforced, and again made the only standard of treason; and all statutes between that of 25 *Edw.* 3. and 1 *Mar.* which made any offences, high, or petit treason, or misprision of treason, are abrogated, so that not any offence is at this day to be esteemed high treason, unless it be either declared to be such by the statute of 25 *Edw.* 3. or made such by some statute since 1 *Mar.*

Sect. 27. He says, it is certain, that a bare conspiracy to levy * such a war cannot amount to treason, unless it be actually levied; yet it hath been resolved, that a conspiracy to levy war against the king's person, may be alledged as an overt-act of compassing his death, and that in all cases, if the treason be actually compleated, the conspirators, &c. are traitors as much as the actors. And 'that there may be a levying of 'war, where there is no actual fighting.'

* He has before been treating of rebellion, insurrections, &c. not directly intended against the *king's person*.

In the preamble of the statute of 1 *Mar. Sess. 1. c. 1.* which is hereafter set forth, (concerning the repeal of certain treasons declared after this statute of the 25 of *Edw. 3.* and before that time, and bringing back all things to the measure of this statute) It is agreed by the whole parliament, *That laws justly made for the preservation of the commonwealth, without extreme punishment, are oftener obeyed than laws made with great and extreme punishments. And that ignorant people are often snared for words only without the commission of any fact.* Therefore this act of 25 *Edw. 3.* provides that there must be an overt-act. But words without any overt-act are to be punished in another degree, as an high misprision.

By people of their condition.] That is, *per pares*, by their equals.

7. As to treason by *levying war against the king*, we must note, that though conspiring, or compassing to levy war, without a war *de facto*, be no treason, yet if many conspire a war, and only some few actually levy it, all are guilty of the treason. Raising a force to burn or throw down a particular inclosure is only a *riot*, but if it had been to have gone from town to town to throw down all inclosures, or to change religion, or the like, it were levying of war, because the intended mischief is publick.

Holding a fort, or castle, against the king's forces is levying of war.

8. As touching the *interpretative treasons* by killing the chancellor, treasurer, justice of one or the other bench, justice in *Eyre*, or of *Affize*, or *Oier* and *Terminer*; Note, 1. This extends but only to the persons here named, not to the lord steward, constable, or marshal, or lords of parliament. Secondly, It extends to those only during their office, for the words are, *being in their places during their offices.* Thirdly,
It

It extends only to killing, not wounding without death.

But by the statute 3 *H. 7. c. 14.* compassing to kill the king, or any of his council, is made felony.

9. Counterfeiting the Great or Privy seal is treason; but it must be an actual counterfeiting thereof: compassing to do it is no treason: Affixing the Great seal by the chancellor without warrant, is no treason; fixing a new Great seal to another patent, is a great *misprision*, but no treason, being not a counterfeiting within this act: but *aiders* and *consenters* are within this act.

The counterfeiting of the Privy signet, or sign manual, is no treason within this act, but made by the statute 1 *Mar. c. 6.*

10. Treason concerning coin is counterfeiting the king's coin, and this was treason at Common law, and judgment only as of petit treason, but clipping, &c. being made treason by subsequent statutes, the judgment is to be drawn, hanged, and quartered. Money here extends only to the proper money of this realm. But now by the 1 *M. c. 6.* Forging, or counterfeiting money made currant by proclamation is high treason, and by 14 *Eliz. c. 3.* Forging of foreign coin, not currant here, is *misprision of treason* in the forgers, their aiders and abettors.—And not that the bare forging of the king's coin, without uttering, is treason.

The second offence concerning money, here declared to be treason, is, if any person *bring into this realm counterfeit money*: where note, 1. It must be *counterfeit*: 2. *Counterfeited to the similitude of English money*: 3. It must be *brought from a foreign realm*, and therefore not from *Ireland*: 4. It must be brought *knowingly*: 5. *Brought*, and not barely *uttered here*. But by the statute *de Moneta*, if false, or clipt money be found in any person's hands, and he be suspicious,

he may be arrested till he can clear himself: 6. He must *merchandize therewith*, that is *make payment thereof*.

11. As this statute leaves all other doubtful matters to be declared treason in parliament, but not to be punished as such, till so declared: So in succeeding reigns abundance of other matters were declared treason, which being found very grievous and dangerous, the statute of 1 *Mar. cap. 1.* was made.

12. There are other offences made high treason by statutes since this first of *Mary*, as follow, *viz.*

Refusing the oath of *Supremacy* upon second tender, is treason by 5 *Eliz. cap. 1. §. 11.* but no corruption of blood, or forfeiture of dower. Extolling the power of the bishop of *Rome* is a *præmunire*, and the bringing in of *bulls*, or putting them in execution, or reconciling to the church of *Rome* is treason by the same statute. Bringing in *agnus Dei's* is a *præmunire*, 23 *Eliz. c. 1.* Also absolving subjects from their obedience, or reconciling them to the obedience of *Rome* is treason. Vide 13 *Eliz. cap. 2. 23. c. 1. 3 Jac. 1. c. 4. §. 22.* So it is likewise for a priest coming into *England*, and not submitting in two days. The like for Englishmen in foreign seminaries: 27 *Eliz. c. 2. §. 3 & 5.*

And the following are noted from Mr. *Ruffhead's* index.

Clipping and impairing money made treason. 5 *El. c. 11.*

Conspiring to enlarge prisoners committed for treason. 14 *El. c. 2.*

No past attainder to be reversed after execution. 29 *El. c. 2.*

Regulations of trials for high treason. 7 & 8 *W. 3. c. 3.*

A copy of the indictment to be given to the defendant five days before the trial, 7 & 8 *W. 3. c. 3. §. 1.* After the pretender's death, it shall be given him

him ten days before the trial, with lists of the witnesses and jury. 7 *Ann. c. 21. §. 11.* Defendant may make his defence by counsel. 7 & 8 *W. 3. c. 3. §. 1.* Extended to trials upon impeachments. 20 *Geo. 2. c. 30.*

Proviso that any person may be outlawed, and thereby attainted. 7 *W. 3. c. 3. §. 3.*

No attainder without two witnesses, or confession, &c. 7 *W. 3. c. 3. §. 2. 4.*

On trial of a peer all peers to be summoned. 7 *W. 3. c. 3. §. 11.*

Corresponding with the late king *James* made treason. 9 *W. 3. c. 1.*

Corresponding with the pretender. 13 *W. 3. c. 3. §. 2.*

Endeavouring to hinder the succession. 1 *Ann. st. 2. c. 17. §. 3.*

Writing in defence of the pretender's claim made treason. 4 *Ann. c. 8. 6 Ann. c. 7.*

The laws concerning treason extended to *Scotland*. 7 *Ann. c. 21.*

After the death of the pretender, no attainder of high treason shall extend to the disheriting an heir, &c. 7 *Ann. c. 21. §. 10.* Not to take effect 'till after the death of the pretender's sons. 17 *Geo. 2. c. 39. §. 3.*

Counsel allowed to persons impeached by the commons. 20 *Geo. 2. c. 30.*

With respect to the foregoing comment we have followed Mr. *Care* who has taken the substance of Lord *Coke's*, an enlargement whereof may be seen in the 3d *Institutes*, and Mr. Serj. *Hawkins* in his Pleas of the crown, *B. 1. c. 17.* on *treason* is very full and elaborate on the subject.

The first of *Mary sess. 1. c. 1. & sess. 2. c. 6.* having been several times mentioned, and being statutes of great consequence, we thought it was better

to insert them at large, as printed in the last new editions of the statutes, than in abridging them, run the risque of not giving their true sense. We have also added some sections concerning treason, and trials for treason, from 1 & 2. P. & M. c. 10.

Anno primo Marix, sessio prima.

C A P. I.

An act repealing and taking away certain treasons, felonies, and cases of præmunire.

‘ FORASMUCH as the state of every king,
 ‘ ruler and governor of any realm, dominion, or
 ‘ commonalty, standeth and consisteth more assured
 ‘ by the love and favour of the subject towards their
 ‘ sovereign ruler and governor, than in the dread and
 ‘ fear of laws made with rigorous pains and extreme
 ‘ punishment, for not obeying of their sovereign ru-
 ‘ ler, and governor: (2.) And laws also justly made
 ‘ for the preservation of the commonweal, without
 ‘ extreme punishment, or great penalty, are more of-
 ‘ ten for the most part obeyed, and kept, than laws
 ‘ and statutes made with great and extreme punish-
 ‘ ments, and in special such laws and statutes so made,
 ‘ whereby not only the ignorant and rude unlearned
 ‘ people, but also learned and expert people, minding
 ‘ honesty, are often and many times trapped and
 ‘ snared, yea many times for *words only*, without
 ‘ other fact or deed done or perpetrated:

‘ 2. The queen’s most excellent majesty, calling to
 ‘ remembrance that many, as well honourable and
 ‘ noble persons, as other of good reputation within
 ‘ this her grace’s realm of *England*, have of late (for
 ‘ *words*

' *words only*, without other opinion, fact, or deed)
 ' suffered shameful death, not accustomed to nobles;
 ' Her highness therefore, of her accustomed clemency
 ' and mercy, minding to avoid and put away the oc-
 ' casion and cause of like chances hereafter to ensue,
 ' trusting her loving subjects will, for her clemency to
 ' them shewed, love, serve, and obey her grace the
 ' more heartily and faithfully, than for dread or fear
 ' of pains of body, is contented and pleased that the
 ' severity of such like extreme, dangerous, and pain-
 ' ful laws, shall be abolished, annulled and made
 ' frustrate and void.

3. Be it therefore ordained and enacted by the
 queen our sovereign lady, with the assent of the lords
 spiritual and temporal, and of the commons, in this
 present parliament assembled, and by the authority of
 the same, that from henceforth none act, deed, or of-
 fence, being by act of parliament, or statute made
 treason, pety treason, or misprision of treason, by
 words, writing, ciphering, deeds, or otherwise what-
 soever, shall be taken, had, deemed, or adjudged to
 be high treason, pety treason, or misprision of trea-
 son, but only such as be declared and expressed to be
 treason, pety treason, or misprision of treason, in or
 by the act of parliament or statute made in the 25th
 year of the reign of the most noble king of famous
 memory, king *Edward* the Third, touching, or con-
 cerning treason, or the declarations of treasons, and
 none other; (2.) Nor that any pains of death, penal-
 ty, or forfeiture in any wise ensue, or be to any offen-
 der, or offenders, for the doing, or committing any
 treason, pety treason, or misprision of treason, other
 than such as be, in the said estatute made in the said 25
 year of the reign of the said king *Edward* the Third,
 ordained and provided; any act, or acts of parliament,
 statute, or statutes, had, or made at any time hereto-
 fore, or after the said 25 year of the reign of the said
 late

late king *Edward* the Third, or any other declaration, or matter, to the contrary in any wise notwithstanding.

4. Provided always, and be it ordained and enacted by the authority aforesaid, That this act of parliament, or any thing therein mentioned, shall not in any wise extend to give any manner of benefit, advantage, or commodity to any person or persons, being the last day of *September* last past arrested, or imprisoned for treason, petty treason, or misprision of treason, or to any person or persons heretofore being indicted of treason, petty treason, or misprision of treason, or being outlawed or attainted of treason, petty treason, or misprision of treason, before the said last day of *Sept.* last past, or being commanded to keep his, or their house, or houses, or other men's houses, or otherwise excepted out of the queen's highness most gracious pardon given the day of her coronation, but that they and every of them, for any the offences before mentioned perpetrated, committed, or done by them or any of them, before the said last day of *September*, shall suffer such pains of death, losses, and forfeitures of lands and goods, as in cases of treason, as though this act had never been had *ne* made; any thing in this act to the contrary in any wise notwithstanding.

5. And be it further ordained and enacted by the authority aforesaid, That all offences made felony, or limited, or appointed to be within the case of *præmunire*, by any act or acts of parliament, statute or statutes, made sithence the first day of the first year of the reign of the late king of famous memory, king *Henry* the Eighth, not being felony before, nor within the case of *præmunire*, and also all and every branch, article and clause mentioned, or in any wise declared in any of the same estatutes, concerning the making of any offence or offences to be felony, or within the case of *præmunire* not being felony, nor within the case of *præmunire* before; and all pains and forfeitures concerning

cerning the same, or any of them, shall from henceforth be repealed and utterly void and of none effect.

Anno primo Mariæ, sessio secunda.

C A P. VI.

An act that the counterfeiting of strange coins being currant within this realm, the queen's highness sign manual, signet, or privy seal, to be adjudged treason.

FORASMUCH as by the laws of this realm small and no due and condign punishment is at this present time provided for such evil disposed persons, as shall counterfeit, or forge such kind of gold or silver of other realms, as is not the proper coin of this realm, and yet permitted and suffered by the queen our sovereign lady's consent, and heretofore hath been permitted and suffered by the consent of her most noble progenitors, to be currant payment within this her realm, nor for such persons as shall counterfeit the queen's highness sign manual, or privy signet, or privy seal; by reason whereof divers evil disposed persons are encouraged and boldned daily to perpetrate and commit the said several offences:

2. For remedy whereof be it enacted by our said sovereign lady the queen, the lords spiritual and temporal, and the commons, in this present parliament assembled, and by the authority of the same, That if any person, or persons hereafter, falsely forge and counterfeit any such kind of coin of gold, or silver, as is

not the proper coin of this realm, and is or shall be current within this realm by the consent of the queen, her heirs, or successors: (2.) Or if any person, or persons at any time hereafter do falsely forge, or counterfeit the queen's sign manual, privy signet, or privy seal; (3.) That then every such offence shall be deemed and judged high treason. (4.) And the offenders therein, their counsellors, procurers, aiders, and abettors, being convicted according to the laws of this realm of any of the said offences, shall be likewise deemed and adjudged traitors against the queen, her heirs, and successors, and the realm, and shall suffer, and have such pains of death, forfeiture of lands, goods, and chattels, and also lose the privilege of all sanctuary, as in the case of high treason is used and ordained.

And the 1 & 2 P. & M. c. 11. makes the bringing in of the counterfeit coins of foreign realms, being current within this realm, high treason.

Anno primo & secundo Philippi & Mariæ.

C. 10. §. 7.

ENACTS as follows, *viz.* That all trials hereafter to be had, awarded, or made for any treason, shall be had and used, only according to the due order and course of the Common laws of this realm, and not otherwise; Saving to every person and persons, bodies politick and corporate, their heirs and successors, other than the offenders and their heirs, and such person and persons as claim to any of their uses, all such rights, titles, interests, possessions, leases, rents, reversions, offices, and other profits, which they, or any of them shall have at the day of com-

committing such treasons, or at any time afore, in as large and ample manner as if this act had never been had nor made.

8. Provided always, and be it declared and enacted by the authority aforesaid, That concealment, or keeping secret of any high treason, be deemed and taken only misprision of treason, and the offenders therein to forfeit and suffer, as in cases of misprision of treason hath heretofore been used; any thing above mentioned to the contrary notwithstanding.

11. Provided always, and be it Enacted by the authority aforesaid, That upon the arraignment of any person which hereafter shall fortune to be arraigned for any treason mentioned in this act, all and every such person and persons (or two of them at the least) who shall hereafter write, declare, confess, or depose any thing, or things against the person to be arraigned, shall, if living and within the realm, be brought forth in person before the party arraigned if he require the same, and object, and say openly in his hearing, what they, or any of them can against him, for or concerning any the treasons contained in the indictment whereupon the party shall be so arraigned, unless the party arraigned for any such treason shall willingly confess the same at the time of his or their arraignment.

12. Provided nevertheless, and be it Enacted by the authority aforesaid, That in all cases of high treason concerning coin currant within this Realm, or for counterfeiting the king or queen's signet, Privy seal, Great seal, or sign manual, such manner of tryal and none other to be observed and kept, as heretofore hath been used by the Common laws of this realm; any law, statute, or any other thing or things to the contrary notwithstanding.

The

The following act made soon after the restoration of Charles II. though now expired, is here inserted, to shew that notwithstanding the peculiar circumstances of the times, notwithstanding the affection of lords, commons, and people in general, according to the natural and usual course of things, flowed in a very full and strong tide towards their sovereign, just restored to his kingdom, yet both houses of parliament could take care to preserve their own liberties and privileges, and the people's freedom.

Anno regni Car. II. regis decimo tertio.

C A P. I.

An act for safety and preservation of his majesty's person and government, against treasonable and seditious practices and attempts.

THE lords and commons assembled in parliament, deeply weighing and considering the miseries and calamities, of well nigh twenty years, before your majesty's happy return, and withal reflecting on the causes and occasions of so great and deplorable confusions, do in all humility and thankfulness acknowledge your majesty's incomparable grace and goodness to your people, in your free and general pardon, indempnity and oblivion, by which your majesty hath been pleased to deliver your subjects, not only from the punishment, but also from the reproach, of their former miscarriages, which unexampled piety and clemency of your majesty hath enflamed the hearts of us your subjects with an ardent desire to express all possible zeal and duty in the care and preservation of your majesty's person (in whose honour

honour and happiness consists the good and welfare of your people) and in preventing (as much as may be) all *treasonable* and *seditions* practices and attempts for the time to come. (2.) And because the growth and increase of the late troubles and disorders, did in a very great measure proceed from a multitude of *seditions sermons*, pamphlets, and speeches, daily preached, printed, and published with a transcendent boldness, defaming the person and government of your majesty and your royal Father, wherein men were too much encouraged, and (above all) from a wilful mistake of the *Supream* and lawful authority, whilst men were forward to cry up and maintain those orders, and ordinances, oaths, and covenants, to be acts legal and warrantable, which in themselves had not the least colour of law or justice to support them, from which kind of distempers, as the present age is not wholly freed, so posterity may be apt to relapse into them, if a timely remedy be not provided. (3.) We therefore the lords and commons in parliament assembled, having duly considered the premisses, and remembering that in the thirteenth year of the reign of queen *Elizabeth* of ever blessed memory, a right good and profitable law was made, for preservation of her majesty's person, do most humbly beseech your most excellent majesty, that it may be enacted. (4.) And be it Enacted by the king's most excellent majesty, by and with the advice and consent of the lords and commons in this present parliament assembled, and by authority of the same, That if any person or persons whatsoever, after the four and twentieth day of *June* in the year of our Lord one thousand six hundred sixty and one, during the natural life of our most gracious sovereign lord the king, (whom God Almighty preserve and bless, with a long and prosperous reign) shall within the realm, or without, *compass, imagine, invent, devise,*

devise, or intend DEATH, or destruction, or any bodily harm, tending to the DEATH, or destruction, maim, or wounding, imprisonment, or restraint of the person of the same our sovereign lord the king. (5.) Or to deprive or to depose him from the style, honour, or kingly name of the imperial crown of this realm, or of any other his majesty's dominions or countries, (6.) To levy war against his majesty within this realm, or without. (7.) Or to move, or stir any forraigner, and strangers with force to invade this realm, or any other his majesty's dominions, or countries, being under his majesty's obedience. (8.) And such compassings, imaginations, inventions, devices, or intentions, or any of them, shall express, utter or declare by any Printing, Writing, Preaching, or malicious and ADVISED speaking, being lawfully convicted thereof, upon the oaths of two LAWFUL and CREDIBLE WITNESSES, upon trial, or otherwise convicted or attainted by due course of law, then every such person and persons so as aforesaid offending shall be deemed, declared and adjudged to be Traytors, and shall suffer pains of death, and also lose and forfeit as in cases of high treason.

2. And be it further Enacted by the authority aforesaid, That if any person or persons at any time after the four and twentieth day of June in the year of our Lord one thousand six hundred sixty and one, during his majesty's life, shall *maliciously and advisedly publish or affirm the king to be an HERETICK or PAPIST, or that he endeavours to introduce popery. (2.) Or shall maliciously and advisedly by printing, writing, preaching, or other speaking, express, publish, utter or declare any words, sentences, or other thing or things to Incite or Stir up the people to Hatred or Dislike of the person of His Majesty, or the established government, (3.)* Then every such person and persons, being

ing thereof LEGALLY CONVICTED, shall be disabled to have, or enjoy, and is hereby disabled, and made incapable of having, holding, enjoying, or exercising any place, office, or promotion, ecclesiastical, civil, or military, or any other employment in church and state, other than that of his PEERAGE, and shall likewise, be liable to such further and other punishments, as by the Common Laws, or statutes of this realm, may be inflicted in such cases. (4.) And to the end that no man hereafter may be misled into any seditions, or unquiet demeanour, out of an opinion that the parliament begun and held at *Westminster*, upon the third day of *November*, in the year of our Lord one thousand six hundred and forty, is yet in being, which is undoubtedly dissolved and determined; and so is hereby declared and adjudged to be fully dissolved, and determined. (5.) Or out of an opinion that there lies any obligation upon him from any oath, covenant, or engagement whatsoever, to endeavour a change of government, either in church, or state. (6.) Or out of an opinion, that *both* houses of parliament, or *either* of them, *have a legislative power* without the king. (7.) All which assertions have been seditiously maintained in some pamphlets lately printed, and are daily promoted by the active enemies of our peace and happiness.

3. Be it therefore further Enacted by the authority aforesaid, That if any person or persons at any time after the four and twentieth day of *June*, in the year of our Lord one thousand six hundred sixty and one, shall maliciously and advisedly, by writing, printing, preaching, or other speaking, express, publish, utter, declare, or affirm, that the parliament begun at *Westminster*, upon the third day of *November*, in the year of our Lord one thousand six hundred and forty, is not yet dissolved, or is not determined, or that it ought to be in being, or hath yet any continuance, or

G

existence.

existence. (2.) Or that there lies any obligation on him, or any other person from any oath, covenant, or engagement whatsoever, to endeavour a change of government, either in church, or state. (3.) Or that *both* houses of parliament, or *either* house of parliament, *have, or both a legislative power* without the king, or any other words to the same effect. (4.) That then every such person and persons, so as aforesaid offending, shall incur the danger and penalty of a *præmunire*, mentioned in a statute made in the *sixteenth* year of the reign of king *Richard the Second*. (5.) And it is hereby also declared, That the oath usually called the *solemn league and covenant*, was in itself an unlawful oath, and imposed upon the subjects of this realm, *against the fundamental LAWS and LIBERTIES of this kingdom*. (6.) And that all *orders and ordinances*, or pretended orders and ordinances of *both, or either houses of parliament, for imposing of oaths, covenants, or engagements, levying of taxes, or raising of forces and arms*, to which the royal assent, either in person, or by commission, was not expressly had, or given, *were* in the first creation and making, and still are, and so shall be taken to be *null and void to all intents and purposes whatsoever*. (7.) Provided nevertheless, That all and every person and persons, bodies politick and corporate, who have been, or shall at any time hereafter be questioned for any thing acted, or done by colour of any the orders, or ordinances herein before mentioned and declared to be null and void, and are indemnified by an act, intituled, *An Act of free and general pardon, indemnity and oblivion*, made in the *twelfth* year of his majesty's reign that now is, or shall be indemnified by any act of parliament, shall and may make such use of the said orders and ordinances for their indemnity, according to the true intent and meaning of the said act, and no other, as he or they might have done, if this act had not been made;

made; any thing in this act contained notwithstanding.

4. Provided always, That *no person be prosecuted for any of the offences in this act mentioned (other than such as are made and declared to be high treason) unless it be by order of the king's majesty, his heirs, or successors, under his or their sign manual, or by order of the council table of his majesty, his heirs, or successors, directed unto the attorney general for the time being, or some other of the council learned to his majesty, his heirs, or successors, for the time being. (2.) Nor shall any person or persons by virtue of this present act incur any the penalties herein before mentioned, unless he or they be prosecuted within six months next after the offence committed, and indicted thereupon within three months after such prosecution; any thing herein contained to the contrary notwithstanding.*

5. Provided always, and be it Enacted, That *no person or persons shall be indicted, arraigned, condemned, convicted, or attainted for any of the treasons or offences aforesaid, unless the same offender or offenders be thereof accused by the testimony and deposition of TWO LAWFUL and CREDIBLE WITNESSES UPON OATH. (2.) Which witnesses at the time of the said offender or offenders arraignment, shall be brought in person before him or them face to face, and shall OPENLY avow and maintain UPON OATH, what they have to say against him, or them, concerning the treason, or offences contained in the said indictment, unless the party or parties arraigned shall willingly without violence confess the same.*

6. Provided likewise, and be it Enacted, That *this act, or any thing therein contained, shall not extend to deprive either of the houses of parliament, or any of their members, of their just antient freedom, and privilege of debating any matters, or business, which shall*

be propounded or debated in either of the said houses, or at any conferences or committees of both or either of the said houses of parliament, or touching the repeal or alteration of any old, or preparing any new laws, or the redressing of any publick grievance; but that the said members of either of the said houses, and the assistants of the house of peers, and every of them, shall have the same FREEDOM OF SPEECH, and all other privileges whatsoever, as they had before the making of this act; any thing in this act to the contrary thereof in any wise notwithstanding.

7. Provided always, and be it ordained and Enacted, That *no peer of this ream shall be tried for any offences against this act, but by his peers; (2.) And further, That every peer who shall be convicted of any offence against this act, after such conviction, be disabled during his life, to SIT IN PARLIAMENT, unless his majesty shall graciously be pleased to pardon him. (3.) And if his majesty shall grant his pardon to any peer of this realm, or commoner convicted of any offence against this act, after such pardon granted, the peer, or commoner so pardoned, shall be restored to all intents and purposes as if he had never been convicted; any thing in this law to the contrary in any wise notwithstanding.*

NOTES

NOTES on this STATUTE,

From M. CARE'S work, inserted here, tho' the said act be expired, because it will serve as a COMMENT on every similar law; and the AUTHOR'S own words are in general pursued, that the reader may have the true sense.

THOUGH the wisdom of our legislators is not generally for bringing *words* within the compass of *treason*, yet upon emergent occasions it hath been done, but then with a *temporary limitation*, as by the statute 13 *Eliz.* here referred unto, during the life of that queen; in imitation whereof this act was made to remain in force during only the life of *Charles the Second*; and the reasons for making this temporary law are assigned in the *preamble*.

This statute made *three sorts of offences*. Some *high treason*; some that *disable* and incapacitate from holding any *place* or *office*; and some that are punishable by *præmunire*.

As to the first, 'tis hereby declared to be high treason during the king's life.

1. Within or without the realm to compass, or intend the death, destruction, maim, wounding, imprisonment, or restraint of the king.

2. Or to deprive, or *depose* him, or *levy war* against him, within the realm or without, or to stir up foreigners to *invade* the realm.

If such compassings or intentions be expressed, uttered, or declared by any *printing, writing, preaching, or malicious and advised speaking.*

Being legally convicted thereof upon the oaths of *two lawful and CREDIBLE witnesses*: [by which words, the statute seems to injoin and require some *more than ordinary* scrutiny into the credit of the witnesses, for otherwise *legal* had been enough (as is every man not convict of *perjury*;) but witnesses in this case must not be only *legal* but *credible*, not infamous, scandalous, or suspected.]

As to the second, maliciously and advisedly to publish or affirm during his majesty's life, that the king is an *heretick*, or a *papist*, or that he *endeavours to introduce popery.*

Or maliciously and advisedly by writing, printing, preaching or speaking, to utter, express or declare any words, sentences, or thing, to stir up the people to *hatred, or dislike of the person of his majesty*, or the established government.

Whoever is legally convicted of any of these crimes shall be disabled to hold any *place, office, or promotion*, ecclesiastical, civil, or military. And besides be liable to such punishments as by the Common laws, or statutes, may be inflicted.

As to the third, to declare, publish, or affirm, first, that the *old long parliament* of 40 is not *dissolved*, or ought to be in being. Secondly, That there lies any obligation on ones self, or any other person from any *oath, covenant, or engagement*, to endeavour a change of government either in church or state.

Thirdly, That *either, or both houses* of parliament have a legislative power without the king, or any other words to the same effect.

The person so offending shall incur the penalty of a *praemunire*, which by the statute of 16 *Rich. 2. c. 5.* here referred unto, is this, *viz.* To be put out of the king's

king's *protection*, their lands and tenements, goods and chattels, *forfeited* to the king, and their bodies to be seized, &c. But in this act of the 13 *Caroli*, there are these proviso's.

1. As for the *two last sorts* of offences that are not treason, none shall be prosecuted but by *order of the king*, under his sign manual, or of the *privy council*.

2. As for the crimes made *treasons*, none shall be indicted, or convicted, unless they are ACCUSED by two *lawful* and CREDIBLE *witnesses*, touching the addition of the word CREDIBLE to *lawful* (which is here again repeated) we have spoken before; but must here further observe,

1. That by these express words, this statute provides that no man shall be *indicted*, [that is, have a bill found against him] upon this statute for treason, unless he be *accused*, [that is, unless the matter be sworn against him before the grand jury] by two not only *lawful*, but CREDIBLE *witnesses*, for the words are not only, *he shall not be convicted* [which is the work of the *petty jury*, or jury of life and death, as 'tis commonly called,] But he shall not be *indicted* [which is the business of the *Grand jury*.] And therefore Grand juries besides their *general and ordinary right* and power by law, have, when any person is indicted upon *this statute*, a special right and direction from *the act itself* to examine and be well satisfied in the *credibility* of the witnesses; which if duly considered, would perhaps much mitigate the clamours lately raised against some juries for their returning some bills before them *ignoramus*, though the matters therein were roundly sworn unto by *legal*, but probably in their esteem and judgment, as they were upon their oaths, not sufficiently *credible* witnesses; especially when their *stories* were no less *incredible* than their persons.

Secondly, Note, that as a person cannot be convicted or indicted, so neither can he be so much as *committed* for any offence made treason by this act, by or upon the oath of any *single witness*, though there should be never so much presumption that more may come in against him before he be brought to trial, for the words are, *Unless he be thereof accused by the testimony and deposition of two lawful and credible witnesses; which witnesses at his arraignment shall be brought before him face to face, &c.* so that 'tis evidently intended the original accusation before the justice or magistrate, that shall commit the person, must be by two such witnesses, and that the same two witnesses (and not *others*, leaving them that first charged him out, though yet others no doubt may be *added* to them) must give evidence to the Grand jury, and at his trial.

3. There is in this act a *third proviso*, that no person shall incur any the penalties in this act mentioned, *unless*, 1. He be *prosecuted*, [That is charged before a magistrate, or committed] within six months after the offence committed. Secondly, and unless he be indicted thereupon within three months after such prosecution. So that if in either of these respects the time be elapsed, the Grand jury ought not to find the bill.

4. Provided this act shall not infringe the *privileges* or freedom of debates in either of the houses of parliament, or any committee of them.

5. That a *peer* shall be tried for any offence against this act by his peers, but if convicted, shall be disabled to sit in parliament during life.

The judgment in all cases of high treason, except for counterfeiting coin (for a man) is, *that he shall be drawn on an hurdle, or sledge to the place of execution, and there be hanged by the neck, to be cut down being yet alive, his privy members cut off, his bowels rip'd up,*
taken

taken out, and burnt before his face, his head severed from his body, his body divided into four quarters, which are to be disposed of as the king shall order. But for counterfeiting coin, only drawn and hanged. And in both cases for a woman (for the sake of modesty) it is only that she shall be burnt.

The reasons of this horrid judgment on a man for treason, are thus explained;

1. He is drawn on a sledge or hurdle on the ground in the dirt, to shew that his *pride* is brought down, for treason commonly springs from *ambition*.

2. On this hurdle he is drawn *backward*, to shew that his actions have been *contrary to order, unnatural and preposterous*.

3. He is *hanged* between heaven and earth as *unworthy of either*.

4. He is cut down yet alive, and his *privities cut off*, to shew that he was unfit to propagate any *posterity*.

5. His *head* is severed from his body, because his mischievous *brain* contrived the treason.

6. His body is *divided*, to shew that all his machinations and devices are *torn to pieces*, and brought to nought; and into *four parts*, that they may be scattered towards the four quarters of the world.

Heading being part of the judgment in treason, the king commonly to persons of quality pardons all the rest, of the sentence, and so they are only *beheaded*. But if a person be attainted of *murder*, or any other felony, if he be beheaded, it is not any execution of the judgment, because there the judgment always is, that he *be hanged 'till he be dead*, which cannot be altered.

Lord Coke in his 3d *Instit.* fol. 211. says, Implied in this judgment is, First, The forfeiture of all his manors, lands, tenements and hereditaments in fee simple, or fee tail, of whom soever they be holden. Secondly, his wife to lose her dower. Thirdly, He shall lose his children (for they become base and ignoble.)

ignoble.) Fourthly, He shall lose his posterity, for his blood is stained and corrupted, and they cannot inherit to him, or any other ancestor. Fifthly, All his goods and chattels, &c. And the reason is, that his body, lands, goods, posterity, &c. should be torn and pulled asunder and destroyed, that intended to tear, and destroy the majesty of government.

Any person being indicted for treason may *challenge* [that is except against, or refuse] *five and thirty jurors, peremptorily* [that is, for his pleasure, or for reasons best known to himself, and without assigning any cause to the court.] But if he challenge more, that is above three full juries, he forfeits his goods, and judgment of *pein fort & dure* [that is of being *pressed* to death] shall pass upon him as one that refuseth the trial of the law.

In cases of *murder* and *felony* a man cannot challenge peremptorily above the number of twenty; but with cause he may except against more; and this is by the stat. of 22 H. 8. cap. 14.

And certainly, since the law of *England*, which is a law of *mercy*, does in *favour of life*, not only order a man to be tried by a *jury* of his country and *equals*, but also allows him to refuse, and have liberty of excepting against so many of those as shall be *impanelled* for that purpose; it cannot be supposed that the same law ever intended that the prisoner should be denied *a copy of the panel* of his jury, that so by the information of his friends, or otherwise, he may be informed of their *qualities, circumstances* and *inclinations*; for how else will he know whom to *challenge peremptorily*, and whom to *challenge with cause*; to allow a man such liberty of challenge, and give him no opportunity of such inquiry is but to *amuse the prisoner*, to whom possibly the whole jury by *face and name* may be utter strangers; and sure the wisdom of our laws never thought every prisoner so skilled in *metoposcopy*, that
merely

merely by *looking* on a parcel of men, he could tell which of them were *indifferent*, and which *biased* against him.

The following act hath so intimate a connection with the principal subject of this work, *viz. Political liberty*, that little need here be mentioned concerning it, nor does the act require much comment.

As during the late political disputes, some have attempted to call in question, the right of the people, as to the *petitioning*, or *addressing* the king, or *parliament*, for the *redressing* of grievances, &c. and the power of the MAYOR, ALDERMEN and COMMONS of LONDON in common council assembled, to interfere in matters relative to the government of the state, &c. hath been with some assurance denied, we take the liberty of recommending to the perusal of those who *doubt*, the following *law*, made by the *king, lords and commons of the realm in PARLIAMENT ASSEMBLED*; which not only admits that right as part of the antient Common law of the state, but also gives proper power to magistrates, &c. to make applications either to the king, or parliament, for obtaining redress of the subjects grievances. By this act those concerned in the silk manufacture, or any of our other manufactories, who have any real grievances to complain of, and also the poor in general, who are aggrieved by *monopolies, exportations, or prohibitions on importations*, may learn the true and proper method of applying, either to his *majesty*, or to the *parliament*, for redress of their grievances, without subjecting themselves to any punishment, as *rioters*, or *præmunire* as *traytors*.

13 Car. 2. st. 2. c. 5.

An act against tumults and disorders, upon pretence of preparing or presenting publick petitions, or other addressees to his majesty, or the parliament.

‘ W H E R E A S it hath been found by sad experience, that tumultuous and other disorderly soliciting and procuring of hands by private persons to petitions, complaints, remonstrances, and declarations, and other addressees, to the king, or to both or either houses of parliament, for alteration of matters established by law, redress of pretended grievances in church, or state, or other publick concernments, have been made use of to serve the ends of factious and seditious persons gotten into power, to the violation of the publick peace, and have been a great means of the late unhappy wars, confusions and calamities in this nation; for preventing the like mischiefs for the future;’

II. Be it Enacted by the king’s most excellent majesty, by and with the consent of the lords and commons assembled in parliament, and by the authority of the same, That no person or persons whatsoever shall, from and after the first of *August* one thousand six hundred sixty and one, solicit, labour, or procure the getting of hands, or other consent, of any persons *above the number of twenty*, or more, to any *petition, complaint, remonstrance, declaration, or other address to the king, or both, or either houses of parliament, for alteration of matters established by law in church, or state, unless the matter thereof have been first consented unto, and ordered by three or more justices of that county, or by the major part of the Grand jury of the county or division of the county where the same matter shall arise, at their* publick

publick assizes or general quarter sessions, or if arising in London, by the lord mayor, aldermen and commons in common council assembled. (2.) And that no person or persons whatsoever, shall repair to his majesty, or both or either of the houses of parliament upon pretence of presenting or delivering any petition, complaint, remonstrance, or declaration, or other addresses accompanied with excessive number of people, nor at any one time with above the number of ten persons; upon pain of incurring a penalty not exceeding the sum of one hundred pounds in money, and three months imprisonment without bail or mainprize for every offence, which offence to be prosecuted at the court of King's bench, or at the assizes or general quarter sessions, within six months after the offence committed, and proved by two or more credible witnesses.

III. Provided always, *That this act, or* *Proviso.*
any thing therein contained, shall not be construed to extend to debar or hinder any person or persons, not exceeding the number of twenty aforesaid, to present any publick or private grievance or complaint to any member or members of parliament after his election, and during the continuance of the parliament, or to the king's majesty for any remedy to be thereupon had, nor to extend to any address whatsoever to his majesty, by all or any of the members of both or either houses of parliament, during the sitting of parliament, but that they may enjoy their freedom of access to his majesty, AS HERETOFORE HATH BEEN USED.

Anno

Anno 2 Edw. 3. cap. 2.

In what cases only pardon of felony shall be granted. Who shall be justices of assize, &c.

ITEM, Whereas offenders have been greatly encouraged, because the Charters of pardon have been so easily granted in times past of manslaughter, robberies, felonies, and other trespasses against the peace. (2.) It is ordained and enacted, That such Charters shall not be granted, but only where the king may do it by his oath, that is to say, where a man slays another in his own defence, or by misfortune. (3.) And also they have been encouraged, because that the justices of gaol delivery, and of *Oyer and Terminer* have been procured by great men, against the form of the statute made in the 27th year of the reign of king *Edward*, grandfather to our lord the king, that now is, wherein is contained that justices assigned to take assizes, if they be laymen, shall make deliverance; and if the one be a clerk, and the other a layman, that the lay-judge, with another of the country associate to him, shall deliver the gaols, (4.) Wherefore it is Enacted, That such justices shall not be made against the form of the said statute. (5.) And that the assizes, attainments, and certifications, be taken before the justices commonly assigned which should be good men and lawful, having knowledge of the law, and none other after the form of another statute, made in the time of the said king *Edward the First*. (6.) And that the *Oyers* and *Terminers* shall not be granted, but before justices of the one bench, or the other, or the justices errants; and that for great hurt or horrible trespasses, and of the king's special grace, after the
the

the form of the statute thereof ordained in time of the said grandfather, and none otherwise.

THE COMMENT.

TOUCHING this statute, and several others to the same purpose, as 14 *Edw. 3. cap. 14.* and 10 *Edw. 3. cap. 2.* and 13 *R. 2. cap. 1.* and 16 *R. cap. 6. &c.*

We shall according to Mr. *Care's* method only give the words of *Coke* in the third part of his *Instit. fol. 236.* As to what things the king may pardon, in what manner, and what he cannot pardon.

In case of death of man, robberies and felonies against the peace, divers acts of parliament have *restrained the power of granting Charters of pardons.* *First,* That no such Charters shall be granted, but in case, *where the king may do it by his oath.* *Secondly,* That no man shall obtain *Charters out of parliament.* stat. 4. *Edw. 3. c. 13.*

And accordingly in a parliament roll it is said, [for the peace of the land it would much help, if good justices were appointed in every county, if such as be let to mainprize do put in good sureties, as esquires, or gentlemen: And that *no pardon were granted but by parliament.*] *Thirdly,* For that the king hath granted pardons of felonies upon false suggestions; it is provided, That every Charter of felony, which shall be granted at the suggestion of any, the name of him that maketh the suggestion shall be comprised in the Charter; and if the suggestion be found untrue, the Charter shall be disallowed. And the like provision is made by the statute of 5 *H. 4. cap. 2* for the pardon of an approver.

Fourthly, It is provided, That no Charter of pardon for murder, treason, or rape, shall be allowed, &c. If they be not specified in the same Charter, *statute 13 R. 2.* Before this *statute 13 R. 2.* by the pardon of *all felonies* treason was pardoned, and so was murder, &c. At this day, by the pardon of all felonies, the death of man is not pardoned. These are excellent laws for direction, and for the peace of the realm. But it hath been conceived, (which we will not question) that the king may dispence with these laws by a *non obstante*, (notwithstanding) be it general, or special, (albeit we find not any such clauses of *non obstante*, (notwithstanding) to dispence with any of these statutes but of late times.) Lord Coke says, these statutes are excellent instructions for a religious and prudent king to follow; for in these cases, *Ut summæ potestatis Regiæ est posse quantum velit, sic magnitudinis est velle quantum possit* (as it is the highest kingly power to be able to act what he wills; so it is his greatness and nobleness to will only what he lawfully can.) Hereof may be seen more in *Stanford, lib. 2. cap. 32.* in divers places of that chapter, of his grave advice in that behalf, most certain it is, that the word of God has set down this indisputable general rule, *Quia non profetur cito contra malos sententia, filii hominum sine timore ullo perpetrant.* (Because sentence against evil men is not speedily executed, therefore the hearts of the children of men are set in them to do evil.) And thereupon the rule of law is grounded. *Spes impunitatis continuum affectum tribuit delinquendi* [the hope of impunity encourageth offenders.] *Et veniæ facilitas incentivum est delinquendi*, [and the facility of obtaining pardon, is an incentive to commit offences] This is to be added that the intention of the act of 13 R. 2. was not, that the king should grant a *pardon of murder by express name* in the charter, but because the whole parliament conceived, that he *would never pardon murder by special name*, for the causes aforesaid: there-

fore that provision made, which was (as in other cases he hath observed) grounded upon the law of God, *Quicumque effuderit humanum sanguinem, fundetur sanguis illius; ad imaginem quippe Dei creatus est homo nec aliter expiari potest, nisi per ejus sanguinem, qui alterius sanguinem effuderit,* [Whoever shall shed man's blood, by man also shall his blood be shed, because man was created after the image of God: neither can it be expiated otherwise than by his blood, who spilt the blood of another.] And the words of every pardon are after the recital of the offence, *nos pietate moti, &c.* We being moved with piety, &c. But it can be no piety, to violate an express law of God, by letting murder escape unpunished.

By the ancient and constant rule of law, *Non poterit rex gratiam facere cum injuria & damno aliorum; quod autem alienum est, dare non potest per suam gratiam.*

In an appeal of death, robbery, rape, &c. the king cannot pardon the defendant, for the appeal is the suit of the party, to have revenge by death: and whether the defendant be attainted by judgment, &c. or by outlawry, the pardon of the king shall not discharge him. In an appeal, the defendant wages battle, the plaintiff counterpleads, for that the defendant broke prison; if the king pardon the breaking of prison, the counterplea fails: Note, The breaking prison is a collateral act: and yet in divers cases at the suit of the party, when the defendant either by the Common law, or by any statute (besides the restitution, or damage of the plaintiff) is thereby also to have an exemplary punishment, the king may pardon the same; for example: In an attaind by *A.* against the party and the petit jury; against the party to have restitution, this the king cannot pardon: against the petit jury, by the Common law that they should lose *liberam legem*, their wives and children cast out of their houses, their houses wasted, their trees prostrated, their meadows ploughed up, their goods

H

and

and chattels seized, and their bodies taken, this the king may pardon, because it is a punishment exemplary to deter others, and tendeth not to the restitution or satisfaction of the plaintiff. 3d *Instit.* 236, 7.

The defendant in an appeal of murder, upon Not guilty pleaded, was found guilty of manslaughter; and it was resolved by the justices upon conference between them, that the queen might pardon the burning of the hand, for that is not any part of the judgment at the suit of the party plaintiff in the appeal, but it is a collateral, and exemplary punishment inflicted by the statute of 4 *H. 7. cap.* 13. *Ib.*

In some actions wherein the subject is sole party (as appeareth by that which hath been said) some things the king may pardon: so on the other side, where the king is sole party, yet some things there be, that he cannot pardon. As for example: for all common nuisances, as for not repairing of bridges, highways, &c. the suit (for avoiding of multiplicity of suits, which the laws abhor, and that *Nulli magis tueri rempublicam creditum est quam regi*) is given to the king only, for redress, and reformation thereof, but the king cannot pardon, or discharge either the nuisance, or the suit for the same; for, as *Bracton* saith, *Non poterit rex gratiam facere cum injuria & damno aliorum.* See *Glanville, lib.* 7. *cap.* 17. *vers. finem.* *Ib.*

The king may pardon one convict of heresy, or of any other offence punishable by the ecclesiastical law. In all proceedings in the ecclesiastical court *ex officio*, the king may pardon the offence. The king may also pardon piracy upon the sea: but by what words, and in what manner, see *Lord Coke* in the 3d *Institutes* on Piracy, 238. What things are requisite to a pardon of outlawry, see the statute of 5 *E. 3. cap.* 12.—240. Such are my *Lord Coke's* sentiments.

The

The following act will shew the sentiments of parliament on that subject.

Sessio secunda, anno regni Gulielmi & Mariæ primo.

C. 2. (36.)

An act declaring the rights and liberties of the subject, and settling the succession of the crown.

RECITING the declaration of the lords and commons, and the endeavours of *James II.* to subvert and extirpate the Protestant religion, and the laws and liberties of this kingdom, among other articles says, in the first instance, “By assuming and exercising a power of dispensing with and suspending of laws, and the execution of laws, without consent of parliament.” This act afterwards recites, that the lords spiritual, temporal, and commons, being assembled in a full and *free* representative of this nation, taking into consideration the best means, for obtaining the ends aforesaid *, do in the first place (as their ancestors in like case have usually done) for the vindicating and asserting their ancient rights and liberties, declare,

1. That the pretended power of suspending of laws, or the execution of laws, by regal authority without consent of parliament, is illegal.

2. That the pretended power of *dispensing with laws*, or the execution of laws, by regal authority, as it hath been assumed and exercised of late is illegal.

3. That the commission for erecting the late court of commissioners for ecclesiastical causes, and all other

* Such an establishment, as that their religion, laws, and liberties, might not again be in danger of being subverted.

commissions and courts of like nature, are illegal and pernicious.

4. That levying money for or to the use of the crown, by pretence of prerogative, without grant of parliament, for longer time, or in other manner than the same is or shall be granted, is illegal.

5. That *it is the right of the subjects to petition the king*, and all commitments and prosecutions for such petitioning are illegal.

6. That the raising or keeping a standing army within the kingdom in time of peace, unless it be with consent of parliament, is against law.

7. That *the subjects which are protestants, may have arms for their defence* suitable to their conditions, and as allowed by law.

8. That *election of members of parliament ought to be free*.

9. That *the freedom of speech, and debates or proceedings in parliament*, ought not to be impeached or questioned in any court or place out of parliament.

10. That *excessive bail ought not to be required, nor excessive fines imposed*, nor cruel and unusual punishments inflicted.

11. That *jurors ought to be duly impanelled and returned*, and jurors which pass upon men in trials for high treason ought to be freeholders.

12. That all grants and promises of fines and forfeitures of particular persons before conviction, are illegal and void.

13. And that for redress of all grievances, and for the amending, strengthening, and preserving of the laws, *parliaments ought to be held frequently*.

And they do *claim, demand, and insist upon all and singular the premisses*, as their *undoubted rights and liberties*; and that no declarations, judgments, doings, or proceedings, to the prejudice of the people in any of the

The said premisses, ought in any wise to be drawn hereafter into consequence, or example.

The sixth section of this statute saith,

Now in pursuance of the premisses, the said lords spiritual and temporal, and commons in parliament assembled, for the ratifying, confirming and establishing the said declaration, and the articles, clauses, matters and things therein contained, by the force of a law made in due form by authority of parliament, do pray, that it may be declared and enacted, That all and singular the rights and liberties asserted and claimed in the said declaration, are the true, antient, and *indubitable rights and liberties* of the people of this kingdom, and so *shall be esteemed, allowed, adjudged, deemed, and taken to be*; and that all and every the particulars aforesaid shall be firmly and strictly holden and observed, as they are expressed in the said declaration; and all officers and ministers whatsoever shall serve their majesties and their successors, according to the same in all times to come.

Then after a variety of matters come the Enacting clauses of the act as follow, *viz.*

§. 11. All which their majesties are contented and pleased shall be declared, enacted and established, by authority of this present parliament, and shall *stand, remain, and be, the law of this realm FOR EVER*; and the same *are* by their said majesties, by and with the advice and consent of the lords spiritual and temporal and commons, in parliament assembled, and by the authority of the same, *declared, enacted, and established accordingly.*

12. And be it further declared and enacted by the authority aforesaid, That from and after this present session of parliament, no dispensation by *Non obstante*

of or to any statute, or any part thereof, shall be allowed, but that the same shall be held void, and of no effect, except a dispensation be allowed of in such statute, and except in such cases as shall be specially provided for by one or more bill or bills, to be passed during this present session of parliament.

A brief digression concerning the nature of Appeals, with little variation from Mr. Care's. The substance from Lord Coke.

THIS discourse of pardons reminds us of another kind of legal prosecution, called an *appeal*; of which it may be proper to give the reader some brief account. It is necessary to observe, That there are several offences, for which a man deserves death, and particularly for *murder*, there are two ways to oblige him to answer for the same, *viz.* One by *indictment*, which is at the king's suit, and the other by *appeal*, which is at the suit of the party who is injured by the murder, as a *woman* whose *husband*, or a *child*, or *brother*, whose *father* or *brother* is killed.

Now upon an indictment, if the offender be found guilty, because it is at the suit of the king; it hath been said by some, that a pardon may be, and perhaps too often has been obtained (though against law): But in an *appeal* all agree, the king *cannot* grant a pardon. Nay, if a person be tried by indictment, and acquitted, or convicted, and get a pardon, yet an *appeal* may be brought, and if he be thereon convicted, notwithstanding such former acquittal, or pardon, he must be hanged.

The word *appeal* is derived from the French verb *appeller*, to call, because he or she that brings it calls the defendant to judgment; but the meaning thereof is the same with an accusation, and is peculiarly in legal

legal signification applied to appeals of *three sorts*: *First*, An appeal brought by an *heir male*, for some wrong done to his *ancestor*, whose heir he is, *Secondly*, Of wrong done to an *husband*, and is by the *wife* only, if it be for the death of her *husband*, to be prosecuted. The *third* is, of wrong done to the *appellants themselves*, as for *robbery*, *rape*, or *maim*. Coke 1 Inst. sect. 500.

Note, That this appeal must be brought within a year and a day after the *murder* is committed; for it cannot be brought after the expiration of that time. Antiently it was customary not to bring an indictment for the king, 'till after the year and the day, waiting in the mean time for the prosecution of the party; but this was found very inconvenient, as the party frequently accepted a composition at the end of the year, the prosecution was forgot, and offenders thereby often escaped justice.

For this reason it was by the statute 3 *Hen. 7. c. 1.* enacted, That every coroner should exercise and do his office, and that offenders might be arraigned at any time within the year, at the king's suit, but if acquitted, yet the party within the year and day, should have liberty to bring an appeal against such person, either acquitted, or attainted, if the benefit of the clergy be not before thereof had, and in order thereunto, that when any person happened to be acquitted for the death of a man within the year, the justices before whom he is acquitted, shall not suffer him to go at large, but either to remit him again to the prison; or else let him to bail at their discretion, 'till the day and the year be passed, that so he may be forth coming to answer an appeal, if it should happen to be brought.

Thus that statute; as to the latter clause whereof the judges have power, in case of acquittal, to continue the party in prison, till the day and year be over, or

else to admit him to bail; and though this is left to their discretion, yet it must not be such a discretion as confounds all discretion, but they must weigh the circumstances, and go according to law and judgment; and certainly the law intended such bail, if any be accepted, should be bound body for body, for otherwise it seems no security.

The form of an appeal of murder.

T. C. Hic instanter appellat W. F. &c. (in English thus) *T. C.* here instantly appeals *W. F.* of the death of his brother *H. C.* For that whereas the aforesaid *H.* was, in the peace of God, and the king, at *Tonbridge* in the county of *Kent*, the twenty-eighth day of *March* in the thirty-fourth year of the reign of our lord *Charles* the *Second*, &c. And that at seven o'clock in the evening of the same day, came the said *W. F.* as a felon of our lord the king, in a premeditated assault, with force and arms, &c. and upon him the said *H. C.* then and there feloniously an assault did make, and with a certain sword of the price of twelve-pence which he then and there in his right hand did hold, the aforesaid *H.* upon his head did strike, and one mortal wound of two inches long in the forepart of his head, even unto the brain of the said *H.* did then and there feloniously give, of which said wound the said *H.* for three days then next following, did languish, and then, (*viz.*) the [such a] day of [such a month] he there died, [or (if the case be so) *instantly died.*] And so the said *W. H.* as a felon of our lord the king the aforesaid *H.* feloniously did kill and murder, against the peace of our said lord the king, his crown and dignity: and that this he did wickedly, and as a felon, against the peace of God, and our lord the king aforesaid.

And

And if the said *W. F.* the felony and murder aforesaid, so as aforesaid done, is willing to avow and affirm, then the said *J. C.* is ready the said felony and murder against him the said *W. F.* to prove, as the court of our said lord the king now here shall consider thereof, and hath found pledges to prosecute his appeal, &c.

1. Note, That a woman cannot now bring an appeal for the *death* of any other than of her husband, being barred therefrom by Magna Charta, *cap.* 34. for as was before shewn, it is thereby provided, that *no man shall be taken or imprisoned upon the appeal of a woman, for the death of any other than of her husband.* But she may bring an appeal for robbery, &c. for therein she is not by that statute restrained. *Coke 2 Instit. fol. 68.*

2. The woman that brings an appeal for the death of her husband must be his wife, not only *de facto*, but *de jure*, not only called and reputed, or cohabiting with him, but *actually* and *legally married* to him: and of such a wife the antient law-books speak. *De morte viri inter brachia sua interfecti*, the husband is killed within her arms, that is, whilst he was legally in her possession, but *that the appellant and the person killed, were not ever lawfully coupled in matrimony*, is a good plea in an *appeal*.

3. This right of appeal for the death of her husband, is annexed to her widowhood, as her quarentine is, and therefore, if the wife of the dead marry again, her appeal is gone, even although the second husband should die within the year and day after the murder of the first: for she must, during the whole time before the appeal be brought, continue *femina viri sui*, his widow upon whose death the appeal is brought. Furthermore, If she bring the appeal during her widowhood, and take a husband whilst it is depending, the appeal shall abate, for ever. Nay, if on her appeal she

she hath judgment against the defendant, if afterwards she take an husband before the defendant be hanged, she can never have execution of death against him.

4. By the statute of *Glocest.* made in the *sixth* year of *Edward 1. cap. 9.* it is Enacted, That if any appeal set forth the deed, the year, the day, the hour, the time of the king, and the town where the deed was done, * *and with what weapon the party was slain*, the appeal shall stand in effect, and shall not be abated for default of fresh suit, if the party shall sue within the year and the day after the deed done.

* *Not in orig.*

5. As for the *year* and *day* here mentioned, it is to be accounted for the whole year according to the calendar, and not for twelve months according to 28 days to the month. So likewise the day intended is a natural day; and this year and day must be accounted *after* the felony and murder committed. If a man be mortally wounded on the first day of *May*, and thereof languishes to the first day of *June*, and then dies; the question here arises, whether the year and the day allowed for bringing the appeal, is to be reckoned from *the giving the wound, or the time of death.* Some have held the former: for that the death ensuing, hath *relation* to it: and that is the cause of the death, and the offender did nothing the day of the death. But the truth is, the year and day shall be accounted only from the first of *June, the day of the death*: for before that time, no felony was committed. And thus it hath been often resolved and adjudged, and the reason above, grounded upon the *relation* (which is a fiction in law) holdeth not in this case. *Coke 2 Instit. fol. 320.*

6. If an appeal of murder be brought, depending the suit, and after the year and day is elapsed, one become accessory to the murder, the plaintiff shall have an appeal against him after the year and day elapsed

elapsed after the death, but it must be brought within the year and day, after this new felony committed as accessory.

7. If a man is indicted for murder, and convicted only of manslaughter, and hath the benefit of his clergy, it seems the wife or heir cannot afterwards bring their appeal? Touching which the Lord *Coke*, 3 *Instit. fol.* 131. cites a case in these words: “*Thomas Burgbe*, brother and heir of *Henry Burgbe*, brought an appeal of murder against *Thomas Holcroft*, of the death of the said *Henry*. The defendant pleaded, that before the coroner, he was indicted of *manslaughter*, and before commissioners of *Oyer and Terminer*, he was upon the indictment arraigned, and confessed the indictment, and prayed *bis clergy*, and thereupon was entered *curia advisari vult*, the court will consider; and concluded, and he demanded judgment, if that appeal, the plaintiff against him, ought to maintain. Whereupon the plaintiff demurred in law. And in this case three points were adjudged by Sir *Christopher Wray*, Sir *Thomas Gawdy*, and the whole court.”

“*First*, That the matter of the bar had been a good bar of the appeal by the Common law, as well as if the clergy had been allowed: for that the defendant, upon his confession of the indictment, had prayed *bis clergy*, which the court ought to have granted, and the deferring of the court to be advised, ought not to prejudice the party defendant, albeit the appeal was commenced before the allowance of it. The *second* point adjudged was, That this case was out of the statute of 3 *Hen.* 7. for that the words of that act are, *If it fortune, that the same felons and murderers and accessories so arraigned, or any of them, to be acquitted, or the principal of the said felony or any of them to be attainted, the wife or next heir of him so slain, &c. may have their appeal* “ of

“ of the same death and murder against the person so acquitted; or against the said principals so attainted if they be alive, and that the benefit of his clergy, thereof before be not bad.”

“ And in this the defendant *Holcroft* was neither acquitted nor attainted, but convicted by confession, and the benefit of *clergy* prayed as is aforesaid, so as the statute being penal concerning *the life of man*, and made in restraint of the *Common law*, was not to be taken by equity, but as *casus omissus*, a case omitted, and left to the *Common law*.”

“ As to the *third* it was objected, That every plea ought to have an apt conclusion, and that the conclusion in this case ought to have been, *Et petit iudicium si prædict. Thomas Holcroft iterum de eadem morte de qua semel convictus fuit, respondere compelli debeat*. And he does ask judgment, if the above-mentioned *Thomas Holcroft* shall be obliged to answer again for the same death he was once convicted of: but it was adjudged, that either of both conclusions was sufficient in law: and therefore that exception was disallowed by the rule of the court.”

“ Note; The antient law was, that when a man had judgment to be hanged in an appeal of death, that the wife and all the blood of the party slain, should draw the defendant to execution. And *Gascoine* said, *Issint fuit in diebus nostris*, so it was done in our days.”

And thus much occasionally about appeals, which we the rather insert, because the practice thereof has been almost lost or forgot, till some few years before the first edition of *Mr. Care's* work, a woman in *Southwark* revived it against one that killed her husband, and obtained a pardon for it, but she prosecuted him on an appeal, had judgment against him, and he was executed.

cuted. To which Mr. *Care* adds, " Since which time
 " the same course has been frequently talked of, and
 " brought, but for the most part, (to the shame, I
 " think, of those women or children, who make such
 " composition for their husband's or father's blood)
 " they have been by some secret bargains or compen-
 " sations hushed up, and seldom effectually fol-
 " lowed."

According to Serjeant *Hawkins* in his *Pleas of the crown*, *Appeals* are of two sorts.

1. By an *innocent person*.
2. By an *offender* confessing himself guilty, who is commonly called an *approver*.

An appeal by an *innocent person*, which is the party's private action, prosecuting also for the crown, in respect of the offence against the public, may be

1. By *writ*,
- or
2. By *bill*.

The writ is an original issuing out of Chancery, returnable in the court of King's Bench, only.

For its form, and for what defects it may be abated *vide Hawkins's, B. 2. the latter part of cap. 23. on appeal.*

The same, for the bill of appeal.

As to where bills of appeal may be commenced and determined; and in fact the whole doctrine of appeals, *vide Hawkins, B. 2. c. 23.*

The matter is too long, to be introduced here, and too curious, and concise, to admit of an abridgment.

We would give a short sketch of the Serjeant's method. He, in the first place observes, that appeals,
 con-

110 BRITISH LIBERTIES, &c.
considered as to the matter of them, are of two kinds.

1. Not *capital*.
2. *Capital*.

Of those not capital there were antiently several kinds as appeals,

1. *De pace*,
2. *De plagis*,
3. *De imprisonmento*,
and
4. *De Mayhem*.

The three former have long been out of use, and actions of trespass substituted in their places.

An appeal of *Mayhem* is now sometimes used. On that subject, Mr. *Hawkins* is pretty full, shewing,

1. Of what *Mayhems* it lies,
2. What ought to be the form of the *writ*, *bill*, and *declaration*.
3. What *defence* may be made by the appellee.
4. How the *mayhem* shall be *tried*, and where the trial shall be peremptory.

As to the third point, he takes notice of the following particulars, *viz.*

1. Where a *recovery* in another action may be pleaded in bar of an appeal of *mayhem*.
2. Where and in what manner, *son assault demesne*, and other matters of the like nature may be pleaded.
3. Whether an *arbitrament*, or an *accord with satisfaction* may be so pleaded.
4. What kind of *release* may be so pleaded.
5. Where a *nonsuit* in a former action.
6. That an appellee cannot *wage his law*.

Of

Of *capital appeals*, as Mr. *Hawkins* observes, there are two kinds.

1. Of *treason*.
2. Of *felony*.

As to those for treason done in the realm, Mr. *Hawkins* seems to be of opinion that they may be sued, tried and determined before the courts of Common law, but that the law relating to such appeals seems wholly obsolete.

As to those done out of the realm, they are to be tried and determined before the *constable* and *marshal*.

And he observes that the statutes, which ordain, that treasons done out of the realm, shall be tried in the King's bench, &c. do not take away the jurisdiction of the *constable* and *marshal*, in relation to appeals of such treasons.

Of appeals of *felony* there are four principal kinds.

1. Of *death*.
2. Of *larceny*.
3. Of *rape*.
4. Of *arson*.

Under sections 30, 31, and 32 Mr. *Hawkins* shews, who may bring such appeals. We think it is proper here to observe that in sect. 31. he says, a woman may sue any other appeal, except that of the death of an ancestor.

Mr. *Hawkins* afterwards considers the nature of an appeal of *death*; for the better understanding whereof, he examines into the following points:

1. Within what *time* it must be brought.
2. In what *county*.
3. By *whom*.

As to the third point *by whom*, he shews,

1. Where

1. Where it may be brought by a *wife*.
2. Where by an *beir*.

As to the appeal of *larceny* he considers,

1. *By whom* it may be brought.
2. *Against whom*.
3. In what *county*.
4. Within what *time*.
5. Where there shall be a *restitution* of the goods stolen.

As to *restitution* he considers,

1. Whether it necessarily require *fresh suit*.
2. What shall be esteemed a *fresh suit*.
3. *By whom*, and in what *manner*, such *fresh suit* shall be *inquired* and *adjudged*.
4. *How far* the *appeal* must be *prosecuted*.
5. Whether the appellants *title* to such *restitution* shall be preferred to any *subsequent title* claimed in the goods.
6. Whether there shall be such a *restitution* on any other *prosecution* besides that of *appeal*.
7. Whether there shall be a *restitution* to any goods *not* mentioned in the *appeal*.

As to an appeal of *rape*, he considers,

1. *By whom* and in what *manner* it may be brought.
2. In what *county*.
3. Within what *time*.

As to the appeal of *arson*, he looks upon it as now obsolete.

After this the Serjeant proceeds to examine some other matters concerning appeals, in general.

1. In

1. In what cases the appellant and appellee are to appear in *proper person*, and where by *attorney*, or *guardian*.
2. How the appellant ought to *declare*.
3. How he may be *non-suited*.
4. For what faults the *writ* may be *abated*.
5. What may be *pleaded in bar* of an *appeal*.
6. Where the *appellant* and his *abettors* shall *render damages* to the *appellee*, for a false appeal.
7. Where the *appellant* is to be *fined*.

As to the second point he considers,

1. In what manner the *count* must pursue the *writ*.
2. How it ought to set forth the *substance* and *matter of fact*.
3. How the *circumstances of time* and *place*.
4. Whether one and the same count ought to be against those who do *not* appear, and against the *accessaries* as well as the *principals*.

Then he observes that the count ought for certainty to shew,

1. The *hour*.
2. The *day*.
3. The *year* and *time* of the king.
4. The *place* where the deed was done.

As to *abating* the *writ*, he considers,

1. Where it may be abated by the court, *ex officio*.
2. Where upon the *exception*, or *plea* of the party, but not without such exception, or plea.

I

3. What

3. What defects of this kind may be *amended*, which without such amendment might abate the writ.

As to the second point he shews,

1. Where it may be *abated* for the want of *fifteen days* between the *teste* and return of the writ.
2. Where for a *misnomer* or *wrong addition*.
3. Where for a *defect* in the *addition* of the appellant, or appellee.
4. Where for the *multiplicity* of action.
5. Where for making of *J. S.* a defendant when there is *not* any such person.
6. Whether the defendant may have *more than one of such pleas or exceptions*.

And for the better understanding the nature of the several additions required by the statute 1 H. 5. c. 5. he shews,

1. What is a sufficient *addition* of the *estate*, or *degree*.
2. What of the *mystery*.
3. What of the *town, hamlet, place or county* of the appellee.
4. How the *defect* of an *addition* may be *salved*.

As to the second particular he shews,

1. What *additions* of this kind are *clearly good*.
2. What are *clearly insufficient*.
3. What are *questionable*.

As to what may be *pleaded in bar* of an appeal of *felony*, he first observes that not any special plea in justification of the *killing*, shall be admitted in an appeal

peal of *death*, but that in every such case the general issue of *Not guilty* is to be pleaded. He then considers,

1. What pleas will be good bars of an appeal of *felony*, by shewing that the *plaintiff never had any right* to bring it.
2. Whether a *retraxit* on *nonsuit* in a former appeal of this kind, will be a good bar of another.
3. Whether a *discontinuance*.
4. Whether an *abatement of a former appeal*.
5. Where the bringing of an appeal of this kind against *one person*, shall be a bar of any subsequent appeal against *any other person not named* in the first.
6. Where a *release* will be a good bar of an appeal of this kind.
7. Where the appellant may be barred as to *one appellee*, and continue his suit against the rest.
8. Whether any and which of these pleas, are *consistent* with the *general issue*.

These outlines we have given to shew Mr. *Hawkins's* excellent, and we may justly add, logical method of treating a subject.

Gentlemen of learning that do not profess the law, will readily understand this sketch in general, and we hope be pleased to find a lawyer treating a difficult and curious subject, with so much precision. As to the gentlemen of the law, they may find pleasure and advantage too, in the perusal, as it may furnish those, who have not already *read*, or particularly *noticed* this part of the learned Serjeant's work, with some excellent hints, and induce them to look under some of the heads here mentioned, for instructions on many other

subjects, besides that of *appeals*. The law being under many of those titles not confined to *appeals* only, but in fact *universal*.

ON PARLIAMENTS.

4 *Ed. 3. cap. 14.*

A parliament shall be holden once every year.

ITEM, it is accorded, that a parliament shall be holden *every year once*, and more often if need be.

36 *Edw. 3. cap. 10.*

A parliament shall be holden once in the year.

ITEM, for maintenance of the said articles and statutes, and redress of divers mischiefs and grievances, which daily happen, a parliament shall be holden *every year*, as another time was ordained by statute.

A COMMENT,

From Mr. CARE on the two preceding statutes.

BEFORE the *conquest* (as the victory of Duke William of Normandy over Harold the Usurper, is commonly, though very improperly, called) parliaments were to be held twice every year, as appears by the laws of king *Edgar, cap. 5.* and the testimony of the *Mirroure of justices, cap. 1. sect. 3.* For the estates
of

of the realm. King *Alfred* caused the committees (some *English* translations of that antient book read, *Earls*, but the word seems rather to signify commiffioners, trustees, or representatives) to meet, and ordained for a PERPETUAL USAGE, that twice in the year, or oftner, if need were, in time of peace they should assemble at *London*, to speak their minds for the guiding of the people of God, how they should keep themselves from offences, live in quiet and have right done them, by certain usages and sound judgments. King *Edward* the *First* (says *Coke*, 4 *Instit.* fol. 97.) kept a parliament once every two years for the most part. And now in this king *Edward* the *Third*'s time (one of the wisest and most glorious of all our kings) It was thought fit to enact by these two severall statutes, That a parliament should be held once at least every year, which two statutes, according to *Mr. Care* when he wrote, were *then*, (we will not attempt to say *now*) in full force: for they are not repealed, but rather confirmed by the statute made in the 16th of *Charles* the *Second*, cap. 1. intituled, An act for the assembling and holding of parliaments once in three years at the least: The words of which are as follow.

§. 3. Because by the antient laws and statutes of this realm, made in the reign of king *Edward* the *Third*, parliaments are to be held very often, your majesty's humble and loyal subjects, the lords spiritual and temporal, and the commons in this present parliament assembled, most humbly do beseech your most excellent majesty, that it may be declared and enacted, (2.) And be it declared and enacted by the authority aforesaid, That hereafter the sitting and holding of parliaments shall not be intermitted or discontinued above three years at the most, but that within three years from and after the determination of this present parliament, so from time to time within three

years after the determination of any other parliament or parliaments, or if there be occasion, more often, your majesty, your heirs and successors, do issue out your writs for calling, assembling and holding of another parliament, to the end there may be *a frequent calling, assembling and holding of parliaments once in three years at the least.*

Agreeable to these good and wholesome laws were those gracious expressions and promises in *Charles's* proclamation touching the causes and reasons of dissolving the two then last parliaments, dated *April 8. 1681.* "Irregularities in parliament shall *never* make us out of love with parliaments, which we look upon as the best method for healing the distempers of the kingdom, and the only means to preserve the monarchy in that due credit and respect which it ought to have both at home and abroad. And for this cause we are resolved, by the blessing of God, to have *frequent parliaments*; and both in and out of parliament to use our utmost endeavours to extirpate popery, and to redress all the grievances of our good subjects, and in all things to govern according to the laws of the kingdom."

Triennial parliaments were established by the *16 Car. 1. c. 1.* to avoid the inconveniencies happening by long intermissions of parliament.

The act which we have just recited is repealed by the *16 Car. c. 1.*

These acts do not require a comment, nor are any observations necessary, to shew how well *Charles I.* or *Charles II.* observed them.

By an old roll of parliament in the *46th of Ed. 3. ex R. t. in Turr. Lond.* vide appendix to *Mr. Ruffhead's edit. p. 43.* No man of the law pursuing business in any of the King's courts, nor any sheriff, during the
time

time he is sheriff, is to be returned, or accepted, a knight of the county, or shire, &c.

On this statute Mr. *Ruffhead* observes thus: As one of the ordinances of this parliament is printed as a statute, in the preface to the third volume of Lord *Coke's Reports*, and is cited as such, in Col. *Sidney's* trial, 35 *Car. 2.* and in Lord *Preston's* trial, anno 2 *Will. & Mar.* the ordinances are printed here, with so much of the record, as may shew that they were not made, 'till after the dismissal of the knights of shires; which irregularity might perhaps be the reason, why they were not entered upon the statute roll, or printed in the statute book, before.

The being a representative in parliament was in the reign of *Richard II.* so little desirable that in the fifth year of his reign, an act was made to inflict a punishment on those who did not attend as follows, viz.

5 R. 2. st. 2. c. 4.

Every one to whom it belongeth shall upon summons come to the parliament.

ITEM the king doth will and command, and it is assented in the parliament, by the prelates, lords, and commons, that all and singular persons and commonalties, which from henceforth shall have the summons of the parliament, shall come from henceforth to the parliaments in the manner as they are bound to do, and have been accustomed within the realm of *England* of old times. (2.) And if any person of the same realm, which from henceforth shall have the said summons (be he archbishop, bishop, abbot, prior, duke, earl, baron, banneret, knight of the shire, citizen of city, burghers of borough, or other singular person or commonalty) do absent himself, and come not at the

said summons (except he may reasonably and honestly excuse him to our lord the king) he shall be amerced, and otherwise punished, according as of old times hath been used to be done within the said realm in the said case.

By 6 W. & M. c. 2.

RECITING, That whereas by the antient laws and statutes of this kingdom, frequent parliaments ought to be held; and *Whereas frequent and new parliaments tend very much to the happy union and good agreement of the king and people*; It is declared and Enacted by the king's and queen's most excellent majesties, by and with the advice and consent of the lords spiritual and temporal, and commons, in that parliament assembled, and by the authority of the same, That from thenceforth a parliament shall be holden once in three years at the least.

II. And it is further Enacted, That within three years at the farthest, from and after the dissolution of that parliament, and so from time to time *for ever thereafter*, within three years at the farthest, from and after the determination of every other parliament, legal writs under the great seal should be issued by directions of their majesties, their heirs *and successors*, for calling, assembling and holding another new parliament.

III. And it is further Enacted, That *from thenceforth no parliament whatsoever*, that should at any time *thereafter be called, assembled, or held*, should have any continuance longer than for three years only at the farthest, to be accounted from the day on which by the writs of summons the said parliament should be appointed to meet.

By

By the 7th and 8th of *W. 3. c. 4. & 2 Geo. 2. c. 24.* Candidates are prohibited from treating or bribing the electors.—How well these salutary laws are observed every election affords *ample* proof. But we shall hereafter notice some other laws on that subject.

By the 7th and 8th *W. 3. c. 25. §. 7.* Conveyances for splitting freeholds are prohibited.

As we are on the subject of parliaments, we will here set forth an act of great consequence to the subject which gives a right to every one aggrieved by, or having any just demands against privileged persons, at certain times to proceed at law, in Equity, or in the Ecclesiastical courts against all lords and members of parliament, and all others intitled to its privilege, *viz.* the 11th *Geo. 2. c. 24.* which is as follows.

An act to amend an act passed in the twelfth and thirteenth year of the reign of king William the Third, intituled, An act for preventing any inconveniencies that may happen by privilege of parliament.

‘ **W**HEREAS for the preventing all delays,
 ‘ the king or his subjects may receive in any
 ‘ of his courts of law or equity, and for their ease in
 ‘ the recovery of their rights and titles to any lands,
 ‘ tenements, or hereditaments, and their debts, or
 ‘ other dues, for which they have cause of suit, or
 ‘ action, an act was made in the 12th and 13th year
 ‘ of the reign of king *William III.* intituled, *An act*
 ‘ *for preventing any inconveniencies that may happen by*
 ‘ *privilege of parliament.* Whereby nevertheless the
 ‘ privilege of parliaments is restrained only in actions,
 ‘ or suits commenced or prosecuted in the courts, and
 ‘ for

172 BRITISH LIBERTIES, &c.

‘ for the causes, therein particularly mentioned : and
‘ whereas great inconveniencies may happen to his
‘ majesty, and his subjects, with respect to their rights
‘ and titles of lands, tenements, or hereditaments,
‘ and their debts, or other dues, for which they have
‘ cause of suit or action, if the privilege of parlia-
‘ ment be not restrained upon actions or suits com-
‘ menced or prosecuted in other courts within *Great Bri-
‘ tain and Ireland* ;’ For remedy thereof, be it enacted by
the king’s most excellent majesty, by and with the
advice and consent of the lords spiritual and temporal,
and commons, in this present parliament assembled, and
by the authority of the same, That from and after
the first day of *June* one thousand seven hundred and
thirty-eight, any person and persons shall and may
commence and prosecute in *Great Britain or Ireland*
any action or suit in any court of record, or court of
equity, or of admiralty, and in all causes matrimo-
nial and testamentary, in any court having cognizance
of causes matrimonial and testamentary, against any
peer or lord of parliament of *Great Britain*, or against
any of the knights, citizens and burgeses of the house
of commons of *Great Britain* for the time being, or
against their or any of their menial or other servants,
or any other person intitled to the privilege of the
parliament of *Great Britain*, at any time from and im-
mediately after the dissolution or prorogation of any
parliament, until a new parliament shall meet or the
same be reassembled, and from and immediately after
any adjournment of both houses of parliament for
above the space of fourteen days, until both houses
shall meet or reassemble ; and that the said respective
courts shall and may after such dissolution, proro-
gation, or adjournment, as aforesaid, proceed to give
judgment, and to make final orders, decrees, and sen-
tences, and award execution thereupon ; any privilege
of parliament to the contrary notwithstanding.

2. Pro-

2. Provided nevertheless, That this act shall not extend to subject the person of any knights, citizens, and burgessees of the house of commons of *Great Britain*, or any other person intituled to privilege of parliament, to be arrested during the time of privilege; nevertheless it shall and may be lawful to and for any of the courts of Great sessions in *Wales*, courts of sessions in the counties palatine of *Chester*, *Lancaster*, and *Durham*, courts of *King's bench*, *Common pleas*, and *Exchequer* in *Ireland*, after any dissolution, prorogation, or such adjournment as aforesaid, or before any session of parliament, or meeting of both houses, as aforesaid, to have and use such and the like methods of proceeding, and to issue such and the like process against any such peer or lord of parliament; or against any of the said knights, citizens, and burgessees, or other persons intituled to the privilege of the parliament of *Great Britain*, as the courts of *King's bench*, *Common pleas*, and *Exchequer* in *England*, are by the said recited act impowered and directed to use and issue respectively; and that it shall and may be lawful to and for the court of *Chancery* of *Ireland*, and the court of equity in the *Exchequer* there, to have and use such and the like methods of proceeding, and to issue such and the like process within the times and against the persons aforesaid, as the high court of *Chancery* of *Great Britain*, and the court of *Exchequer* in *England*, are by the said recited act respectively directed and impowered to use and issue; and that it shall and may be lawful to and for any of the other courts herein before described, the process whereof is not particularly directed by the said recited act, or by this act, after any dissolution, prorogation, or such adjournment as aforesaid, or before any session of parliament, or meeting of both houses as aforesaid, to issue such and the like process against any such peer or lord of parliament, or against any of the

said knights, citizens, or burgessees, or other person intitled to the privilege of parliament, as such courts may now lawfully issue against persons not liable to be arrested or imprisoned.

3. And be it Enacted by the authority aforesaid, That where any plaintiff shall, by reason or occasion of privilege of parliament, be stayed or prevented from prosecuting any suit by him commenced; such plaintiff shall not be barred by any statute of limitation, or nonsuited, dismissed, nor his suit discontinued for want of prosecution of the suit by him begun; but shall from time to time upon the rising of the parliament be at liberty to proceed to judgment and execution.

4. And it is hereby Enacted, That no action, suit, process, order, judgment, decree, or proceeding in law or equity against the king's original and immediate debtor, for the recovery or obtaining of any debt or duty originally and immediately due or payable unto his majesty, his heirs or successors, or against any accountant, or person answerable or liable to render any account unto his majesty, his heirs or successor, for any part or branch of any of his or their revenues, or other original and immediate debt or duty, or the execution of any such process, order, judgment, decrees or proceedings, shall be impeached, stayed, or delayed in any court in *Great Britain* or *Ireland*, by or under the colour or pretence of any privilege of the parliament of *Great Britain*; yet so nevertheless, that the person of any such debtor or accountant, or person answerable or liable to account, being a peer or lord of parliament of *Great Britain*, shall not be liable to be arrested or imprisoned by or upon any such suit, order, judgment, decree, process or proceedings, or being a member of the house of commons of *Great Britain*, shall not during the continuance of the privilege of parliament, be arrested
or

or imprisoned by or upon any such order, judgment, decree, process or proceedings.

5. Provided nevertheless, That neither this act, nor any thing therein contained, shall extend to give any jurisdiction, power, or authority to any court, to hold plea in any real or mixed action, in any other manner than such court might have done before the making this act.

By the 12 & 13 of *W. 3. c. 2. §. 3.* Persons having places or pensions, were disabled from being members of parliament — That clause was by the 4 *Ann. c. 8. §. 25.* repealed.—A comment hereon appears to be unnecessary.

To do justice to that queen, it may not be improper to state an act, that will shew the care that was taken of the police of the state. It is the 2d & 3d of *Ann. c. 18.* and which is as follows, *viz.*

An act for the further explanation and regulation of privilege of parliament, in relation to persons in publick offices.

WHEREAS it is most just and reasonable, that persons employed in offices and places of publick trust, should at all times be accountable for any misdemeanors therein, and the publick justice of the realm requireth a vigorous prosecution of such offenders: To the end therefore that your majesty's good subjects may not lie under any doubts or discouragements, whereby such prosecutions might be prevented or delayed; may it please your most excellent majesty that it may be Enacted; and be it Enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled,

and by the authority of the same, That any action or suit shall and may be commenced and prosecuted in any of her majesty's courts at *Westminster*, against any officer or person intrusted or employed in the *revenue* of her majesty, her heirs and successors, or *any part or branch thereof*, or *any other office or place of publick trust*, for any *forfeiture, misdemeanor, or breach of trust, of, in, or relating to such office or place of trust, or any penalty imposed by law to enforce the due execution thereof*; and that no such action, suit, or any other process, proceeding, judgment, or execution thereupon, *although such officer or person shall be a peer of this realm, or lord of parliament, or one of the knights, citizens, or burgeses, of the house of commons, or otherwise intituled to the privilege of parliament, shall be impeached, stayed or delayed by or under colour or pretence of any privilege of parliament.*

II. Provided nevertheless, and be it further Enacted by the authority aforesaid, That nothing in this act shall extend to subject the *person* of such officer, *being a peer* of this realm, or *lord of parliament*, to be arrested or imprisoned; but that all process shall issue against such officer or person, *being a peer* of this realm, or *lord of parliament*, as should have issued against him out of the time of privilege: Nor shall extend to subject the *person* of such officer, *being a knight, citizen, or burgeses* of the house of commons, to be *arrested or imprisoned*, during the time of privilege of parliament; and that against such officer or other person, *being a knight, citizen, or burgeses* of the house of commons, intituled to privilege, shall be issued *summons and distress infinite, or original bill, summons, attachment and distress infinite*, which the said respective courts are hereby empowered to issue in such case, until the party shall appear upon such process according to the course of such respective court.

To shew the care that has been often taken, and the many endeavours that have been used, for preserving
par-

parliaments free, and independent, and to prevent improper persons from having seats in the house of commons; we have set forth the following acts, being the principal laws in force relative thereto.

9 *Ann. cap. 5.*

An act for securing the freedom of parliaments, by the farther qualifying the members to sit in the house of commons.

FOR the better preserving the constitution and freedom of parliament, Be it enacted and declared by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That from and after the determination of this present parliament, no person shall be capable to sit or vote as a member of the house of commons, for any county, city, borough, or cinque port, within that part of *Great Britain* called *England*, the dominion of *Wales*, and town of *Berwick upon Tweed*, who shall not have an estate, freehold or copyhold, for his own life, or for some greater estate, either in law or equity, to and for his own use and benefit, of or in lands, tenements or hereditaments, over and above what will satisfy and clear all incumbrances that may affect the same, lying or being within that part of *Great Britain* called *England*, the dominion of *Wales*, and town of *Berwick upon Tweed*, of the respective annual value hereafter limited, *videlicet*, The annual value of *six hundred pounds*, above reprises, for every *knight* of a shire; and the annual value of *three hundred pounds*, above reprises, for every *citizen, burges, or baron* of the *Cinque ports*; and that if any person, who shall be elected or returned to serve
in

in any parliament, as a *knight* of a shire, or as a *citizen*, *burgess* or *baron* of the *Cinque ports*, shall not, at the time of such election and return, be seised of, or intitled to such an estate, in lands, tenements or hereditaments, as for such *knight* or for such *citizen*, *burgess* or *baron* respectively, is herein before required or limited, *such election and return shall be void*.

II. Provided always, That nothing in this act contained, shall extend to make the eldest son, or heir apparent of any peer, or lord of parliament, or of any person qualified by this act to serve as knight of a shire, incapable of being elected and returned, and sitting and voting as a member of the house of commons in any parliament.

III. Provided always, That nothing in this act contained shall extend, or be construed to extend to either of the *universities* in that part of *Great Britain* called *England*, but that they, and each of them may elect and return members to represent them in parliament, as heretofore they have done; any thing herein contained to the contrary notwithstanding.

IV. Provided always, and be it Enacted by the authority aforesaid, That no person whatsoever shall be construed to be qualified to sit in the house of commons, within the meaning of this act, by virtue of any mortgage whatsoever, whereof the equity of redemption is in any other person or persons, unless the mortgagee shall have been in possession of the mortgaged premises, for the space of seven years before the time of his election; any thing herein contained to the contrary notwithstanding.

V. Provided always, and it is hereby Enacted by the authority aforesaid, That every person (except as aforesaid) who from and after the determination of this present parliament, shall appear as a candidate, or shall, by himself or any others, be proposed to be elected to serve as a member for the house of commons, for any *county*, *city*, *borough*, or *Cinque port*, in *England*,

England, Wales, or Berwick upon Tweed, shall, and he is hereby enjoined and required, upon reasonable request to him to be made (at the time of such election, or before the day to be prefixed in the writ of summons for the meeting of the parliament) by any other person who shall stand candidate at such election, or by any two or more persons having right to vote at such election, take a corporal oath in the form, or to the effect following.

I *A. B.* do swear, That I truly and *bona fide* have such an estate in law or equity, to and for my own use and benefit, of or in lands, tenements, or hereditaments (over and above what will satisfy and clear all incumbrances that may affect the same) of the annual value of six hundred pounds, above reprises, as doth qualify me to be elected and returned to serve as a member for the county of _____ according to the tenor and true meaning of the act of parliament in that behalf; and that my said lands, tenements, or hereditaments, are lying or being within the parish, township, or precinct of _____ Or in the several parishes, townships, or precincts of _____ in the county of _____ Or, in the several counties of _____ (as the case may be.)

VI. And in case such candidate or person is to serve for any *city, borough, or cinque port*, then the said oath shall relate only to the said value of three hundred pounds *per annum*, and be taken to the same effect, *mutatis mutandis*, as is hereby prescribed for the oath of a person to serve as a member for such county as aforesaid.

1 Geo. 1. *ft.* 2. *c.* 38.

An act for enlarging the time of continuance of parliaments, appointed by an act made in the sixth year of the reign of king William and queen Mary, intituled, An act for the frequent meeting and calling of parliaments.

WHEREAS in and by an act of parliament made in the sixth year of the reign of their late majesties king *William* and queen *Mary* (of ever blessed memory) intituled, *An act for the frequent meeting and calling of parliaments*: it was among other things Enacted, That from thenceforth no parliament whatsoever, that should at any time then after be called, assembled or held, should have any continuance longer than for three years only at the farthest, to be accounted from the day on which by the writ of summons the said parliament should be appointed to meet: And whereas it has been found by experience, that the said clause hath proved very grievous and burthensome, by occasioning much greater and more continued expences in order to elections of members to serve in parliament, and more violent and lasting heats and animosities among the subjects of this realm, than were ever known before the said clause was enacted; and the said provision, if it should continue, may probably at this juncture, when a restless and popish faction are designing and endeavouring to renew the rebellion within this kingdom and an invasion from abroad, be destructive to the peace and security of the government; Be it Enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in parliament assembled, and by the authority of the same,

same, That this present parliament, and all parliaments that shall at any time hereafter be called, assembled or held, shall and may respectively have continuance for *seven* years, and no longer, to be accounted from the day on which by the writ of summons this present parliament hath been, or any future parliament shall be appointed to meet, unless this present, or any such parliament hereafter to be summoned, shall be sooner dissolved by his majesty, his heirs or successors.

1 Geo. I. st. 2. c. 56.

An act to disable any person from being chose a member of, or from sitting and voting in the house of commons, who has any pension for any number of years from the crown.

‘ I. **W**HEREAS by an act intituled, *An act for the security of her majesty's person and government, and of the succession to the crown of Great Britain in the Protestant line, and made in the sixth year of the late queen Anne*, it was provided, That no person having any pension from the crown during pleasure, should be capable of being elected, or of sitting or voting as a member of the house of commons, in any parliament which should be then after summoned and holden;’ To the end therefore that the provision intended by that law, for securing the honour of the house of commons, may not in future times be defeated or eluded by any person who shall be a member of the house of commons, accepting any pension for any term or number of years; Be it Enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament

assembled, and by the authority of the same, That no person having any pension from the crown for any term or number of years, either in his own name, or in the name or names of any other person or persons in trust for him, or for his benefit, shall be capable of being elected or chosen a member of, or of sitting or voting as a member of this present or any future house of commons which shall be hereafter summoned.

II. And be it further Enacted by the authority aforesaid, That if any person who shall have such pension, as aforesaid, at the time of his being so elected, or at any time after, during such time as he shall continue or be a member of the house of commons, shall presume to sit or vote in that house, then and in such case, he shall forfeit twenty pounds for every day in which he shall so sit or vote in the said house of commons, to such person or persons who shall sue for the same in any of his majesty's courts in *Westminster-hall*; and the monies so forfeited shall be recovered by the person so suing, with full costs of suit in any of the said courts, by action of debt, bill, plaint, or information, in which no essoin, privilege, protection or wager of law shall be allowed, and only one imparlance.

2 Geo. 2. c. 24.

An act for the more effectual preventing bribery and corruption in the elections of members to serve in parliament.

‘ **W**HEREAS it is found by experience,
 ‘ that the laws already in being have not been
 ‘ sufficient to prevent corrupt and illegal practices in
 ‘ the election of members to serve in parliament;
 For

For remedy therefore of *sa great an evil*, and to the end that all elections of members to parliament may hereafter be freely and indifferently made, without charge or expence, Be it Enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That from and after the twenty-fourth day of *June* in the year of our lord one thousand seven hundred and twenty-nine, upon every election of any member or members to serve for the commons in parliament, every freeholder, citizen, freeman, burgess, or person having or claiming to have a right to vote or be polled at such election, shall, before he is admitted to poll at the same election, take the following oath (or, being one of the people called *quakers*, shall make the solemn affirmation appointed for *quakers*) in case the same shall be demanded by either of the candidates, or any two of the electors; that is to say,

I *A. B.* do swear, (or, being one of the people called *quakers*, I *A. B.* do solemnly affirm) I have not received, or had by myself, or any person whatsoever in trust for me, or for my use and benefit, directly or indirectly, any sum or sums of money, office, place or employment, gift or reward, or any promise or security for any money, office, employment or gift, in order to give my vote at this election, and that I have not been before polled at this election.

Which oath or affirmation the officer or officers presiding or taking the poll at such election, is and are hereby impowered and required to administer *gratis*, if demanded, as aforesaid, upon pain to forfeit the sum of fifty pounds of lawful money of *Great Britain*, to any person that shall sue for the same, to be recovered,

vered, together with full costs of suit, by action of debt, bill, plaint, or information, in any of his majesty's courts of record at *Westminster*, wherein no es-foign, protection, wager of law, or more than one imparlance, shall be admitted or allowed; and if the said offence shall be committed in that part of *Great Britain* called *Scotland*, there to be recovered, together with full costs of suit, by summary action or complaint before the court of session, or by prosecution before the court of justiciary there; for every neglect or refusal so to do; and no person shall be admitted to poll, 'till he has taken and repeated the said oath in a publick manner; in case the same shall be demanded as aforesaid, before the returning officer or such others as shall be legally deputed by him.

II. And be it further Enacted, That if any sheriff, mayor, bailiff, or other returning officer, shall admit any person to be polled without taking such oath or affirmation, if demanded as aforesaid, such returning officer shall forfeit the sum of one hundred pounds, to be recovered in manner aforesaid, together with full costs of suit; and that if any person shall vote or poll at such election without having first taken the oath, or, if a *quaker*, having made his affirmation as aforesaid; if demanded, such person shall incur the same penalty, which the officer is subject to for the offence above mentioned.

III. And be it further Enacted by the authority aforesaid, That every sheriff, mayor, bailiff, head-borough, or other person, being the returning officer of any member to serve in parliament, shall, immediately after the reading the writ or precept for the election of such member, take and subscribe the following oath, *videlicet*,

I A. B.

I *A. B.* do solemnly swear, That I have not, directly nor indirectly, received any sum or sums of money, office, place or employment, gratuity or reward, or any bond, bill or note, or any promise or gratuity whatsoever, either by myself, or any other person to my use, or benefit or advantage, for making any return at the present election of members to serve in parliament; and that I will return such person or persons as shall, to the best of my judgment, appear to me to have the majority of legal votes.

Which oath any justice or justices of the peace of the said county, city, corporation or borough where such election shall be made, or, in his or their absence, any three of the electors are hereby required and authorized to administer; and such oath, so taken, shall be entred among the records of the sessions of such county, city, corporation and borough as aforesaid.

IV. And be it Enacted by the authority aforesaid, That such votes shall be deemed to be legal, which have been so declared by the last determination in the house of commons; which last determination concerning any county, shire, city, borough, cinque port or place shall be final to all intents and purposes whatsoever, any usage to the contrary notwithstanding.

V. And be it further Enacted by the authority aforesaid, That if any returning officer, elector or person taking the oath or affirmation herein before mentioned, shall be guilty of wilful and corrupt perjury, or of false affirming, and be thereof convicted by due course of law, shall incur and suffer the pains and penalties, which by law are Enacted or inflicted in cases of *wilful and corrupt perjury*.

K 4

VI. And

VI. And be it further Enacted by the authority aforesaid, That no person convicted of wilful and corrupt perjury, or subornation of perjury, shall, after such conviction, be capable of voting in any election of any member or members to serve in parliament.

VII. And be it further Enacted by the authority aforesaid, That if any person who hath, or claimeth to have, or hereafter shall have, or claim to have any right to vote in any such election, shall from and after the said twenty-fourth day of *June*, which shall be in the year of our Lord one thousand seven hundred and twenty nine, *ask, receive or take any money or other reward, by way of gift, loan, or other device, or agree or contract, for any money, gift, office, employment or other reward whatsoever, to give his vote, or to refuse or forbear to give his vote in any such election, or if any person by himself, or any person employed by him, doth or shall, by any gift or reward, or by any promise, agreement or security for any gift or reward, corrupt or procure any person or persons to give his or their vote or votes, or to forbear to give his or their vote or votes in any such election; such person so offending in any of the cases aforesaid, shall for every such offence forfeit the sum of FIVE HUNDRED POUNDS of lawful money of Great Britain, to be recovered as before directed, together with full costs of suit; and every person offending in any of the cases aforesaid, from and after judgment obtained against him in any such action of debt, bill, plaint or information, or summary action or prosecution, or being any otherwise lawfully convicted thereof, shall for ever be disabled to vote in any election of any member or members to parliament, and also shall for ever be disabled, to hold exercise, or enjoy any office or franchise to which he and they then shall or at any time afterwards may be intitled, as a member of any city, borough, town corporate or cinque port, as if such person was naturally dead.*

VIII. And

VIII. And be it further Enacted by the authority aforesaid, That if any person offending against this act shall, within the space of twelve months next after such election as aforesaid, discover any other person or persons offending against this act, so that such person or persons so discovered be thereupon convicted, such person so discovering, and not having been before that time convicted of any offence against this act, shall be indemnified, and discharged from all penalties and disabilities which he shall then have incurred by any offence against this act.

IX. And for the more effectual observance of this act, be it Enacted, That all and every the sheriffs, mayors, bailiffs, and other officers, to whom the execution of any writ or precept, for electing any member or members to serve in parliament shall belong and appertain, shall and are hereby required, at the time of such election, immediately after the reading such writ or precept, read or cause to be read openly before the electors there assembled, this present act, and every clause therein contained; and the same shall also openly be read once in every year at the general quarter sessions of the peace to be holden next after EASTER, for any county or city, and at every election of the chief magistrate in any borough, town corporate or cinque port, and at the annual election of magistrates and town counsellors for every borough within that part of Great Britain called Scotland.

X. And be it further Enacted by the authority aforesaid, That every sheriff, under-sheriff, mayor, bailiff and other officer, to whom the execution of any writ or precept for the electing of members to serve in parliament doth belong, for EVERY wilful offence contrary to this act, shall forfeit the sum of fifty pounds, to be recovered, together with full costs of suit, in the manner before directed.

XI. Pro-

XI. Provided always, and it is hereby declared and enacted by the authority aforesaid, That no person shall be made liable to any incapacity, disability, forfeiture, or penalty by this act laid or imposed, unless prosecution be commenced within *two years* after such incapacity, disability, forfeiture or penalty shall be incurred, or in case of a prosecution the same be carried on without *wilful delay*; any thing herein contained to the contrary notwithstanding.

9 Geo. 2. c. 38.

An act to explain and amend so much of an act made in the second year of his present majesty's reign, intituled, An act for the more effectual preventing bribery and corruption in the elections of members to serve in parliament, as relates to the commencing and carrying on of prosecutions grounded upon the said act.

WHEREAS by an act of parliament made in the second year of the reign of his present majesty, intituled, *An act for the more effectual preventing bribery and corruption in the elections of members to serve in parliament*, It is Enacted, That no person shall be made liable to any incapacity, disability, forfeiture or penalty by the said act laid or imposed, unless prosecution be commenced within *two years* after such incapacity, disability, forfeiture or penalty shall be incurred, or in case of a prosecution the same be carried on without *wilful delay*: And whereas prosecutions may have been or may be commenced against persons offending against the said act, by suing out original or other writs or processses against such persons so offending, within two years after the incurring any incapacity,

capacity, disability, forfeiture or penalty laid or imposed by the said act, and persons so suing out such original or other writs or processes may have delayed, or may delay, to serve the same, without giving the persons, against whom such original or other writs or processes may have been or may be sued out, any notice thereof, by reason of which practice the said provision for limiting the time for the prosecution of persons offending against the said act is or may be evaded; now for explaining and amending the said provision, Be it Enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That *no person shall be made liable to any incapacity, disability, forfeiture or penalty by the said act laid or imposed, unless such person has been or shall be ACTUALLY and LEGALLY ARRESTED, SUMMONED or otherwise SERVED with any such original or other writ or process, within the space of TWO YEARS after any offence against the said act has been or shall be committed, so as the service of any such original or other writ or process hath not been or shall not be prevented by such person absconding or withdrawing out of this kingdom.*

The following is the freeholders oath, appointed by the 18 Geo. 2. c. 18.

YOU shall swear (or being one of the people called Quakers, you shall solemnly affirm) that you are a freeholder in the county of _____ and have a freehold estate, consisting of _____ (specifying, the nature of such freehold estate, whether messuage, land, rent, tythe, or what else; and if such freehold estate consists in messuages, lands, or tythes, then specifying in whose occupation the same are; and if in rent, then specifying _____)

specifying the names of the owners or possessors of the lands or tenements, out of which such rent is issuing, or of some or one of them,) lying or being at

in the county of _____ of the clear yearly value of forty shillings, over and above all rents and charges payable out of, or in respect of the same; and that you have been in the actual possession or receipt of the rents and profits thereof, for your own use, above *twelve kalendar months*, or that the same came to you, within the time aforesaid, by descent, marriage, marriage settlement, devise, or promotion to a benefice in a church, or by promotion to an office; and that such freehold estate *has not been granted or made to you fraudulently*, on purpose to qualify you to give your vote; and that the place of your abode is at

in _____ and that you are twenty-one years of age, as you believe, and that you have not been polled before at this election.

19 Geo. 2. c. 28.

An act for the better regulating of elections of members to serve in parliament, for such cities and towns in that part of Great Britain called England, as are counties of themselves.

WHEREAS by an act made and passed in the last session of parliament, intituled, *An act to explain and amend the laws, touching the elections of knights of the shire to serve in parliament for that part of Great Britain called England*, several good provisions were Enacted for the better regulating the said elections; and whereas it is reasonable, that like provisions should be made for the due election of members to serve in parliament, for such cities and towns in that part of *Great Britain* called *England*, as are counties of

of themselves, and in which persons have a right to vote for electing such members, for and in respect of freehold lands, tenements or hereditaments, of the yearly value of forty shillings; Therefore be it Enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That from and after the twenty-fourth day of *June* one thousand seven hundred and forty-six, every person demanding to vote for the election of any member to serve in parliament for such city or town, being a county of itself, in that part of *Great Britain*, called *England*, for and in respect of any freehold estate of *forty shillings* a year, shall, before he is admitted to poll at the said election (if required by the candidates, or any of them, or any person having a right to vote at the said election) first take the oath, (or being a *quaker*, the solemn affirmation) following *videlicet*,

YOU shall swear (or, being a *quaker*, *Oath.* you shall solemnly affirm) *That you have a freehold estate consisting of,* (specifying the nature of such freehold estate, whether messuage, land, rent, tythe, or what else; and if such freehold estate consists in messuages, lands, or tythes, then specifying in whose occupation the same are; and if rent, then specifying the names of the owners or possessors of the lands or tenements, out of which such rent is issuing, or some or one of them) *lying or being in the city and county, or town and county* (as the case may be) *of*
of the clear yearly value of forty shillings, over and above all rents and charges payable out of, or in respect of the same; and that you have been in the actual possession or receipt of the rents and profits thereof, for your own use, above twelve calendar months; or that the same came to you within the time aforesaid by descent,

marriage, marriage settlement, devise, or promotion to a benefice in a church, or by promotion to an office; and that such freehold estate has not been granted or made to you fraudulently, on purpose to qualify you to give your vote; and that the place of your abode is at

in *and that you are*
twenty-one years of age, as you believe; and that you have not been polled before at this election.

Which oath (or solemn affirmation) the sheriff or sheriffs, by him or themselves, or his or their under-sheriff or under-sheriffs, or such sworn clerk or clerks, as shall be by him or them appointed for the taking of the poll, is and are hereby required to administer; and in case any freeholder, or other person, taking the said oath or affirmation hereby appointed, shall thereby commit wilful perjury, and be thereof convicted; and if any person do unlawfully and corruptly procure or suborn any freeholder, or other person, to take the said oath or affirmation, in order to be polled, whereby he shall commit such wilful perjury, and shall be thereof convicted; he and they, for every such offence, shall incur such pains and penalties, as are in and by two acts of parliament, the one made in the *fifth* year of the reign of the late queen *Elizabeth*, intituled, *An act for punishment of such persons as shall procure or commit wilful perjury*; * the other made in the *second* year of the reign of his present majesty, intituled, *An act for the more effectual preventing and further punishment of forgery, perjury, subornation of per-*

* Subornation a penalty of 40*l.* for want of effects to pay such penalty, a year's imprisonment, and pillory in the open market, and rendered incapable of giving evidence in any court of record. Committing of perjury 20*l.* penalty, 6 months imprisonment, and the person rendered incapable of giving evidence. If he cannot pay the 20*l.* to be set in the pillory, in the market-place, and for ever discredited.

jury;

jury; and to make it felony to steal bonds, notes or other securities for payment of money; * directed to be inflicted for offences committed contrary to the said acts.

III. Provided always, That from and after the said twenty-fourth day of *June* one thousand seven hundred and forty-six, no person shall vote for the electing a member or members to serve in parliament for such city or town, being a county of itself as aforesaid, within that part of *Great Britain* called *England*, in respect or in right of any freehold, messuages, lands or tenements, of the yearly value of forty shillings as aforesaid, which have not been charged or assessed towards some aid granted, or hereafter to be granted to his majesty, his heirs or successors, by a land tax in *Great Britain*, twelve calendar months next before such election; Provided, That nothing herein contained shall extend, or be construed to restrain any person from voting in any such election for cities and towns as are counties of themselves as aforesaid in respect or in right of any rents, or any messuages or seats belonging to any offices, in regard or by reason that the same have not been usually charged or assessed to the aid commonly called the land tax;

IV. And be it further Enacted by the authority aforesaid, That from and after the said twenty-fourth day of *June* one thousand seven hundred and forty-six, no person shall vote in such election of a member or members to serve in parliament for any city or town being a county of itself, and in which persons have a right to vote for such members, for and in respect of lands, tenements, or hereditaments, of the yearly value of *forty shillings*, unless such persons shall have a freehold estate in the city and county, or town and

* Perjury and subornation of perjury, commitment to the house of correction, for any term not exceeding 7 years, there to be kept to hard labour, or transportation for a term not exceeding 7 years, and return from transportation death, as a felon.

county

county, for which he votes, of the clear yearly value of *forty shillings*, over and above all rents and charges payable out of or in respect of the same, and shall have been in the actual possession or in receipt of the rents and profits thereof for his own use, above *twelve calendar months*, except the same came to him within the time aforesaid by descent, marriage, marriage settlement, devise or promotion to any benefice in a church or by promotion to an office; and no person shall vote in respect or in right of any freehold estate which was made or granted to him fraudulently, on purpose to qualify him to give his vote, or shall vote more than once at the same election; and if any person shall vote in any such election contrary to the true intent and meaning hereof, he shall forfeit to any candidate for whom such vote shall not have been given, and who shall first sue for the same, the sum of *forty pounds*, to be recovered by him or them, his or their executors or administrators, together with full costs of suit, by action of debt, in any of his majesty's courts of record at *Westminster*, wherein no essoin, protection, wager of law, privilege or imparlance shall be admitted or allowed; and in every such action the proof shall lie on such person against whom the same was brought, unless the fact on which such action is grounded be, the having polled more than once at the same election.

X. Provided always, That every action, suit, indictment or information given by this act, shall be commenced within the space of *nine calendar months* after the fact upon which the same is grounded shall have been committed.

XIII. Provided always, and be it Enacted by the authority aforesaid, That this act, or any thing therein contained (other than and except such clauses and provisions as are by this act made for or concerning allowing *cheque books*, or for or concerning *notice* to be given

given of the time and place of election, and proceeding to election thereupon) shall not extend, or be construed to extend, to any city or town, being a county of itself, or to any person or persons, where the right of voting for any member or members of any such city or town is, for or in respect of burgage tenure, or where the right of voting for such member or members, for or in respect of a freehold, does not require the same to be of the yearly value of *forty shillings*.

A DIGRESSION touching the antiquity, use and power of parliaments, and the qualifications of such gentlemen as are fit to be chosen the people's representatives.

THE recital of those several laws for frequent calling of parliaments, declaring the same to be of such importance, and of such necessity, to the safety and well being of the nation, is a sufficient inducement to give the reader some farther information touching those most honourable assemblies.

Of the name and antiquity of parliaments.

THE word *parliament* is derived from the French words, *parler la ment*, to speak ones mind, because every member of that court should *sincerely* and *discreetly* speak his mind, *i. e.* his real opinion, and that on mature deliberation, for the general good of the commonwealth; and this name (saith Coke, *1 Instit. fol. 100.*) was used before the reign of *William the Conqueror*, even in the time of *Edward the Confessor*. But most commonly in the *Saxons* time, it was called *Michegemote* or *Witenage-mote*, that is, the *Great mote* [meeting or assembly, whence the ward mooves in

L

London

London receive their name to this day] or the Wise moote, that is, the assembly of the *wise men* and *sages* of the land.

But this word *parliament* is used in a double sense.

1. Strictly, as it includes the *legislative* power of *England*, as when we say an act of parliament: and in this acceptation it necessarily includes the *king*, the *lords*, and the *commons*; each of which have a *negative* voice in making laws, and without their joint consent, not any new laws can pass, that are obligatory on the subject.

2. The word is commonly used for the *two houses*, the *lords*, and *commons*, as when we say, the *king* will call a parliament, his majesty hath dissolved his parliament, &c.

The *lords of parliament* are divided into two sorts, *viz. spiritual*, that is to say, the *bishops*, who sit there in respect of their baronies; parcel of their bishopricks, which they hold in their politick capacity; and *temporal*.

The *commons* are likewise divided into three classes or parts, *viz. knights* or representatives of the *shires* or *counties*; where note, that though the writ require two knights to be chosen, and that they are called knights, yet there is not any necessity that they should actually have the degree of knight-hood, provided they are *gentlemen*: for the statute 23 *Hen. 6. cap. 15.* hath these words, That the knights of the shires for the parliament hereafter to be chosen, shall be *notable knights* of the same counties for which they shall be chosen, or otherwise such *notable esquires* or *gentlemen* born of the same counties, as shall *be able to be knights*, and no man to be such knight, which standeth in the degree of a *yeoman* and under.

Secondly, *Citizens* chosen to represent *cities*.

Thirdly, *Burgesses*, that is to say, those that are chosen out of *boroughs*.

Note;

Note; That the difference between a *city* and a *borough* is this, a *city* is a *borough* incorporate, which is, or has been within time of memory an episcopal see, or had a bishop; and this, although the bishoprick be dissolved, as *Westminster* having heretofore a bishop, (though none now) still remains a city. *Coke 1 Instit. sect. 164.* *Boroughs* are *towns* incorporated, but such as never had any bishops.

Of the three estates in parliament.

THERE have been many debates about the three *estates*; some insisting, That the *bishops* are one of the three estates of the realm, the *lords temporal* a second, and the *house of commons* a third, and the *king* over all as a transcendent by himself: others as positively deny this, and assign the *king* (as he is the head of the common-wealth) to be the first estate; the *lords*, as well *spiritual* as *temporal* jointly, to be the second, and the *house of commons* the third.

Non opus est nostræ tantas componere lites.

We shall not presume to undertake a decision of this arduous controversy, but only observe that the matter seems to appear more difficult than really it is, because the contending parties do not first properly define what they severally mean by the word *estate*. Which may be taken, *First*, For a *rank*, *degree*, or *condition of persons* considered by themselves, different in some peculiar respects from others wherewith they may be compared. And in this respect my lords the *bishops*, may very properly be said to be an *estate*, or one of the *estates* of the realm, for then there will be several estates, above the number of *three*, so in the *house of commons* there may be said to be three estates, viz. *knights*, *citizens*, and *burgesses*. And heretofore,

when the Roman Catholic religion prevailed, there were 26 *abbots* and *priors*, that held *per baroniam*, as well as the *bishops*, called to the parliament, and sat in the *house of lords*, [see *Fuller's Church History*, lib. 6. fol. 292.] Whether they as being *religious* and *monastical persons*, whereas the *bishops* were *seculars*, (an essential difference) might not as well claim to be a *distinct estate* by themselves, as now the *bishops* do, may be a question.

But *secondly*, when we hear of *three estates* in the constitution of our *English government*, 'tis most natural to mean and intend such a poize in the balance, such an order or state, as hath a negative voice in the *legislative power*: for neither the *king* and *commons* excluding the *lords*, nor the *king* and *lords*, excluding the *commons*; much less the *lords* and *commons* excluding the *king*, can make any law; but the three must mutually join.

When from their united influence spring those laws that are obligatory on the subject. In this sense the *lords spiritual* by themselves have no pretence to be a *distinct estate*; that is, they have not by themselves a negative voice (which is, as I conceive, the proper characteristick or essential mark of each of the three estates) for, suppose a bill pass the *commons*, and being brought into the *house of lords*, and the 26 *bishops* should be against it, and some of the *temporal lords*, yet if the other *temporal lords* are more in number than the *bishops*, and those that are with them, the bill shall pass as the act of the whole house; and if his majesty please to give it his royal assent, it is undoubted law.

This sufficiently shews that the *bishops of themselves* have not, as a distinct estate, a negative voice, and consequently are not of themselves, one of the *three estates* of the realm.

Not-

Notwithstanding what is said by Mr. *Care*, the statute of the first of *Eliz. c. 3. §. 2.* hath these peculiar words: "We your said most loving, faithful, and obedient subjects, representing the *three estates* of your "realm of *England.*" yet in our humble opinion he is right.

Touching the power of the Parliament.

THE jurisdiction of this court, (saith *Coke*, 1 *Instit. secl. 164.*) is so transcendent, that it *maketh, enlargeth, diminisheth, abrogateth, repealeth* and *reviveth laws, statutes, acts and ordinances*, concerning matters *ecclesiastical, civil, martial, marine, capital, criminal* and *common*. And 4 *Instit. fol. 36.* The power and jurisdiction of the parliament for making of laws in proceeding by bill, is so transcendent and absolute, that it cannot be confined either for *causes* or *persons* within any bounds. Of this court it is truly said, *Si antiquitatem spectes, est vetustissima, si dignitatem, est honoratissima, si jurisdictionem, est capacissima*; if you regard its original it is most *ancient*; if its dignity, it is most *honourable*; if its jurisdiction, it is most *capacious*.

Sir *Thomas Smith* a great statesman, and in high esteem and place under queen *Elizabeth*, in his treatise, *de republica Anglorum, lib. 2. cap. 2.* gives the following character of this suprem court. *In comitiis parliamentariis, posita est omnis augustæ, absolutæque potestatis vis, veteres leges jubent esse irritas, novas inducunt; presentibus juxta ac futuris modum constituunt; jura & possessiones hominum privatorum commutant, spurios natalibus restituant, cultum divinum sanctionibus corroborant; pondera & mensuras variant; jus in regno succedendi præscribunt, &c.* The most high and absolute power of the realm of *England*, consisteth in the parliament; for the parliament abrogateth old laws, maketh new, giveth order for things past, and for things hereafter

to be followed, changeth the rights and possessions of private men; legitimises bastards, corroborates religion with civil sanctions, alters weights and measures; prescribes the right of succession to the crown; defines doubtful rights, where there is no law already made; appointeth subsidies, taxes and impositions; giveth most free pardons, restoreth in blood and name, &c.

As for the power of parliaments over both *Statute* and *Common law*, take it in the accurate and significant words of a parliament, viz. the statute of 25 H. 8. cap. 12. as follows. *Whereas this realm recognizing no superior under God, but the king, hath been and is free from subjection to any man's laws, but only to such as have been devised, made, and ordained within this realm, for the wealth thereof, or to such other as the people of this realm have taken at their free liberty, by their own consent, to be used amongst them, and have bound themselves, by long use and custom, to the observance of the same; not to the observance of the laws of any foreign prince, potentate, or prelate, but as to the ACCUSTOMED and ANCIENT LAWS of this realm, originally established as laws of the same, by the said sufferance, consents and custom, and none otherwise. It standeth therefore with natural equity and good reason that all and every such laws human, made within this realm, or induced into this realm, by the said sufferance, consents, and custom, the king and the lords spiritual and temporal and commons, representing the WHOLE state of the realm, in the most high court of parliament, have full power and authority to dispense with these and all other human laws of the realm, and with every one of them, as the quality of the persons and matter shall require. And also the said laws and every of them, to abrogate, annul, amplify, or diminish, as to the king, nobles and commons of the realm, present in parliament, shall seem most meet and convenient for the wealth of the realm.*

Thus

Thus far that notable statute, which in truth is only declarative, and in affirmance of the antient Common law of *England*.

The particular business of Parliaments.

BY what hath been said, as Mr. *Care* jocosely observes, you may perceive the work of an *English* parliament, is not (as some would have it) only to be keys to unlock the people's purses. That is but one part, and perhaps one of the least parts, of their office. They are to propose new laws that are wanting for the general good, and to press the *abrogation* of laws in being, when the *execution* of them is found *prejudicial* or *dangerous* to the *public*. They are to provide for *religion*, and the *safety* and *honour* of the *nation*, they have a power (as quoted from Sir *Thomas Smith*) to order the right of the crown (understand all this with the king's consent) and they have very frequently undertaken, and actually limited the same contrary to, and different from, the common line of succession. Nay, by the statute of 13 *Eliz. cap. 1*. It is expressly Enacted, That if any person shall, in any wise, hold and affirm, or maintain, that the queen, with and by the parliament of *England*, is not able to make laws and statutes of sufficient force and validity, to limit and bind the crown of this realm, and the descent, limitation, inheritance and government thereof; or that this present statute or any part thereof, or any other statute to be made by the authority of the parliament of *England*, with the royal assent for limiting the crown, is not, was not, or shall not, or ought not to be for ever of good and sufficient force and validity to bind, limit, restrain and govern all persons, their rights and titles, that in any wise may or might claim any interest or possibility in or to the

crown of *England*, in possession, remainder, inheritance, succession, or otherwise howsoever, and all other persons whatsoever, every person so holding, affirming or maintaining, *during the life of the queen*, shall be adjudged a high traitor, and suffer, and forfeit, as in cases of high treason is accustomed, and every person so holding, affirming or maintaining, *after the decease* of our said sovereign lady, shall forfeit all his goods and chattels.

Which clause, and the last penalty, is now in force, and ought to be considered by those who may yet pretend that an act of parliament cannot dispose of the succession. The last new editions of the statutes have severally omitted the whole statute, as being expired, yet it is very evident by the words, *AFTER the decease*, that the clause here set forth is still in force.

As to the right of making war and peace, the same is granted to be part of the high prerogative of our kings, yet the wisest monarchs that have sat on the throne of these kingdoms have very seldom entred into any war without the consent of parliament: for

1. Who could give them better counsel in an affair of such moment?
2. The people would more readily expose their persons in a war, the justice and expediency whereof was approved by their representatives, than in any other.
3. The king, from thence, might more certainly promise himself supplies of money the sinews of war, to carry on the same.

Not any thing is more properly the work of a parliament, than to REDRESS GRIEVANCES; to *take notice of* MONOPOLIES and OPPRESSIONS; to *curb the exorbitances of* PERNICIOUS FAVOURITES, and ILL MINISTERS of state; to *punish such* MIGHTY DELINQUENTS *as look upon themselves too great for the ordinary reach of justice*; and to *inspect the conduct of those*
who

who are intrusted with the ADMINISTRATION OF THE LAWS, OF DISPOSAL of the PUBLICK TREASURE of the nation; all crimes of these and the like kinds, are publick nuisances, common mischiefs, wound the whole body politick in its vital parts, and can scarce be discovered or redressed (by reason of the *power and influence of the offenders*) but in this *great and awful senate*, before whom the haughtiest criminals tremble, and it has been observed that they scarce ever prosecuted any (though never so great, or highly in favour at court) but sooner or later they succeeded, and it proved the offender's ruin. *Edward the Second* had for his favourite *Pierce Gaveston* (a French gentleman); he wasted the king's treasures, had undeserved honours conferred on him, and affronted the antient nobility. The parliament in the beginning of the king's reign complained of him, and he was banished into *Ireland*: the king afterwards called him home, and married him to the earl of *Gloucester's* sister; the lords complained again so effectually, that the king not only consented to his second banishment, but that if ever he returned, or was found in the kingdom, he should be held and proceeded against as an ENEMY to the STATE. Yet he did return a second time, and was received by the king with the greatest favour: he took his favourite with him into the north, but hearing the lords were in arms to bring *Gaveston* to justice, he put him for safety into *Scarborough* castle, which being taken, his head was struck off.

In *Richard the Second's* time, most of the judges of *England*, to gratify some corrupt and pernicious favourites about the king, being sent for to *Nottingham*, were, by persuasions and menaces, prevailed upon to give false and illegal resolutions to several questions proposed to them, declaring certain matters to be treason, which in truth were not so; for which, in the next parliament, they were called to *account*, and

AT-

ATTAINED; and Sir *Robert Tresilian*, LORD CHIEF JUSTICE OF ENGLAND, was drawn from the *Tower* through *London* to *Tyburn* and there HANGED: As likewise was *Blake* one of the king's council, and *Uske* the under-sheriff of *Middlesex*, who was to back a jury to serve a peculiar purpose, against certain innocent lords, and others whom they intended to have had taken off; *five more of the judges were banished, and their lands and goods forfeited.* And the *Archbishop of York*, the *Duke of Ireland*, and the *Earl of Suffolk*, three of the king's evil counsellors, were forced to fly, and they afterwards *died miserable fugitives in foreign parts.*

In the beginning of *Henry the Eighth's* reign Sir *Richard Empson* knight, and *Edmund Dudley* one of the barons of the Exchequer, having, by colour of an act of parliament for trying people for several offences *without JURIES*, committed great oppressions, were proceeded against in parliament, and lost their heads.

In the nineteenth year of the reign of king *James*, at a parliament holden at *Westminster*, there were shewn (saith *Baker's Chron. fol. 418.*) two great examples of justice, which, for FUTURE TERROR, to use Mr. *Care's* words, are not unfit to be here related; one upon Sir *Giles Mompesson*, a gentleman, otherwise of good parts; but for practising sundry abuses, in erecting and setting up new inns and ale-houses, and exacting great sums of money of people, by pretence of *letters patents* granted to him for that purpose, was sentenced *to be degraded from his knighthood, and disabled to bear any office in the commonwealth, though he avoided the execution by flying the land:* but upon Sir *Francis Mitchel*, a justice of the peace for *Middlesex*, and one of the chief agents, the sentence of *degradation* was executed, and *he was obliged to ride with his face to the horse's tail through the city of LONDON.* The other

ex-

example was of Sir *Francis Bacon viscount St. Alban*, Lord Chancellor of ENGLAND, who for bribery was *dismissed from his place*, and *committed to the tower*, though sometime before, he obtained a verdict against a person for a *libel*, affirming that he had done injustice and other scandalous matter, and the defendant was sentenced to pay 1000 *l.* fine, to ride on a horse with his face to the tail, from the *Fleet to Westminster*, with his fault written on his head to acknowledge his offence in all the courts at *Westminster*, to stand in the *pillory*, that one of his ears should be cut off at *Westminster*, the other in *Cheapside*, and to suffer imprisonment during life. A pretty sentence to be executed in a *free* country. It may in answer be said, for the sake of order, &c. &c. it was proper. Be it so. Notwithstanding his power and abilities, that great genius at length fell, and all human nature felt the shock! but to return to our subject.

In the time of *Charles the First*, most of the judges that had given their opinions contrary to law in the case of *ship-money*, were *called to an account and forced to fly for the same*. And in the nineteenth year of *Charles the Second*, the *earl of Clarendon*, Lord Chancellor of England, that great man, being questioned in parliament, and retiring thereupon beyond the seas, was by a *special act*, *banished and disabled*. In a word, it was well and wisely said by that excellent statesman, Sir *William Cecil*, Lord *Burleigh*, and high treasurer of England, That "he knew not what an act of parliament might not do;" which apothegm was approved by king *James*, and mentioned (as Mr. *Care* remembered) in one of his published speeches.

As the jurisdiction of this court is so transcendent so the rules and methods of proceeding there, are different from those of other courts. For (saith Coke 4 Instit. fol. 15.) *As every court of justice hath laws and customs for its directions, some by the Common law, some by the*

Civil and Canon law, some by peculiar laws and customs, &c. So the HIGH COURT OF PARLIAMENT *suâ propriis legibus & consuetudinibus subsistit*. Subsists by its own peculiar laws and customs. It is, *lex consuetudo parliamenti*, The law and custom of parliament, that all weighty matter, in any parliament moved concerning the peers, and commons in parliament assembled, ought to be determined, adjudged and discussed by the course of parliament, and not by the Civil law, nor yet by the Common laws of this realm, used in more inferiour courts. Which was so declared to be *secundum legem & consuetudinem parliamenti*, according to the law and custom of parliament, concerning the peers of the realm, by the king, and all the lords spiritual and temporal; and the like *pari ratione* (for the same reason) is for the commons, for any thing moved or done in the house of commons: and the rather, for that by another law and custom 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 judicial place, and cannot be a witness. 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 law, but *secundum legem & consuetudinem parliamenti*, according to the law and custom of parliament: And so the judges in divers parliaments have confessed. And some hold that every offence committed in any court, punished by that court, must be punished (proceeding criminally) in the same court or in some higher, and not by any inferior court, and the court of parliament hath not any higher. Thus Coke.

In the reign of Charles the Second, great complaints were made about the house of commons sending for some persons into custody by their serjeant at arms, but certainly they did no more, than their predecessors had often done; every court must be supposed
armed

armed with a power to defend itself from affronts and insults. In all ages, when the house has appointed particular committees, hath it not been usual to order, that they be impowered to send for *papers, persons, and records?* But, as Mr. *Care* says, to bring men to a sober consideration of their duty and danger, we shall give a few other instances, of what the house of commons hath done in former ages.

1. *Anno 20 Jacobi*, doctor *Harris*, minister of *Bletchingly* in *Surry*, for misbehaving himself by preaching and otherwise, about elections of members of parliament, upon complaint, was called to the bar of the house of commons, and there, as a delinquent on his knees, had judgment to confess his fault there, and in the country in the pulpit of his parish church, on *Sunday* before sermon.

2. *Anno 21 Jacobi*, *Ingrey* under-sheriff of *Cambridgeshire*, for refusing the poll, upon the promise of Sir *Thomas Steward* to defend him therein, kneeling at the bar, received judgment to stand committed to the serjeant at arms, to make submission at the bar, acknowledge his offence there, to make a farther submission openly at the quarter sessions, and there also to acknowledge his fault.

3. *Anno 20 Jacobi*, the mayor of *Arundel*, for misbehaving himself in an election, by putting the town to great charge, not giving a due and general warning, but packing a number of electors was sent for by warrant, ordered to pay all the charge, and the house appointed certain persons to adjust the charges.

4. 3 *Car.* 1. Sir *William Wray*, and others, deputy lieutenants of *Cornwal*, for assuming to themselves a power to make whom they pleased *knights*, and defaming those gentlemen that then stood to be chosen, sending up and down the country letters for the trainbands to appear at the day of election, and menacing the country, under the title of *his majesty's pleasure*;

had judgment to be committed to the tower. 2. To make acknowledgment of their offence at the bar of the house upon their knees, which was done, 3. And to make an acknowledgment and submission at the assizes in CORNWAL, in a form drawn by a committee.

5. But the most remarkable proceedings are in the same parliament, anno 1628. against Dr. *Manwaring*, who being there charged with preaching and publishing offensive sermons, and the same referred to a committee, they brought in their report, which was delivered to the house with the following speech, as set forth in Dr. *Fuller's Church History*, lib. 11. fol. 129.

“ MR. SPEAKER,”

“ I AM to deliver from the sub-committee, a charge against Mr. *Manwaring*, a preacher and doctor of divinity, but a man so criminous, that he hath turned his titles into accusations; for the better they are, the worse is he, that hath dishonoured them. Here is a great charge that lies upon him, it is great in itself, and great because it hath many great charges in it; *Serpens qui serpentem devorat, fit draco*; his charge having digested many charges into it, is become a monster of charges. The main and great one is this, a plot and policy, to alter and subvert the frame and fabrick of this state and commonwealth. This is the great one, and it hath others in it that gain it more greatness; for to this end, he labours to infuse into the conscience of his majesty, *the persuasion of a power not bounding itself with laws*, which king *James* of famous memory calls, in his speech in parliament 1619. *tyranny, yea, tyranny accompanied with perjury*.

“ 2. He endeavours to persuade the consciences of the subjects, that they are bound to obey ille-
“ gal

“ gal commands ; yea, he damns them for not obeying them.

“ 3. He robs the subjects of the property of their goods.

“ 4. He brands them that will not lose this property, with most scandalous and odious titles, to make them hateful both to prince and people, so to set a division between the head and members, and between the members themselves.

“ 5. To the same end (not much unlike *Faux* and his fellows) he seems to blow up parliaments and parliamentary power. These five being duly viewed, will appear to be so many charges, and withal they make up the main and great charge a *mischievous plot to alter and subvert the frame and government of this state and commonwealth*. And now, that you may be sure that Mr. *Manwaring*, though he leave us no propriety in our goods, yet he hath an absolute propriety in his charge ; *audite ipsam belluam*, hear Mr. *Manwaring* by his own words, making up his own charge.”

Here he produced the books, particularly insisting on *p.* 19. 29. and 30. in the first sermon, *p.* 35, 36. and 48. in the second sermon ; all which passages he heightened with much acrimony, thus concluding his speech, “ I have shewed you an evil tree, that bringeth forth evil fruit ; and now it rests with you to determine, whether the following sentence shall follow, *Cut it down and cast it into the fire.*”

Four days after the parliament proceeded to his censure, consisting of eight particulars, ordered by the house of lords against him as followeth.

1. *To be imprisoned during the pleasure of the house.*
2. *To be fined a thousand pounds.*
3. *To make his submission at the bar in this house, and in the house of commons, at the bar there, in verbis conceptis,*

ceptis, a set form of words framed by a committee of this house.

4. To be suspended from his ministerial function three years, and in the mean time a sufficient preaching man to be provided out of the profits of his living, and this to be left to be performed by the ecclesiastical court.

5. To be disabled for ever hereafter from preaching at court.

6. To be for ever disabled of having any ecclesiastical dignity in the church of England.

7. To be incapable of any secular office or preferment.

8. That his books are worthy to be burned, and his majesty to be moved, that it may be so in London and both the Universities.

And accordingly he made his humble submission at both the bars in parliament, on the twenty-third of June following, and on his knees, before both houses submitted himself with outward expressions of sorrow as followeth.

“ I DO here, in all sorrow of heart, and true re-
 “ pentance, acknowledge those many errors and
 “ indiscretions that I have committed, in preaching
 “ and publishing the two sermons of mine, which I
 “ called *Religion* and *Allegiance*, and my great fault
 “ in falling upon this theme again, and handling the
 “ same rashly, scandalously and unadvisedly, in my own
 “ parish church in St. Giles’s in the fields, the fourth
 “ of May past. I do humbly acknowledge these two
 “ sermons to have been full of *dangerous passages* and
 “ *inferences*, and *scandalous aspersions*, in most part of
 “ them. And I do humbly acknowledge the just
 “ proceedings of this honourable house against me,
 “ and the just sentence and judgment passed upon
 “ me for my great offence. And I do from the bot-
 “ tom of my heart, crave pardon of God, the king,
 and

“ and this *honourable house*, and the *commonwealth in general*, and these *worthy persons adjudged to be re-flected upon by me in particular*, for these great offences and errors.”

In fact, it is the high court of parliament only that can hinder the subject from being given up as a prey to the arbitrary pleasure, not only of the prince, if he should attempt it, but (which is much worse) to the unreasonable passions and lusts of *favourites, chief ministers* and *women*; when otherwise, instead of a monarch (who as sometimes it may happen shall govern but in name) we might be ruled, like the *ancient French*, by an *insolent major of the palace*, who will be sure to mind the private interest of himself and family, more than that of the *prince*, or the *publick good*: Or like the *Turkish Empire* under a weak *Grand Signior*, by the prevailing *concubine* of the *seraglio*, who is perhaps herself managed by no other dictates, than that of her chief eunuch, or of her favourite she-slave. As Mr. Care says, it is strange, to observe the impotent ambition of some men, who (provided they may trample upon, and domineer over their inferiors) care not how much their superiors do the like over them. Their souls (like most insolent men) being mean enough to submit to it; or, who can sufficiently deplore and abhor the ignorance and stupidity of some lazy insignificant gentlemen, who care not how things go, provided they can enjoy their country diversions, and we may add, enforce the game laws, with more severity than the legislature intended, and against objects, the legislature never had in view, whilst as to divinity, and politicks, they are governed by their impertinent chaplains, or the parsons of their parish.

As at present we live under a government, the most perfect in *Europe*, where being securely landed ourselves we behold the shipwreck of our neighbours; it

is the indispensable interest and duty of every true *Briton* to maintain those privileges, which have been conveyed to us from our ancestors, through so many generations, inviolable; upon which all our temporal (and in a great measure our eternal) happiness, safety, and well being depends. And every one must acknowledge that the only right way to attain that *end*, is to observe well the *means*, which is, by taking care what persons are chosen for the people's representatives, with whom we must trust our lives, our property, and our liberties.

Although the government of a nation by a prince with the assistance of parliaments, whenever the condition and necessities of the state require them, according to its primitive institution, was, and still is the best of all others; yet there have been many ways to corrupt; as when they sit *too long*, or *too seldom*, or are *too frequently dissolved*; too frequent *dissolutions* being no less dangerous to the subject, than too long *sessions*, and many others, as appear by the act recited. Nevertheless, it may be in the electors power to avoid the inconveniencies of both, by making a good choice. To make that choice the electors ought, in every respect, to be free, impartial, and unbiaffed.

The candidate ought to be returned free from expence, those expences that are necessarily incurred, to be born by the county, city, or borough, for which the representative is chosen. He may then be expected to do justice to his constituents, but if he spends his own fortune to obtain a seat in parliament, can any elector be so weak as to suppose he will prefer their interest to his own? Have they any right to expect it? Yet how do they in general vote!

The man who wilfully gives his voice for a candidate who bribes him, uses his utmost endeavours to ruin his country, himself, and his posterity.

If

If the elector by this means becomes a slave, and his children perpetual vassals, it is no more than what he justly merits. Lord treasurer *Burleigh*, (who is said to have been the greatest statesman that ever this nation produced) has frequently laid it down as a maxim, that *England can never be undone but by a parliament*; undoubtedly foreseeing that other oppressions, as being wrought by violence, might perhaps by violence be in time shaken off again; yet judged that such mischiefs might in a parliamentary way arise, as could not ever be remedied unless by an absolute rebellion, because the parties who receive any advantage by such a law, will never agree to the repealing of it; and a rebellion is so dangerous, and of so black a character, as men either rich or conscientious, will not engage therein, and therefore not any publick mischief is so irrecoverable, as that which is grown into a law, and nothing can become so, but what is imposed by parliament. Such is the happy frame of our government, so prudently and so strongly have our ancestors secured property and liberty, (rescued by inches out of the hands of encroaching violence) that we cannot be enslaved but with chains of our own making; for as we are never undone till ruined by law; so we can never experience that mischief by a law, till we chuse legislators properly adapted for *ruin and devastation*.

It evidently appears from what has been said, of how great importance it is at all times, whenever his majesty shall be pleased to issue out his writs for a parliament, to chuse (as much as in us lies) a good house of commons, as we esteem our religion, our property, our liberties, and our posterity. For that religion, that property, those liberties, and that posterity solely depend on our choice of representatives, in parliament.

We will conclude this part of the subject with Mr. *Care's* own words.

M 2

“ Be-

“ Besides, they whom you chuse, will represent
 “ the qualities as well as the persons, and if you send
 “ up a false glass, it will represent you with an ugly
 “ face ; you have hitherto had the report of an an-
 “ tient and grave people, but if you chuse raw strip-
 “ lings, green heads, unexperienced children, the
 “ world will judge of you, as they once did of the
 “ *Grecians*, that you were either always children, or
 “ are grown twice so ; you have long been a famous
 “ religious protestant nation, but if you chuse de-
 “ bauched swearing atheists, men of no religion, or
 “ such as are mere formalists, or inclinable to pope-
 “ ry, what can the world think, but that the nation
 “ has lost its sense of religion, and is content to be
 “ led back into the *Ægyptian* darkness of *Romish* fop-
 “ peries ? You have formerly had the character of a
 “ sober temperate nation, but if you chuse drunkards
 “ for your trustees, or give your voices for those that
 “ gorge you most with liquor ; what can be supposed,
 “ but that you are already drunk with folly ; and just
 “ reeling into slavery ?”

*Some directions (by Mr. Care) concerning the choice
 of members to serve in parliament, and the qua-
 lifications that render a gentleman fit or unfit,
 worthy or undeserving of the people's voices for
 so great a trust.*

1. **A**VOID all such as hold any office of con-
 siderable value during pleasure, they being
 subject to be over-awed. For although a man with
 well to his country, and in the betraying thereof,
 knows that at the long run he mischiefs and enslaves
 his posterity if not himself, yet the narrowness of
 mens minds is such, as makes them more tenderly ap-
 prehend a small present damage, than a far greater
 hereafter

hereafter. Such men must of necessity be under great temptation and distraction, when their consciences and interest look different ways. For to say truth, such an office is but a softer word for a pension: Therefore since these men know beforehand, the inconveniences that attend the trust of a member of parliament faithfully discharged, 'tis very suspicious and reflecting upon their honesty, if any such stand for it: And I think we are bound in charity, nor can we do them a greater courtesy, than to answer their petition in the Lord's prayer,—*Not to lead them into temptation.*

2. Suspect all those (especially if they are men of ill repute) who in their profession, or near relations, have dependency upon the court. For though to be the king's servant is no bar from being a parliament man, or from serving his country honestly in that station, and no doubt, several of them have, at divers times, well discharged the same; yet frequently such persons, (unworthily) guessing at their prince by themselves, are apt to vote right or wrong, as they imagine will most please the prerogative party; and it is an hard matter for a courtier to please that great statesman and minister who supports him, and those whom he represents at the same time: And if he endeavours to oblige both, he becomes such an uncertain weather-cock, as seldom to please either. And therefore the most prudent, and most honest of the courtiers, are always observed to decline being parliament-men for this very reason.

3. Chuse not such as have been, or are like to prove pensioners, or receive salaries for *secret* services. There is none more implacably your enemy, than he whose interest it is to destroy you; that must neither eat, nor drink; except you starve; that must go in rags except you go naked; are taught to fleece you, that

they may keep themselves warm. To prevent this, avoid not only all former pensioners, but such others as may be in danger to become so, therefore do not make choice of men of necessitous fortunes, or much in debt. The representatives of a nation ought to consist of the most *wise, wealthy, sober and courageous* of the people; not men of *mean spirits, little figure, and sordid passions*, that would sell the interest of the people that chose them, to advance their own; or be at the beck of some great men, in hopes of preferment to a good employ. Those that have fair estates, have, in a manner, given hostages to their country, and must be errant fools, before they can play the knave with you. The needy passenger regards not the ship's perishing, if he can save himself in the long boat, or gain advantage by the wreck? What protection can be expected from those, who can't shew their faces with confidence, without a protection either in, or out of parliament? Who are no less apprehensive of a *bailiff*, than of the once growing greatness of the *French*; and dread not any thing so much as an *outlawry*? Will you secure them within the walls of the house of commons, who were better secured within the walls of a common gaol? Who can never pay their debts contracted by their prodigality, but out of your purses; and must run you into debt, to free themselves from their own mortgages? These men's fear of being dissolved, makes them submit to any thing rather than be left to the unmerciful rage of their creditors, who have so long waited for their money. For all such persons (though some of them may be looked upon as honest men, and good house-keepers) are in danger of being tempted to repair the decay of their own private fortunes, by the ruin of the publick; Moreover, the chusing of such broken fortunes, decays trade, and ruins whole families; insomuch that
 many

many men (contrary to their own inclinations) have on that occasion wished never to see parliaments more in *England*; in a word, if beggars ever come to be the people's representatives; how can they judge what is expedient for the nation to spare, whose only care is, to get money to spend?

4. As you are not to chuse such as are dependent on the court at home, so much less are you to elect any who have their dependance upon foreign princes or states; these are under strong obligations to see you ruined; for your own reason will tell you, that no foreign power will prodigally throw away his' pistoles, where he expects not an harvest answerable to his feed.

5. Be not fond of receiving bribes and gratifications from persons that would make a prey of you, and by their purses, lavish treats, and entertainments, would allure you to prostitute your voices for their elections; you may be assured they would never bid so high for your suffrages, but that they know where to have a return of what they spend with high interest. Chuse the worthy unwilling person, before the complimentary unworthy man, whose extraordinary forwardness indicates that he seeks not your good, but his own separate from the publick. Let us not play the fool or knave, to neglect or betray the common interest of our country, by a base election; let neither fear, flattery, nor gain bias us. Consider with yourselves what losers you will be, if to laugh and be merry one day, the person you chuse, should give you and your children occasion to mourn for ever after.—Say not, he is but a single person—one man cannot do such hurt. Silly men! What if all other places should be as bad as yourselves? Then the whole house would be of a piece; and besides, is it not well known that sometimes a single man has carried a vote, which perhaps was no less mischievous than irretrievable? Think how

justly the gallant ancients, if now living, might upbraid this baseness of ours? They sacrificed many of their children, nay, and oftentimes their own lives, for the good of their country; we on the contrary sacrifice, or at least greatly endanger our religion, lives, children and country, for the brutish pleasure of a day or two's debauchery.

6. Make not your publick choice the recompence of private favours; it is not pleasing a neighbour, because rich and powerful, but *Saving of England*, that you are to regard. Neither pay or return *private obligations at the cost of the nation*. Sir *John* is a pretty gentleman, and treats people civilly; and my landlord is a good man, and has been kind; and esquire such a one is our next justice of peace; but yet I will not give my vote contrary to my conscience, or have any hand in a choice that may ruin my country, to gratify any or all of them. Let no such engagements put you upon dangerous elections, as you love the liberties and freedom of your posterity; but tell them in this affair they must hold you excused, for that the weight of the matter will well bear it; this is your inheritance, all may depend upon it; it is a more modest request, if they would desire you to give them that freehold and estate that qualifies you for an elector, than to press you to vote for a man, that in your conscience you think unfit, or not so fit as his competitor, for so weighty a trust. Men are not used to lend their wives, or give their children, to satisfy personal kindnesses; nor ought you to exchange your birth-right (and that of your posterity too) for a feast; there can be no proportion here, and therefore none must take it ill, that you use your freedom about that which in its institution, is the great bulwark of all your ancient liberties.

7. Take care of ambitious men, and non-resident; such as live most about the town, and not with their
e ate;

estates in the country. These seek honours and preferments above, and seldom enrich or are of any service to the country by their expences or hospitality; they are too much for themselves to act vigorously for the advantage of their country; or if in the house they do for sometime act as a patriot, it is only that the court may notice them, and take them off by some preferment; and then these false patriots shall be the only advocates for unbounded prerogative.

8. Be resolved (against all temptations) not to chuse any minors. What, will you be content with sucking statesmen, beardless politicians, and Reoboam's councillors? Then expect, (for well you deserve,) to be lashed with scorpions; can you judge them fit to dispose of your liberties, lives, estates and religion, who cannot legally dispose of their own estates, or themselves? What security can they give you, that they will not give away yours and you, whose bond, in the eye of the law, will not be taken for forty shillings? But sure, your own experience of what such young green persons have *been and done* in former parliaments, hath, I hope, learned you sufficient wisdom, not to chuse the like again.

9. Elect not any prodigal or voluptuous person, for besides that, such are not regular enough to be legislators, they are commonly idle, and though possibly they may wish well to your interest, yet they will rather lose it than their pleasures; they will scarce leave one of their nightly revellings, to give you their attendance and service next day, and therefore they are not to be relied upon. And upon this occasion I shall borrow the words of an author, to whom I do not much desire to be beholden; *Some senators are drawn from their duties by pleasure; perhaps a party at tennis, bowls, cards, a pack of dogs, a cockfighting, or a horse match, a comedy, a good fellow, or a mistress. And while they are thus employed, the vigilant*
faction

faſſion ſteals a vote that is worth a kingdom.—Some again are ſo transported with the vanity of dreſs and language, that rather than ſerve the publick with one hair amiſs, or with one broken period, they will let the publick periſh, *Mallent rempublicam turbari quam capillos.* Theſe while their country lies at ſtake, are ordering of their beads, and poliſhing the phraſe, ſhaping the parts of a ſet ſpeech, till it is too late to uſe it. Nothing methinks, does leſs beſeem a grave aſſembly, than this facultatula loquendi; this ſame rhetorical tittle tattle, it ſpins out ſo much time in tedious circumſtance, that it makes a man & en ſick of a good cauſe, and for the very form, prejudice the reaſon of it.—Sloth and neglect are yet more dangerous in a ſenator, in regard of ſurprizes from the faſſion; theſe think a wet day, or a cold morning, a ſufficient diſcharge of their attendance; and while they are taking t'other nap, or t'other bottle, the monarch perhaps has loſt his crown, or the ſubject his liberty.

10. As for citizens, burgeſſes, and freemen, of cities and corporations in particular, I ſhall only ſay, That whoever is not fit to be choſen knight of the ſhire, is likewise unfit to be choſen a burgeſs. Neither let the more ſpecious pretences of any man, that ſhall promiſe to build a town-hall, or relieve the poor with money, or out of his adjacent woods, &c. deceive you; for if ſo, wherein are you wiſer than your horſes, whom you catch by ſhewing them a few oats, which they are never like to eat? Even the very mice are too wiſe to be taken by an old bait, but will have the trap new baited, before they will meddle: And yet a corporation has been taken twice by the ſame bait.

But ſuppoſe theſe men do really perform their promiſes, what compensation is that, if the ſame men ſhould lay an heavy tax upon your eſtates, without a real cauſe? Or ſhould give up the very power you have, of taxing yourſelves or chooſing your repreſen-

tatives in parliament, (for one bad parliament may ruin us) what good would the money for your poor do in such a case, more than that when you are thereby reduced to beggary, you might, perhaps, yourselves (the gentry of the country have no reason to relieve you) be forced to come in for a small share of this their hypocritical charity? An excellent reward for a knavish folly.—Neither say,—Oh! *This is but one man, and can have but one vote, he will do our town a great deal of good, and can do us but little hurt, if he would, &c.* For 1. As was mentioned before, one or two voices have, sometimes, carried a vote of great importance. 2. You know not what mischief your bad example may do in other corporations; and if all should do so, what a miserable situation would you be in; since the voices of the boroughs can make two thirds of the house. Lastly, No man can tell, the influence that one running talkative ill man, may get over the rest of the house, especially over those that weigh words more than sense or reason, and the interest of their country.

Hitherto we have wrote on negatives, and described such as are not fit to be chosen; now we come positively to describe those who are fit for a trust of so great importance. And here it will be necessary to consider for what ends they serve? Those ends are principally two. The first is, The preservation of our religion, the other to preserve inviolably our liberty and property, according to the known laws of the realm, free from the least encroachment of arbitrary rule. Therefore,

1. Take care to chuse such as are well known to be men of good principles, friends to the protestant religion, and of sufficient resolution and spirit to support it with their lives and fortunes. And especially such as will not sacrifice their neighbours property and civil rights, to their own or any other party in religion,
or

or politics. The great interest of *England*, is, to tolerate the tolerable, to bear with the weak, to encourage the conscientious, and to restrain none, but such as would restrain all besides themselves.

2. Under the second head *M. Care* recommends the choice of those gentlemen who are now owners of the abbey lands, as supposing their interest more immediately connected with the preservation of the protestant religion, than that of others; but as his work was wrote many years ago, and this new edition is intended to omit what the editors suppose unnecessary, and introduce what is more agreeable to modern times with new laws, &c. We shall on this subject only observe, and that with pleasure, that the protestant religion is now so engrafted into and made part of our constitution, and so firmly established; that there is but little probability of its being ever overturned. We have only to avoid the artifices of the *Jesuits*. That done, we apprehend our religion is not in any danger.

3. Under the third head *Mr. Care* says, endeavour to chuse men of wisdom and courage, who will not be hector'd out of their duties by the frowns and scouls of men. Never had you more need to pitch upon the old *English* spirit, that durst be faithful and just against all temptations. What a degenerate race have we known, that could never yet resist smile or frown, but tamely sunk below their own convictions, and knew the evil they did, yet durst not but commit it? These are *Mr. Care's* words, which might be apropos for the time he wrote them in. We let them stand, as such a time may come again. In the 4th and 5th heads we shall follow *Mr. Care*, (changing only a word or two.)

4. Make it your business to chuse such as are resolved to stand by, and maintain the power and privileges

vileges of parliaments (for they are the heart strings of the commonwealth) together with the power and just rights of the king according to the laws of the realm, so as the one may not inroach upon the other. And such as, with a becoming true *English* courage, will prosecute *all traitors*, whether *already impeached, or to be impeached*; to secure us from popery hereafter, and to remove *all corrupt, and arbitrary ministers of state, and wicked judges*, and others who are for a foreign interest, and the spirit of prosecution.

Lastly, Take particular notice of those who are men of industry and improvement; for such as are ingenious and laborious, to propagate the growth and advantage of their country, will be very tender of yielding to any thing that may weaken or impoverish it.

If you conduct yourselves thus prudently, honestly, and gallantly, in your choice, without putting the gentlemen, whom you chuse to serve you, to charges, the consequence will be, that as you will be sure to have a good parliament, whenever his majesty shall please to call one, and such as will be zealous for the safety of the protestant religion, and prosperity of the nation, if they shall continue to sit and act; so, on the other side, if they should be dissolved, and never so many new parliaments be called, yet you run no hazard, for the same candidates will be still ready to serve you.

And so we shall conclude our discourse of parliaments, only shall first observe, that antiently all freemen of *England*, (though not freeholders) had a right to chuse their representatives, till the same was altered and limited by the following statutes, for the reasons therein mentioned, and which we have not before set forth.

1 Hen. 5. c. 1.

What sort of people shall be chosen, and who shall be the choosers of the knights and burgeses of the parliament.

FIRST, That the statutes of the election of the knights of the shires to come to the parliament, be holden and kept in all points; (2.) Adjoining to the same, That the knights of the shires which from henceforth shall be chosen in every shire, be not chosen *unless they be resident within the shire* where they shall be chosen the day of the date of the writ of the summons of the parliament; (3.) And that the knights and esquires, and others which shall be choosers of those knights of the shires, be *also resident within the same shires*, in manner and form as is aforesaid. (4.) And moreover it is ordained and established, That the citizens and burgeses of the cities and boroughs be chosen men, citizens and burgeses *resiant, dwelling and free* in the same cities and boroughs, and no other in any wise.

The Statute anno 8 Hen. 6. cap. 7.

What sort of men shall be choosers, and who shall be chosen knights of the parliament.

ITEM, Whereas the elections of knights of shires, to come to the parliaments of our lord the king, in many counties of the realm of *England*, have now of late been made, by very great outrageous and excessive number of people, dwelling within the same counties of the realm of *England*, of the which
most

most part was of people of small substance, and of no value, whereof every one of them pretended a voice equivalent, as to such elections to be made, with the most worthy knights and esquires, dwelling within the same counties, whereby manslaughters, riots, batteries, and divisions among the gentlemen, and other people of the same counties, shall very likely rise and be, unless convenient and due remedy be provided, in this behalf. 2. Our lord the king considering the premisses, hath provided, ordained, and established by authority of this present parliament, that the knights of the shires to be chosen within the same realm of *England*, to come to the parliaments of our lord the king, hereafter to be holden, shall be chosen in every county of the realm of *England*, by people dwelling and resident in the same counties, whereof every one of them shall have free land or tenement, to the value of forty shillings, by the year, at the least, above all charges. 3. And that they which shall be so chose, shall be dwelling and resident within the same counties. 4. And such as have the greatest number of them, that may expend forty shillings by year, and above, as afore is said, shall be returned by the sheriffs of every county, knights for the parliament, by indentures sealed betwixt the said sheriffs and the said choosers so to be made. 5. And every sheriff of the realm of *England*, shall have power by the said authority, to examine, upon the Evangelists every such chooser, how much he may expend by the year. 6. And if any sheriff return knights to come to the parliament, contrary to the said ordinance, the justices of assize, in their sessions of assizes, shall have power by the authority aforesaid thereof to enquire: 7. And if, by inquest, the same be found before the justices, and the sheriff thereof be duly attainted, that then the said sheriff shall incur the pain of an hundred pounds, to be paid to our lord the king,

king, and also that he have imprisonment by a year, without being let to bail or mainprize. 8. And that the knights for the parliament, returned contrary to the said ordinance, shall lose their wages.

Provided always, That he which cannot expend forty shillings by year, as afore is said, shall in no wise be chooser of the knights for the parliament. (2.) And that in every writ, that shall hereafter go forth to the sheriffs to choose knights for the parliament, mention to be made of the said ordinances.

N O T E.

Though the statute make the penalty on a sheriff but 100 *l.* for a false return, yet the house may further punish him by imprisonment &c. at their pleasure, by the law and custom of parliament.

10 *Henr. 6. c. 2.*

Certain things required in him who shall be a chooser of the knights of parliament.

“ I T E M, Whereas at the parliament holden at
 “ *Westminster* the morrow of *St. Matthew* the
 “ apostle, the eighth year of the king that now is,
 “ it was ordained by the authority of the same parlia-
 “ ment, That the knights of all counties within the
 “ realm of *England*, to be chosen to come to the par-
 “ liaments hereafter to be holden, should be chosen
 “ in every county by people dwelling and resident in
 “ the same, whereof every one shall have freehold to
 “ the value of *forty shillings* by year at the least,
 “ above all charges, upon a certain pain contained in
 “ the same statute; (2.) Not making exprefs men-
 “ tion in the same, that every man that shall be
 “ chooser

“ choofer of any such knights, shall have freehold to
 “ the value of *forty shillings* at the least, *above all*
 “ *charges*, within the same county where such choofer
 “ with other like, shall make such election, or else-
 “ where :

“ (3.) And therefore our lord the king, willing to
 “ make plain declaration of the said statute, by the
 “ advice and assent aforesaid, and at the special re-
 “ quest of the said commons, hath ordained, That
 “ the knights of all counties within the said realm, to
 “ be chosen to come to parliaments hereafter to be
 “ holden, *shall be chosen in every county by people dwel-*
 “ *ling and resident in the same*, whereof every man shall
 “ have freehold to the value of 40s. by the year
 “ at the least, above all charges, within the same
 “ county where any such choofer will meddle of any
 “ such election.”

We shall now proceed to some other laws of a later date, relative to the preservation of our *liberties*, and in the first place set forth that excellent *petition of right*, a grant and confirmation whereof was obtained from *Charles the First*, but with some difficulty, as is hereafter shewn.

Anno regni Caroli regis tertio, cap. 1.

The petition exhibited to his majesty by the lords spiritual and temporal, and commons, in this present parliament assembled, concerning divers rights and liberties of the subjects,

To the King's Most Excellent Majesty.

HUMBLY Shew unto our sovereign lord the king, the lords spiritual and temporal and commons in parliament assembled, That whereas it is de-

N

clared

clared and Enacted by a statute made in the time of the reign of king *Edward the First*, commonly called *Statutum de tallagio non concedendo*, that no tallage or aid shall be laid or levied by the king or his heirs in this realm, without the good will and assent of the arch-bishops, bishops, earls, barons, knights, burgesses, and other *the freemen of the commonalty of this realm*: (2.) And by authority of parliament holden in the *five and twentieth* year of the reign of king *Edward the Third*, it is declared and Enacted, That from henceforth no person should be compelled to make any loans to the king against his will, because such loans were *against reason*, and the *franchise of the land*; (3.) And by other laws of the realm it is provided, that none should be charged by any charge or imposition called a benevolence, nor by such like charge, (4.) By which the statutes before-mentioned, and other the good laws and statutes of this realm, your subjects have inherited *this freedom*, that *they should not be compelled to contribute to any tax, tallage, aid, or other like charge, not set by COMMON CONSENT in parliament.*

2. Yet nevertheless, of late divers commissions directed to sundry commissioners in several counties, with instructions, have issued, by means whereof your people have been in divers places assembled and required to lend certain sums of money unto your majesty, and many of them, upon their refusal so to do, have had an oath administered unto them not warrantable by the laws or statutes of this realm, and have been constrained to become bound to make appearance and give attendance before your privy council, and in other places; and others of them have been therefore imprisoned, confined, and sundry other ways molested and disquieted, (2.) And divers other charges have been laid and levied upon your people in several counties by lord lieutenants,

nants, deputy lieutenants, commissioners for musters, justices of peace, and others, by command or direction from your majesty or your privy council, against the LAWS and FREE CUSTOMS of this realm.

3. And where also by the statute called the GREAT CHARTER OF THE LIBERTIES OF ENGLAND, it is declared and Enacted, *That no freeman may be taken or imprisoned, or be disseised of his freehold or liberties, or of his free customs, or be outlawed or exiled, or in any manner destroyed, but by the lawful judgment of his peers, or by the law of the land.*

4. And in the eight and twentieth year of the reign of king Edward the Third, it was declared and Enacted by authority of parliament, *That no man of what estate or condition that he be, should be put out of his land or tenements, nor taken nor imprisoned, nor disberited, nor put to death, without being brought to answer, by due process of law.*

5. Nevertheless, against the tenor of the said statutes and other the good laws and statutes of your realm to that end provided, divers of your subjects of late have been imprisoned without any cause shewed; (2.) And when for their deliverance they were brought before justice by your majesties writs of *Habeas corpus*, there to undergo and receive as the court should order, and their keepers commanded to certify the causes of their detainer, no cause was certified, but that they were detained by your majesties special command, signified by the lords of your privy council, and yet were returned back to several prisons without being charged with any thing, to which they might make answer according to the law.

6. And whereas of late great companies of soldiers and mariners have been dispersed into divers counties of the realm, and the inhabitants against their wills, have been compelled to receive them into their houses,

and there to suffer them to sojourn, against the laws and customs of this realm, and to the great grievance and vexation of the people.

7. And whereas also by authority of parliament, in the *five and twentieth* year of the reign of king *Edward the Third*, it is declared and Enacted, *That no man shall be forejudged of life or limb, against the form of the GREAT CHARTER and LAW OF THE LAND;* (2.) And by the said GREAT CHARTER and *other the LAWS and STATUTES of this your realm, no man ought to be judged to death, but by the laws established in this your realm, either by the customs of the realm, or by acts of parliament;* (3.) And whereas no offender of what kind soever, is exempted from the proceedings to be used, and punishments to be inflicted by the laws and statutes of this your realm; nevertheless, of late divers commissions under your majesty's Great seal have issued forth, by which certain persons have been assigned and appointed commissioners, with power and authority to proceed within the land, according to the justice of martial law, against such soldiers and mariners, or other dissolute persons joining with them, as should commit any murder, robbery, felony, mutiny, or other outrage or misdemeanor whatsoever, and by such summary course and order as is agreeable to martial law, and as is used in armies in time of war, to proceed to the trial and condemnation of such offenders, and them to cause to be executed and put to death according to the law martial.

8. By pretext whereof some of your majesty's subjects have been by some of the said commissioners put to death, *when and where, if by the laws and statutes of the land they had deserved death, by the SAME LAWS and STATUTES also they MIGHT, and by NO OTHER OUGHT to have been JUDGED and EXECUTED.*

9. And

9. And also sundry grievous offenders, by colour thereof, claiming an exemption, have escaped the punishments due to them by the laws and statutes of this your realm, by reason that divers of your officers and ministers of justice have unjustly refused or forbore to proceed against such offenders according to the same laws and statutes, upon pretence that the said offenders were punishable only by martial law, and by authority of such commissions as aforesaid; (2.) *Which commissions, and ALL OTHERS of like nature, are WHOLLY and DIRECTLY CONTRARY to the said laws and statutes of this your realm.*

10. They do therefore humbly pray your most excellent majesty, That *no man hereafter be compelled to make or yield any gift, loan, benevolence, tax, or such like charge, without COMMON CONSENT by ACT OF PARLIAMENT;* (2.) And that *none be called to make answer, or take such oath, or to give attendance, or be confined, or otherwise molested or disquieted concerning the same, or for refusal thereof;* (3.) And that *no freeman in any such manner as is before mentioned be imprisoned or detained;* (4.) And that your majesty would be pleased to remove the said soldiers and mariners, and that your people may not be *so burthened in time to come;* (5.) And that the 'foresaid commissions for proceeding by martial law, may be revoked and annulled; and that hereafter *no commissions of like nature may issue forth to any person or persons whatsoever to be executed as aforesaid,* lest by colour of them, any of your majesty's subjects *be destroyed, or put to death CONTRARY TO THE LAWS AND FRANCHISE OF THE LAND.*

11. All which they most humbly pray of your most excellent majesty, *as their RIGHTS and LIBERTIES, according to the laws and statutes of this realm;* and that your majesty would also vouchsafe to declare, that the awards, doings and proceedings to the pre-

judice of your people in any of the premises, shall not be drawn hereafter into consequence or example; (2.) And that your majesty would be also graciously pleased for the further comfort and safety of your people, to declare your royal will and pleasure, that in the things aforesaid, all your officers and ministers shall serve you according to the laws and statutes of this realm, as they tender the honour of your majesty and the prosperity of this kingdom.

An author who writes on the *Use and Abuse of Parliaments* says on this subject.

“ I N the latter end of *March* 1628, the petition of
 “ *Right* was brought in; which had for its founda-
 “ tion *Magna Charta*, six other statutes, twelve
 “ precedents in term, and thirty-one more: notwith-
 “ standing which, the king, first by the lord-keeper,
 “ and then by two messuages, endeavoured to evade
 “ the passing it into an act, though he acknowledged
 “ the said statutes to be in force; the lords, likewise,
 “ at a conference, laboured, though in vain, to slip
 “ in a salvo, *not to infringe the sovereign power*, and
 “ when it was presented to his majesty by both houses,
 “ his answer was, *Let right be done according to law;*
 “ *and the statutes be put in due execution.* But this
 “ did not give satisfaction: notwithstanding which,
 “ the king signified by message, he would not alter
 “ his answer, but on the joint petition of both houses
 “ for one more satisfactory, the king in person, upon
 “ the seventh of *June*, gave this second answer,

My Lords and Gentlemen,

T H E answer I have already given you, was made with so good deliberation, and approved by the judgment of so many wise men, that I could not have imagined, but that it should have given you

you full satisfaction; but to avoid all ambiguous interpretations, and to shew you that there is no doubleness in my meaning, I am willing to please you in words, as well as in substance; read your petition, and you shall have an answer that I am sure will please you.

And then causing the petition to be read distinctly by the clerk of the crown, the clerk of the parliament read the king's answer thereto in these words, *Soit droit fait, come est desire*, which is, Let right be done as is desired. Mr. Care says,

This answer, and the manner of confirming this law, I have the rather recited, because the king's answer and circumstances relating thereunto, are wholly left out in our last printed book of statutes.

The petition itself is so plain that there needs no comment thereon, only the reader may observe that the things therein mentioned were the *antient rights* of the people, and therefore they expressly demanded them of the king as their *rights* and *liberties*.

The author I have before quoted, on the *Use* and *Abuse* of parliaments, mentioning the passing of this at the time when the king's second answer was given says,

“ With such difficulty was this most reasonable act
 “ carried, even by this enterprizing parliament, who
 “ had already resolved, at the instance of Sir Thomas
 “ *Wentworth*, afterwards earl of *Strafford*, that grie-
 “ vances and supplies should go hand in hand to-
 “ gether;”

The same author afterwards says,

But notwithstanding this spirited parliament had weight enough with the court to carry their petition into a law, the king so far resented their subsequent attempts to obtain a more effectual and comprehensive redress of grievances, that he dissolved them without

even requiring the attendance of the commons, whom he stigmatized in his speech, as *undutiful* and *seditions*, and for *twelve years* after, never summoned another.

In the *thirteenth* year however, his majesty's *wants* got the better of his *prejudices*, and parliaments were again brought into play; but without the desired satisfaction either to the king or the nation: The first being abruptly dissolved after it had sat but three weeks and one day; and the second as absurdly rendered perpetual in effect, by the king's parting with his own power of dissolving it, unless with the Consent of both houses.

As the nation had smarted so severely by the long disuse of parliaments, it was but natural, that, when the time would permit, they should endeavour to prevent the like grievances for the future: accordingly the * triennial bill, (which was passed *February 15,*
1640-1,

* In the debate upon this bill, the lord *George Digby*, afterwards earl of *Bristol*, thus expresseth himself.

“ It hath been a maxim among the wisest legislators, that whosoever means to settle good laws, must proceed in them, with a sinister opinion of all mankind; and suppose that whosoever is not wicked, it's for want only of the opportunity. It is that opportunity of being ill, Mr. Speaker, that we must take away, if ever we mean to be happy, which can never be done, but by *the frequency of parliaments*.”

No state can wisely be confident of any public minister's continuing good, longer than the rod is over him.

Let me appeal to all those that were present in this house at the agitation of the *petition of right*: And let them tell themselves truly, of whose promotion to the management of affairs do they think the generality would, at that time, have had better hopes, than of *Mr. Noy*, and *Sir Thomas Wentworth*; both having been at that time, and in that business as I have heard, most keen and active patriots, and the latter of them to the eternal aggravation of his infamous treachery to the commonwealth be it spoken, the first mover, and insister to have this clause added to the *petition of right*.

That, for the comfort and safety of his subjects, his majesty would be pleased to declare his will and pleasure, that all his ministers should serve him according to the laws and statutes of the realm.

And

1640-1, and which provided that a parliament should be held in *England* every third year, and that the lord keeper and chancellor of the duchy should be sworn to issue the writs, or in default to lose their places,) was made use of, as a just and wholesome expedient to answer this salutary end; but agreed to by his majesty, with the worst grace in the world; since he more than hinted, that it was a favour, which they little deserved.

Upon which occasion Mr. *May*, the parliament historian, expresses himself with much good sense as follows;

IT is observable in the course of histories, how much kings, in such limited monarchies as that of *England*, do in time, by degrees, gain upon the people's rights and privileges: That those things which, by constitution of the government, the people may challenge as due from the prince, having been long forborn, become at last to be esteemed such acts of

And yet, Mr. Speaker, to whom now can all the inundations upon our *liberties*, under pretence of law, and the late shipwreck at once of all our property, be attributed more than to *Noy*, and all those other mischiefs whereby this monarchy hath been brought almost to the brink of destruction, so much to any as to that *Grand apostate* to the commonwealth, the now lieutenant of *Ireland*?

The first I hope *God* hath forgiven in the other world; and the latter must not hope to be pardoned it, in this, 'till he be dispatched to the other.

Let every man but consider those men as once they were.

The excellent law for the security of the subject, enacted immediately before their coming to employment, in the contriving whereof themselves were principal actors.

The goodness and virtue of the king they served, and yet the high and public oppressions that in his time they have wrought. And surely there is no man but will conclude with me, that as the *deficiency* of *parliaments* hath been the *causa causarum* of all the mischiefs and distempers of the present times; so the *frequency* of them is the sole catholic antidote, that can preserve and secure the future from the like.

extraordinary grace, as that the prince is highly thanked for granting them.

Such was the case of this triennial parliament bill, as both houses, afterwards, when the unhappy division began, and the king upbraided them with this favour, could plainly answer: That it was *not so much as by law they could require*; there being two statutes then in force, for a parliament *once a year*.

The triennial bill referred to, is set forth, in this work.

In the next place we shall add, the late excellent *Habeas corpus* act, because relating to the same subject, *viz.* The Freeing of the subject from *causeless, tedious and arbitrary imprisonments*.

Anno tricesimo primo Caroli Secundi Regis.

C A P. II.

An act for the better securing the liberty of the subject, and for prevention of imprisonments beyond the seas.

I. **W**HEREAS great delays have been used by sheriffs, gaolers, and other officers to whose custody any of the king's subjects have been committed for criminal, or supposed criminal matters, in making returns of writs of *Habeas corpus* to them directed, by standing out an *Alias*, and *Pluries Habeas corpus*, and sometimes more, and by other shifts, to avoid their yielding obedience to such writs contrary to their duty, and the known laws of the land, whereby many of the king's subjects have been, and hereafter may be long detained in prison, in such cases where by law they areailable, to their great charges and vexation.

II. For

II. For the prevention whereof, and the more speedy relief of all persons imprisoned for any such criminal or supposed criminal matters, (2.) Be it Enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled; and by the authority thereof, That whenever any person or persons shall bring any *Habeas corpus* directed unto any sheriff or sheriffs, gaoler, minister or other person whatsoever, for any person in his or their custody, and the said writ shall be served upon the said officer, or left at the gaol or prison with any of the under-officers, under-keepers, or deputy of the said officers or keepers, that the said officer or officers, his or their under-officers, under-keepers, or deputies shall within three days after the service thereof, as aforesaid (unless the commitment aforesaid were for TREASON OF FELONY, plainly and specially expressed in the warrant of commitment) upon payment or tender of the charges of bringing the said prisoner, to be ascertained by the judge or court that awarded the same, and endorsed upon the said writ, not exceeding twelve pence per mile, and upon security given by his own bond to pay the charges of carrying back the prisoner, if he shall be remanded by the court or judge, to which he shall be brought, according to the true intent of this present act, and that he will not make any escape by the way, make return of such writ: (3.) And bring or cause to be brought the body, of the party so committed or restrained, unto, or before, the lord chancellor, or lord keeper of the Great seal of *England* for the time being, or the judges or Barons of the said court from whence the said writ shall issue, or unto and before such other person or persons before whom the said writ is made returnable, according to the command thereof: (4.) And shall then likewise certify the true causes of his
 detainer,

detainer; or imprisonment, unless the commitment of the said party be in any place beyond the distance of twenty miles from the place or places, where such court or person is or shall be residing: And if beyond the distance of twenty miles, and not above one hundred miles, then within the space of ten days, and if beyond the distance of one hundred miles, then within the space of twenty days after such delivery aforesaid, and not longer.

III. And to the intent that no sheriff, gaoler, or other officer may pretend ignorance of the import of any such writ, (2.) Be it Enacted by the authority aforesaid, That all such writs shall be marked in this manner, *Per statutum tricesimo primo Caroli Secundi regis*, and shall be signed by the person that awards the same. (3.) And if any person or persons shall be, or stand committed or detained as aforesaid, for any crime, unless for FELONY or TREASON, *plainly expressed in the warrant of commitment*, in the vacation time, and out of term, it shall and may be lawful to and for the person or persons so committed or detained (other than persons *convict*, or *in execution* by legal process) or *any one on his or their behalf* to appeal, or complain to the lord chancellor, or lord keeper, or any one of his majesty's justices either of the one bench, or of the other, or the barons of the Exchequer of the degree of the coif. (4.) And the said lord chancellor, lord keeper, justices, or barons, or any of them, upon view of the copy or copies of the warrant or warrants of commitment and detainer, or otherwise upon oath made, that such copy or copies were denied to be given by such person or persons, in whose custody the prisoner or prisoners is or are detained, are hereby authorized and required upon request made in writing by such person or persons, or any on his, her, or their behalf, attested and subscribed by two witnesses, who were present at the delivery

livery of the same, to award and grant an *Habeas corpus* under the seal of such court whereof he shall then be one of the judges; (5.) To be directed to the officer or officers in whose custody the party so committed or detained, shall be, returnable immediate before the said lord chancellor or lord keeper, or such justice, baron, or any other justice or baron of the degree of the coif, of any of the said courts. (6.) And upon service thereof as aforesaid, the officer or officers, his or their under-officer or under-officers, under-keeper or under-keepers, or their deputy in whose custody the party is so committed or detained, shall, within the times respectively before limited, bring such prisoner or prisoners before the said lord chancellor or lord keeper, or such justices, barons, or one of them, before whom the said writ is made returnable, and in case of his absence, before any other of them, with the return of such writ, and the true causes of the commitment, and detainer. (7.) And thereupon within two days after the party shall be brought before them, the said lord chancellor or lord keeper, or such justice, or baron before whom the prisoner shall be brought as aforesaid, shall discharge the said prisoner from his imprisonment, taking his or their recognizance, with one or more surety or sureties in any sum, according to their discretions, having regard to the *quality of the prisoner*, and *nature of the offence*, for his or their appearance in the court of King's bench the term following, or at the next assizes, sessions, or general gaol-delivery of and for such county, city, or place, where the commitment was, or where the offence was committed, or in such other court where the said offence is properly cognizable, as the case shall require, and then shall certify the said writ, with the return thereof, and the said recognizance or recognizances, into the said court, where
such

such appearance is to be made. (8.) Unless it shall appear, unto the said lord chancellor, or lord keeper, or justice or justices, or baron or barons, that the party so committed is detained upon a legal process, order, or warrant out of some court that hath jurisdiction of *criminal matters*, or by some warrant signed and sealed with the hand and seal of any of the said justices or barons, or some justice or justices of the peace, *for such matters or offences for the which by the law the prisoner is NOT bailable.*

IV. Provided always, and be it Enacted, That if any person shall have *wilfully* neglected, by the space of *two whole terms* after his imprisonment, to pray a *Habeas corpus* for his enlargement, such person so *wilfully* neglecting, shall *not* have any *Habeas corpus* to be granted in vacation time in pursuance of this act.

V. Be it further Enacted by the authority aforesaid, That if any officer or officers, his or their under-officer, under-officers, under-keeper, or under-keepers, or deputy, shall neglect or refuse to make the returns aforesaid, or to bring the body or bodies of the prisoner or prisoners according to the command of the said writ, within the respective times aforesaid; or upon demand made by the prisoner, or person on his behalf, shall refuse to deliver, or within the space of *six hours* after demand shall not deliver to the person so demanding, *a true copy of the warrant or warrants of commitment and detainer of such prisoner*, which he or they are hereby required to deliver accordingly; All and every the head-gaolers, and keepers of such prisons, and such other person, in whose custody the prisoner shall be detained, shall for the *first* offence forfeit *to the prisoner or party grieved*, the sum of *one hundred pounds*; (2.) And for the *second* offence, the sum of *two hundred pounds*, and shall and is hereby made *incapable to hold or execute his said office*; (3.) The said penalties to be recovered *by the prisoner or party grieved*,

ad, his executors or administrators, against such offender, his executors or administrators, by any action of debt, suit, bill, plaint or information, in any of the king's courts at Westminster, wherein no *essoign*, protection, privilege, injunction, wager of law, or stay of prosecution by *non vult ulterius prosequi*, or otherwise, shall be admitted or allowed, or any more than one *imparlance* ; (4.) And any recovery or judgment at the suit of any party grieved, shall be a sufficient conviction for the first offence ; and any after recovery, or judgment at the suit of a party grieved for any offence after the first judgment, shall be a sufficient conviction to bring the officers or person within the said penalty for the second offence.

6. And for the prevention of unjust vexation by reiterated commitments for the same offence ; (2.) Be it Enacted by the authority aforesaid, That no person or persons which shall be delivered or set at large upon any *Habeas corpus*, shall at any time hereafter be again imprisoned or committed for the same offence, by any person or persons whatsoever, other than by the legal order, and process of such court where-in he or they shall be bound by recognizance to appear, or other court having jurisdiction of the cause ; (3.) And if any other person or persons shall knowingly contrary to this act recommit, or imprison, or knowingly procure or cause to be recommitted or imprisoned for the same offence, or pretended offence, any person or persons delivered or set at large as aforesaid ; or be knowingly aiding or assisting therein, then he or they shall forfeit to the prisoner or party grieved, the sum of five hundred pounds, any colourable pretence or variation in the warrant or warrants of commitment notwithstanding, to be recovered as aforesaid.

7. Provided always, and be it further Enacted, That if any person or persons shall be committed for high treason or felony, plainly and specially expressed in the

the warrant of commitment, upon his prayer or petition in open court the first week of the term, or first day of the sessions of Oyer and Terminer, or general gaol-delivery, to be brought to his trial, shall not be indicted sometime in the next term, sessions of Oyer and Terminer, or general gaol-delivery after such commitment, it shall and may be lawful to and for the judges of the court of King's bench, and justices of Oyer and Terminer, or general gaol-delivery, and they are hereby required, upon motion to them made in open court the last day of the term, sessions, or gaol-delivery, either by the prisoner, or any one in his behalf, to set at liberty the prisoner upon bail, unless it appear to the judges and justices upon oath made, that the witnesses for the king could not be produced the SAME term, sessions or general gaol-delivery; (2.) And if any person or persons committed as aforesaid, upon his prayer or petition in open court, the first week of the term, or first day of the sessions of Oyer and Terminer, and general gaol-delivery, to be brought to his trial, shall not be indicted and tried the second term, sessions of Oyer and Terminer, or general gaol-delivery, after his commitment, or upon his trial shall be acquitted, he SHALL be discharged from his imprisonment.

8. Provided always, That nothing in this act shall extend to discharge out of prison any person charged in debt, or other action, or with process in any civil cause, but that after he shall be discharged of his imprisonment for such his criminal offence, he shall be kept in custody according to the law, for such other suit.

9. Provided always, and be it Enacted by the authority aforesaid, That if any person or persons subjects of this realm, shall be committed to any prison, or in custody of any officer or officers whatsoever, for any criminal, or supposed CRIMINAL matter, That the said person SHALL NOT BE REMOVED FROM THE PRISON AND CUSTODY, INTO THE CUSTODY OF ANY OTHER

OTHER OFFICER or officers; (2) Unless it be by Habeas corpus, or some other LEGAL WRIT; or where the prisoner is delivered to the constable or other inferior officer to carry such prisoner to some common gaol; (3) Or where any person is sent by order of any judge of assize, or justice of the peace, to any common workhouse, or house of correction; (4) Or where the prisoner is removed from one prison or place to another within the same county, in order to his or her trial or discharge in due course of law; (5) Or in case of sudden fire or infection, or other necessity; (6) And if any person or persons shall after such commitment aforesaid MAKE OUT AND SIGN, or COUNTERSIGN ANY WARRANT or warrants FOR SUCH REMOVAL aforesaid, contrary to this act, as well he that MAKES or SIGNS or COUNTERSIGNS such warrant or warrants, as the OFFICER or OFFICERS, that obey or execute the same, shall suffer, and incur the pains, and forfeitures in this act before mentioned, both for the FIRST and SECOND offence respectively, to be recovered in manner aforesaid BY THE PARTY GRIEVED.

10. Provided also, and be it further Enacted by the authority aforesaid, That it shall and may be lawful to and for any prisoner and prisoners as aforesaid, to move and obtain his or their Habeas corpus, as well out of the high court of Chancery, or court of Exchequer, as out of the courts of King's bench, or Common pleas, or either of them; (2) And if the said lord chancellor, or lord keeper, or any judge or judges, baron or barons for the time being, of the degree of the coif of any of the courts aforesaid, in the vacation time, upon view of the copy or copies of the warrant or warrants of commitment or detainer, or upon oath made, that such copy or copies were denied as aforesaid, shall deny any writ of Habeas corpus, by this act required to be granted, being moved for as aforesaid, they shall severally forfeit to the prisoner or party
 O
 grievd,

grieved, the sum of *five hundred pounds*, to be recovered in manner aforesaid.

11. And be it declared and Enacted by the authority aforesaid, That an *Habeas corpus*, according to the true intent and meaning of this act, may be directed, and run into any county palatine, the cinque ports or other privileged places within the kingdom of *England* and dominion of *Wales*, or town of *Berwick upon Tweed*, and the islands of *Jersey* or *Guernsey*; any law or usage to the contrary notwithstanding.

12. And for preventing illegal imprisonments in prisons beyond the seas; (2) Be it further Enacted by the authority aforesaid, That no subject of this realm that now is, or hereafter shall be an inhabitant or resident of this kingdom of *England*, dominion of *Wales*, or town of *Berwick upon Tweed*, shall or may be sent prisoner into *Scotland*, *Ireland*, *Jersey*, *Guernsey*, *Tangier*, or into parts, garrisons, islands, or places beyond the seas, which are, or at any time hereafter shall be within or without the dominions of his majesty, his heirs, or successors. (3) And that every such imprisonment is hereby Enacted and adjudged to be illegal; (4) And that, if any of the said subjects now is, or hereafter shall be so imprisoned, every such person and persons so imprisoned shall and may, for every such imprisonment, maintain by virtue of this act, an action or actions of false imprisonment, in any of his majesty's courts of record, against the person or persons by whom he or she shall be so committed, detained, imprisoned, sent prisoner, or transported contrary to the true meaning of this act, and against all or any person or persons that shall frame, contrive, write, seal, or countersign any warrant or writing for such commitment, detainer, imprisonment, or transportation, or shall be advising, aiding, or assisting in the same, or any of them; (5) And the plaintiff in every such action shall have judgment to recover his

his *treble costs*, besides *damages*; which damages so to be given, shall *not* be less than *five hundred pounds*;

(6) In which action, no delay, stay or stop of proceeding by rule, order or command, nor no injunction, protection, or privilege whatsoever, nor any more than one imparlance shall be allowed, excepting such rule of the court wherein the action shall depend, made in open court, as shall be thought in justice necessary, for special cause to be expressed in the said rule; (7) And the person or persons who shall knowingly frame, contrive, write, seal or counterfign any warrant for such commitment, detainer, or transportation, or shall so commit, detain, imprison, or transport any person or persons contrary to this act, or be any ways advising, aiding or assisting therein, being lawfully convicted thereof, shall be disabled from thenceforth to bear any office of trust or profit within the said realm of *England*, dominion of *Wales*, or town of *Berwick upon Tweed*, or any of the islands, territories or dominions thereunto belonging. (8)

And shall incur and sustain the pains, penalties and forfeitures limited, ordained, and provided in and by the statute of provision and præmunire, made in the *sixteenth* year of king *Richard the Second*. (9) And be incapable of any pardon from the king, his heirs or successors, of the said forfeitures, losses, or disabilities, or any of them.

13. Provided always, That nothing in this act extend to give benefit to any person who shall by contract in writing agree with any merchant, or owner, of any plantation, or other person whatsoever, to be transported to any parts beyond the seas, and receive earnest upon such agreement, although that afterwards such person shall renounce such contract.

14. Provided always, and be it Enacted, That if any person or persons lawfully convicted of any felony, shall in open court pray to be transported beyond the

seas, and the court shall think fit to leave him or them in prison, for that purpose, such person or persons may be transported into any parts beyond the seas; this act or any thing therein contained to the contrary notwithstanding.

15. Provided also, and be it Enacted, That nothing herein contained, shall be deemed, construed, or taken to extend to the imprisonment of any person before the *first day of June one thousand six hundred and seventy and nine*, or to any thing advised, procured, or otherwise done, relating to such imprisonment; any thing herein contained to the contrary notwithstanding.

16. Provided also, That if any person or persons at any time resiant in this realm, shall have committed any *capital offence* in *Scotland* or *Ireland*, or any of the islands, or foreign plantations of the king, his heirs or successors, where he or she ought to be tried for such offence, such person or persons may be sent to such place there to receive such trial, in such manner as the same might have been used before the making of this act; any thing herein contained to the contrary notwithstanding.

17. Provided also, and be it Enacted, That no person or persons shall be sued, impleaded, molested or troubled for any offence against this act, unless the party offending be sued or impleaded for the same within *two years* at the most after such time wherein the offence shall be committed, in case the party grieved shall not be then in prison, and if he shall be in prison, then within the space of *two years* after the decease of the person imprisoned; or his or her delivery out of prison, which shall first happen.

18. And to the intent no person may avoid his trial at the assizes, or general gaol-delivery, by procuring his removal before the assizes at such time as he cannot be brought back to receive his trial there; (2)

Be

Be it Enacted, That after the affizes proclaimed for that county where the prisoner is detained, no person shall be removed from the common gaol upon any *Habeas corpus* granted in pursuance of this act, but upon any such *Habeas corpus* shall be brought before the judge of affize in open court, who is thereupon to do what to justice shall appertain.

19. Provided nevertheless, That after the affizes are ended, any person or persons detained may have his or her *Habeas corpus* according to the direction and intention of this act.

20. 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 this law, it shall be lawful for such defendants to plead the *general issue*, that they are not guilty, or that they owe nothing, and to give such special matter in evidence to the jury that shall try the same, which matter being pleaded, had been 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 alleged the same matter in bar or discharge of such information, suit or action.

‘ 21. And because many times persons charged with *petty treason or felony*, or as accessaries thereunto, are committed upon *suspicion only*, whereupon they areailable, or not, according as the circumstances making out that suspicion are more or less weighty, which are best known to the justices of peace that committed the persons, and have the examinations before them, or to other justices of the peace in the county :’ (2) Be it therefore Enacted, That where any person shall appear to be committed

by any judge, or justice of the peace, and charged as *accessary before the fact*, to any *petty treason* or *felony*, or upon *suspicion* thereof, or with *suspicion* of *petty treason* or *felony*, which *petty treason* or *felony* shall be *plainly* and *specially expressed* in the *warrant of commitment*, that such person shall *not* be removed or bailed by virtue of this act, or in any other manner than they might have been before the making of this act.

THE COMMENT.

THERE are three things, the law of *England* (which is a law of mercy) principally regards and takes care of, *viz.* *Life, liberty* and *property*. Next to a man's *life* the nearest thing that concerns him, is *FREEDOM of his person*; for indeed what is imprisonment, but a kind of civil death? Therefore saith *Fortescue, cap. 42. Angliæ Jura in omni casu LIBERTATI dant favorem.* The laws of *England* do in all cases favour *liberty*.

Touching commitments, and what is required to make a legal *mittimus*, see before.

The writ of *Habeas corpus* is a remedy given by the Common law, for such as were unjustly detained in custody, to procure their *liberty*: But before this statute, it was rendered far less useful than it ought to be, in some respect by the judges pretending in many cases a power to grant, or deny the writ at their pleasure; and in other respects by the ill practices of sheriffs and gaolers, who often put the prisoner to the charge and trouble of an *alias* and *pluries* (that is a second and third writ, before they would obey the first, for there was not any penalty 'till the third); and after obtaining that, the judges would often alledge, that they could not take bail, because the party was a *prisoner of state*, &c. Therefore to remedy all those mischiefs, this
excel-

excellent law was provided. We shall endeavour briefly to divide this act into its several branches, and explain it in a familiar manner, that every one may readily understand it, since no man is sure but he may have occasion to make use of it.

This act in the first place concerns persons committed for some or other *criminal*, or *supposed criminal* matter, besides *treason* or *felony*, and these are to have an *Habeas corpus* IMMEDIATELY; 2ly, Such who in their *mittimus* are charged with *treason* or *felony*, and these shall have the benefit of the writ after the time herein limited. 1st, If any gaoler or under-keeper shall not deliver a true copy of the *mittimus* within 6 hours after the prisoner demands it, the head gaoler or keeper forfeits *to the prisoner* for the *first* offence 100 l. for the *second* offence 200 l. and loses his place. Nor is there any fee to be paid for the same, for the turn-key must deliver it at his peril. And note; if the prisoner should be lock'd up, or none suffered to come at him, any friend of his may demand the same on his behalf.

2. Whatever the criminal matter be, if *treason* or *felony* be not *expressly charged*, any person on the prisoner's behalf, carrying a true copy of the commitment to the lord chancellor, or any one of the judges, or barons of the Exchequer, or upon oath made, that a copy was demanded and denied, he shall grant an *Habeas corpus*, or forfeit 500 l. *to the prisoner*; but note, the request must be made to such judge *in writing*, and attested by two witnesses.

3. If the sheriff or gaoler do not carry up the prisoner, and return the true causes of his detainer, within *three days*, if under *twenty miles* distance, or within *ten days* if *above twenty*, and under *one hundred miles*, or within *twenty days* if *above one hundred miles*, he forfeits 500 l. *to the prisoner*.

Note; the prisoner must pay the charges of his carrying up, and the judge when he grants the writ, may order how much, but it must not be above 12 *d.* a mile.

If upon the return of such *Habeas corpus*, it appears that the prisoner is not charged with *treason* or *felony*, SPECIALLY AND PLAINLY EXPRESSED, or for such matters, *as by law* are not bailable, the judge shall discharge the prisoner upon bail.

4. If a person once so bailed, shall again be imprisoned for the same offence, those who imprison him forfeit 500 *l.*

5. If *high treason* or *felony* is PLAINLY AND SPECIALLY EXPRESSED [That is, not only *generally*, for *treason* or *felony*, but *treason in conspiring to kill the king*, or *in counterfeiting the king's coin*, or *felony, for stealing the goods of such an one to such a value*, &c.] Then the prisoner cannot have his *Habeas corpus*, 'till he has, in the first week of the term, or on the first day of sessions of *Oyer and Terminer*, or general gaol-delivery petitioned in *open court* to be brought to his trial; and then if he is not brought to trial, he shall be bailed on the last day of the next term, or sessions; and if not indicted the second term or sessions, he shall be discharged.

6. This act extends to all places within *England* and *Wales*; the *tower* cannot be supposed to be exempted, nor *Windsor Castle*, nor any such royal forts; for the words are general: And farther, there is a special act of parliament, that unites the king's castles to the counties wherein they stand; there having been it seems some pretensions and ill practices to hold them distinct, that therein they might detain men prisoners against law, and not admit any writ to enlarge them. For remedy whereof it was thus enacted;

Anno

Anno 13 Rich. Secundi.

ITEM. It is ordained and assented, that the king's castles and gaols which were wont to be joined to the bodies of the counties, and be now severed, shall be rejoined to the same counties.

Lastly, No person shall be sent prisoner out of *England*, or *Wales*, into *Scotland*, *Ireland*, *Jersey*, *Guernsey*, *Tangier*, or any other place beyond the seas.

The proviso's and other clauses of this act may be easily understood by any one.

As the law thus provides for our liberty, so it takes care, that those that are in custody, shall not be abused or oppressed, for proof whereof we shall here insert what is material and necessary to be known by all persons, who are so unhappy as to be prisoners, from the statute of the 22d and 23d *Car. 2. cap. 28.* the words whereof are as follow ;

Whereas persons that are under arrests, or committed to the custody of sheriffs, bailiffs, gaolers, keepers of prisons, or gaols, are much abused and wronged by extorting of great fees, rewards, and other exactions, and put to great expences under pretences of favour, or otherwise, whereby they are greatly oppressed, and many times ruined in their estates.

(2) For remedy thereof, Be it Enacted by the authority aforesaid, That if any under-sheriff, bailiff, serjeant at mace, or other officer or minister whatsoever, shall at any time or times hereafter have in his or their custody, any person or persons by virtue or colour of any writ, process, or other warrant whatsoever, it shall not be lawful for such officer or officers, to convey or carry, or cause to be conveyed or carried the said person or persons to any tavern, ale-house, or other publick victualling or drinking-house, without

without the free and voluntary consent of the said person or persons, so as to charge such prisoner with any sum of money for any wine, beer, ale, victuals, tobacco, or any other things whatsoever, but what the said person or persons shall call for, of his, her, or their own accord; (3) And shall not demand, take or receive, or cause to be demanded, taken or received, *directly* or *indirectly*, any other, or greater sum or sums than what by law ought to be taken or demanded for such arrest, taking or waiting (until such person or persons shall have procured an appearance, found bail, agreed with his or their adversaries, or be sent to the proper gaol belonging to the county, city, town or place where such arrest, or taking shall be,) (4) Nor take nor exact any other reward or gratuity, for so keeping the said person or persons out of the gaol or prison, than what he, she or they shall or will of his, her, or their own accord, voluntarily and freely give; (5) Nor take, nor receive any other, or greater sum or sums for each night's lodging, or other expences, than what is reasonable and fitting in such cases, or shall be so adjudged by the next justice of the peace, or at the next quarter sessions; (6) And shall not cause or procure the said person or persons, to pay for any other wine, beer, ale, victuals, tobacco, or other things, than what the said person or persons shall voluntarily, freely, and particularly call for.

And that every under-sheriff, gaoler, or keeper of prison or gaol, and every person or persons whatsoever to whose custody any person or persons shall be delivered or committed, by virtue of any writ or process, or any pretence whatsoever, shall permit and suffer the said person or persons at his and their will and pleasure, to send for, and have any beer, ale, victuals, and other necessary food, where, and from whence they please, and also to have and use such bedding,
linen,

linen, and other things, as the said person or persons shall think fit, without any purloining, detaining or paying for the same, or any part thereof; nor shall demand, take or receive of the said person or persons, any other, or greater fee or fees whatsoever, for his, her, or their commitment, release or discharge; or for his, her, or their chamber rent, than what is allowable by law, until the same shall be settled by three justices of the peace, whereof one to be of the *Quorum*, of each particular county, city and town corporate, in their several precincts; and for the city of *London*, and counties of *Middlesex* and *Surry*, the two lord chief justices of the King's bench and Common pleas, and the lord chief baron, or any two of them, and the justices of the peace of the same, in their several jurisdictions.

And likewise that the said lord chief justices, lord chief baron, and justices of the peace in their several jurisdictions, and all commissioners for charitable uses, do their best endeavours, and diligence to examine, and find out the several legacies, gifts and bequests bestowed and given for the benefit and advantage of the poor prisoners for debt, in the several gaols and prisons in this kingdom, and to send for any deeds, wills, writings, and books of accounts whatsoever; and any person or persons concerned therein, and to examine them upon oath, to make true discovery thereof (which they have full power and authority hereby to do), and the same so found out and ascertained, to order and settle in some manner and way, that the prisoners hereafter may not be defrauded, but receive the full benefit thereof, according to the true intent of the donors.

And that these accounts of the several legacies, gifts and bequests, given and bestowed upon the several prisoners for debt, within this kingdom, and the several rates of fees, and the future government of
prisons,

prisons, be signed and confirmed by the lord chief justices, and the lord chief baron, or any two of them for the time being, and the justices of the peace in *London, Middlesex, and Surry*; and by the judges for the several circuits, and justices of the peace for the time being, in their several precincts, and fairly written and hung up in a table in every gaol and prison, before the first day of *November 1671*, and likewise be registered by each and every clerk of the peace within his or their particular jurisdiction: And after such establishment, no other or greater fee or fees than shall be so established, shall be demanded or received.

And whereas it is become the common practice of gaolers, and keepers of *Newgate*, the gatehouse at *Westminster*, and sundry other gaols and prisons, to lodge together in one room, or chamber and bed, prisoners for debt, and felons, whereby many times honest gentlemen, tradesmen and other prisoners for debt, are disturbed and hindered in the night time from their natural rest, by reason of their fetters and irons, and otherwise much offended and troubled by their lewd and prophane language and discourses, with most horrid cursing and swearing (much accustomed to such persons;) (2) Be it Enacted by the authority aforesaid, That it shall not be lawful hereafter for any sheriff, gaoler, or keeper of any gaol, or prison, to put, keep or lodge prisoners for debt, and felons together in one room or chamber; but that they shall be put, kept, and lodged separate and apart one from another, in distinct rooms; (3) Upon pain that he, she, or they which shall offend against this act, or the true intent and meaning thereof, or any part thereof, shall forfeit and lose his or her office, place or employment, and shall forfeit *treble damages* to the party grieved, to be recovered by virtue of

of this act; any law, statute, usage or custom to the contrary in any wise notwithstanding.

And as Mr. Care says, to the end that *Englishmen* may more entirely enjoy their due freedom, the prudence of our legislators have thought fit from time to time to remove encroachments thereupon, though under pretence of *jurisdictions* and *courts of justice*; and to prohibit any exorbitant arbitrary power for the future, but that all things may be left to the calm and equal proceedings of law; and that most excellent method of trial by juries, one of the principal bulwarks of *England's* liberties. For an instance hereof, the following act is set forth.

16 Car. I. c. 10.

An act for the regulating of the privy council, and for taking away the court commonly called the

S T A R - C H A M B E R.

W H E R E A S by the GREAT CHARTER many times confirmed in parliament, it is enacted, That no freeman shall be taken or imprisoned, or disseised of his freehold or liberties, or free customs, or be outlawed, or exiled, or otherwise destroyed; and that the king will not pass upon him, or condemn him, but by lawful judgment of his peers, or by the law of the land.

(2) And by another statute made in the fifth year of the reign of king Edward, it is Enacted, That no man shall be attacked by any accusation, nor forejudged of life, or limb, nor his lands, tenements, goods nor chattels seized into the king's hands, against the form of the GREAT CHARTER, and the LAW OF THE LAND;

(3) And by another statute made in the five and twentieth year of the reign of the same king Edward the

Third,

Third, it is accorded, assented, and established, That *none shall be taken by petition, or suggestion made to the king, or to his council, unless it be by indictment or presentment of good and lawful people of the same neighbourhood, where such deeds be done, in due manner, or by process made by writ original at the Common law; and that none be put out of his franchise, or freehold, unless he be duly brought in to answer, and forejudged of the same by the course of the law: And if any thing be done against the same, it shall be redressed, and bolden for NONE.* (4) And by another statute made in the *eight and twentieth* year of the reign of the same king *Edward the Third*, it is, amongst other things, Enacted, That *no man, of what estate or condition soever he be, shall be put out of his lands and tenements, nor taken, nor imprisoned, nor disinherited, without being brought in to answer by DUE PROCESS OF LAW.* (5) And by another statute made in the *two and fortieth* year of the reign of the said king *Edward the Third*, it is Enacted, That *no man* be put to answer without *presentment* before justices or *matter of record*, or by *due process* and *writ original*, according to the *OLD LAW of the land*: And if any thing be done to the contrary, it shall be *void in law*, and *bolden for error.* (6) And by another statute in the *six and thirtieth* year of the reign of the same king *Edward the Third*, it is amongst other things Enacted, That all pleas, which shall be pleaded in any courts, before any of the king's justices, or in his other places, or before any of his other ministers, or in the courts and places of any other lords within this realm, shall be entred and enrolled in Latin. (7) And whereas by the statute made in the *third* year of king *Henry the Seventh*, power is given to the chancellor, the lord treasurer of *England*, for the time being, and the keeper of the king's Privy seal, or two of them, calling unto them
a bi-

a bishop, and a temporal lord of the king's most honourable council, and the two chief justices of the King's bench, and Common pleas for the time being, or other two justices in their absence, to proceed as in that act is expressed, for the punishment of some particular offences therein mentioned. (8) And by the statute made in the *one and twentieth* year of king Henry the *Eighth*, the president of the council associated to join with the lord chancellor, and other judges in the said statute of the *third* of Henry the *Seventh* mentioned. (9) But the said judges have not kept themselves to the points limited by the said statute, but have undertaken to punish where *no law doth warrant*, and to make decrees for things, having *no such authority*, and to inflict heavier punishments, *than by any law is warranted*.

2. And forasmuch as all matters examinable or determinable before the said judges, or in the court commonly called the *Star-chamber*, may have their proper remedy and redress, and their due punishment and correction by the *Common law of the land*, and in the *ordinary course of justice* elsewhere. (2) And for as much as the reasons and motives, inducing the erection and continuance of that court do now cease; (3) And the proceedings, censures, and decrees of that court, have by experience been found to be an intolerable burthen to the subject, and the means to introduce *an arbitrary power and government*. (4) And for as much as the council hath of late times assumed unto itself, a power to intermeddle in civil and matters only of private interest between party and party; and have ADVENTURED to determine of the *estates and liberties of the subjects*, *contrary to the LAWS of the LAND, and the RIGHTS and PRIVILEGES of the subject*, by which great and manifold mischiefs and inconveniencies have arisen and

and happened, and much uncertainty, by means of such proceedings, hath been conceived concerning mens. rights and estates; for settling whereof and PREVENTING THE LIKE IN TIME TO COME,

3. Be it Ordained and Enacted by *the authority of this present parliament*, That the said court commonly called the STAR-CHAMBER, and all jurisdiction, power and authority, belonging unto, or exercised in the same court, or by any the judges, officers, or ministers thereof, be from the *first* day of *August*, in the year of our Lord God *one thousand six hundred forty and one*, CLEARLY and ABSOLUTELY dissolved, taken away and determined. (2) And that from the said *first* day of *August* neither the lord chancellor or keeper of the Great seal of *England*, the lord treasurer of *England*, the keeper of the king's Privy seal, or president of the council, nor any bishop, temporal lord, privy councillor or judge, or justice whatsoever, shall have any power or authority to hear, examine or determine any matter or thing whatsoever, in the said court, commonly called the STAR-CHAMBER, or to make, pronounce, or deliver any judgment, sentence, order or decree; or to do any judicial or ministerial act in the said court. (3) And that all and every act and acts of parliament, and all and every article, clause, and sentence in them, and every of them, by which any jurisdiction, power or authority is given, limited or appointed unto the said court, commonly called the STAR-CHAMBER, or unto all, or any the judges, officers, or ministers thereof, or for any proceedings to be had or made in the said court, or for any matter or thing to be drawn into question, examined or determined there, shall for so much as concerneth the said court of STAR-CHAMBER, and the power and authority thereby given unto it, be from the *first* day of *August* REPEALED and ABSOLUTELY REVOKED and made void.

4. And be it likewise Enacted, That the like jurisdiction now used and exercised in the court, before the president and council in the marches of *Wales*; (2) And also in the court, before the president and council established in the *Northern parts*; (3) And also in the court commonly called the *court of the duchy of Lancaster*, held before the chancellor and council of that court; (4) And also in the court of *Exchequer* of the *county palatine of Chester*, held before the chamberlain and council of that court; (5) The like jurisdiction being exercised there, shall, from the said first day of *August one thousand six hundred forty-one*, be also REPEALED, and ABSOLUTELY REVOKED, and made VOID; any law, prescription, custom or usage, or the said statute made in the third year of king *Henry the Seventh*, or the statute made in the one and twentieth of *Henry the Eighth*, or any act or acts of parliament heretofore had or made, to the contrary thereof, in any wise notwithstanding. (6) AND THAT FROM HENCEFORTH NO COURT, COUNCIL OR PLACE OF JUDICATURE, SHALL BE ERECTED, ORDAINED, CONSTITUTED OR APPOINTED WITHIN THIS REALM OF *England*, OR DOMINION OF *Wales*, WHICH SHALL HAVE, USE, OR EXERCISE THE SAME, OR THE LIKE JURISDICTION, AS IS OR HATH BEEN USED, PRACTISED OR EXERCISED IN THE SAID COURT OF *Star-chamber*.

5. Be it likewise declared, and Enacted by the authority of this present parliament, That neither his MAJESTY, NOR his PRIVY COUNCIL, HAVE, or OUGHT TO HAVE any jurisdiction, power or authority, by *English bill, petition, articles, libels, or any other ARBITRARY WAY WHATSOEVER*, to examine, or draw into question, determine or dispose of the lands, tenements, hereditaments, goods or chattels of any of the subjects of this kingdom; but that the same ought to be

P

tried,

tried, and determined in the ordinary courts of justice and by the ordinary course of law.

6. And be it further provided and Enacted, That if any lord chancellor or keeper of the Great seal of *England*, lord treasurer, keeper of the king's Privy seal, president of the council, bishop, temporal lord, privy counsellor, judge or justice *whatsoever*, shall offend, or do any thing contrary to the purport, true intent, and meaning of this law, then he or they shall for such offence *forfeit* the sum of FIVE HUNDRED POUNDS of lawful money of *England*, unto any party grieved, his executors or administrators, who shall really prosecute for the same, and first obtain judgment thereupon to be recovered in any court of record at *Westminster*, by action of debt, bill, plaint, or information, wherein no *essoign*, protection, wager of law, aid prayer, *privilege*, injunction or order of restraint, *shall be* IN ANY WISE *prayed, granted or allowed*, nor any more than one imparlance. (2) And if any person, against whom, any such judgment or recovery shall be had as aforesaid shall, after such judgment or recovery, *offend again* in the same, then he or they for such offence shall *forfeit* the sum of ONE THOUSAND POUNDS of lawful money of *England*, unto any party grieved, his executors or administrators, who shall really prosecute for the same, and first obtain judgment thereupon, to be recovered in any court of record at *Westminster*, by action of debt, bill, plaint, or information, in which no *essoign*, protection, wager of law, aid prayer, *privilege*, injunction or order of restraint, shall be IN ANY WISE *prayed, granted or allowed*; nor any more than one imparlance. (3) And if any person, against whom any such second judgment or recovery shall be had as aforesaid, shall after such judgment of recovery *offend again* in the same kind, and shall be thereof duly convicted by indictment, information, or any other lawful way or means, that such

such person so convicted shall be from thenceforth **DISABLED**, and become by virtue of this act **INCAPABLE**, *ipso facto*, to bear *his and their said office and offices respectively*; (4) And shall be likewise *disabled to make any gift, grant, conveyance, or other disposition of any of his lands, tenements, hereditaments, goods or chattels; or to make any benefit of any gifts, conveyance or legacy, to his own use.*

7. And every person so offending, shall likewise forfeit and lose *to the party grieved*, by any thing done contrary to the true intent and meaning of this law, his *treble damages*, which he shall sustain and be put unto, by means or occasion of any such act, or thing done; the same to be recovered in any of his majesty's courts of record at *Westminster*, by action of debt, bill, plaint, or information, wherein no *essoign*, protection, wager of law, aid prayer, *privilege*, injunction, or order of restraint, *shall be IN ANY WISE prayed, granted or allowed*, nor any more than one *imparlance*.

8. And be it also provided and Enacted, That if any person shall hereafter be *committed, restrained of his liberty, or suffer imprisonment*, by the order or decree of any such court of **STAR-CHAMBER**, or other court aforesaid, now; or at any time hereafter, having, or pretending to have, the same, or like jurisdiction, power or authority, to *commit or imprison as aforesaid*; (2) Or by the command or warrant of the *king's majesty, his heirs and successors in their own person*; or by the command or warrant of the *council-board*; or of *any of the lords, or others of his majesty's privy council*; (3) That in every such case, every person so *committed, restrained of his liberty, or suffering imprisonment*, upon demand or motion made by his counsel, or other employed by him for that purpose, unto the judges of the court of King's bench, or common pleas, in open court, shall without delay, upon any

pretence whatsoever, for the ordinary fees usually paid for the same, have forthwith granted unto him a writ of *Habeas corpus*, to be directed generally unto all and every sheriff, gaoler, minister, officer, or other person, in whose custody the person committed or restrained shall be. (4) And the sheriffs, gaoler, minister, officer, or other person, in whose custody the person so committed or restrained shall be, shall, at the return of the said writ and according to the command thereof, upon due and convenient notice thereof given unto him, at the charge of the party who requireth or procureth such writ, and upon security by his *own bond* given, to pay the charge of carrying back the prisoner, if he shall be remanded by the court to which he shall be brought; as in like cases hath been used; such charges of bringing up, and carrying back the prisoner, to be always ordered by the court, if any difference shall arise thereabout; bring or cause to be brought, the body of the said party so committed or restrained, unto and before the judges or justices of the said court, from whence the same writ shall issue, in open court. (5) And shall then likewise certify the *true cause* of such his *detainer* or imprisonment, and thereupon the **court**, within three court days after such return, made and delivered in open court, shall proceed to *examine* and *determine*, whether the cause of such commitment, appearing upon the said return, be just and legal or not, and shall thereupon do what to JUSTICE SHALL APPERTAIN, either by *delivering*, *bailing*, or *remanding* the prisoner. (6) And if any thing shall be otherwise wilfully done, or omitted to be done by any judge, justice, officer or other person afore-mentioned, contrary to the direction, and true meaning hereof, then such person so offending shall forfeit to *the party grieved*, his *treble damages* to be recovered by such means, and in such manner

manner as is formerly in this act limited and appointed, for the like penalty to be sued for and recovered.

9. Provided always, and be it Enacted, That this act, and the severall clauses therein contained, shall be taken and expounded to extend only to the court of STAR-CHAMBER; (2) And to the said court holden before the *president* and *council* in the *marches* of *Wales*; (3) And before the *president* and *council* in the *northern parts*; (4) And also to the court commonly called the *court of the duchy of Lancaster* holden before the *chancellor* and *council* of that court; (5) And also in the court of *Exchequer*, of the *county palatine of Chester*, held before the *chamberlain*, and *council* of that court; (6) And to *all courts of like jurisdiction*, to be *hereafter* erected, ordained, constituted, or appointed, as aforesaid; and to the warrants and directions of the *council-board*, and to the *commitments*, *restraints* and *imprisonments* of any person or persons, made, commanded or awarded by the *king's majesty*, *his heirs* or *successors*, in *their own person*, or by the *lords*, and *others of the privy council*, and every one of *them*.

And lastly, Provided and be it Enacted, That no person or persons shall be sued, impleaded, molested or troubled, for any offence against this present act, unless the party supposed to have so offended, shall be sued, or impleaded for the same, within *two years*, at the most, after such time, wherein the said offence shall be committed.

THE COMMENT.

THE court of *Star-chamber* (so called because held in a chamber at *Westminster*, the roof of which is garnished with golden stars) was not originally erected, but confirmed and established by the

statute of 3 H. 7. cap. 1. For there had before been some such jurisdiction, as *Coke* observes 4 *Inst. fol.* 62. yet there is reason to believe, that it grew up rather by *connivance* and *usurpation*, than any due course of law. The crimes it pretended to punish, were *the exorbitant offences of great men* (whom inferior judges and jurors (though they should not) would in respect of their greatness, be afraid to offend). *Bribery, extortion, maintenance, champerty, imbracery, forgery, perjury, libelling, challenges, duels, &c.* their proceedings were by *English bill* and *process under the great seal*; and the punishments by them inflicted, were *fines, imprisonment, pillory, cutting off ears, &c.* But whatever pretences there were, for the setting up this court at first, 'tis certain it was made use of as an instrument of arbitrary power, to crush any whom the *ruling ministers* and *favourites* had a mind to destroy; and indeed there were *three things* in the very nature of this court, which were destructive to the *original constitution* of our *English* government and liberties. 1. They proceeded *without juries*. 2. They pretended to a power of *examining men upon their oaths*, touching crimes by *them supposed to be committed*, which is contrary to all law and reason; for, *Nemo tenetur seipsum accusare*. No man is bound to accuse himself. 3. The judges of this court proceeded by *no known laws or rules*, but were left at liberty to act *arbitrarily*, and according to their own pleasures: Whereas the laws of *England* do not approve of the leaving any such unlimited power to be exercised by any one, but as it marks out the several species of crimes, such or such an act shall be *treason, this felony, that petty larceny, &c.* so it awards certain and positive punishments, PROPORTIONATE *to each of them*. Therefore this court being found a grievance to the subject, was by the above act dissolved and taken away.

And

And to the intent nothing of the like kind, should by any other name be practised for the future, it is declared and Enacted, That the *king* and his *privy council* shall not *question* or *dispose* of the *lands* or *goods* of any subjects: And if they do, each privy councillor present forfeits 500 *l.* to the party grieved.

A clause in the act of 31 Car. 2. cap. 1.

WHEREAS by the laws and customs of this realm, the inhabitants thereof cannot be compelled, against their wills, to receive soldiers into their houses, and to sojourn them there, Be it declared and Enacted by the authority aforesaid, That no officer, military or civil, nor any other person whatsoever, shall from henceforth presume to place, quarter or billet, any soldier or soldiers, upon any subject or inhabitant of this realm of any degree, quality or profession whatsoever, without his consent. And that it shall and may be lawful, for every such subject and inhabitant, to refuse to sojourn or quarter any soldier or soldiers, notwithstanding any command, order, warrant, or billeting whatsoever.

But the military laws are often contrary to this clause.

5 *Eliz. cap. 23.*

An act for the due execution of the writ de excommunicato capiendo.

FORASMUCH as divers persons offending in many great crimes and offences, appearing meerly to the jurisdiction and determination of the *ecclesiastical* courts and judges of this realm, are many times unpunished for lack and want of the good and due execution of the writ *Excommunicato capiendo*,

P 4

directed

directed to the sheriff of any county, for the taking and apprehending of such offenders: (2) The great abuse whereof, as it should seem, hath grown for that the said writ is not returnable into any court that might have the judgment of the well executing and serving of the said writ according to the contents thereof: (3) But hitherto have been left only to the discretion of the sheriffs and their deputies, by whose negligences and defaults for the most part the said writ is not executed upon the offenders as it ought to be: (4) By reason whereof such offenders be greatly encouraged to continue their sinful and criminous life, much to the displeasure of Almighty God, and to the great contempt of the ecclesiastical laws of this realm.

II. Wherefore for the redress thereof, be it Enacted by the queen's most excellent majesty, with the assent of the lords spiritual and temporal, and the commons, in this present parliament assembled, and by the authority of the same, that from and after the *first* day of *May* next coming, every writ of *Excommunicato capiendo* that shall be granted and awarded out of the high court of Chancery, against any person or persons within the realm of *England*, shall be made in the time of the term, (2) And returnable before the queen's highness, her heirs and successors, in the court commonly called the King's bench, in the term next after the *teste* of the same writ. (3) And that the said writ shall be made to contain at the least *twenty days* between the *teste* and the return thereof: (4) And after the same writ shall be so made and sealed, that then the said writ shall be forthwith brought into the said court of King's bench, and there in the presence of the justices shall be opened and delivered of record to the sheriff or other officer to whom the serving and execution thereof shall appertain, or to his or their deputy or deputies: (5) And if afterwards it shall

shall or may appear to the justices of the same court for the time being, that the same writ so delivered of record be not duly returned before them at the day of the return thereof, or that any other default or negligence hath been used or had in the not well serving and executing of the said writ; That then the justices of the said court shall and may, by authority of this act, assess such amerçiamment upon the said sheriff or other officer in whom such default shall appear, as to the discretion of the said justices shall be thought meet and convenient; which amerçiamment so assessed shall be estreated into the court of Exchequer, as other amerçiamments have been used.

III. And be it further Enacted by the authority aforesaid, That the sheriff or other officer to whom such writ of *Excommunicato capiendo*, or other process by virtue of this act shall be directed, shall not in any wise be compelled to bring the body of such person or persons as shall be named in the said writ or process, into the said court of the King's bench at the day of the return thereof; (2) But shall only return the same writ and process thither, with declaration briefly how and in what manner he hath served and executed the same, to the intent that thereupon the said justices may then further therein proceed, according to the tenor and effect of this present act.

IV. And if the said sheriff, or other officer to whom the execution of the said writ shall so appertain, do or shall return that the party or parties named in the said writ cannot be found within his bailiwick; that then the said justices of the King's bench for the time being, upon every such return, shall award one writ of *Capias* against the said person or persons named in the said writ of *Excommunicato capiendo*, (2) Returnable in the same court in the term time, two months at least next after the *teste* thereof, (3) With a proclamation to be contained within the said writ of
Capias

Capias, that the sheriff or other officer to whom the said writ shall be directed, in the full county court, or else at the general assizes and gaol-delivery to be holden within the said county, or at a quarter sessions to be holden before the justices of the peace within the said county, shall make open proclamation *ten days* at the least before the return, that the party or parties named in the said writ shall, within six days next after such proclamation, yield his or their body or bodies to the gaol or prison of the said sheriff or other such officer, there to remain as a prisoner, according to the tenor and effect of the first writ of *Excommunicato capiende*, upon pain of forfeiture of *ten pounds* : (4) And thereupon after such proclamation had, and the said *six days* past and expired, then the said sheriff or other officer to whom such writ of *Capias* shall be directed, shall make a return of the same writ of *Capias* into the said court of the King's bench, of all that he hath done in the execution thereof, and whether the party named in the said writ, have yielded his body to prison or not.

V. And if upon the return of the said sheriff it shall appear, that the party or parties named in the same writ of *Capias*, or any of them, have not yielded their bodies to the gaol and prison of the said sheriff or other officer, according to the effect of the same proclamation ; that then every such person that so shall make default, shall for every such default forfeit to the queen's highness, her heirs and successors, *ten pounds* ; (2) Which shall likewise be estreated by the said justices into the said court of Exchequer, in such manner and form as fines and amerciaments there taxed and assessed are used to be.

VI. And thereupon the said justices of the king's bench shall also award forth one other writ of *Capias* against the person or persons that so shall be returned
to

to have made default, with such like proclamation as was contained in the first *Capias*, and a pain of *twenty pounds*, to be mentioned in the said second writ and proclamation. (2) And the sheriff, or other officer to whom the said writ of second *Capias* shall be so directed, shall serve and execute the said second writ in such like manner and form as before is expressed for the serving and executing of the said first writ of *Capias*; (3) And if the sheriff or other officer shall return upon the said second *Capias*, that he hath made the proclamation according to the tenor and effect of the same writ, and that the party hath not yielded his body to prison according to the tenor of the said proclamation; that then the said party that so shall make default, shall for such his contempt and default forfeit to the queen's highness, her heirs and successors, the sum of *twenty pounds*: (4) Which said sum of *twenty pounds* the said justices of the King's bench for the time being shall likewise cause to be estreated into the said court of Exchequer, in manner and form aforesaid.

VII. And then the said justices shall likewise award forth one other writ of *Capias* against the said party with such like proclamation and pain of forfeiture, as was contained in the said second writ of *Capias*: (2) And the sheriff, or other officer to whom the said third writ of *Capias* shall so be directed, shall serve and execute the said third writ of *Capias* in such like manner and form, as before in this act is expressed and declared for the serving and executing of the said first and second writs of *Capias*. (3) And if the sheriff, or other officer to whom the execution of the said third writ shall appertain, do make return of the said third writ of *Capias*, that the party upon such proclamation hath not yielded his body to prison according to the tenor thereof; that then every such party for every such contempt and default shall likewise forfeit to the queen's majesty,

majesty, her heirs and successors, other xx li. (4) Which sum of xx li. shall likewise be estreated into the said court of the Exchequer in manner and form aforesaid; (5) And thereupon the said justices of the King's bench shall likewise award forth one writ of *Capias* against the said party, with like proclamation and like pain of forfeiture of xx li. (6) And that also the said justices shall have authority by this act, infinitely to award such process of *Capias* with such like proclamation and pain of forfeiture of 20 li. as is before limited, against the said party, that so shall make default in yielding of his body to the prison of the sheriff, until such time as by return of some of the said writs before the said justices it shall and may appear, that the said party hath yielded himself to the custody of the said sheriff or other officer, according to the tenor of the said proclamation; (7) And that the party upon every default and contempt, by him made against the proclamation of any of the said writs so infinitely to be awarded against him, shall incur like pain and forfeiture of 20 li. which shall likewise be estreated in manner and form aforesaid.

VIII. And be it further Enacted by the authority aforesaid, That when any person or persons shall yield his or their body or bodies to the hands of the sheriff or other officer, upon any of the said writs of *Capias*, that then the same party or parties, that shall so yield themselves, shall remain in the prison and custody of the said sheriff or other officer, without bail, baston or mainprize, in such like manner and form to all intents and purposes as he or they should or ought to have done, if he or they had been apprehended and taken upon the said writ of *Excommunicato capiendo*.

IX. And be it further Enacted by the authority aforesaid, That if any sheriff, or other officer by whom the said writ of *Capias* or any of them shall be returned, as is aforesaid, do make an untrue return upon any
of

of the said writs, that the party named in the said writ hath not yielded his body upon the said proclamations, or any of them, where indeed the party did yield himself according to the effect of the same, that then every such sheriff or other officer, for every such false and untrue return shall forfeit to the party grieved and damnified by the said return the sum of *forty pounds*; (2) For the which sum of *forty pounds* the said party grieved shall have his recovery and due remedy by action of debt, bill, plaint or information, in any of the queen's courts of record; in which action, bill, plaint or information, no effoign, protection or wager of law shall be admitted or allowed for the party defendant.

X. Saving and reserving to all archbishops and bishops, and all others having authority to certify any person excommunicated, like authority to accept and receive the submission and satisfaction of the said person so excommunicated, in manner and form heretofore used, (2) And him to absolve and release, and the same to signify, as heretofore hath been accustomed, to the queen's majesty, her heirs and successors, into the high court of Chancery; (3) And thereupon to have such writs for the deliverance of the said person, so absolved and released, from the sheriff's custody or prison, as heretofore they or any of them had or of right ought or might have had; any thing in this present statute specified or contained to the contrary hereof in any wise notwithstanding.

XI. Provided always, That in *Wales*, the counties palatine of *Lancaster*, *Chester*, *Durham*, and *Ely*, and in the *cinque ports*, being jurisdictions and places exempt, where the queen's majesty's writ doth not run, and process of *Capias* from thence not returnable into the said court of the King's bench, after any *significavit* being of record in the said court of Chancery, the tenor of such *significavit* by *mittimus* shall be sent to such of the head officers of the said county of *Wales*,

counties palatines, and places exempt, within whose offices, charge or jurisdiction the offenders shall be recaptured; that is to say, to the chancellor or chamberlain for the said county palatine of *Lancaster*, and *Chester*, and for the *Cinque ports*, to the lord warden of the same, and for *Wales* and *Ely*, and the county palatine of *Durham*, to the chief justice or justices there: (2) And thereupon every of the said justices, and officers to whom such tenor of *significavit* with *mittimus* shall be directed and delivered, shall by virtue of this estatute have power and authority to make like process to the inferior officer and officers to whom the execution of process there doth appertain, returnable before the justices there at their next sessions or courts, two months at the least after the *teste* of every such process: (3) So always as in every degree they shall proceed in their sessions and courts against the offenders, as the justices of the said court of King's bench are limited by the tenor of this act in term-times to do and execute.

XII. Provided also, and be it Enacted, That any person, at the time of any process of *Capias* aforementioned awarded, being in prison, or out of this realm in the parts beyond the sea, or within age, or of *non sana memoriae*, or woman covert, shall not incur any of the pains or forfeitures aforementioned, which shall grow by any return or default happening during such time of nonage, imprisonment, being beyond the sea, or *non sana memoriae*: (2) And that by virtue of this estatute, the party grieved may plead every such cause or matter in bar of and upon the distress, or other process that shall be made for levying of any of the said pains or forfeitures.

XIII. And that if the offender, against whom any such writ of *Excommunicato capiendo* shall be awarded, shall not in the same writ of *Excommunicato capiendo* have a sufficient and lawful addition, according to the

the form of the statute of *primo* of Henry the Fifth, in cases of certain suits whereupon process of *exigent* are to be awarded: (2) Or if in the *significavit* it be not contained, That the excommunication doth proceed upon some cause or contempt of some original matter of heresy, or refusing to have his or their child baptized, or to receive the holy communion as it is now commonly used to be received in the church of *England*, or to come to divine service now commonly used in the said church of *England*, or error in matters of religion or doctrine now received and allowed in the said church of *England*, incontinency, usury, simony, perjury, in the ecclesiastical court, or idolatry: (3) That then all and every pains and forfeitures limited against such persons excommunicate by this estatute, by reason of such writ of *Excommunicato capiendo* wanting sufficient addition, or of such *significavit* wanting all the causes afore-mentioned, shall be utterly void in law; (4) And by way of plea to be allowed to the party grieved.

XIV. And if the addition shall be with a *Nuper* of the place, Then in every such case, at the awarding of the first *Capias* with proclamation according to the form afore-mentioned, one writ of proclamation (without any pain expressed) shall be awarded into the county where the offender shall be most commonly resident at the time of the awarding of the said first *Capias* with pain in the same writ of proclamation, to be returnable the day of the return of the said first *Capias* with pain, and proclamation thereupon at some one such time and court, as is prescribed for the proclamation upon the said first *Capias* with pain: (2) And if such proclamation be not made in the county where the offender shall be most commonly resident in such cases of additions of *Nuper*, That then such offender shall sustain no pain or forfeiture by virtue of this estatute, for not yielding his or her body accord-

according to the tenor afore-mentioned; any thing before specified to the contrary hereof in any wise notwithstanding.

THE COMMENT

With a discourse on the nature of excommunication, and how to prevent or take off the writ,

DE EXCOMMUNICATO CAPIENDO;

by Mr. Care.

THOUGH excommunications pretend a title *jure divino*, as the institution of *Christ*, and therefore his *name* is made use of, as well as several *spiritual phrases* purporting that the same, and all proceedings relative thereto are by his authority; yet being so commonly thundered out, by persons who have not immediately any authority from God or the scriptures so to do, and the same being often for such trivial crimes as no law of the Deity hath ordered them against, and in such a light and precipitant manner, as no part of holy scripture warranteth: The wiser sort of men do therefore look upon them rather as excommunings, or a sort of *civil* punishment, like that in use among the Romans, *interdico tibi aqua & igni*, than one of the solemn institutions of God. And therefore waving any discourse of what spiritual influence or effect may be dreaded from the same in our days, mankind we hope are wise enough not to be terrified with that maxim of the *Canonists*, *Excommunicatio sive justa, sive injusta, est timenda*; a church curse, be it just, or unjust, is to be feared. All that we shall speak to is matter of law, as there are *legal bars*, and punishments formed by our temporal laws, as
long

long as the *legislative* power shall not be at leisure to consider of them, and (if they find it requisite) repeal them. For

1. A person *excommunicated* is forthwith *disabled to sue* in any of his majesty's courts; not that thereby he loses his right for ever, but the excommunication may be pleaded in *abatement* of his present action, 'till the same is taken off by an absolution. Yet note, That whoever is instrumental in procuring, soliciting, decreeing or pronouncing the excommunication, shall never be allowed to plead it; nor shall it be pleaded, unless the excommunication be signified by the bishop himself; for the court will not receive any certificate from any to whom they cannot write to absolve the person, if they find cause.

2. Though a person excommunicated may be appointed an executor, and is capable of having a *legacy* given him, yet so long, as he stands excommunicated, he is not allowed to *prove the will, nor sue for his legacy* in the spiritual court. But note, whereas some say a man excommunicated cannot marry; it is an error, for marriage is *de jure naturali*, and alike absurd it is for any to pretend that such a person cannot give his suffrage in any election; as for example, of parliament men, as the law allows him a voice so long as he hath a freehold of forty shillings *per annum*, tho' he were under *forty curses*.

3. If a person (justly or unjustly) *excommunicated*, continue for the space of forty days then by the *Common law*, the *bishop* certifying the same into *Chancery*, (which is called a *significavit*) there shall issue forth a writ from thence to the sheriff of the county where the party lives, to imprison him without *bail or mainprize*, till he hath made satisfaction to HOLY CHURCH.

Q

This

This is called a writ *de excommunicato capiendo*, and such imprisonment of a person *excommunicated* by a civil sanction, is not practised in any nation in the world but ours, and if it had been buried with its brother *de heretico comburendo*, I believe it would have had few tears shed at its funeral, by laymen at least. But at Common law the same writ being not returnable in any court, the sheriffs took their own time, and used their discretion in executing it; to enforce which, this statute was made, whereby it is Enacted,

1. That the said writ shall be returnable in the King's bench, yet the sheriff need not bring thither the body.

2. If the sheriff return *non est inventus*, a *Capias* shall be awarded with proclamation, to come in within 6 days; if the party do not, he forfeits 10*l.* and thenceforwards *Capias* after *Capias*, and 20*l.* forfeited on each.

3. But note, there are two cases in which, though a man stands out many proclamations, he shall not forfeit any thing. And they are these,

1. Where the party, against whom the writ *de excommunicato capiendo* is awarded, hath not therein a sufficient and lawful addition; that is (saith Cowel) a title over and above his christian and surname, shewing his *state, degree, trade, occupation, or mystery* (as Lord, Knight, Gentleman, Yeoman, Clothier, and the like) and the *Hamlet, Town, Parish and County* where he is, or lately was conversant and dwelling. And if it be with a *Nuper* (late of such a place) there must be made out one *Capias* without any penalty.

2. Where it is not expressed in the bishop's certificate, that the cause for which the party was originally cited into the spiritual court was for one of these 10 causes following, *viz.* 1. *Heresy*; 2. Refusing to
have

have children baptized; 3. Refusing to receive the Communion; 4. Refusing to come to divine service; 5. Error in religion or doctrine. 6. Incontinency; 7. Usury; 8. Simony; 9. Perjury in the ecclesiastical court; or 10. Idolatry.

To know whether there is such cause expressed, you may have a copy of the *significavit* at the *Cursitors office* in *Cbancery lane*.

In either of these cases, all pains, and forfeitures limited by the statute by reason of such writ of *Excommunicato capiendo* wanting such *addition* or *significavit*, or wanting all the causes aforesaid, shall be utterly void in law, and by way of plea be allowed to the party grieved.

Touching the authority of the courts called *spiritual* or *ecclesiastical*, whether they have any by our present laws, I shall not here debate; they that have a mind to know what is said on that theme, may read Mr. *Hickeringil's* book of *Naked truth*, or Mr. *Henry Care's* book written in the year 1664. intituled, *A true guide for all persons concerned in ecclesiastical courts*; neither of which I ever yet saw sufficiently answered; however since most certain it is, that such courts do proceed and act, we shall suppose them to have some power, and only inform our reader of the course of their practice, as it is now used, and the best course for any one to defend himself.

It is necessary to observe that persons are usually excommunicated upon *contempt* or *contumacy*, which may be,

1. *If the party being duly cited, denieth, or omitteth to appear*: For if he be not personally summoned, he needs not appear the first time; but then their way is to cite him by a writ called *viis & modis*, set up at the door of his house, or at the church doors, citing him

Q 2

at

at a certain day to appear to answer, &c. But (being personally cited) if he does not appear the first time, or whether he is or is not personally cited, if he does not appear the second time, he is *excommunicated for contempt*. If he is cited generally; the law is, *That he shall appear the third day after the service of the citation*. The law also is, that *if he will give the apparator 6 d. he must bring him the full and true copy of the citation*; if a day of appearance be mentioned, and the same be not at least the third day from the citation; or if he hath before witnesses given the apparator 6 d. to bring him a full and true copy of the citation, and he doth not, I conceive, he needs not appear, but observe what they do; and if they decree him excommunicated, he may appeal within 15 days, and bring from the *superior court*, an *inhibition* to stop their proceedings against him. And further, the rule in that law is, *Totus dies debetur delinquenti*. It is enough for a person to appear any hour of the day (provided it be a court hour) wherein he is cited to appear; so that, though he be called before he comes, yet if he appeareth that day, he shall be discharged, or he may appeal.

2. When he appeareth, he shall demand the charge against him, which is either by a *presentment* from *churchwardens*, or by a *libel*, or *articles*, which are exhibited by a *promoter*. Be it which it will, he shall demand a *copy*; if it be *denied* or *delayed*, he may bring, if he will, a *prohibition* from the *King's court at Westminster*, forbidding them to proceed in that cause, 'till they have given a full and true copy of his charge according to the statute 2 *Hen. 5. cap. 3.*

3. If he *appeareth in person*, he ought to have his charge the first court-day; if he appeareth by a *proctor*, they will usually (to get the proctor more fees) give to the second court day, to bring in the *libel* or *articles*.

4. If

4. If they deliver him not his charge the second court day, he may appeal, if upon his demand the judge will not dismiss him; or he may, if he will bring his prohibition, for want of *articles* and stop their further proceedings.

5. If the proceedings be upon a *promotion*, and the *promoter* hath employed a *proctor* in the case, the party accused must know, that no *proctor* can be admitted without a *proxy*, that is, letters *procuratory* under the *promoter's band and seal*, authorizing him to act for him in the case; and when he hath that, there must be an *act* entered in *court* to admit such a person *proctor* in the case. The party charged may go or send to the *register*, and demand a *sight of both*; the reason in law is this, because a *proctor* who molesteth any person in the name of another, without authority from him, is liable to an action at the suit of the party grieved. And secondly, *if there is not any act of court* admitting him as a *proctor*, though the party accused be conqueror in the case, yet *he cannot recover costs* because there is not any legal *adversary*, against whom they can be recovered.

6. According to the *statute law*, every *informer*, if overthrown, shall pay charges. According to the *Civil and Common law*, none ought to be admitted as a *voluntary promoter*, till he hath given security to pay the charges. If overthrown, the party accused therefore shall, before he answereth the *articles*, demand this; if it be denied by the judge, he may appeal to the superior court. It is also worthy enquiry by the person who is accused, and to be well advised, whether the *promoter* in the *ecclesiastical courts* is not obliged to all those things, that an informer in the secular courts is tied to, by the statutes 31 *Eliz.* 5. 18 *Eliz.* 5. 21 *Jac.* 4. The reason is, because those statutes say, *Informers upon any penal statutes*, and commonly *promoters*

ters in the *ecclesiastical courts*, say such and such things are done contrary to the *statutes of this realm*, as well as contrary to the *canons*: Now what things the statutes (which also name *promoters*) require of such *informers* and *promoters*, those statutes declare.

7. When the party accused hath a copy of his *libel*, let him demand time to answer; if the judge denies him time (at least till the next court-day) let him appeal; having due time granted, in the mean time let him duly consider the *matter and form of his libel*. As to which, let him amongst other things observe these that follow.

1. Whether the matter he is charged with, belong to the cognisance of the ecclesiastical court? If lawyers tell him no, let that be his answer, and let him hasten to bring his prohibition, which lies in all such causes.

2. Whether they have put into the libel the *promoter's petition for right and justice* to be done him; it is oft-times left out. It is a rule in their law, *libellus est ipso jure nullus, ubi nihil petitur*. If he finds that this is wanting, let his answer only be that the libel is in law utterly void, and insufficient, and desire to be dismissed: If the judge refuseth to dismiss him, let him appeal.

3. Let him also observe, whether he be in the articles laid to be *one of the diocese*, or a parishioner of such a parish; for if it is not so laid, it can never be proved, and the *promoter* must fail in his suit; for what is not laid, cannot be proved: *Quicquid deponitur extra articulum, deponitur extra legem*, is a rule in their law. If he be said to be a parishioner of such a place, within such a diocese, let him not in his answer confess it but say, *He cannot determine the bounds*
of

of dioceses and parishes, but for that he referreth himself to the law.

4. Let him also observe, if the thing he is charged to have done, or omitted, be within the compass of a year, and whether there hath since been *any act of grace or oblivion, which hath pardoned them; and whether they are not such things as he hath been punished for, or such things as the statute law hath limited the prosecution of to a less time than a year*: For if any of these should happen to be the case, they may be given in answer to avoid either the whole, or any part of the charge. If the judge will not accept the *answer*, the party may sue out a *prohibition* and stop them.

5. Let him also observe, *whether he be charged certainly or particularly, as to time and place, or only generally and uncertainly*; if he is charged only *generally*, as for the most part is the method in churchwardens presentments, not mentioning *time and place*; or *uncertainly* with disjunctives, that he did not come to his parish church, such and such months and days, or was absent in some one, or more, or most of them; let his answer be, that this charge is *void in law*, for the *generality or uncertainty of it*. If the judge will not receive his answer, let him *appeal*; for the law of *England* does not allow such charges, *from which there can be not any discharge*, or where the crime is not fixed to a *certain time*. But perhaps in this case, a *prohibition* will be his best remedy.

6. Let him observe, whether he is charged only upon *Statute law*, or upon *Canon*; if upon *Canon*, let him in his answer modestly refer himself to *persons learned in the statute laws*, whether any such *Canons* were ever *Enacted, ratified, allowed, or confirmed by Parliament, or by the established laws of the land*, as they stood in the year 1639, and if not, whether they are not made void by the statute 13 Car. 2.

Q 4

7. When

7. When he hath given his answer, which must be subscribed by his own hand, it is usual for the *adverse proſtor* to demand time to prove his articles, for which the judge at his pleasure granteth two, three, four, or six court days (usually but two); let him at the same time move, that he may have liberty within that time also, to produce any witnesses for his defence; if it be denied, let him appeal.

8. Let him observe what time the judge setteth his adversary to produce his witnesses in court, and whom he names as witnesses for him. Let him also desire a time to be set in court for him to produce his witnesses, and be careful to bring them at the time appointed. For they must all be sworn in court, then examined privately by the register. Unless the adversary desireth a *commission to examine* witnesses, (which is not often done, because it is much more chargeable) in that case, not any of the witnesses are produced and sworn in court, but before those commissioners.

9. If the *party defendant will*, he may deliver in to the register *interrogatories*, upon which the register shall cross-examine his adversaries witnesses. But he must be very wary as to this, as he cannot afterwards *except* against any of *those witnesses*, whom he hath cross-examined, and made witnesses for himself.

10. Let him *advise his own witnesses to be very careful that the register setteth down what they say, in their OWN WORDS, that under the pretence of putting them into a decent phrase, their whole sense be not altered.*

11. When the *time probatory*, set at first by the judge, is expired, let him desire of the judge, *publication*. If the judge will grant longer time to prove, let him desire the advantage of the same time also, to bring more witnesses for himself, which he may, or may not, make use of as he pleases. If the term
given

given for proof be expired; let him desire *publication*, and liberty to take out a *copy of the depositions*.

12. When he hath got a *copy*, let him diligently observe, if he can prove any thing contrary to what the witnesses, or any of them have sworn; if he can let him at the next court-day offer a paper of *general and particular exceptions*, shewing the particulars which he excepteth against in their *depositions* severally, as well as his *general exceptions* against them all. Let him desire time to bring in witnesses, to prove his *exceptions*. If the judge refuse to admit his *exceptions*, or to give him due time to prove them, he may again appeal.

13. When once the *promoter* hath allowed to have *publication*, he may again move for time, to invalidate the proof of the *exceptions*, but not to fortify his first proof. If any liberty of that nature be denied, the *defendant* may *appeal*; for unless in a case for the king, not any new witnesses can be produced after publication.

14. When the party against whom the *promotion* is, peruseth the *deposition*, let him strictly observe, whether the particulars he is charged with are proved by *two witnesses*; for it is a rule in their law, *vox unius est vox nullius*, and if the judge will admit the thing proved by *one witness* a prohibition lies; for the king's judges will not only see, that those courts shall keep no matters truly belonging to the temporal jurisdiction; but also that in the prosecution of those that belong to the spiritual, they shall keep to the *received rules* of their own law, in those main points of proof, &c.

15. It is an usual thing upon presentments by churchwardens, when the party presented calls for proof of the presentment, to tell them, that the *church-wardens presentment is a conviction*, they being sworn officers. But this is contrary to the law of
Eng-

England, which alloweth no *presentment by officers EX OFFICIO* to be a *conviction*. If *grand juries at assizes and sessions* do present, this is no *conviction*, but the person must afterwards be *indicted*, and *proof* made by witnesses. If therefore the ecclesiastical court insists on this, the person may appeal, or (which perhaps is better) he may have a *prohibition* from the king's court at *Westminster*, according to the opinion of some great lawyers.

16. When the *time for proof* is expired, and *publication* made, and *exceptions* given in and proved, and *publication* of those proofs also made; either party may move for a time to be set, to conclude, and to give the judge *information* of the whole state and merit of the case, and for him to give sentence therein.

17. At the dayset, the party accused, or promoted against, may appear, and shew to the judge the whole state of the case, and plead it himself; or, by an advocate, or, for ought I know, if there be none, by *attorney*, or *barrister at Common law*; after which the judge will, upon desire, appoint a day to give sentence.

18. At that day the party must have the form of an *absolatory sentence*, ready to tender to the judge. If the judge give sentence against him, he may appeal within 15 days, by virtue of the statute 24 Hen. 8. 12.

19. During the whole time of the *prosecution*, it will be adviseable for the person against whom the same is instituted, after every court, to get the *acts of the court in his case*, under the register's hand, and to keep them by him carefully. So much I thought fit to add here for the reader's instruction, how to behave and conduct himself when troubled in *those courts*, because it is a practice very little understood,
by

apprehended, only this must be *within a year* after his appeal, that it may appear to the court, he hath not deserted his appeal; you may find forms of such a *superfedeas* in the *Register of original writs*; both these are founded upon excellent reason. The law of *England* will not suffer ecclesiastical judges, either to invade their right, or to exalt themselves against their authority, nor yet suffer *inferior ecclesiastical courts* to invade the *right, power and authority of superior courts* in their own order.

3. *If a person be sued in the ecclesiastical courts for a matter not within their jurisdiction, and they have caught him upon contempt, in not appearing or not obeying their sentence*; upon a suggestion to the king's courts, if it appear to them, that the original matter was not cognizable in the ecclesiastical courts, they will *superfede* the proceedings, and order the imprisoned person to be discharged.

4. *If the imprisoned person, or he against whom the writ is out, though he be not taken, bring a copy of the bishop's significavit into the courts at Westminster, and make it appear to the judges there, that the cause of excommunication is not therein expressed, together with the day when it was pronounced*; if he be not said to be excommunicated *majori excommunicatione*; if it be not signed by the bishop, or said to be done *authoritate nostra ordinaria*; if the party excommunicated be not expressed by name, the court will deliver the person. Dr. Cozens mentions three of these cases, and the reader may find two of them in the *Register of writs*. The first he saith he cannot find in the *Register*, viz. *That the articles or matter of the libel must be expressed*; nor indeed do I find it there, but it is in several reports. The reasons are, 1. Because the law will not suffer men to be imprisoned for every slight offence, (this Dr. Cozens gives.) 2. Because the king's

king's courts can receive *significavit* from none but the person to whom (if need be) they may write to discharge the prisoner: Nor will the court suffer a person to be excommunicated, and lie in prison for a crime which the ecclesiastical court hath not any judgment in; nor yet unless it appeareth to the court, he hath stood *forty days* excommunicated. Again heretofore whole cities and communities have been excommunicated, therefore the person must be expressed by *name*, or he shall not lie there.

5. Let him procure the copy of the writ *de excommunicato capiendo*, and observe, First, *If it be issued in term time.* 2. *If there were full twenty days between the teste and return.* 3. *If it be made returnable the next term.* 4. *If there be due additions in it.* 5. *If before it was delivered to the sheriff, it was entered upon record in the King's bench, and made returnable into that court.* All these things are required by the statute 5 Eliz. 23. If error is found in any of these particulars, he shall upon motion in the King's bench be discharged, and the writ will be declared *illegal*.

Lastly, If he cannot be delivered by any of these ways, he may at any sealing in the *Chancery*, whether it be in term, or out of term, upon a petition to, or motion before the lord chancellor have the writ *de cautione admittenda* granted him (in case he hath before offered the bishop a bond of 10*l.* or 20*l.* with sureties *stare & parere mandatis ecclesie in forma juris*); when he hath it, let some attorney attend the bishop with it, tender him a bond and sufficient sureties, and demand the discharge of the prisoner; if it be not presently done, let him certify so much, and at the next seal move for a second writ to the bishop; or (which perhaps is more adviseable) let him move for a second writ to be directed to the sheriff, (the form of it is in the Register.) In that the king com-

mandeth the sheriff to admonish the bishop to accept the *caution*, and to deliver the *prisoner*, and further commands him, that in case he doth it not in his presence, the sheriff should do it himself. If the sheriff yields not obedience; upon another motion, he ought to have a writ to the coroners, commanding them to take security of the sheriff to appear at *Westminster* such a day, to shew reason why he hath contemned the king's writ; and further it commandeth the coroners to take the caution of the prisoner, and to deliver him. The reader may find all this in the Register where the forms of these writs are, and also in *Dr. Cozen's apology*, p. 1. c. 2. who being himself a *judge* in the ecclesiastical courts, cannot be presumed to have told us any thing but what is *law*, contrary to their own interest.

It is true, the bishop upon taking such *cautionary bonds* doth commonly insist upon the person's paying the prosecutor's charges, but it is unreasonable, 1. Because he hath nothing to do but to execute the command of the writ, which mentions not a word of charges. 2. Because, if the charges are legally due, the promoter must have also a legal way to recover them; if not, it is extortion for the ecclesiastical judge to exact them. 3. Because it is not a sufficient return to the king's writ, which does not mention any such thing, to say, he could not discharge the prisoner, because he would not pay the promoter's charges.

But

BRITISH LIBERTIES, &c. 239

But as the legal charges are small, the prisoner for his liberty usually pays them. These are as follow.

For the adversary's proctor every court-day until he was excommunicated, and that day when the <i>significavit</i> was decreed: for every day	—	l.	s.	d.
		00	01	00

For the proctor's procuratory letter, seal and wax	—	00	01	08
--	---	----	----	----

For certifying the service of the citation	—	00	00	06
--	---	----	----	----

For the articles, if there were any		00	05	00
-------------------------------------	--	----	----	----

For an act of court, for every day		00	00	02
------------------------------------	--	----	----	----

For the <i>significavit</i>	—	00	05	00
-----------------------------	---	----	----	----

For the <i>significavit</i> to deliver the prisoner	—	00	05	00
---	---	----	----	----

For the excommunication and schedule	—	00	02	04
--------------------------------------	---	----	----	----

For the writ <i>de excommunicato capiendo</i> , and the charge of entring it upon record in the King's bench	—	01	01	00
--	---	----	----	----

About	—	02	01	08
-------	---	----	----	----

If the business have proceeded no further than a libel and articles, this is all the legal charges; but if it hath proceeded further, there may be for the copy of the answer

	—	00	00	09
--	---	----	----	----

For every witness examined <i>i.s.</i> and for the first	—	00	01	06
--	---	----	----	----

For a fee to the proctor at inform.		00	03	00
-------------------------------------	--	----	----	----

For a definitive sentence	—	00	11	00
---------------------------	---	----	----	----

For the advocate at the sentence		00	10	00
----------------------------------	--	----	----	----

Note however, the charges are *more* or *less*, according to the proceeding in the case before the *excommunication*.

If

If the bishop will not take the *caution*, and discharge you, you may, as before observed, have a second *writ* directed to the *high sheriff*, commanding him to go to the bishop, and require him to take the caution, and to deliver the prisoner, and requiring him to do it *himself*, if the bishop still refuse. And if the sheriff do not do so, you may have a writ to the same purpose directed to the *coroner*, for which see that authentic law-book, *The register of original writs*, fol. 66 and 67. So careful were our forefathers for the liberty of the subject. And hereby it appears that the bishop is bound by law to take such caution, that is, *fidejussory caution*, I mean by *bond and sureties*, and thereupon to absolve the person excommunicated, though he will not take an oath, *stare mandatis ecclesie, to obey the commands of holy church*. As for what shall be accounted such *sufficient caution*, the practice is for the party and two friends (for there must be two sureties) to be bound in a bond of 10 *l.* seldom more, or at most 20 *l.* to the bishop, conditioned, that the party shall obey the commands of the church.

By the statute of *Car. 1. cap. 11.* For taking away the high commission court, there is the following clause.

AND be it also Enacted by the authority
 aforesaid, That no arch-bishop, bishop, nor
 vicar general, nor any chancellor official, nor com-
 missary of any arch-bishop, bishop, or vicar gene-
 ral, nor any ordinary whatsoever, nor any other
 spiritual or ecclesiastical judge, officer or minister
 of justice, &c. shall *ex officio*, or at the instance, or
 promotion of any other person whatsoever, urge, en-
 force, tender, give or minister unto any church-
 warden, sideman, or other person whatsoever, any
 corporal oath, whereby he or she shall or may be
 charged

' charged or obliged to make any presentment of any
 ' crime or offence, or to confess or to accuse himself
 ' or herself of any crime, offence, delinquency or mis-
 ' demeanor, or any neglect, matter or thing, where-
 ' by or by reason whereof he or she shall or may be
 ' liable, or exposed to any censure, pain, penalty, or
 ' punishment whatsoever; upon pain and penalty that
 ' every person who shall offend contrary to this statute
 ' shall forfeit and pay *treble damages* to every person
 ' thereby grieved, and the sum of 100*l.* to him or
 ' them who shall first demand and sue for the same.'

And though by the statute 13 *Car. 2. cap. 12.* part
 of the above statute is repealed, yet this clause is ex-
 cepted, and confirmed by an express proviso of the
 last act. There are many precedents since the resto-
 ration of *Charles the Second*, where churchwardens
 being prosecuted in the spiritual court for not swear-
 ing to the bishops *book of articles* of inquiry, have
 moved *the King's bench* or *Common pleas*, and ob-
 tained a *prohibition* to stop such proceedings; par-
 ticularly in the case of one *Waters of Chichester* in
 the *Common pleas*.

R

O N

O N

PROTESTANT DISSENTERS, &c.

AN D now coming to speak of the laws upon which *Protestant Dissenters* have been often and may again be prosecuted, we must for the better understanding of those laws, distinguish them; for they are of *two* different kinds.

1. Several *statutes* which were wholly designed against *Papists*, and ought only to be exerted against them, have been according to Mr. *Care* by some attempted to be wrested and distorted, and used as *rods* wherewith to lash dissenting protestants for not going to church, receiving the sacrament, &c.

2. The laws that were indeed made against Puritan *Secularies*, (as they call them) or dissenting protestants. We shall pursue Mr. *Care*, and first briefly sum up all the former sort, how many and what they are, and shew the reasons why they ought not to be turned upon such dissenters. The statutes meant are *five*, viz. The first *Elizabeth*, cap. 2. The 23 *Elizabeth*, cap. 1. The 29 *Elizabeth*, cap. 6. The 1 *Jac.* cap. 4. and 3 *Jac.* cap. 4.

1. The act of the 1 *Eliz.* cap. 2. was made immediately after that queen's coming to the crown, when she found nothing but papists and protestants in general. For the word *Puritan* in those days was not known, (much less our modern terms of reproach, *Whig*, *Secular* or *Fanatick*) and she being a good Protestant having been educated in that religion, and resolved to support it, consulting with her council how

to act, that the indifferent and moderate sort of papists might not be too much disgusted or alienated from the protestant religion; but be rather invited to come in; it was on mature deliberation concluded to proceed gently in the reformation; consequently not to expunge all the ceremonies at once: And therefore having a pattern of protestant discipline in king Edward the Sixth's time, she followed the same steps as near as could be in the beginning, and built on the same foundation which her pious brother and his wise and honest council had laid. In pursuance of this resolution the first act she passed, was to take off the jurisdiction of the see of ROME (which had been re-introduced by her sister Mary (of unbappy memory) and to take off all coercive power whatsoever from ecclesiastical persons, which was done, and the whole resumed and re-annexed to the imperial crown of these realms. This act was intituled, *An act to restore to the crown the ANTIEN T jurisdiction, &c.* 1 Eliz. cap. 1. And hereby all the laws made in the time of queen Mary for settling the pope's authority in England were repealed. And by sect. 18. power is given to the queen to grant commissions under the broad seal of England to such [bishops or laymen] as she should appoint to hold ecclesiastical courts, and none might do it without, upon pain of a *præmunire*, and the oath of *supremacy* is hereby formed and enjoined.

The very next act is, That which we have now under consideration, intituled, *An act of uniformity, and common prayer, and service in the church, and administration of the sacrament*, which among other things inflicts the penalty of 12 d. for not coming to church every sunday and holy-day.

Now that this act was intended against papists may be concluded as well, because the whole act runs for the expelling of the fopperies and superstitions of the church of Rome, and how could it mean any sort

of protestants, since at that time there were none but papists and churchmen in *England*.

This twelve-pence is not forfeited 'till conviction which must be by a jury; for which purpose, the justices of Oyer and *Terminer*, and of assize, and mayors and head-officers of corporations are authorized to inquire, hear and determine the same.—But the party must be indicted the next sessions or assizes after the offence or not at all. So that on this act no one can be prosecuted at once for any more defaults than there are *sundays* and holy-days between one sessions or assizes and another; when the party is so convicted, the same courts are to make out process for levying the shillings, which shall be levied by the churchwardens for the use of the poor.

However there being 52 *sundays* and 29 holydays (appointed by our liturgy to be observed) in the year, the constant charge by this statute for not coming to church would be but 4*l.* 1*s.* *per annum*. So that if any one should be busy to execute this act upon such protestants as are dissenters from the established church of *England*, yet considering the trouble and charges attending such a conviction, there is little fear of prosecutions on this act.

2. The second act of this kind, is 23 *Eliz. cap. 1.* intituled an act to retain the queen's majesty's subjects in their due obedience, and by this, to reconcile any, or for any to be reconciled to the see of Rome, to withdraw or be withdrawn from the established religion, to the Romish religion, is made *high treason*; and that every one saying *mass* shall forfeit 200 marks, and every one that hears it 100 marks, and every one above 16 years old not repairing to some church or chapel, but forbearing the same contrary to the *said statute* 1 *Eliz. c. 2.* shall, being lawfully convicted, forfeit 20*l.* for every month. The justices at the quarter sessions are impowered to enquire into offences against
this

this act, except treason. And if any indicted hereon (except for treason) will submit in open court and conform before judgment given, he shall be discharged.

That this statute was expressly and wholly made against the papists is evident by the whole scope thereof, as punishing saying of *mass* and drawing the queen's subjects to popery, &c. more especially by the preamble (which always opens and declares the scope of a law) whereas since the statutes made in the 13th year of the reign of the queen, intituled, *An act against the bringing in, and putting in execution of bulls, writings and instruments, and other superstitious things from the see of Rome*, diverse ill affected persons have practised by other means than by bulls or instruments written or printed to withdraw her majesty's subjects to obey the said usurped authority of *Rome*, and in respect of the same to persuade great numbers to withdraw their due obedience from her majesty's laws, established for the due service of Almighty God.—For reformation whereof, be it Enacted, *viz.* That to withdraw to the church of *Rome* shall be *treason*; and not coming to church shall forfeit 20 *l. per month*.—Nothing can be plainer than that this was levelled *wholly against the papists*, and cannot at all affect dissenting protestants.

3. The statute of 29 *Eliz. cap. 6.* is only a reinforcement of the last act, and therefore must be intended of the same persons, *viz. popish recusants* [for as yet there were no other] whose penalties this statute encreases for not coming to church; by the former statute of the 23d it was to be only 20 *l. per month* and bound to their *good behaviour* after conviction. *This* gives to the queen and her heirs, a right to 20 *l. per month* for every month after such conviction 'till they come to church; And if default be made in payment of the 20 *l.* a month, then to seize all

R 3

their

their goods, and two parts of their real estate.—But this is still concerning *popish recusants*, for it respects the same that were offenders against the statute of the 23d; and they were *only papists*: Therefore as Mr. Care observes it would be absurd and unjust to turn the edge of it upon protestants.

4. We come now to the statute of 1 Jac. cap. 4. which confirms all the former statutes made against *popish recusants* in the queen's time, but provides for their being discharged, though convicted, upon their coming to church.

And that it means and intends none but JESUITS POPIH PRIESTS and other *popish recusants*, appears manifestly, not only in the title but in the first section of the act itself, and so throughout: The title is, *An act for the due execution of the statutes against JESUITS, SEMINARY PRIESTS, recusants*, [the two former words including the *Romish clergy*, the latter the *laity*] &c. and begins thus *For the better and more due execution of the statutes heretofore made [against whom?] as well against JESUITS, SEMINARY PRIESTS and other such like PRIESTS [that is, other POPIH PRIESTS though not bred up in the seminaries] as also against all manner of recusants [that is papists though not in orders. Be it Enacted, &c. that all and every the statutes heretofore made against JESUITS, SEMINARY PRIESTS and OTHER PRIESTS, DEACONS, and RELIGIOUS and ECCLESIASTICAL PERSONS WHATSOEVER, made, ordained or professed, or so to be made by any authority or jurisdiction derived, challenged, or pretended from the see of ROME together with all those made against any manner of recusants [that is papists still, but laymen not in orders nor professed of any order of monks or friars as those before mentioned were] shall be put in due and exact execution.*—Nothing, as Mr. Care observes, can be more absurd

furd than to rack and force this law so far besides its scope, as to make use of it against protestants agreeing with the church of *England* in all the doctrines, and only differing in a few indifferent ceremonies, when it most manifestly appears intended only against **JESUITS, ROMISH PRIESTS, and other papists.**

It is hoped the many Jesuits now in this kingdom, and in *Ireland*, if this publication ever reaches that Island, will notice these laws, and it is likewise hoped, the laws in force against papists will be, with proper caution, carried into execution, so far, as to frustrate the present intentions of those Jesuits that are now in these kingdoms.

5. The discovery of the *powder-plot* charged on the papists occasioned the making of the statute 3 *Jac. cap. 4.* intituled, *An act for discovering and repressing popish recusants.* So that both the occasion and the very title shews evidently against whom this act was designed: It also appears further in the preamble; the whole purport of the act being only to reinforce the rest of the acts against *popish recusants*, and as thereby appears because some of them did come to church and hear *divine service*, to save the penalties in the former acts, and yet continued *papists still in their hearts.* Therefore by this act they were all to take the sacrament once a year, and if they refused they were to forfeit 20 *l.* the first year, for the second year 40 *l.* and for every year afterwards 60 *l.* until he or she had received the sacrament.

By the 4th section, the churchwardens and constables are to present the monthly absence of all *popish recusants*—but they are not bound by this act to present any but papists, for we may observe, that none can be prosecuted upon this act or any of the others which it refers to, (*viz.* all those here before rehearsed) unless they are *popish recusants*, for so are the express words of the act. And according to *Mr. Care,*

should any *busy officer* whatsoever present or prosecute any person thereupon other than a popish recusant, the person so presented may *join issue*, that he is *no such person as these acts intend, not being a papist*.

And as Mr. Care also expresses himself, upon the whole matter, we may conclude, it is an abuse, and utterly illegal, to prosecute *Protestants* on such *laws* as were made solely and wholly against *PAPISTS*, as will further appear in our next observation; and we have heard some judges have declared as much.

However I shall here add the *judgment* of the *house of commons* in the case, for though I know and own *a vote* of either or both houses cannot repeal a law, nor alter its sense, yet certainly the house consisting of so many wise discreet persons, and a great number of them excellently learned in the laws, they are the most proper to interpret a doubtful law, and give the true interpretation and determine how far and to what it extends.

Sabbati sexto die Nov. 1680.

R E S O L V E D, Nemine contradicente, *That it is the opinion of this house that the acts of parliament made in the reign of queen Elizabeth and king James against popish recusants, ought not to be extended against protestant dissenters.* Mr. Care proceeds as follows.

And now having discharged these unlawful weapons, let us see what *legal arms* there are or have been really formed against the *Seſtaries*. The *first* was the act of 35 *Eliz. cap. 1.* intituled, *An act to retain the queen's majesty's subjects in their due obedience.* This was the first law that was made since the reformation, against those who were commonly called *Seſtaries*, *Conventiclers*, or *Protestant Dissenters*; and this act indeed,

deed, beyond all dispute, was made against them, and them only; for the popish recusants are expressly excepted out of it, as appears by the act: That the reader may better judge of the true difference between *this act* and *those* before recited, made against popish recusants, by the stile and expressions, we shall here insert the first paragraph, and give the substance of the rest.

For the preventing and avoiding of such great inconveniencies and perils as might happen and grow by the wicked and dangerous practices of seditious sectaries, and disloyal persons; Be it Enacted by the queen's most excellent majesty, and by the lords spiritual and temporal, and the commons, in this present parliament assembled; and by the authority of the same, That if any person or persons above the age of *sixteen* years, which shall obstinately refuse to repair to some church, chapel, or usual place of Common prayer, to hear divine service, established by her majesty's laws and statutes, in that behalf made, and shall forbear to do the same by the space of one month next after, without any lawful cause, shall at any time after forty days next, after the end of this session of parliament, by printing, writing, or express words or speeches, advisedly, or purposely, practise, or go about to make or persuade any of her majesty's subjects, or any other within her highness's realms or dominions, to deny, withstand, and impugn her majesty's power and authority, in cases ecclesiastical, united and annexed to the imperial crown of this realm; or to that end or purpose shall advisedly or maliciously move, or persuade any other person whatsoever, to forbear or abstain from coming to church, to hear divine service, or to receive the communion, according to her majesty's laws and statutes aforesaid, or to come to, or be present at any unlawful assemblies, conventicles or meetings, under colour or pretence of
any

any exercise of religion, contrary to her majesty's laws and statutes; or if any person or persons which shall obstinately refuse to repair to some church, by the space of one month, to hear divine service, as is aforesaid, shall after the said forty days, either of him or themselves, or by the motion, persuasion, inticement or allurement of any other, willingly join in, or be present at any such assemblies, conventicles, or meetings under colour or pretence of any such exercise of religion, contrary to the laws and statutes of this realm as is aforesaid, That then every such person so offending as aforesaid, and being thereof lawfully convicted, shall *be committed to prison*, and there to remain, without *bail* or mainprize, *until they shall conform* and yield themselves to come to some church, chapel, or usual place of Common prayer, and hear divine service, &c.

Then the act goes on, and provides, that if the person do not conform within three months after conviction, he should abjure, that is, be banished, and swear never to come back without leave; and if he will not swear so, then the same to be *felony, without benefit of clergy*.

From which act these three things are observable.

1. That the same was wholly intended against the *Puritans* or *Seſtaries*, for the papists are expressly exempted, by a particular clause, *ſect.* 12. in these words, Provided, That *no popiſh* recusant, or *feme covert* shall be compelled or bound to *abjure by virtue of this act*.

2. That queen *Eliz.* and her wise parliament did not intend or take such Protestant recusants to be within the meaning of, or punishable by the other before-mentioned statutes against popiſh recusants: For if they had so understood, they might have punished

nished them sufficiently on those old laws without giving themselves the trouble of making this new-law against them. *Frustra fit per plura quod fieri potest per pauciora. God and the law do nothing in vain.*

3. If it be objected, That all those laws as well as this ought to be construed to one and the same end and scope, and that all the before-mentioned acts of queen *Elizabeth* and king *James* are equally to be applied to all dissenters from the established church of *England*: In answer it may be said that cannot be; since in this act not any papists are concerned, they being particularly exempted: Then it necessarily follows, if popish recusants shall not be punished by this act made against sectaries and seditious conventiclers, the sectaries and conventiclers, protestant dissenters, that is, protestant recusants (for that is what they aim at, to colour the laying the other acts upon them) shall not be prosecuted upon those laws made only against popish recusants: for if they should, then the protestant recusants are left in a far worse condition than the papists, the one being provided for and not the other.

But still note, that all that is mentioned about this act of the 35 of *Eliz.* comparing it with the others made against popish recusants, is only to shew the nature of the one and the other: We will here still pursue Mr. *Care*, not affirming what he says to be law. He thus proceeds, This act of the 35 of *Eliz.* is not now in force, as appears thus:

1. The very words thereof shew it to have been originally but a temporary act, the last words of it being—*This act to continue no longer than to the end of the next session of parliament.*

2. By several acts it was continued till the first year of king *James*, and then it was Enacted, that the same

same should be continued, and remain in force until the end of the first session of the next parliament.

3. The second and next session of parliament, began and was hold by prorogation the 5th of *November* in the third year of king *James*, and ended the 27th of *May* next, and was then prorogued to the 18th of *November* 1606. In which session there was no continuance of this statute of the 35th of *Eliz.* so that there it expired, absolutely ceased, and was of no more force than if it had never been, and so continued for many years buried in oblivion.

4. In a parliament held the 21st of king *James*, cap. 28. it is (amongst other things) Enacted, *That this statute of the 35 of Eliz. shall be adjudged, ever since the session in the seventh of his majesty's reign of England, to have been of such force and effect, as the same were the last day of that session, and from thenceforth to the end of the first session of the next parliament.*

It's hoped this method of continuing in force, for a time elapsed, a law long before expired, will never be used as a precedent, for in such a case, can the subject know how to act, if it is impossible to tell what the laws prescribe as the rule of his conduct? But to pursue Mr. *Care*, he says

The truth is, that the statute of the 35th of *Eliz.* was not *in force*, nor of any effect at the last day of the session in the 7th year of king *James*, being expired and gone long before, *viz.* in the third year of that king as mentioned above. And that being the case, the statute of the 21 *Jacobi* could not revive it, for this only attempts to continue what was in force the last day of the session of the 7th of *James*.

5. So in the 3 *Caroli primi*, cap. 4. this act (amongst others) is mentioned; but how?—*That it shall continue to the end of the first session of the next parliament,*

in such force and effect as it was the first year of Charles the First,—When indeed it was not then in force.

6. In the 16th *Caroli Secundi*, cap. 4. An act was made, intituled, *An act to prevent and suppress seditious conventicles*, which begins thus: Whereas an act made in the 35th year of the reign of our late sovereign lady queen *Eliz.* intituled, *An act to retain the queen's majesty's subjects in their due obedience*, hath not been put in execution by reason of some doubt of late made, whether the said act be still in force, although it be very clear and evident: And it is hereby declared, That the said act is still in force, and ought to be put in execution; for providing therefore of further and more speedy remedies, &c. Be it Enacted, &c. And the last clause of this statute of the 16 *Car. Secundi* runs thus: Provided that this act continue in force for three years after the end of this present session of parliament, and from thence to the end of the next session of parliament, after the said three years, and no longer. Now how far these words—*It is hereby declared that it is in force, and ought to be put in execution*, without saying, *It is hereby Enacted, that it shall be in force*, might operate to give some life and strength to the aforesaid expired statute of the 35th of *Eliz.* I shall not determine: But suppose it was thereby *set on foot again*, this last statute is but one *entire* statute, and that part which declares or enables the statute of the 35th of *Eliz.* to be in force, is joined and annexed to the rest, and is altogether but *one law*, and hath its period at the time before prefixed, and then that declarative part must die with the rest.

Now *that session* wherein this statute of 16 *Car. 2.* was made, ended the 16th and 17th of *Car. 2.* Then the three years, for which it was to continue commenced, and it ended the 20th *Car. 2d*, but after the three
years

years it was to continue till the next session of parliament, which *next session*, after the three years, began 10 Oct. 1667, and by adjournments was continued to the 24th of *October* 1670, being the 22d of *Car. 2d*. There was then an end of it, and with it this conventicle act expired, therefore says Mr. *Care*, there is not now the least pretence of the 35th of *Elizabeth's* being in force; as the declarative part in this conventicle act cannot enforce or give life to any thing longer than it *lives itself*: For if the declaratory part of this act, after itself is extinguished, can be read, urged or construed as a law to enforce and enliven another statute, which hath not any being as a law in itself, then it would necessarily follow, that an expired law is as authentic as a law in being, which is absurd.

From what hath been said, it appears, That as *protestant dissenters* ought not to be prosecuted on the laws made against popish recusants; so likewise it is very evident, that both the statutes of the 35th of *Eliz.* and also that of the 16th of *Car. Secundi*, are expired, and of no force. And Mr. *Care* proceeds and says, indeed it is happy for the nation that they are so; for had these two acts been still in force, being of a *cruel* sanguinary nature, much mischief might have accrued to the people of this kingdom.

So that there are *not now any laws* in being to punish the conventiclors, and the non-conformist ministers, who did not conform to the act of uniformity made in the reign of *Charles the Second*: But the act commonly called the *Five Mile* or *Oxford* act; and the conventicle act made the 22d of *Car. 2.* except as is hereafter mentioned.

These we shall severally consider.

Anno

Anno 17 Caroli Secundi, cap. 2.

An act for restraining non-conformists from inhabiting in corporations.

WHEREAS divers parsons, vicars, curates, lecturers, and other persons in holy orders have not declared their unfeigned assent and consent to the use of all things contained and prescribed in the book of Common prayer, and administration of the Sacraments, and other rites and ceremonies of the church, according to the use of the church of *England*, or have not subscribed the declaration or acknowledgment contained in a certain act of parliament made in the 14th year of his majesty's reign, and intituled, *An act for uniformity of publick prayers, and administration of Sacraments, and other rites and ceremonies, and for the establishing the form of making, ordaining, and consecrating of bishops, priests and deacons in the church of England*, according to the said act, or any other subsequent act, and whereas they or some of them, and divers other person and persons not ordained according to the form of the church of *England*, and as have since the act of oblivion taken upon them to preach in unlawful assemblies, conventicles, or meetings, under colour or pretence of exercise of religion, contrary to the laws and statutes of this kingdom, have settled themselves in divers corporations in *England*, sometimes three or more of them in a place, thereby taking an opportunity to distill the poisonous principles of schism and rebellion into the hearts of his majesty's subjects, to the great danger of the church and kingdom.

II. Be it therefore Enacted by the king's most excellent majesty, by and with the advice and consent
of

of the lords spiritual and temporal, and the commons, in this present parliament assembled, and by the authority of the same, That the said parsons, vicars, curates, lecturers, and other persons in holy orders, or pretended holy orders, or pretending to holy orders, and all stipendiaries, or other persons who have been possessed of any ecclesiastical or spiritual promotion, and every of them, who have not declared their unfeigned assent and consent as aforesaid, and subscribed the declaration aforesaid, and shall not take and subscribe the oath following.

I *A. B.* do swear, That it is not lawful upon any pretence whatsoever, to take arms against the king; and that I do abhor that traiterous position of taking arms by his authority against his person, or against those that are commissioned by him, in pursuance of such commissions; and that I will not at any time endeavour any alteration of government either in church or state.

III. And all such person and persons as shall take upon them to preach in any unlawful assembly, conventicle or meeting under colour or pretence of any exercise of religion, contrary to the laws and statutes of this kingdom, (2) Shall not at any time from and after the 24th day of *March*, which shall be in this present year of our Lord God one thousand six hundred sixty and five, unless only in passing upon the road, come or be within five miles of any city, or town corporate, or borough, that sends burgeses to the parliament, within his majesty's kingdom of *England*, principality of *Wales*, or of the town of *Berwick* upon *Tweed*, (3) Or within five miles of any parish, town or place, wherein he or they have since the act of oblivion been parson, vicar, curate, stipendiary, or lecturer, or taken upon them to preach in any unlawful assembly, conventicle or meeting, under colour

colour or pretence of any exercise of religion, contrary to the laws and statutes of this kingdom, (4) Before he or they have taken and subscribed the oath aforesaid, before the justices of the peace at their quarter sessions, to be holden for the county, riding, or division next unto the said corporation, city or borough, parish, place or town, in open court, which said oath the said justices are hereby impowered there to administer, (5) Upon forfeiture for every such offence of the sum of *forty pounds* of lawful *English* money; the one third part thereof to his majesty and his successors, the other third part to the use of the poor of the parish where the offence shall be committed, and the other third part thereof to such person or persons as shall or will sue for the same by action of debt, plaint, bill, or information in any court of record at *Westminster*, or before any justices of assize, *Oyer and Terminer*, or gaol-delivery, or before any justices of the counties palatine of *Chester*, *Lancaster* or *Durham*, or the justices of the great sessions in *Wales*, or before any justices of peace in their quarter sessions, wherein no esbign, protection, or wager of law shall be allowed.

IV. Provided always, and be it further Enacted by the authority aforesaid, That it shall not be lawful for any person or persons restrained from coming to any city, town corporate, borough, parish, town or place, as aforesaid, or for any other person or persons as shall not first take and subscribe the said oath, and as shall not frequent divine service established by the laws of this kingdom, and carry him or herself reverently, decently, and orderly there, to teach any publick or private school, or take any boarders or tablers; that are taught or instructed by him or herself, or any other, upon pain for every such offence to forfeit the sum of *forty pounds*, to be recovered and distributed as aforesaid.

S

V. Pro-

V. Provided also, and be it further Enacted by the authority aforesaid, That it shall be lawful for any two justices of the peace of the respective county, upon oath to them of any offence against this act, which oath they are hereby impowered to administer, to commit the offender for six months without bail or mainprize, unless upon or before such commitment he shall, before the said justices of the peace, swear and subscribe the aforesaid oath and declaration.

VI. Provided always, That if any person intended to be restrained by virtue of this act, shall without fraud or covin be served with any writ, *subpœna*, warrant or other process, whereby his personal appearance is required, his obedience to such writ, *subpœna*, or process, shall not be construed an offence against this act.

Note, That as to the penalty of *forty pounds*, the party must be tried at the assizes or sessions before it is recovered. But any two justices of peace may commit for six months, unless before them the defendant swears and subscribes the oath in this declaration specified, the assent and consent, and the declaration therein referred unto, which if he do he frees himself from their power.

The assent and consent is appointed by the statute 13 & 14 *Car. 2di*, *cap. 4.* as follows.

I *A. B.* do here declare my unfeigned assent and consent to all and every thing contained and prescribed, in and by the book intituled, The book of Common prayer, and administration of the Sacraments, and other rites and ceremonies of the church according to the use of the church of *England*, together with the psalter or psalms of *David*, pointed as they are to be sung or said in churches; and the form or manner

manner of making, ordaining, and consecrating of bishops, priests and deacons.

The declaration is by the act last mentioned, as follows.

I *A. B.* do declare, that it is not lawful, upon any pretence whatsoever; to take arms against the king; and that I do abhor that traiterous position of taking arms by his authority against his person, or against those that are commissioned by him; and that I will conform to the liturgy of the church of *England*, as it is now by law established; *And I do declare, That I do hold there lies no obligation upon me, or any other person, from the oath commonly called the solemn league and covenant, to endeavour any change or alteration of government, either in church or state, and that the same was in itself an unlawful oath, and imposed upon the subjects of this realm against the known laws and liberties of this kingdom.*

But note, That this last branch of the declaration which is in *Italics*, by a subsequent clause, *viz.* §. 12. of the same act, was to continue but till the 25th day of *March* 1682. So that now the same is not to be required.—And thus much for this *Five mile* act.

We now proceed to the other laws concerning *Protestant Dissenters*, *viz.*

*Anno vicefimo fecundo Caroli Secundi regis,
cap. 1.*

*An act to prevent and fuppress seditious conven-
ticles.*

FOR Providing further and more speedy remedies against the growing and dangerous practices of seditious sectaries, and other difloyal persons, who under pretence of tender consciences, have or may at their meetings contrive insurrections (as late experience hath shewn;) (2) Be it Enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That if any person of the age of *sixteen years*, or upwards, being a subject of this realm, at any time after the *tenth day of May* next, shall be present at any assembly, conventicle or meeting, under colour or pretence of any exercise of religion, in other manner than according to the liturgy and practice of the church of *England*, in any place within the kingdom of *England*, dominion of *Wales*, or town of *Berwick upon Tweed*, at which conventicle, meeting or assembly, there shall be five persons or more assembled together over and besides those of the same household; if it be in a house where there is a family inhabiting; or if it be in a house, field, or place where there is no family inhabiting; then where any five persons or more, are so assembled as aforesaid, it shall and may be lawful to and for any one or more justices of the peace of the county, limit, division, corporation or liberty wherein the offence aforesaid shall be committed; or for the chief magistrate

strate of the place where the offence aforesaid shall be committed; And he and they are hereby required and enjoined, *upon proof* to him or them respectively made of such offence, either by confession of the party, or oath of two witnesses, (3) which oath the said justice and justices of the peace, and chief magistrate respectively, are hereby impowered and required to administer; or by notorious evidence and circumstance of the fact, to make a record of every such offence under his or their hands and seals respectively; which record so made as aforesaid, shall to all intents and purposes be in law taken and adjudged to be a full and *perfect conviction* of every such offender for such offence; and thereupon the said justice, justices and chief magistrate respectively shall impose on every such offender so convicted as aforesaid, a fine of *five shillings* for such first offence, which record and conviction shall be certified by the said justice, justices or chief magistrate, at the next quarter sessions of the peace; for the county or place where the offence was committed.

2. And be it further Enacted by the authority aforesaid, That if such offender, so convicted as aforesaid, shall at any time again commit the like offence or offences, contrary to this act, and be thereof in manner aforesaid convicted, then such offender so convicted of such like offence or offences, shall for every such offence incur the penalty of *ten shillings*; (2) Which fine and fines, for the first and every other offence, shall be levied by distress and sale of the offender's goods and chattels; or in case of the poverty of such offender, upon the goods and chattels of any other person or persons who shall be then convicted in manner aforesaid of the like offence at the same conventicle, at the discretion of the said justice, justices, or chief magistrate, respectively, so as the sum to be levied on any one person in case of the poverty

of other offenders, amount not in the whole to above the sum of *ten pounds*, upon occasion of any one meeting as aforesaid; (3) And every constable, headborough, tythingman, churchwardens, and overseers, of the poor respectively, are hereby authorized and required to levy the same accordingly, having first received a warrant under the hands and seals of the said justice, justices, or chief magistrate respectively so to do; (4) The said money so to be levied, to be forthwith delivered to the same justice, justices, or chief magistrate, and by him or them to be distributed, the one third part thereof to the use of the king's majesty, his heirs and successors, to be paid to the high sheriff of the county for the time being in manner following; that is to say, the justice or justices of peace shall pay the same into the court of the respective quarter sessions, which said court shall deliver the same to the sheriff, and make a memorial on record of the payment and delivery thereof, which said memorial shall be a sufficient and final discharge to the said justice and justices, and a charge to the sheriff, which said discharge and charge shall be certified into the Exchequer together, and not one without the other: And no justice shall or may be questioned, or accountable for the same in the Exchequer or elsewhere, than in quarter sessions; another third part thereof to and for the use of the poor of the parish, where such offence shall be committed; and the other third part thereof to the informer and informers, and to such person and persons as the said justice, justices, or chief magistrate respectively, shall appoint, having regard to their diligence and industry in the discovery, dispersing and punishing of the said conventicles.

3. And be it further Enacted by the authority aforesaid, That every person who shall take upon him
to

to preach or teach in any such meeting, assembly, or conventicle, and shall thereof be convicted as aforesaid, shall forfeit for every such first offence the sum of *twenty pounds*, to be levied in manner aforesaid, upon his goods and chattels; (2) And if the said preacher or teacher so convicted be a stranger, and his name and habitation not known, or is fled and cannot be found, or in the judgment of the justice, justices, or chief magistrate, before whom he shall be convicted, shall be thought unable to pay the same, the said justice, justices, or chief magistrate respectively, are hereby impowered and required to levy the same by warrant as aforesaid upon the goods and chattels of any such persons who shall be present at the same conventicle; any thing in this or any other act, law or statute to the contrary notwithstanding; and the money so levied to be disposed of in manner aforesaid. (3) And if such offender, so convicted as aforesaid, shall at any time again commit the like offence or offences contrary to this act, and be thereof convicted in manner aforesaid, then such offender so convicted of such like offence or offences, shall for every such offence incur the penalty of *forty pounds*, to be levied and disposed as aforesaid.

4. And be it further Enacted by the authority aforesaid, That every person who shall wittingly and willingly suffer any such conventicle, meeting, or unlawful assembly aforesaid, to be held in his or her house, out-house, barn, yard, or backside, and be convicted thereof in manner aforesaid, shall forfeit the sum of *twenty pounds* to be levied in manner aforesaid, upon his or her goods and chattels; or in case of his or her poverty or inability as aforesaid, upon the goods and chattels of such persons who shall be convicted in manner aforesaid, of being present at the same conventicle; and the money so levied to be disposed of in manner aforesaid.

5. Provided always, and be it Enacted by the authority aforesaid, That no person shall by any clause of this act be liable to pay above *ten pounds* for any one meeting, in regard of the poverty of any other person or persons.

6. Provided also, and be it further Enacted, That in all cases of this act where the penalty or sum charged upon any offender exceeds the sum of *ten shillings*, and such offender shall find himself aggrieved, it shall and may be lawful for him within one week after the said penalty or money charged shall be paid or levied, to appeal in writing from the person or persons convicting, to the judgment of the justices of the peace in their next quarter sessions, (2) To whom the justice or justices of peace, chief magistrate or alderman, that first convicted such offender, shall return the money levied upon the appelland, and shall certify under his and their hands and seals, the evidence upon which the conviction passed, with the whole record thereof, and the said appeal; (3) Whereupon such offender may plead and make defence, and have his *trial by a jury* thereupon: (4) And in case such appelland shall not prosecute with effect, or if upon such trial he shall not be acquitted, or judgment pass not for him upon his said appeal, the said justices at the sessions shall give treble costs against such offender for his unjust appeal; (5) And no other court whatsoever shall intermeddle with any case or causes of appeal upon this act, but they shall be finally determined in the quarter sessions only.

7. Provided always, and be it further Enacted, That upon the delivery of such appeal as aforesaid, the person or persons appelland shall enter before the person or persons convicting into a recognizance, to prosecute the said appeal with effect; (2) Which said recognizance the person or persons convicting is hereby

hereby impowered to take, and required to certify the same to the next quarter sessions. (3) And in case no such recognizance be entred into, the said appeal to be null and void.

8. Provided always, That every such appeal shall be left with the person or persons so convicting as aforesaid, at the time of the making thereof.

9. And be it further Enacted by the authority aforesaid, That the justice, justices of the peace and chief magistrate respectively, or the respective constables, headboroughs and tythingmen by *warrant* from the said justice, justices, or chief magistrate respectively, shall and may, with what aid, force and assistance they shall think fit, for the better execution of this act, after refusal or denial to enter, break open and enter into any house or other place, where they shall be informed any such conventicle, as aforesaid, is or shall be held, as well within liberties as without; (2) And take into their custody the persons there unlawfully assembled, to the intent they may be proceeded against according to this act: (3) And that the lieutenants or deputy lieutenants, or any commissioned officer of the militia, or other of his majesty's forces, with such troops or companies of horse and foot; and also the sheriffs and other magistrates and ministers of justice, or any of them, jointly or severally within any the counties or places within this kingdom of *England*, dominion of *Wales*, or town of *Berwick upon Tweed*, with such other assistance as they shall think meet or can get in readiness with the soonest, *on certificate* made to them respectively under the hand and seal of any one justice of the peace or chief magistrate of his particular information or knowledge of such unlawful meeting or conventicle held, or to be held in their respective counties or places, and that he with such assistance as he can get together, is not able to suppress and dissolve the same, shall and may, and

and are hereby required and enjoined to repair unto the place where they are so held or to be held; and by the best means they can, to dissolve, dissipate, or prevent all such unlawful meetings, and take into their custody such and so many of the said persons so unlawfully assembled, as they shall think fit, to the intent they may be proceeded against according to this act.

10. Provided always, That no dwelling house of any peer of this realm, where he or his wife shall be then resident, shall be searched by virtue of this act, but by immediate warrant from his majesty under his sign manual, or in the presence of the lieutenant, or one deputy lieutenant, or two justices of the peace, whereof one to be of the *Quorum* of the same county or riding.

11. And be it further Enacted by the authority aforesaid, That if any constable, headborough, tythingman, churchwarden or overseer of the poor, who *shall know or be credibly informed* of any such meetings or conventicles held within his precincts, parishes or limits, and shall not give information thereof to some justice of the peace, or the chief magistrate, and endeavour the conviction of the parties according to his duty, but such constable, headborough, tything-man, churchwarden, overseers of the poor, or any person lawfully called in aid of the constable, headborough or tything-man, shall wilfully and wittingly omit the performance of his duty, in the execution of this act, and *be thereof convicted in manner aforesaid*, he shall forfeit for every such offence, the sum of *five pounds* to be levied upon his goods and chattels, and disposed in manner aforesaid; (2) And that if any justice of the peace, or chief magistrate shall wilfully and wittingly omit the performance of his duty in the execution of this act, he shall forfeit the sum of *one hundred pounds*, the one moiety to the

the use of the informer, to be recovered by action, suit, bill or plaint, in any of his majesty's courts at *Westminster*, wherein no effoign, protection or wager of law shall lie.

12. And be it further Enacted by the authority aforesaid, That if any person be at any time sued for putting in execution any of the powers contained in this act, otherwise than upon appeal allowed by this act, such person shall and may plead the general issue, and give the special matter in evidence; (2) And if the plaintiff be nonsuit, or a verdict pass for the defendant, or if the plaintiff discontinue his action, or if upon demurrer judgment be given for the defendant, every such defendant shall have his full treble costs.

13. And be it further Enacted by the authority aforesaid, That this act, and all clauses therein contained, shall be construed most largely and beneficially for the suppressing of conventicles, and for the justification and encouragement of all persons to be employed in the execution thereof. (2) And that no record, warrant, or *mittimus* to be made by virtue of this act, or any proceedings thereupon shall be reversed, avoided, or any way impeached by reason of any default in form. (3) And in case any person offending against this act, shall be an inhabitant in any other county or corporation, or fly into any other county or corporation after the offence committed, the justice of peace or chief magistrate before whom he shall be convicted as aforesaid, shall certify the same under his hand and seal, to any justice of peace, or chief magistrate of such other county or corporation wherein the said person or persons are inhabitants, or are fled into, (4) Which said justice or chief magistrate respectively, is hereby authorized and required to levy the penalty or penalties in this act mentioned upon the goods and chattels of such person or persons,

persons, as fully as the said other justice of peace might have done, in case he or they had been inhabitants in the place where the offence was committed.

14. Provided also, That no person shall be punished for any offence against this act, unless such offender be prosecuted for the same within three months after the offence committed. (2) And that no person who shall be punished for any offence by virtue of this act, shall be punished for the same offence by virtue of any other act, or law whatsoever.

15. Provided and be it further Enacted by the authority aforesaid, That every alderman of *London* for the time being, within the city of *London* and the liberties thereof, shall have (and they and every of them are hereby impowered and required to execute) the same power and authority within *London* and the liberties thereof, for the examining, convicting and punishing of all offences within this act committed within *London* and the liberties thereof, which any justice of the peace hath by this act in any county of *England*, and shall be subject to the same penalties and punishments, for not doing that which by this act is directed to be done by any justice of peace in any county of *England*.

16. Provided and be it Enacted by the authority aforesaid, That if the person offending and convicted as aforesaid, be a feme-covert, cohabiting with her husband, the penalties of *five shillings* and *ten shillings*, so as aforesaid incurred, shall be levied by warrant as aforesaid, upon the goods and chattels of the husband of each feme-covert.

17. Provided also, That no peer of this realm shall be attached or imprisoned by virtue or force of this act; any thing, matter or clause therein to the contrary notwithstanding.

18. Provided also, That neither this act, nor any thing therein contained, shall extend to invalidate or

void his majesty's supremacy in ecclesiastical affairs ;
 (2) But that his majesty and his heirs and successors,
 may from time to time, and at all times hereafter,
 exercise and enjoy all powers and authority in eccle-
 siastical affairs, as fully and as amply as himself or any
 of his predecessors have, or might have done the
 same, any thing in this act notwithstanding.

NOTES upon the foregoing acts.

1. **B**Y the title, preamble and scope of the act it
 appears that the same is intended for suppressing
seditions conventicles under *pretence* of religious wor-
 ship ; that is, where the conventiclers meet together
 under a pretence of worship, not according to the li-
 turgy and practice of the church of *England*, but to
 carry on ill designs against the state.

2. If there is any such conventicle, the justices
 knowing it by the oath of *two witnesses*, may make a
 record thereof, and then the persons so offending shall
 forfeit as is particularly mentioned in the act.

3. It must appear upon oath before the justices, or
 by confession of the parties, 1. That it was a *sedition-
 ous* conventicle, met together to disturb the peace,
 under pretence of religion. 2. That the worship
 there practised, was *not according* to the liturgy and
 practice of the church of *England*, so that the infor-
 mers must be present. Mr. Care says, the whole time
 of the meeting ; for if they only hear a man praying
 or preaching, that is not contrary to the practice of
 the church of *England*, and how does it appear that
 they did not read the liturgy ? 3. It must be proved
 that there were assembled five persons or more, be-
 sides the inhabitants in the house.

4. If a party be fined above *ten shillings*, and he
 pay down the money, or it is levied, within one week
 after

after such payment, or levy, *he may appeal* from the justice convicting, to the next quarter sessions, where he shall have a trial *by jury* thereon, and undoubtedly, if it do not appear to the jury that it was a *seditions* meeting, they ought to find for the appellant.

5. A *general* warrant from any justice or justices to the constables, to enquire after, seize, &c. all conventicles in their precincts, is not good; it ought to particularize the house and place, houses and places where the conventicle is, or conventicles are held, and then the constable ought forthwith to go, and if he finds it as stated, to suppress the same; but otherwise the constable might be put to endless vexation in searching after meetings to no purpose, whereas the act does not enjoin him any such trouble; and if he goes once and cannot find any conventicle, he is not obliged to go a *second time* on the same warrant, but ought to have a new one, nor is he obliged to turn *informer*.

6. As to *breaking open* doors, the act directs that it may be done, first *only* in an house *where* information is given that there is actually a conventicle (*viz.* upon the *oaths* of two persons). 2. The constables, &c. cannot do this without there hath first been a *demand and denial* to enter: 3. Nor then without a *warrant* from the justice to that purpose. If a constable upon a light vain tale, without two persons swearing, that there is at such a house a meeting, and without warrant shall venture to break open the doors, and there is not any conventicle, Mr. *Care* says, he makes himself liable to be indicted for burglary: though we cannot be of that opinion. He doubtless subjects himself to an action of trespass.

7. There is not any power given to break doors for *levying* the penalties, therefore let the constables and officers take great care, what they do in that case.

8. Con-

8. Constables would do well to know and assert the dignity of their *office*, they are not to run up and down after the capricio's of every justice, and spend the Sabbath profanely in hunting after meetings; if the justices are upon sufficient oath informed of a meeting, and will make out a warrant specifying where it is, the constables should go, but to ramble about with them from one place to another, they are not obliged; no more are they to seize or imprison persons on the verbal command of any justice, unless on a visible breach of the peace, but he must have a warrant, specifying the person's *name* and *offence*, before he can lay hold of him, or else he may be sued for false imprisonment.

9. Since by the statute of the 29 of *Car. 2. cap. 7.* It is Enacted in these words: "Provided also, That no person or persons upon the Lord's day shall serve or execute, or cause to be served or executed, any writ, process, *warrant*, order, judgment or decree, (except in cases of treason, felony, or breach of the peace,) but that the service of every such writ, process, warrant, &c. shall be void to all intents and purposes whatsoever; and the person or persons so serving or executing the same shall be as liable to the suit of the party grieved, and answer damages to him for doing thereof, as if he or they had done the same without any writ, process, *warrant*, order, judgment or decree at all.

It will concern all constables and officers to consider with what safety they can execute any such warrants on the Lord's day, on peaceable meetings, it being evident that every man they disturb by colour of such warrant, on that day, has, by this statute a good action against them.

Such was Mr. *Care's* reasoning on the foregoing laws, which were not sufficiently declarative *literally*, as to *Protestant Dissenters*. And many disputes hav-
ing

ing arisen, as Mr. Care observed, and, notwithstanding what he had so published, continuing, on that subject, the legislature at length took it into consideration, and made the following law, to remove all doubts thereon.

1st Will. & Mar. sess. 1.

C A P. XVIII.

An act for exempting their majesties Protestant subjects, dissenting from the church of England, from the penalties of certain laws.

FORASMUCH as some ease to scrupulous consciences in the exercise of religion may be an effectual means to unite their majesties Protestant subjects in interest and affection :

II. Be it Enacted by the king's and queen's most excellent majesties, by and with the advice and consent of the lords spiritual and temporal, and the commons, in this present parliament assembled, and by the authority of the same, that neither the statute made in the three and twentieth year of the reign of the late queen *Elizabeth*, intituled, *An act to retain the queen's majesty's subjects in. their due obedience*; nor the statute made in the twenty-ninth year of the said queen, intituled, *An act for the more speedy and due execution of certain branches of the statute made in the three and twentieth year of the queen's majesty's reign, viz. the aforesaid act*; nor that branch or clause of a statute made in the first year of the reign of the said queen, intituled, *An act for the uniformity of Common prayer and service in the church and administration of the sacraments*; whereby all persons, having

ing no lawful or reasonable excuse to be absent, are required to resort to their parish church or chapel, or some usual place where the Common prayer shall be used, upon pain of punishment by the censures of the church, and also upon pain that every person so offending shall forfeit for every such offence *twelve pence*; nor the statute made in the third year of the reign of the late king *James the First*, intituled, *An act for the better discovering and repressing popish recusants*; nor that other statute made in the same year, intituled, *An act to prevent and avoid dangers which may grow by popish recusants*, nor ANY OTHER LAW or STATUTE of this realm made against papists or popish recusants, EXCEPT the statute made in the *five and twentieth* year of king *Charles the Second*, intituled, *An act for preventing dangers which may happen from popish recusants* *; and except also the statute made in the *thirtieth* year of the said king *Charles the Second*, intituled, *An act for the more effectual preserving the king's person and government by disabling papists from sitting in either house of parliament* *; shall be construed to extend to any person or persons dissenting from the church of *England*, that shall take the † oaths mentioned in a statute made this present parliament, intituled, *An act for removing and preventing all questions and disputes concerning the assembling and sitting of this present parliament*;

* *Vide* these statutes hereafter in the collection of statute laws against papists.

† The oaths are as follow, *viz.*

I *A. B.* do sincerely promise and swear, that I will be faithful, and bear true allegiance to their majesties king *William* and queen *Mary*.

So help me God.

T

and

and shall make and subscribe the declaration mentioned in a statute made in the thirtieth year of the reign of king *Charles the Second*, intituled, *An act to prevent papists from sitting in either house of parliament* *; which oaths and declaration the justices of peace at the general sessions of the peace, to be held for the county or place where such person shall live, are hereby required to tender and administer to such persons as shall offer themselves to take, make, and subscribe the same, and thereof to keep a Register; and likewise none of the persons aforesaid shall give or pay, as any fee or reward to any officer or officers belonging to the court aforesaid, above the sum of *six pence*, nor that more than once, for his or their entry of his taking the said oaths, and making and subscribing the said declaration; nor above the further sum of *six pence* for any certificate of the same, to be made out and signed by the officer or officers of the said court.

III. And be it further Enacted by the authority aforesaid, That all and every person and persons, already convicted or prosecuted in order to conviction

I *A. B.* do swear, that I do from my heart abhor, detest and abjure, as impious and heretical, that damnable doctrine and position, *That princes excommunicated or deprived by the Pope or any authority of the see of Rome, may be deposed or murdered by their subjects, or any other whatsoever.* And I do declare, That no foreign prince, person, prelate, state, or potentate hath, or ought to have, any power, jurisdiction, superiority, pre-eminence, or authority, ecclesiastical or spiritual, within this realm.

So help me God.

* *Vide* the foregoing note.

of

of recusancy, by indictment, information, action of debt, or otherwise, grounded upon the aforesaid statutes, or any of them, that shall take the said oaths mentioned in the said statute made this present parliament, and make and subscribe the declaration aforesaid, in the court of Exchequer, or assizes, or general or quarter sessions to be held for the county where such person lives, and to be thence respectively certified into the Exchequer, shall be thenceforth exempted and discharged from ALL the *penalties, seizures, forfeitures, judgments and executions* incurred by force of any of the aforesaid statutes, *without ANY composition, fee or further charge whatsoever.*

IV. And be it further Enacted by the authority aforesaid, That all and every person and persons, that shall, as aforesaid, take the said oaths, and make and subscribe the declaration aforesaid, shall not be liable to any pains, penalties, or forfeitures, mentioned in an act made in the five and thirtieth year of the reign of the late queen *Elizabeth*, intituled, *An act to retain the queen's majesty's subjects in their due obedience*; nor in an act made in the two and twentieth year of the reign of the late king *Charles the Second* intituled, *An act to prevent and suppress seditious conventicles*; nor shall any of the said persons be prosecuted in any ecclesiastical court, for or by reason of their non-conforming to the church of *England*.

V. Provided always, and be it Enacted by the authority aforesaid, That if any assembly of persons dissenting from the church of *England*, shall be had in any place for religious worship with the doors locked, barred or bolted, during any time of such meeting together, all and every person or persons, that shall come to and be at such meeting, shall not receive any benefit from this law, but be liable to all the pains and penalties of all the aforesaid laws recited in this

act, for such their meeting, notwithstanding his taking the oaths, and his making and subscribing the declaration aforesaid.

VI. Provided always, That nothing herein contained shall be construed to exempt any of the persons aforesaid from paying of tythes or other parochial duties, or any other duties to the church or minister, nor from any prosecution in any ecclesiastical court, or elsewhere, for the same.

VII. And be it further Enacted by the authority aforesaid, That if any person dissenting from the church of *England*, as aforesaid, shall hereafter be chosen or otherwise appointed to bear the office of high constable, or petit constable, churchwarden, overseer of the poor, or any other parochial or ward office, and such person shall scruple to take upon him any of the said offices in regard of the oaths, or any other matter or thing required by the law to be taken or done in respect of such office; every such person shall and may execute such office or employment by a sufficient deputy, by him to be provided, that shall comply with the laws on this behalf. Provided always, the said deputy be allowed and approved by such person or persons, in such manner as such officer or officers respectively should by law have been allowed and approved.

VIII. And be it further Enacted by the authority aforesaid, That no person dissenting from the church of *England* in holy orders, or pretended holy orders, or pretending to holy orders, nor any preacher or teacher of any congregation of dissenting protestants, that shall make and subscribe the declaration aforesaid, and take the said oaths at the general or quarter sessions of the peace to be held for the county, town, parts or division where such person lives, which court is hereby impowered to administer the same, and shall also

also declare his approbation of and subscribe the articles of religion mentioned in the statute made in the thirteenth year of the reign of the late queen *Elizabeth*, except the thirty-fourth, thirty-fifth, and thirty-sixth, and these words of the twentieth article, *viz.* [*the church hath power to decree rites or ceremonies, and authority in controversies of faith, and yet*] shall be liable to any of the pains or penalties mentioned in an act made in the seventeenth year of the reign of king *Charles the Second*, intituled, *An act for restraining non-conformists from inhabiting in corporations*; nor the penalties mentioned in the aforesaid act made in the two and twentieth year of his said late majesty's reign, for or by reason of such persons preaching at any meeting for the exercise of religion; nor to the penalty of *one hundred pounds* mentioned in an act made in the thirteenth and fourteenth of king *Charles the Second*, intituled, *An act for the uniformity of publick prayers, and administration of sacraments, and other rites and ceremonies; and for establishing the form of making, ordaining and consecrating of bishops, priests and deacons in the church of England*, for officiating in any congregation for the exercise of religion permitted and allowed by this act.

IX. Provided always, That the making and subscribing the said declaration, and the taking the said oaths, and making the declaration of approbation and subscription to the said articles in manner as aforesaid, by every respective person or persons herein before mentioned, at such general or quarter sessions of the peace as aforesaid, shall be then and there entred of record in the said court, for which *sixpence* shall be paid to the clerk of the peace, and no more; Provided that such person shall not at any time preach in any place, but with the doors not locked, barred or bolted, as aforesaid.

X. And whereas some dissenting protestants, scruple the baptizing of infants; Be it Enacted by the authority aforesaid, That every person in pretended holy orders, or pretending to holy orders, or preacher, or teacher, that shall subscribe the aforesaid articles of religion, except before excepted, and except part of the *seven and twentieth* article, touching *infant baptism*, and shall take the said oaths, and make and subscribe the declaration aforesaid, in manner aforesaid, every such person shall enjoy all the privileges, benefits, and advantages, which any other dissenting minister, as aforesaid, might have or enjoy by virtue of this act.

XI. And be it further Enacted by the authority aforesaid, That every teacher or preacher in holy orders, or pretended holy orders, that is a minister, preacher or teacher of a congregation, that shall take the oaths herein required, and make and subscribe the declaration aforesaid, and also subscribe such of the aforesaid articles of the church of *England*, as are required by this act in manner aforesaid, shall be thenceforth exempted from serving upon any jury, or from being chosen or appointed to bear the office of churchwarden, overseer of the poor, or any other parochial or ward office, or other office in any hundred of any shire, city, town, parish division, or wapentake.

XII. And be it further Enacted by the authority aforesaid, That every justice of the peace may at any time hereafter require any person, that goes to any meeting for exercise of religion, to make and subscribe the declaration aforesaid, and also to take the said oaths or declaration of fidelity herein after mentioned, in case such person scruples the taking of an oath, and upon refusal thereof, such justice of the peace is hereby required to commit such person to prison without bail or mainprize, and to certify the name

name of such person to the next general or quarter sessions of the peace to be held for that county, city, town, part or division, where such person then resides; and if such person so committed shall upon a second tender at the general or quarter sessions refuse to make and subscribe the declaration aforesaid, such person refusing shall be then and there recorded, and he shall be taken thenceforth to all intents and purposes for a popish recusant convict, and suffer accordingly, and incur all the penalties and forfeitures of all the aforesaid laws.

XIII. And whereas there are certain other persons dissenters from the church of *England*, who scruple the taking of any oath; Be it Enacted by the authority aforesaid, That every such person shall make and subscribe the aforesaid declaration, and also this declaration of fidelity following, *viz.*

I *A. B.* do sincerely promise and solemnly declare before God and the world, that I will be true and faithful to king *William* and queen *Mary*; and I do solemnly profess and declare, that I do from my heart abhor, detest, and renounce, as impious and heretical, that damnable doctrine and position, *That princes excommunicated or deprived by the pope, or any authority of the see of Rome, may be deposed or murdered by their subjects, or any other whatsoever.* And I do declare, That no foreign prince, person, prelate, state, or potentate, hath or ought to have any power, jurisdiction, superiority, pre-eminence, or authority ecclesiastical or spiritual within this realm.

And shall subscribe a profession of their Christian belief in these words;

T 4

I A. B;

I *A. B.* profess faith in God the Father, and in Jesus Christ his Eternal Son, the true God, and in the Holy Spirit, one God blessed for evermore; and do acknowledge the holy Scriptures of the Old and New Testament to be given by divine inspiration.

Which declarations and subscription shall be made and entred, of record at the general quarter sessions of the peace for the county, city, or place where every such person shall then reside. And every such person that shall make and subscribe the two declarations and profession aforesaid, being thereunto required, shall be exempted from all the pains and penalties of all and every the afore-mentioned statutes made against popish recusants, or protestant non-conformists, and also from the penalties of an act made in the fifth year of the reign of the late queen *Elizabeth*, intituled, *An act for the assurance of the queen's royal power over all estates and subjects within her dominions*, for or by reason of such persons not taking or refusing to take the oath mentioned in the said act; and also from the penalties of an act made in the *thirteenth* and *fourteenth* years of the reign of king *Charles the Second*, intituled, *An act for preventing mischiefs that may arise by certain persons called Quakers, refusing to take lawful oaths*; and enjoy all other the benefits, privileges, and advantages under the like limitations, provisos and conditions, which any other dissenters shall or ought to enjoy by virtue of this act.

XIV. Provided always, and be it Enacted by the authority aforesaid, That in case any person shall refuse to take the said oaths, when tendered to them, which every justice of the peace is hereby impowered to do, such person shall not be admitted to make and sub-

sub.

subscribe the two declarations aforesaid, though required thereunto either before any justice of the peace, or at the general or quarter sessions, before or after any conviction of popish recusancy, as aforesaid, unless such person can, within thirty-one days after such tender of the declarations to him, produce two sufficient protestant witnesses, to testify upon oath, that they believe him to be a protestant dissenter, or a certificate under the hands of four protestants, who are conformable to the church of *England*, or have taken the oaths and subscribed the declaration, above-mentioned, and shall also produce a certificate under the hands and seals of six or more sufficient men of the congregation to which he belongs, owning him for one of them.

XV. Provided also, and be it Enacted by the authority aforesaid, That until such certificate, under the hands of six of his congregation as aforesaid, be produced, and two protestant witnesses come to attest his being a protestant dissenter, or a certificate under the hands of four protestants, as aforesaid, be produced, the justice of the peace shall and hereby is required to take a recognizance with two sureties in the penal sum of *fifty pounds*, to be levied of his goods and chattels, lands and tenements, to the use of the king's and queen's majesties, their heirs and successors, for his producing the same; and if he cannot give such security, to commit him to prison, there to remain until he has produced such certificates, or two witnesses as aforesaid.

XVI. Provided always, and it is the true intent and meaning of this act, That all the laws made and provided for the frequenting of Divine service on the Lord's day, commonly called *Sunday*, shall be still in force, and executed against all persons that offend against the said laws, except such persons come
to

to some congregation or assembly of religious worship, allowed or permitted by this act.

XVII. Provided always, and be it further Enacted by the authority aforesaid, That neither this act, nor any clause, article, or thing herein contained shall extend or be construed to extend to give any ease, benefit, or advantage to any papist or popish recusant whatsoever, or any person that shall deny in his preaching or writing the doctrine of the Blessed Trinity, as it is declared in the aforesaid articles of religion.

XVIII. Provided always, and be it Enacted by the authority aforesaid, That if any person or persons, at any time or times after the *tenth* day of *June*, do and shall willingly and of purpose, maliciously or contemptuously come into any cathedral or parish church, chapel, or other congregation permitted by this act, and disquiet or disturb the same, or misuse any preacher or teacher, such person or persons, upon proof thereof before any justice of peace, by two or more sufficient witnesses, shall find two sureties to be bound by recognizance in the penal sum of *fifty pounds*, and in default of such sureties shall be committed to prison, there to remain 'till the next general or quarter sessions; and upon conviction of the said offence at the said general or quarter sessions, shall suffer the pain and penalty of *twenty pounds*, to the use of the king's and queen's majesties, their heirs and successors.

XIX. Provided always, That no congregation or assembly for religious worship shall be permitted or allowed by this act, until the place of such meeting shall be certified to the bishop of the diocese, or to the arch-deacon of that arch-deaconry, or to the justices of the peace at the general or quarter sessions of the peace for the county, city or place in which such meeting shall be held, and registred in the said bi-

shop's or arch-deacon's court respectively, or recorded at the said general or quarter sessions; the register or clerk of the peace whereof respectively is hereby required to register the same, and to give certificate thereof to such person as shall demand the same, for which there shall be no greater fee nor reward taken than the sum of *sixpence*.

In the reign of queen *Anne*, this act not being sufficient, further provision was made by an act passed in the

10th year of her reign, *cap. 2.* as follows, *viz.*

AN act for preserving the Protestant religion, by better securing the church of ENGLAND, as by law established; and for confirming the toleration granted to Protestant dissenters by an act intituled, *An act for exempting their majesty's Protestant subjects, dissenting from the church of England, from the penalties of certain laws*, and for supplying the defects thereof; and for the further securing the Protestant succession, by requiring the practicers of the law in *North Britain* to take the oaths, and subscribe the declaration therein mentioned.

‘ Whereas an act was made in the thirteenth year
 ‘ of the reign of the late king *Charles the Second*, in-
 ‘ tituled, *An act for the well governing and regulating*
 ‘ *of corporations*; and another act was made in the
 ‘ five and twentieth year of the reign of the said late
 ‘ king *Charles the Second*, intituled, *An act for the*
 ‘ preventing dangers which may happen from *popish*
 ‘ *recusants*; both which acts were made for the secu-
 ‘ rity of the church of *England*, as by law established;
 ‘ Now for the better securing the said church and
 ‘ quieting the minds of her majesty's protestant sub-
 ‘ jects dissenting from the church of *England*, and
 ‘ rendering

‘ rendering them secure in the exercise of their religious worship, as also for the further strengthening the provision already made for the security of the succession to the crown in the house of *Hanover* ;’
 Be it Enacted, &c. (This act repealed to the 7th §. by 5 *Geo.* 1. *cap.* 4. *sess.* 1.)

‘ After 25 *March* 1712. If any officer civil or military, &c. who receives any salary, &c. or if any magistrate of a corporation, &c. who by the acts of 13 & 25 *Car.* 2. are obliged to receive the Sacrament, shall after their admission into their office, and during their office and during their continuance in it, be present at any conventicle, &c. such person shall forfeit 40 *l.* to be recovered by the prosecutor. Every person so convicted shall be disabled to hold his office, &c. and incapable of any employment in *England*, &c. any person after conviction, conforming to the church of *England*, for one year, &c. shall be capable of the grant of any office. Every such person to make oath the next term after admission into any office, or at the *quarter session*, &c. that he hath conformed, &c. oath to be made of the offence within 10 days, and prosecution within 3 months, &c. This act shall not vacate any office of inheritance, so as a sufficient deputy be appointed to execute it.

REP.’

VII. And it is hereby further Enacted and declared by the authority aforesaid, ‘ That the toleration granted to the Protestant dissenters by the act made in the first year of the reign of king *William* and queen *Mary*, intituled, *An act for exempting their majesty’s Protestant subjects, dissenting from the church of England from the penalties of certain laws*, shall be, and and is hereby ratified and confirmed,

‘firmed, and that the same act shall at all times be
 ‘inviolably observed for the exempting of such Pro-
 ‘testant dissenters as are thereby intended, from the
 ‘pains and penalties therein mentioned.’

VIII. ‘And for the rendring the said last men-
 ‘tioned act more effectual, according to the true in-
 ‘tent and meaning thereof;’ Be it further Enacted
 and declared by the authority aforesaid, That if any
 person dissenting from the church of *England*, (not
 in holy orders or pretended holy orders, or pre-
 tending to holy orders, nor any preacher or teacher
 of any congregation) who should have been intitled
 to the benefit of the said last-mentioned act if such
 person had duly taken, made and subscribed the oaths,
 and declaration, or otherwise qualified him or her-
 self, as required by the said act, and now is or shall
 be prosecuted upon or by virtue of any of the penal
 statutes, from which Protestant dissenters are exemp-
 ted by the said act, shall at any time during such pro-
 secution take, make, and subscribe the said oaths and
 declaration, or being of the people called *Quakers*,
 shall make and subscribe the aforesaid declaration, and
 also the declaration of fidelity, and subscribe the pro-
 fession of their Christian belief, according to the said
 act, or before any two of her majesty’s justices of the
 peace (who are hereby required to take and return the
 same to the next quarter sessions of the peace to be
 there recorded) such person shall be, and is hereby
 intitled to the benefit of the said act, as fully and ef-
 fectually, as if such person had duly qualified himself
 within the time prescribed by the said act, and shall be
 thenceforth exempted and discharged from all the pe-
 nalties and forfeitures incurred by force of any the
 aforesaid penal statutes.

IX. ‘And whereas it is or may be doubted whether
 ‘a preacher or teacher of any congregation of dissen-
 ‘ting’ protestants, duly in all respects qualified ac-
 ‘cording

‘ cording to the said act, be allowed by virtue of the
 ‘ said act, to officiate in any congregation in any
 ‘ county other than that in which he so qualified him-
 ‘ self, although in a congregation or place of meet-
 ‘ ing duly certified and registred as is required by the
 ‘ said act ;’ Be it declared and Enacted by the autho-
 rity aforesaid, That any such preacher or teacher,
 so duly qualified according to the said act, shall be and
 is hereby allowed to officiate in any congregation, al-
 though the same be not in the county wherein he was
 so qualified ; Provided that the said congregation, or
 place of meeting, hath been before such officiating
 duly certified and registred or recorded according to
 the said act : And such preacher or teacher, shall if
 required, produce a certificate of his having so qual-
 ified himself, under the hand of the clerk of the
 peace for the county or place where he so qualified
 himself, which certificate such clerk of the peace is
 hereby required to make, and shall also, before any
 justice of the peace of such county or place where he
 shall so officiate, make and subscribe such declara-
 tion, and take such oaths as are mentioned in the said
 act if thereunto required.

X. And be it further Enacted by the authority
 aforesaid, That on or before the *fifteenth* day of *June*
 next, all advocates, writers to the signet, notaries
 publick, and other members of the college of ju-
 stice, within that part of her majesty’s kingdom of
Great Britain called *Scotland*, shall be and are hereby
 obliged to take and subscribe the oath appointed by
 the act of the sixth year of her majesty’s reign, inti-
 tuled, *An act for the better security of her majesty’s per-
 son and government*, before the lords of session of the
 aforesaid part of her majesty’s kingdom ; except such
 of the said persons who have already taken the same :
 And if any of the persons aforesaid, do or shall neglect
 or refuse to take and subscribe the said oath, as afore-
 said,

said, such person shall be *ipso facto*, adjudged incapable, and disabled in law to have, enjoy, or exercise in any manner his said employment or practice.

XI. And be it further Enacted by the authority aforesaid, That in all time coming, no person or persons shall be admitted to the employment of advocate, writer to the signet, notary publick, or any office belonging to the said college of justice, until he or they have taken and subscribed the aforesaid oath, in manner as is above directed.

Part of the above act, having been repealed, as mentioned in the margin, by the 5th Geo. 1. and some addition being by that last act made to these laws, We have here set it forth.

5 Geo. 1. cap. 4.

An act for strengthening the Protestant interest in these kingdoms.

‘ W H E R E A S an act of parliament was
 ‘ made in the *tenth* year of the reign of the
 ‘ late queen *Anne*, intituled, *An act for preserving the*
 ‘ *Protestant religion, by better securing the church of*
 ‘ *England, as by law established, and for confirming the*
 ‘ *toleration granted to Protestant dissenters by an act in-*
 ‘ *tituled, An act for exempting their majesty’s Prote-*
 ‘ *stant subjects, dissenting from the church of Eng-*
 ‘ *land, from the penalties of certain laws, and for*
 ‘ *supplying the defects thereof, and for the further se-*
 ‘ *curing the Protestant succession, by requiring the prac-*
 ‘ *tisers of the law in North Britain to take the oaths and*
 ‘ *subscribe the declaration therein mentioned: And where-*
 ‘ as part of the said act, as also another act herein after
 ‘ mentioned, have been found to be inconvenient ;’

Be

Be it therefore Enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in parliament assembled; and by the authority of the same, That the said recited act passed in the *tenth* year of the late queen *Anne*, from the beginning thereof to these words, 'And it is hereby further Enacted and declared by the authority aforesaid, That the toleration granted to Protestant dissenters,' and also one act made in the *twelfth* year of the reign of the late queen *Anne*, intituled, *An act to prevent the growth of schism, and for the further security of the churches of England and Ireland, as by law established*, shall be and are hereby repealed, annulled, and made void.

II. Provided always, and be it Enacted by the authority aforesaid, That if any mayor, bailiff or other magistrate, in that part of *Great Britain* called *England*, the dominion of *Wales*, or the town of *Berwick upon Tweed*, or the isles of *Jersey* or *Guernsey*, shall knowingly or wilfully resort to, or be present at any publick meeting for religious worship, other than of the church of *England*, as by law established, in the gown or other peculiar habit, or attended with the ensign or ensigns of or belonging to such his office, that every such mayor, bailiff or other magistrate, being thereof convicted by due course of law, shall be disabled to hold such office or offices, employment or employments, and shall be adjudged incapable to bear any publick office or employment whatsoever within that part of *Great Britain* called *England*, the dominion of *Wales*, and town of *Berwick upon Tweed*, or isles of *Jersey* and *Guernsey*.

The last statute is the principal law relative to Protestant dissenters in *England*; as to *Scotland*, and the *Unitas fratrum*, they are in short, as follow, *viz.*

The

The toleration of the Episcopal communion in *Scotland*, by the 10 *Ann. cap. 7.*

The Episcopal meeting houses in *Scotland*, to be registered, by 19 *Geo. 2. cap. 38.*

The penalty on unqualified ministers officiating in *Scotland*, by the same statute.

Episcopal ministers in *Scotland*, are to be ordained by a bishop of *England* or *Ireland*, *ibidem* §. 19. and by 21 *Geo. 2. cap. 33. §. 13.*

Peers and others present at unlawful meeting houses in *Scotland*, disqualified from voting, &c. by the 19 *Geo. 2. cap. 38. §. 11.*

The form of an affirmation to be taken instead of an oath by the members of the *Unitas fratrum*, is directed by the 22 *Geo. 2. cap. 30.* This statute is made on their behalf, and by the same act, *sect. 4.* certain privileges are granted to the members of the *Unitas fratrum*, who shall settle in *America.*

In the next place, according to our promise, we shall here add the principal laws with an abstract of the others against popery, papists, and popish recusants, and as Mr. Care says, perhaps according to the old adage, where there are most laws there are most offences, so here we may say, though there are so many acts, of such severe and various penalties, yet there are scarce any sort of offenders more rarely brought to conviction or punishment. But to proceed—

3 Car. 1.

C A P. III.

*An act to restrain the passing or sending of any
to be popishly bred beyond the seas.*

FORASMUCH as divers ill affected persons to the true religion established within this realm, have sent their children into foreign parts to be bred up in popery, notwithstanding the restraint thereof by the statute made in the first year of the reign of our late sovereign lord king *James* of famous memory; Be it Enacted, That the said statute shall be put in due execution: (2) And be it further Enacted by the the king's most excellent Majesty, and the lords spiritual and temporal, and the commons, in this present parliament assembled, and by the authority of the same, That in case any person or persons under the obedience of the king, his heirs and successors, at any time after the end of this session of parliament, shall pass or go, or shall convey or send, or cause to be sent or conveyed, any child or other person, out of any of the king's dominions, unto any the parts beyond the seas, out of the king's obedience, to the intent and purpose to enter into, or be resident or trained up in, any priory, abbey, nunnery, popish university, college or school, or house of jesuits, priests, or in any private popish family, and shall be there by any jesuits, seminary priests, frier, monk, or other popish person, instructed, persuaded or strengthened in the popish religion, in any sort to profess the same, or shall convey or send, or cause to be conveyed or sent, by the hands or means of any person whatsoever, any sum or sums of money, or other

other thing, for or towards the maintenance of any child or other person already gone or sent, or to go or to be sent, and trained and instructed, as is aforesaid, or under the name or colour of any charity, benevolence or alms, towards the relief of any priory, abbey, nunnery, college, school or any religious house whatsoever; every person so sending, conveying, or causing to be sent and conveyed, as well any such child or other person, as any sum or sums of money, or other thing, and every person passing, or being sent beyond the seas, being thereof lawfully convicted, in or upon any information, presentment or indictment, as is aforesaid, shall be disabled from thenceforth to sue or use any action, bill, plaint or information, in course of law, or to prosecute any suit in any court of equity, or to be committee of any ward, or executor or administrator to any person, or capable of any legacy or deed of gift, or to bear any office within the realm; (3) And shall lose and forfeit all his goods and chattels, and shall forfeit all his lands, tenements and hereditaments, rents, annuities, offices, and estates of freehold, for and during his natural life.

II. Provided always, That no person sent or conveyed as aforesaid, that shall within six months after his return into this realm conform himself unto the present religion established in this church of *England*, and receive the sacrament of the Lord's Supper, according to the statutes made concerning *conformity* in other cases required from *popish recusants*, shall incur any the penalties aforesaid.

III. And it is Enacted, That all and every the offences against this statute may be enquired, heard and determined before the justices of the King's bench or justices of assize or gaol-delivery, or of *Oyer and Terminer*, of such counties, where the offenders did last

dwell or abide, or whence they departed out of this kingdom, or where they were taken.

IV. Provided also, That if any person or child, so passing or sent, or now being beyond the sea, shall after his return into this realm conform himself to the religion established in the church of *England*, and receive the sacrament of the Lord his Supper, according to the statutes made for or concerning conformity in other cases required from popish recusants, for and during such time as he or she shall so continue in such conformity and obedience, according to the true intent and meaning of the said laws and statutes, shall have his or her lands restored to them again.

25 Car. 2.

C A P. II.

An act for preventing dangers which may happen from popish recusants.

FOR preventing dangers which may happen from popish recusants, and quieting the minds of his majesty's good subjects; (2) Be it Enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and the commons, in this present parliament assembled, and by the authority of the same, That all and every person or persons, as well peers as commoners, that shall bear any office or offices civil or military, or shall receive any pay, salary, fee or wages, by reason of any patent or grant from his majesty, or shall have command or place of trust from or under his majesty, or from any of his majesty's predecessors, or by his or their authority, or by authority derived from him or them, within the realm of *England*, dominion

minion of *Wales*, or town of *Berwick upon Tweed*, or in his majesty's navy, or in the several islands of *Jersey* and *Guernsey*, or shall be of the household, or in the service or employment of his majesty, or of his royal highness the duke of *York*, who shall inhabit, reside or be within the city of *London* or *Westminster*, or within thirty miles distant from the same, on the first day of *Easter* term that shall be in the year of our Lord one thousand six hundred seventy-three; or at any time during the said term, all and every the said person and persons shall personally appear before the end of the said term, or of *Trinity* term next following, in his majesty's high court of Chancery, or in his majesty's court of King's bench, and there in publick and open court, between the hours of nine of the clock and twelve in the forenoon, take the several oaths of supremacy and allegiance (which oath of allegiance is contained in the statute made in the third year of king *James*) by law established; (3) And during the time of the taking thereof by the said person and persons all pleas and proceedings in the said respective courts shall cease; (4) And that all and every of the said respective persons and officers, not having taken the said oaths in the said respective courts aforesaid, shall on or before the first day of *August* one thousand six hundred seventy-three, at the quarter-sessions for that county or place where he or they shall be, inhabit or reside on the twentieth day of *May*, take the said oaths in open court, between the said hours of nine and twelve of the clock, in the forenoon; (5) And the said respective officers aforesaid shall also receive the sacrament of the Lord's Supper, according to the usage of the church of *England*, at or before the first day of *August* in the year of our Lord one thousand six-hundred and seventy-three, in some parish church, upon some

Lord's day, commonly called *Sunday*, immediately after divine service and sermon.

II. And be it further Enacted by the authority aforesaid, That all and every person or persons that shall be admitted, entred, placed or taken into any office or offices civil or military, or shall receive any pay, salary, fee or wages, by reason of any patent or grant of his majesty, or shall have command or place of trust from or under his majesty, his heirs or successors, or by his or their authority, or by authority derived from him or them, within this realm of *England*, dominion of *Wales*, or town of *Berwick upon Tweed*, or in his majesty's navy, or in the several islands of *Fersey* and *Guernsey*, or that shall be admitted into any service or employment in his majesty's or royal highness's household or family, after the first day of *Easter* term aforesaid, and shall inhabit, be or reside, when he or they is or are so admitted or placed, within the cities of *London*, or *Westminster*, or within *thirty miles* of the same, shall take the said oaths aforesaid in the said respective court or courts aforesaid, in the next term after such his or their admittance or admittances into the office or offices, employment or employments aforesaid, between the hours aforesaid, and no other, and the proceedings to cease as aforesaid; (2) And that all and every such person or persons to be admitted after the said first day of *Easter* term as aforesaid, not having taken the said oaths in the said courts aforesaid, shall at the quarter sessions for that county or place where he or they shall reside, next after such his admittance or admittances into any of the said respective offices or employments aforesaid, take the said several and respective oaths as aforesaid; (3) And all and every such person and persons, so to be admitted as aforesaid, shall also receive the sacrament of the Lord's Supper, according to the usage of the church of *England*, within three months

months after his or their admittance in or receiving their said authority and employment, in some public church, upon some Lord's day, commonly called *Sunday*, immediately after divine service and sermon.

Explained by 1 *Geo. 2. Stat. 2. cap. 23. §. 6.* but that §. is expired.

III. And every of the said persons in the respective court where he takes the said oaths shall first deliver a certificate of such his receiving the said sacrament as aforesaid, under the hands of the respective minister and churchwarden, and shall then make proof of the truth thereof by two credible witnesses at the least, upon oath; all which shall be enquired of, and put upon record in the respective courts.

IV. And be it further Enacted by the authority aforesaid, That all and every the person or persons aforesaid, that do or shall neglect or refuse to take the said oaths and sacrament in the said courts and places, and at the respective times aforesaid, shall be *ipso facto* adjudged incapable and disabled in law, to all intents and purposes whatsoever, to have, occupy or enjoy the said office or offices, employment or employments, or any part of them, or any matter or thing aforesaid, or any profit or advantage appertaining to them or any of them; (2) And every such office and place, employment and employments shall be void, and is hereby adjudged void.

V. And be it further Enacted, That all and every such person or persons that shall neglect or refuse to take the said oaths or the sacrament as aforesaid, within the times, and in the places aforesaid, and in the manner aforesaid, and yet after such neglect or refusal shall execute any of the said offices or employments after the said times expired, wherein he or they ought to have taken the same, and being thereupon lawfully convicted, in or upon any information, pre-

sentment or indictment, in any of the King's courts at *Westminster*, or at the assizes, every such person and persons shall be disabled from thenceforth to sue or use any action, bill, plaint, or information in course of law, or to prosecute any suit in any court of equity, or to be guardian of any child, or executor or administrator of any person, or capable of any legacy or deed of gift, or to bear any office within this realm of *England*, dominion of *Wales*, or town of *Berwick upon Tweed*; (2) And shall forfeit the sum of *five hundred pounds*, to be recovered by him or them that shall sue for the same, to be prosecuted by any action of debt, suit, bill, plaint or information in any of his majesty's courts at *Westminster*, wherein no essoign, protection or wager of law shall lie.

VI. And be it further Enacted by the authority aforesaid, That the names of all and singular such persons and officers aforesaid, that do or shall take the oaths aforesaid, shall be in the respective courts of Chancery and King's bench and the quarter sessions inrolled, with the day and time of their taking the same, in rolls made and kept only for that intent and purpose, and for no other; (2) The which rolls, as for the court of Chancery, shall be publickly hung up in the office of the petty-bag, and the roll for the King's bench in the crown office of the said court, and in some publick place in every quarter sessions, and there remain during the whole term, every term, and during the whole time of the said sessions, in every quarter sessions, for every one to resort to and look upon without fee or reward; (3) And likewise none of the person or persons aforesaid, shall give or pay as any fee or reward, to any officer or officers, belonging to any of the courts aforesaid, above the sum of *twelve pence* for his or their entry of his or their taking of the the oaths aforesaid.

VII. And

VII. And further, That it shall and may be lawful to and for the respective courts aforesaid, to give and administer the said oaths aforesaid to the person or persons aforesaid, in manner as aforesaid, and upon the due tender of any such person or persons to take the said oaths, the said courts are hereby required and enjoined to administer the same.

VIII. And be it further Enacted, That if any person or persons, not bred up by his or their parent or parents from their infancy in the popish religion, and professing themselves to be popish recusants, shall breed up, instruct or educate his or their child or children, or suffer them to be instructed or educated in the popish religion, every such person being thereof convicted, shall be from thenceforth disabled of bearing any office or place of trust or profit in church or state; (2) And all such children as shall be so brought up, instructed or educated, are and shall be hereby disabled of bearing any such office or place of trust or profit, until he and they shall be perfectly reconciled and converted to the church of *England*, and shall take the oaths of supremacy and allegiance aforesaid before the justices of the peace in the open quarter sessions of the county or place where they shall inhabit, and thereupon receive the sacrament of the Lord's Supper after the usage of the church of *England*, and obtain a certificate thereof under the hands of two or more of the said justices of the peace.

IX. And be it further Enacted by the authority aforesaid, That at the same time when the persons concerned in this act shall take the aforesaid oaths of supremacy and allegiance, they shall likewise make and subscribe this declaration following, under the same penalties and forfeitures as by this act is appointed.

I A. B.

I A. B. do declare, That I do believe that there is not any transubstantiation in the sacrament of the Lord's Supper, or in the elements of bread and wine, at or after the consecration thereof by any person whatsoever.

X. Of which subscription there shall be the like register kept, as of the taking the oaths aforesaid.

XI. Provided always, That neither this act, nor any thing therein contained, shall extend, be judged or interpreted any ways to hurt, or prejudice the peerage of any peer of this realm, or to take away any right, power, privilege or profit, which any person (being a peer of this realm) hath or ought to enjoy by reason of his peerage, either in time of parliament or otherwise; (2) Or to take away creation-money or bills of imposit, nor to take away or make void any pension or salary granted by his majesty to any person for valuable and sufficient consideration for life, lives or years, other than such as relate to any office, or to any place of trust under his majesty, and other than pensions of bounty or voluntary pensions; (3) Nor to take away or make void any estate of inheritance granted by his majesty, or any his predecessors, to any person or persons of or in any lands, rents, tithes or hereditaments, not being offices; (4) Nor to take away or make void any pension or salary already granted by his majesty, to any person, who was instrumental in the happy preservation of his sacred majesty after the battle at *Worcester*, in the year one thousand six hundred fifty-one, until his majesty's arrival beyond the seas; (5) Nor to take away or make void the grant of any office or offices of inheritance, or any fee, salary or reward for executing such office or offices or thereto any way belonging, granted by his majesty or any his predecessors, to, or enjoyed or which hereafter shall be enjoyed by,
any

any person or persons who shall refuse or neglect to take the said oaths, or either of them, or to receive the sacrament, or to subscribe the declaration mentioned in this act, in manner therein expressed:

(6) Nevertheless so as such person or persons having or enjoying any such office or offices of inheritance, do or shall substitute and appoint his or their sufficient deputy or deputies (which such officer or officers respectively are hereby empowered from time to time to make or change, any former law or usage to the contrary notwithstanding) to exercise the said office or offices, until such time as the person or persons, having such office or offices shall voluntarily in the court of Chancery, before the lord chancellor or lord keeper for the time being, or in the court of King's bench, take the said oaths, and receive the sacrament according to law, and subscribe the said declaration, and so as all and every the deputy and deputies so as aforesaid to be appointed, take the said oaths, receive the sacrament, and subscribe the said declaration from time to time, as they shall happen to be so appointed, in manner as by this act such officers whose deputies they be, are appointed to do; and so as such deputies be from time to time approved of by the king's majesty under his privy signet: (7) But that all and every the peers of this realm shall have, hold and enjoy what is provided for as aforesaid, and all and every other person or persons before mentioned, denoted or intended within this proviso, shall have hold and enjoy what is provided for as aforesaid, notwithstanding any incapacity or disability mentioned in this act.

XII. Provided also, That the said peers and every of them may take the said oaths, and make the said subscription, and deliver the said certificates, before the peers sitting in parliament, if the parliament be sitting within the time limited for doing thereof, and in the intervals of parliament in the high court of Chan-

Chancery, in which respective courts all the said proceedings are to be recorded in manner aforesaid.

XIII. Provided always, That no married woman, or person under the age of eighteen years, or being beyond or upon the seas, or found by the lawful oaths of twelve men to be *non compos mentis*, and so being and remaining at the end of *Trinity* term in the year of our Lord one thousand six hundred seventy-three, having any office, shall by virtue of this act lose or forfeit any such his or her office, (other than such married woman during the life of her husband only) for any neglect or refusal of taking the oaths, and doing the other things required by this act to be done by persons having offices, so as such respective persons within four months after the death of the husband, coming to the age of eighteen years, returning into this kingdom, and becoming of sound mind, shall respectively take the said oaths, and perform all other things in manner as by this act is appointed for persons to do, who shall happen to have any office or officess to them given or fallen after the end of the said *Trinity* term.

XIV. Provided also, That any person who by his or her neglect or refusal, according to this act, shall lose or forfeit any office, may be capable by a new grant of the said office, or of any other, and to have and hold the same again, such person taking the said oaths, and doing all other things required by this act, so as such office be not granted to, and actually enjoyed by, some other person at the time of the re-granting thereof.

XV. Provided also, That nothing in this act contained shall extend to make any forfeiture, disability or incapacity in, by, or upon any non-commission officer or officers in his majesty's navy, if such officer or officers, shall only subscribe the declaration therein required, in manner as the same is directed.

XVI. Pro-

XVI. Provided also, That nothing in this act contained shall extend to prejudice *George Earl of Bristol*, or *Ann countess of Bristol* his wife, in the pension or pensions granted to them by patent under the Great seal of *England*, bearing date the *sixteenth* day of *July* in the year of our Lord one thousand six hundred sixty and nine, being in lieu of a just debt due to the said Earl from his majesty, particularly expressed in the said patent.

XVII. Provided also, That this act, or any thing therein contained, shall not extend to the office of any high constable, petty constable, tythingman, headborough, overseer of the poor, churchwardens, surveyor of the highways, or any like inferior civil office, or to any office of forester, or keeper of any park, chace, warren, or game, or of bailiff of any manor or lands, or to any like private offices, or to any person or persons having only any the before-mentioned, or any the like offices.

30 Car. 2. stat. 2.

An act for the more effectual preserving the king's person and government, by disabling Papists from sitting in either house of parliament.

FORASMUCH as divers good laws have been made for preventing the increase and danger of popery in this kingdom, which have not had the desired effects, by reason of the free access which popish recusants have had to his majesty's court, and by reason of the liberty which of late some of the recusants have had and taken to sit and vote in parliament.

II. Where-

II. Wherefore, and for the safety of his majesty's royal person and government, Be it Enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and of the commons, in this present parliament assembled, and by the authority of the same, that from and after the *first* day of *December*, which shall be in the year of our Lord God one thousand six hundred seventy and eight, no person that now is or hereafter shall be a peer of this realm, or member of the house of peers, shall vote, or make his proxy in the house of peers, or sit there during any debate in the said house of peers; (2) Nor any person that now is, or hereafter shall be a member of the house of commons, shall vote in the house of commons, or sit there during any debate in the said house of commons after their speaker is chosen; (3) Until such peer or member shall from time to time respectively, and in manner following, first take the several oaths of allegiance and supremacy, and make, subscribe and audibly repeat this declaration following.

III. *I A. B. do solemnly and sincerely in the presence of God profess, testify and declare, that I do believe that in the sacrament of the Lord's Supper there is not any transubstantiation of the elements of bread and wine into the body and blood of Christ, at or after the consecration thereof by any person whatsoever: (2) And that the invocation or adoration of the virgin Mary or any other saint, and the sacrifice of the mass, as they are now used in the church of Rome, are superstitious and idolatrous. (3) And I do solemnly in the presence of God profess, testify and declare, That I do make this declaration, and every part thereof, in the plain and ordinary sense of the words read unto me, as they are commonly understood by English Protestants, without any evasion,*

evafion, equivocation or mental refervation whatfoever, and without any difpenfation already granted me for this purpofe by the pope, or any other authority or perfon whatfoever, or without any hope of any fuch difpenfation from any perfon or authority whatfoever, or without thinking that I am or can be acquitted before God or man, or abfolved of this declaration or any part thereof, although the pope, or any other perfon or perfons, or power whatfoever, fhould difpenfe with or annul the fame, or declare that it was null or void from the beginning.

IV. Which faid oaths and declaration fhall be in this and every fucceeding parliament folemnly and publickly made and fubfcribed betwixt the hours of nine in the morning and four in the afternoon, by every fuch peer and member of the houfe of peers, at the table in the middle of the faid houfe, before he take his place in the faid houfe of peers, and whilft a full houfe of peers is there with their fpeaker in his place: (2) And by every fuch member of the houfe of commons, at the table in the middle of the faid houfe, and whilft a full houfe of commons is there duly fitting with their fpeaker in his chair; (3) And that the fame be done in either houfe in fuch like order or method as each houfe is called over by refpectively.

V. And be it further Enacted, That from and after the faid firft day of *December* every peer of this realm, and member of the houfe of peers, and every peer of the kingdom of *Scotland*, or of the kingdom of *Ireland*, being of the age of one and twenty years or upwards, not having taken the faid oaths, and made and fubfcribed the faid declaration; (2) And every member of the faid houfe of commons, not having as aforefaid, taken the faid oaths, and made and fubfcribed the faid declaration; (3) And every perfon now, or hereafter convicted of popifh recufancy,

fancy; (4) Who hereafter shall at any time after the said first day of *December* come advisedly into or remain in the presence of the king's majesty or queen's majesty, or shall come into the court or house where they or any of them reside, as well during the reign of his present majesty (whose life God long preserve) as during the reigns of any his royal successors kings or queens of *England*; (5) Shall incur and suffer all the pains, penalties, forfeitures, and disabilities in this act mentioned or contained; (6) Unless such peer, member or person so convicted, do respectively in the next term after such his coming or remaining, take the said oaths, and make and subscribe the said declaration in his majesty's high court of Chancery between the hours of nine and twelve in the forenoon.

VI. And be it further Enacted by the authority aforesaid, That if any person that now is or hereafter shall be a peer of this realm, or member of the house of peers, or member of the house of commons, shall presume to do any thing contrary to this act, or shall offend in any of the cases aforesaid, That then every such peer and member so offending, shall from thenceforth be deemed and adjudged a popish recusant convict to all intents and purposes whatsoever; (2) And shall forfeit and suffer as a popish recusant convict; (3) And shall be disabled to hold or execute any office or place of profit or trust civil or military, in any of his majesty's realms of *England* or *Ireland*, dominion of *Wales*, or town of *Berwick upon Tweed*, or in any of his majesty's islands or foreign plantations to the said realms belonging; (4) And shall be disabled from thenceforth to sit or vote in either house of parliament, or make a proxy in the house of peers; (5) Or to sue or use any action, bill, plaint or information in course of law, or to prosecute any suit in any court of equity, (6) Or to be guardian of any child,

child, or executor or administrator of any person, (7) Or capable of any legacy or deed of gift; (8) And shall forfeit for every wilful offence against this act the sum of *five hundred pounds*, to be recovered and received by him or them that shall sue for the same, and to be prosecuted by any action of debt, suit, bill, plaint or information in any of his majesty's courts at *Westminster*, wherein no *essoign*, protection or wager of law shall lie.

VII. And be it further Enacted by the authority aforesaid, That from the said *first* day of *December*, it shall and may be lawful to and for the house of peers and house of commons, or either of them respectively, as often as they or either of them shall see occasion, either in this present parliament, or any other hereafter to be holden, to order and cause all or any of the members of their respective houses of parliament, openly in their respective houses of parliament, to take the said oaths, and to make and subscribe the said declaration, at such times, and in such manner, as they shall appoint. (2) And if any peer shall, contrary to such order made by their said house, wilfully presume to sit therein, without taking the said oaths, and subscribing the said declaration, according to the said order, every such peer or member of the house of peers, so presuming to sit, shall be adjudged, and is hereby declared, to be incapable and disabled in law to all intents and purposes whatsoever, to sit in the said house of peers, and give any voice therein, either by proxy or otherwise howsoever, during that parliament; (3) And if any member or members of the house of commons, shall contrary to such order made by their house, wilfully presume to sit therein without taking the said oaths, and making and subscribing the said declaration; every such member or members of the house of commons, so presuming to sit, shall be adjudged, and is hereby de-

X

clared

clared to be incapable and disabled in law to all intents and purposes whatsoever to sit in the said house of commons, or give any voice therein during that parliament.

VIII. And be it Enacted, That in every case where any member or members of the house of commons shall by virtue of this act be disabled to sit or vote in the house of commons, then and in every such case, without any further conviction or other proceedings against such member or members, the place or places for which they or any of them were elected, is hereby declared void; (2) And a new writ or writs shall issue out of the high court of Chancery by warrant or warrants from the speaker of the house of commons for the time being, and by order of the said house, for the election of a new member or members to serve in the house of commons, in the place or places of such member or members so disabled, to all intents and purposes, as if such member or members were naturally dead.

IX. And be it further Enacted by the authority aforesaid, That from and after the *first* day of *December* one thousand six hundred seventy and eight, Every person then being, and who after that time shall be, a sworn servant to the king's or queen's majesty, not having before that time duly taken the oaths, and made and subscribed the declaration contained in an act, intituled, *An act for preventing dangers which may happen from popish recusants*, shall take the oaths, and make and subscribe the declaration before expressed, in his majesty's high court of Chancery, in the manner aforesaid, either in the next term after the said *first* day of *December*, or in the next term after any such person shall be so sworn a servant; or in case of lawful impediment by sickness, proved upon oath, and allowed to be such under the hands of the lord chancellor or lord keeper for the time

time being, then in the next term after such impediment removed; (2) And if any such person shall refuse or neglect to do the same, and yet after such refusal or neglect shall advisedly come into or remain in the presence of the king's or queen's majesty, or shall come into the court or house where they or any of them reside, as well during the reign of his present majesty, as during the reigns of his and their royal successors, kings or queens of *England*, and every of them; every such person shall be disabled to hold any place as such sworn servant, and shall incur and suffer all the pains, penalties, forfeitures and disabilities in this act mentioned or contained.

X. Provided, That nothing in this act shall relate to or have any effect upon any person being a natural born subject of the king of *Portugal*, who now is or hereafter shall be a sworn servant to the queen's majesty, not exceeding nine in number at any one time: (2) Nor to such women servants as her majesty shall under her hand and seal from time to time for that purpose be pleased to nominate; the said women servants so nominated not exceeding the number of nine at any one time.

XI. And be it Enacted, That during the time of taking of the said oaths, and making and subscribing the said declaration, all other matters and proceedings, as well in the said houses of parliament, as in the said court, shall cease; (2) And the said oaths, declaration and subscription, together with a schedule of the names of the persons who shall by virtue of this act take and subscribe the same, shall be made, entred and filed in parchment-rolls from time to time, duly provided for that purpose by the clerk of the house of lords, and the clerk of the house of commons, and by the clerk of the petty bag in Chancery, for the several and respective uses as aforesaid; (3) And none

of the peers or members shall give or pay any fee or reward to any such clerk, above the sum of *twelve pence* for the Entry of his taking the said oaths, and making and subscribing the said declaration: (4) All which rolls respectively the said clerks are hereby required from time to time, without any fee or reward, to shew to any person desiring to look upon the same; (5) And the said house of peers, and house of commons, and court of Chancery are hereby severally impowered and required in the first place, all other business laid aside, to administer the said oaths, declaration and subscription respectively, as occasion shall be from time to time, to all and every the person and persons aforesaid, duly demanding the same, according to the directions, purport and meaning of this present act.

XII. Provided always, That this act, nor any thing herein contained, shall extend to the prejudice of any person for coming into or remaining in the presence of the king or queen's majesty, who shall first have licence so to do by any warrant under the hands and seals of six or more privy counsellors, by order of his majesty's privy council, upon some urgent occasion therein to be expressed, so as such licence exceed not the space of *ten days*, and that the said licence be first filed and put upon record in the office of the petty-bag in Chancery, for any body to view without fee or reward, and no person be licensed for above the number of *thirty days* in any one year.

XIII. Provided nevertheless, That if any offender contrary to this act, shall at any time after such offence take the said oaths, and make and subscribe the said declaration in his majesty's high court of Chancery, and in the manner aforesaid; every such person shall be from thenceforth freed and discharged of and from all seizures, penalties and losses which he might otherwise sustain or bear for or by reason of being

ing a *popish recusant convict* by virtue of this act; (2) and shall be freed and discharged from all disabilities and incapacities incurred thereby; (3) so as such freedom and discharge extend not to restore any such person to any office or place filled and supplied upon voidance by this act; (4) nor to any other office, till after the expiration of one year, from the taking the said oath and making the declaration aforesaid; (5) nor to make void, or at any time discharge the said forfeiture of five hundred pounds incurred as aforesaid.

XIV. Provided always, That nothing in this act contained shall extend to his royal highness the duke of *York*.

I *Will. & Mar.*

C A P. IX.

An Act for the removing Papists, and reputed Papists, from the Cities of London and Westminster, and ten miles distance from the same.

BY this act, after reciting that Whereas the great numbers of PAPISTS resorting to the cities of *London* and *Westminster* ARE AND FOR A LONG TIME HAVE BEEN FOUND DANGEROUS TO THE PEACE AND SAFETY OF THIS KINGDOM; For the better preservation of the common safety, and avoiding *their mischievous practices and designs*;

II. It is Enacted, That for the better discovering and removing all papists and reputed papists out of the said cities, and ten miles of the same, it shall and may be lawful, and it is hereby required, that the lord mayor of *London* for the time being, and every justice of the peace of the city of *London*, and for the city and Liberties of *Westminster*, and borough of *Southwark*, and of the counties of *Middlesex*, *Surry*, *Kent*, and *Sussex*, within

their respective counties, cities, boroughs and limits, do from time to time *cause to be* ARRESTED and *brought before him* every person or persons, not being a merchant foreigner, within the said cities, or within ten miles of the same, as *are* or *are reputed to be* PAPISTS, and tender unto him the declaration mentioned in the statute made in the thirtieth year of king Charles the Second, intituled, *An act for the more effectual preserving the king's person and government, by disabling papists from sitting in either house of parliament*; and in case such person, upon such tender, refuse *audibly* and *solemnly* to *repeat, make, and subscribe* the said declaration, and shall after such refusal remain, continue, or be within the said city or cities, or ten miles distance from the same, that in every such case *he or she shall forfeit and suffer, as a* POPISH RECUSANT CONVICT by the laws already established shall or may forfeit or suffer.—

III. And that every justice of peace shall and do certify all and every subscription before him by virtue of this act taken, and likewise the names of all and every person refusing to repeat, take, make, or subscribe, as aforesaid, upon tender, under the hand and seal of the said justice, into the court of King's bench, the next term, or else at the next Quarter-sessions, that shall be of or for the county or place where such taking, subscribing or refusal shall happen: And if the said person, so refusing and certified, shall not, within the next term or sessions after such refusal, appear in the court of King's bench, or sessions where such certificate shall be returned, and *in open court audibly and solemnly repeat, take, make, and subscribe* the declaration aforesaid, and *indorse or enter his so doing upon the certificate* so returned, *shall be, from the time of such his neglect or refusal, taken, esteemed, and adjudged a* POPISH RECUSANT CONVICT, and as such to *forfeit and be proceeded against.*

IV. Pro-

IV. Provided always, That this act shall not extend to such person or persons as now use any trade, mystery, or manual occupation within the said liberties of *London* and *Westminster*, or within ten miles of the same; nor to such as within six months before the thirteenth day of *February* one thousand six hundred eighty-eight, had their dwellings or places of abode within the said cities, or ten miles compass of the same, *not having any dwelling or place of abode elsewhere*, so as he or they, before the first day of *August* one thousand six hundred eighty-nine, do certify his or their names, additions and places of abode, at the sessions of the peace to be held for the said respective cities, counties or places: And the clerk of the peace shall not take or receive above two pence for the entry of the name, addition and place of abode of any one person.

V. Provided, That nothing in this act shall relate to, or have any effect upon, any foreigner that is or shall be a menial servant to any ambassador, or publick agent.

VI. Provided, That nothing in this act shall relate to, or have any effect upon, any person being a natural born subject of the king of *Portugal*, who now is, or hereafter shall be, a sworn servant to the queen dowager, nor to any other servants being natural born subjects of their majesties, as her majesty the queen dowager shall under her hand and seal from time to time for that purpose be pleased to nominate, the said servants, so nominated not exceeding the number of thirty at any one time, so as none of the said servants, being natural born subjects of their majesties, be a Jesuit, Priest, Monk or Fryar; any law or statute to the contrary notwithstanding.

1 Will. & Mar.

C A P. XV.

An act for the better securing the government by disarming papists and reputed papists.

FOR the better securing of the government against papists and reputed papists;

II. It is Enacted, That it shall and may be lawful for any two or more justices of the peace, who shall know or suspect any person to be a PAPIST, or shall be informed that any person is, or is suspected to be a PAPIST, to tender, and they are hereby authorized and required forthwith to tender to such person so known or suspected to be a PAPIST, the DECLARATION set down and expressed in an act of parliament made in the thirtieth year of the reign of the late king Charles the Second, intituled, *An act for the more effectual preserving the king's person and government, by disabling papists from sitting in either house of parliament*, to be by him made, repeated and subscribed; and if such person so required shall refuse to make, repeat and subscribe the said declaration, or shall not make, repeat and subscribe the said declaration, or shall refuse or forbear, to appear before the said justices, for the making, repeating and subscribing the said declaration, upon notice to him given or left at his usual place of abode, by any person authorized in that behalf, by warrant under the hands and seals of the said two justices, such person from thenceforth shall be taken to be, and is hereby declared to be liable and subject to all and every the penalties, forfeitures and disabilities hereafter in this act mentioned.

III. And it is further Enacted, That the said justices of peace shall certify the name, surname and usual

usual place of abode of every person, who being required shall *refuse* or *neglect* to *make, repeat* and *subscribe* the said *declaration*, or to *appear before them* for the *making, repeating* and *subscribing* the said *declaration*, as also of every person, who shall make, repeat and subscribe the said declaration, at the next general quarter sessions to be holden for the shire, riding, division or liberty, for which they shall be justices of the peace, to be there recorded by the clerk of the peace, or town clerk, and kept amongst the records of the said sessions.

IV. And for the better securing their majesties persons and government; it is further Enacted and declared, That no *papist* or *reputed papist*, so *refusing* or *making default*, as aforesaid, shall or may have or keep in his house or elsewhere, or in the possession of any other person to his use, or at his disposition, any *arms, weapons, gunpowder* or *ammunition* (other than such necessary weapons, as shall be allowed to him by *order of the justices* of the peace, at *their general quarter sessions*, for the *defence of his house or person*); and that any two or more justices of the peace, from time to time, by warrant under their hands and seals, may authorize and impower *any person* or *persons* in the *day time with the assistance of the constable* or his *deputy*, or the *tythingman*, or *headborough*, where the search shall be, (who are hereby *required* to be aiding and assisting herein) to *search for all arms, weapons, gunpowder* or *ammunition*, which shall be in the *house, custody* or *possession* of any such **PAPIST** or **REPUTED PAPIST**, and *seize the same* for the use of their majesties and their successors: which said justices of the peace shall from time to time, at the next general quarter sessions to be held for the county, riding, division, or liberty, where such seizure shall be made, deliver the said arms, weapons, gunpowder, and ammunition, in open court for the use aforesaid.

V. And

V. And it is further Enacted, That *every* PAPIST or REPUTED PAPIST, who shall not, within the space of *ten days* after such *refusal* or *making default* as aforesaid, *discover* and *deliver*, or *cause to be delivered*, to some of their majesties justices of the peace, *ALL arms, weapons, gunpowder, or ammunition* whatsoever, which he shall have in his house or elsewhere, or which shall be in the possession of *any person* to *his use*, or *at his disposition*, or shall *bind* or *disturb* any person or persons *authorized by warrant under the hands and seals of any two justices* of the peace, to *search for* and *seize the same*, that every such person so offending, contrary to the statute in this behalf made, shall be *committed to the COMMON GAOL* of the county or place where he shall commit such offence, by warrant under the hands and seals of any two justices of the peace, there to remain *without bail or mainprize*, for the space of *three months*, and shall also *forfeit* and *lose* the said *arms*, and *pay treble the value of them* to the use of their majesties, and their successors, to be appraised by the justices of the peace *at the next general quarter sessions* to be held for the said county, riding, or division, to their majesties and their successors.

VI. And it is further Enacted, That *every person* who shall *conceal*, or *be privy*, or *aiding*, or *assisting* to the *concealing*, or who *knowing thereof*, shall not *discover* or *declare* to some of their majesties justices of the peace, the *arms, weapons, gunpowder, or ammunition* of any person *refusing*, or *making default* as aforesaid, or shall *bind* or *disturb* any person or persons, *authorized as aforesaid*, in *searching for, taking and seizing* the same, shall be committed to the COMMON GAOL of the county or place where he shall commit such offence, by warrant under the hands and seals of any two justices of the peace, there to remain *without bail or mainprize* for the space of *three months*; and shall also

also forfeit and lose *treble the value* of the said arms to their majesties and their successors.

VII. And it is further Enacted, That if *any person or persons shall discover* any concealed arms, weapons, ammunition or gunpowder, belonging to any refusing or making default as aforesaid, so as the same may be seized as aforesaid, for the use of their majesties and their successors, the justices of the peace, upon delivery of the same at the general quarter-sessions as aforesaid, shall have power, and they are hereby required, as a reward for such a discovery, by order of sessions, to allow to him or them a sum of money, amounting to the full value of the arms, weapons, ammunition or gunpowder so discovered; the said sum to be assessed by the judgment of the said justices at their said sessions, and to be levied by distress, and sale of the goods of the person offending against this act, rendering the overplus which shall arise by such sale, above the said sum so allowed, and above the necessary charges of taking such distress, to the owner.

VIII. Provided always, That if any person, who shall have refused or made default as aforesaid, shall desire to submit and conform, and for that purpose shall present himself before the justices of peace, at the general quarter-sessions to be holden for the county, riding, division, or liberty where his refusal, or making default, as aforesaid, shall be certified, as aforesaid, and shall there in OPEN COURT make, repeat, and subscribe the said DECLARATION, contained in the said act, made in the said thirtieth year of the reign of the said late king Charles the Second, and take the several oaths contained in an act made in this present parliament, intituled, *An act for removing and preventing all questions and disputes concerning the assembling and sitting of this present parliament*, he shall from thenceforth be discharged of and from all disabilities, and forfeitures, which

which he might or should be liable to *for the FUTURE*, by reason of his refusal or default as aforesaid.

IX. And be it further Enacted, That *no papist, or reputed papist, so refusing or making default as aforesaid, at any time after the fifteenth day of May in the year of our Lord one thousand six hundred eighty-nine, shall or may have or keep in his own possession, or in the possession of any other person to his use, or at his disposition, any horse or horses, which shall be above the value of five pounds, to be sold; and that any two or more justices of the peace, from time to time, by warrant under their bands and seals, may and shall authorize any person or persons, with the assistance of the constable or his deputy, or the tythingman, or headborough, where the search shall be, (who are hereby required to be aiding and assisting herein) to search for and seize, for the use of their majesties and their successors, all such horses; which horses are hereby declared to be forfeited to their majesties and their successors.*

X. And it is further Enacted, That if any person shall conceal, or be aiding or assisting in the concealing any such horse or horses belonging to any PAPIST, or REPUTED PAPIST, so refusing or making default as aforesaid, after the said fifteenth day of May, such person shall be committed to prison by such warrant as aforesaid, there to remain without bail or mainprize by the space of three months, and shall also forfeit and lose to their majesties, and their successors treble the value of such horse or horses; which value is to be settled as aforesaid.

By the 1 Geo. 1. *st.* 2. *c.* 20. §. 16.

IT is Enacted That from and after the *tenth* day of *September* next to come, an act made in the parliament of *England* in the first year of the reign of the late king

king *William* and queen *Mary*, intituled, *An act for the better securing the government, by disarming papists and reputed papists*, shall be in force in that part of *Great Britain* called *Scotland*, excepting only that in lieu of the declaration mentioned in the said act, the oaths of *allegiance* and *abjuration* shall be taken and subscribed, and the declaration called the *formula*, recited in an act of the parliament of *Scotland*, passed in the year one thousand seven hundred, intituled, *An act for preventing the growth of popery*, shall be likewise made and subscribed; and also that the counties, ridings and divisions mentioned in the aforesaid act, shall be construed and understood in *Scotland*, to be shires or stewardries: and nothing in the said act contained shall be construed to establish any office which is not now in being in *Scotland*.

1 *Will. & Mar. cap. 26.*

An act to vest in the two universities the presentations of benefices belonging to papists.

BY this act, after reciting, That whereas in and by a certain clause mentioned in one act of parliament made in the third year of the reign of king *James the First*, intituled, *An act to prevent and avoid dangers which may grow by popish recusants*, it is Enacted, That every person or persons that is or shall be a *popish recusant convict*, during the time that he shall be or remain a *recusant*, shall from and after the end of that present session of parliament, be utterly disabled to present to any benefice with cure, or without cure, prebend or any other ecclesiastical living, or to collate or nominate to any free-school, hospital, or donative whatsoever, and from the beginning of the said parliament shall

shall likewise be *disabled to grant any avoidance to any benefice, prebend or other ecclesiastical living.*

II. It is Enacted, That every person who shall *refuse, or neglect to make, repeat, and subscribe the declaration* mentioned in one act of this present parliament, intituled, *An act for the better securing the government by disarming papists and reputed papists, when the same shall be tendered to such person by any two or more justices of the peace, as in the said act is Enacted, or who shall upon notice given, as in the said act is directed, refuse or forbear to appear before them for the making, repeating, and subscribing thereof, and shall thereupon have his name, surname, and usual place of abode certified and recorded at the general quarter-sessions to be holden for the shire, riding, division, or liberty, for which such two justices shall be justices of the peace, by the clerk of the peace, or town clerk, as in the said act is appointed; every such person so recorded, shall be, from and after the time of such record made, adjudged, taken, and esteemed disabled to make such presentation, collation, nomination, donation or grant of any avoidance of any benefice, prebend, or ecclesiastical living, as fully and amply as if such person were a POPISH RECUSANT CONVICT* by the laws or statutes of this realm; any law, statute, or usage to the contrary notwithstanding. And that the chancellor and scholars of the university of *Oxford*, and the chancellor and scholars of the university of *Cambridge*, by what name or names soever they, or either of them, are incorporated, shall respectively have the *presentation, nomination, collation, and donation* of and to every such *benefice, prebend or ecclesiastical living, school, hospital, and donative*, set, lying, and being in the respective counties, cities, and other the places and limits in the said act of the third of king *James* mentioned, as in and by the said act is directed, and appointed, so often as any of them shall become void, according to the limitations,

tations, directions, and provisions in that behalf limited, enacted, and provided.

III. And it is further Enacted, That where any person or persons are or shall be *seized* or *possessed* of any *advowson*, *right of presentation*, *collation*, or *nomination* to any such *ecclesiastical living*, *free-school*, or *hospital* as aforesaid, *in trust* for any *papist* or *popish recusant* who shall be *convicted* or *disabled*, according to the true intent and meaning of the said statute, made in the third year of the reign of the said King *James* the first, or by this present act; every such person and persons so *seized* and *possessed in trust* for any *papist* or *popish recusant convicted*, or *disabled*, shall be and are hereby adjudged to be *disabled* to *present*, *nominate*, or *collate* to any such *ecclesiastical living*, *free-school*, or *hospital*, or to grant any *avoidance* thereof; and their and every of their *presentations*, *nominations*, *collations* and *grants*, shall be *null* and *void* to all intents and purposes whatsoever; and the *chancellors* and *scholars* of the said respective universities as aforesaid, upon every avoidance, shall have the *presentations*, *nominations*, and *collations*, to such *ecclesiastical livings*, *free-schools*, and *hospitals*, in such manner as they should have the same, in case such *recusant convicted* or *disabled* were *seized* or *possessed* thereof.

IV. And in case any *trustee* or *trustees*, or *mortgagee*, or *grantee*, of any *avoidance*, hereafter *present*, *nominate*, or *collate*, or *cause to be presented*, *nominated* or *collated* any person to any such *ecclesiastical living*, *free-school*, or *hospital*, whereof the *TRUST* shall be for any *recusant convicted* or *disabled*, without giving notice of the *avoidance* in writing to the vice-chancellor for the time being of the university, to whom the *presentation*, *nomination*, or *collation* shall belong, according to the true intent of this act, within *three months* after the *avoidance* shall happen, such *trustee* or *trustees*, *mortgagees*, or *grantees*, shall forfeit and pay the sum of

FIVE

FIVE HUNDRED POUNDS, to the said respective chancellors and scholars of either of the said universities, to whom such *presentation, nomination, or collation* shall belong, according to the true intent of this present act, to be recovered in any of their majesties courts of record, by action of debt, bill, plaint, or information, wherein no effoign, protection, or wager of law shall be allowed.

V. Provided always, That the said chancellors and scholars of either of the said universities shall not *present or nominate* to any *benefice with cure, prebend, or other ecclesiastical living*, any person as shall then have any other *benefice with cure* of souls; and if any such *presentation* shall be had or made of any such person so *beneficed*, the said *presentation* shall be *utterly void*; any thing in this act to the contrary notwithstanding.

VI. Provided, That if any person so presented or nominated to any *benefice with cure*, shall be *absent from the same above the space of SIXTY DAYS in any one year*, that in such case *the said benefice shall become void*.

VII. Provided nevertheless, That if any such person shall *present himself* before the *justices of the peace* at the *general quarter-sessions* to be holden for the county, riding, division or liberty where his name was *recorded*, and shall there in *open court, make, repeat, and subscribe* the said *declaration*, and *take the several oaths* contained in one act of this present parliament, intituled, *An act for the abrogating of the oaths of supremacy and allegiance, and appointing other oaths*, he shall from thenceforth be *discharged of and from the said disability*, and be *enabled to make such presentation, collation, nomination, and donation, and grant of any avoidance to any benefice, prebend, or ecclesiastical living, school, or hospital, as if this act had not been made*.

11 & 12 Will. 3. cap. 4.

*An act for the further preventing the growth of
popery.*

WHEREAS there has been of late a *much* greater resort into this kingdom than formerly of *popish bishops, priests and jesuits*, and they do very openly, and in insolent manner, affront the laws, and daily endeavour to pervert his majesty's natural-born subjects, which has been occasioned by neglect of the due execution of the laws already in force: For preventing the further growth of popery, and of such *treasonable and execrable designs and conspiracies* against his majesty's person and government, and the established religion, as have lately, as well as frequently heretofore, been brought to light, and happily defeated by the wonderful providence of God; Be it Enacted by the king's most excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and commons, in this present parliament assembled, and by authority of the same, that from and after the five and twentieth day of *March* one thousand and seven hundred, *all and every person and persons who shall APPREHEND and TAKE one or more POPISH BISHOP, PRIEST, or JESUIT, and prosecute him or them so apprehended and taken, until he or they be convicted of SAYING MASS or of EXERCISING ANY OTHER PART OF THE OFFICE OR FUNCTION of a popish bishop, or priest within these realms, shall have and receive from the sheriff or sheriffs of the county where such conviction shall be made (without paying any fee for the same) for EVERY such offender so convicted, the sum of ONE HUNDRED POUNDS within four months after such conviction, and demand thereof made, by tendring a certificate to the said sheriff or*

Y

sheriffs

sheriffs, under the hand or hands of the judge or justices before whom such conviction shall be made, certifying the *conviction* of such *popish bishop, priest or jesuit*, and also that such *popish bishop, priest or jesuit, popish bishops, priests, or jesuits*, was or were taken by the person or persons claiming the said reward: And in case any dispute shall happen to arise between the persons so apprehending any *popish bishop, priest or jesuit*, touching their right and title to the said reward, that then the said judge, or justices so respectively certifying as aforesaid, shall in and by their said certificate direct and appoint the said reward to be paid unto and amongst the parties claiming the same, in such share and proportion as to the said judge or justices shall seem just and reasonable; and if any such sheriff die, or be removed, before the expiration of four months after conviction and demand made of the reward (not being paid as aforesaid) that then the next sheriff shall pay the same, within *two months* after demand, and certificate brought as aforesaid; and if default of payment of the said sum or sums of money shall happen to be made by any sheriff, such sheriff, so making default, shall forfeit to the person or persons to whom such money is due as aforesaid, *two hundred pounds*, to be recovered by him or them, or his or their executors or administrators, in any of his majesty's courts of record at *Westminster*, by action of debt, bill, plaint or information, wherein but one imparlance, and no essoin, protection or wager of law shall be allowed, with full costs of suit by him or them expended in the recovery of the same.

II. And it is further Enacted, That all sheriffs, their successors, executors or administrators, upon producing such respective certificates, or a duplicate or duplicates thereof, shall have the monies contained in such certificate paid to them by the lord treasurer,

or

or commissioners of his majesty's treasury, for the time being, out of the revenue of the crown.

III. And for a further remedy against the growth of popery, over and beyond the good laws already made, Be it further Enacted by the authority aforesaid, That if any *popish bishop, priest or jesuit whatsoever*, shall say mass, or exercise any other part of the office or function of a *popish bishop or priest within these realms, OR THE DOMINIONS THEREUNTO BELONGING*, or if any *papist, or person making profession of the popish religion*, shall keep school, or take upon themselves the education or government, or boarding of youth in any place within this realm, or the dominions thereunto belonging, such person or persons being thereof lawfully convicted, that then every such person shall on such conviction, be adjudged to *perpetual imprisonment*, in such place or places within this kingdom, as the king by advice of his privy council shall appoint.

IV. And be it also further Enacted by the authority aforesaid, That from and after the nine and twentieth day of *September*, which shall be in the year of our Lord one thousand seven hundred, if any person educated in the *popish religion, or professing the same*, shall not within *six months* after he or she shall attain the age of *eighteen years*, take the oaths of *allegiance and supremacy*, and also *subscribe the declaration* set down and expressed in an act of parliament made in the *thirtieth* year of the reign of the late king *Charles the Second*, intituled, *An act for the more effectual preserving the king's person and government, by disabling papists from sitting in either house of parliament*, to be by him or her made, repeated and subscribed in the courts of *Chancery, or King's Bench, or quarter sessions* of the county where such person shall reside, every such person shall in respect of him or herself only, and not to or in respect of any of his or her heirs or posterity, be *disabled and made incapable to inherit or*

take by descent, devise or limitation in possession, reversion or remainder, any lands, tenements or hereditaments, within the kingdom of England, dominion of Wales, or town of Berwick upon Tweed. And that during the life of such person, or until he or she do take the said oaths and make, repeat and subscribe the said declaration in manner as aforesaid, the next of his or her kindred, which shall be a protestant, shall have and enjoy the said lands, tenements and hereditaments, without being accountable for the profits by him or her received during such enjoyment thereof as aforesaid: But in case of any wilful waste committed on the said lands, tenements, or hereditaments, by the person so having or enjoying the same, or any other by his or her licence or authority, the party disabled, his or her executors and administrators, shall and may recover treble damages for the same, against the person committing such waste, his or her executors or administrators, by action of debt in any of his majesty's courts of record at Westminster; and that from and after the tenth day of April, which shall be in the year of our Lord one thousand seven hundred, every papist or person, making profession of the popish religion, shall be disabled, and is hereby made incapable, to purchase, either in his or her own name, or in the name of any other person or persons, to his or her use, or in trust for him or her, any manors, lands, profits out of lands, tenements, rents, terms or hereditaments, within the kingdom of England, dominion of Wales, and town of Berwick upon Tweed; and that all and singular estates, terms, and any other interests or profits whatsoever out of lands, from and after the said tenth day of April, to be made, suffered or done, to or for the use or behoof of any such person or persons, or upon any trust or confidence, mediately or immediately, to or for the benefit or relief of any such person or persons, SHALL BE UTTERLY VOID, and OF NONE EFFECT, to ALL INTENTS,

INTENTS, CONSTRUCTIONS and PURPOSES WHATSOEVER.

V. Provided always, That nothing in this act contained shall be construed to extend to any popish priest for saying mass, or officiating as a priest within the dwelling house of any foreign minister residing here, *so as such priest be not one of his majesty's natural-born subjects, nor naturalized within any of his kingdoms, or dominions, and so as the name of such priest, and the place of his birth, and the foreign minister to whom he shall belong, be entered and registred in the office of the principal secretary of state.*

VI. And whereas by an act made in the third year of king *James the First*, intituled, *An act to prevent and avoid dangers which may grow by popish recusants*, whosoever shall be convicted of sending, or causing to be sent, any child, or any other person under their government, into parts beyond the seas out of the king's obedience, to the intent that such child or person so sent should be educated in the *Romish religion*, contrary to the said act, is to forfeit one hundred pounds, one half to the king's majesty, and the other half to him that shall sue for the same: For the greater encouragement and reward of those who shall discover such offenders, Be it Enacted by the authority aforesaid, That the said sum of one hundred pounds shall be to the sole use and benefit of him or her who shall discover and convict any person so offending, to be recovered in such manner as in the said recited act is Enacted; any thing in the said act to the contrary notwithstanding.

VII. And to the end that the protestant children of popish parents may not in the life-times of such their parents, for want of fitting maintenance, be necessitated, in compliance with their parents, to embrace the *popish religion*, contrary to their own inclinations, Be it Enacted by the authority aforesaid, That from and after the said five and twentieth day of *March* one

thousand seven hundred, if any such parent, in order to the compelling such his or her protestant child to change his or her religion, shall refuse to allow such child a fitting maintenance, suitable to the degree and ability of such parent, and to the age and education of such child, then upon complaint thereof made to the lord high chancellor of ENGLAND, or lord keeper of the Great seal, or commissioners for the Great seal for the time being, it shall be lawful for the said lord chancellor, lord keeper or commissioners, to make such order therein as shall be agreeable to the intent of this act.

11th Geo. 2. cap. 17.

An act for securing the estates of papists conforming to the Protestant religion, against the disabilities created by several acts of parliament relating to papists; and for rendering more effectual the several acts of parliament made for vesting in the two universities in that part of Great Britain called England the presentations of benefices belonging to papists.

BY this act, after reciting that whereas persons professing or educated in the popish religion, are by divers acts of parliament subjected to several disabilities and incapacities, which may affect persons conforming from the popish to the Protestant religion: And whereas many persons have already conformed to the Protestant religion, and are willing to submit to his majesty's government in as full and ample manner as any other of his majesty's subjects, and others are likely so to do: It is Enacted, That all and every person or persons being reputed owner or owners, or in possession or receipt of the rents and profits of any manors,

manors, messuages, lands, tenements or hereditaments, or of any interest therein, who having been, or reputed to be a papist or papists, or educated in the popish religion, hath or have conformed to, or hereafter shall conform to and profess, the protestant religion, and hath or have taken, or shall take the oaths of *allegiance, supremacy and abjuration*, and also subscribed, or shall subscribe, the *declaration* set down and expressed in an act of parliament made in the thirtieth year of the reign of the late king *Charles the Second*, intituled, *An act for the more effectual preserving the king's person and government, by disabling papists from sitting in either house of parliament*, to be by him, her, or them repeated and subscribed in the courts of *Chancery or King's Bench*, or quarter sessions of the county where such person or persons shall reside (all which shall be recorded in one of his majesty's courts of record at *Westminster*, or such quarter sessions as aforesaid) and all and every person and persons being protestants, claiming under such person or persons conforming and performing the requisities as aforesaid, for their own benefit, or for the benefit of any other protestant or protestants, *and not for the benefit of any papist or papists*, shall hold, possess, and enjoy all such manors, messuages, lands, tenements, and hereditaments, freed and discharged of and from the disabilities and incapacities in the said acts, or any of them, contained, incurred, or supposed to be incurred by such person or persons so reputed owner or owners, or in possession or receipt of the rents and profits as aforesaid, or by any other person or persons, by, from, or through whom the title to such manors, messuages, lands, tenements, or hereditaments, or any interest therein, was or shall be derived, or supposed to be derived, for such estate, right, title, or interest as he, she, or they had, or would have had, if no such disability or incapacity had been incurred; unless the

person or persons intituled to take advantage of such disability, incapacity, or defect of title, hath or have actually and *bona fide* recovered, or shall hereafter recover such manors, messuages, lands, tenements, or hereditaments, by judgment or decree, in some action, or suit already commenced, or hereafter to be commenced, *six calendar months* at least before the making of such record, and to be prosecuted with due diligence.

II. Provided nevertheless, That this act, or any thing herein contained, shall not take away or prejudice the right of any person or persons, intituled to take advantage of such disability or incapacity, who now is or are in the actual possession of, or shall have, precedent to the making of such record, been in quiet possession of any such manors, messuages, lands, tenements, or hereditaments, by the space of *two calendar months*.

III. Provided always, and it is further Enacted, That if any such person or persons so conforming as aforesaid, shall after such conformity, return to, or again profess, the popish religion, every such person and persons shall for ever afterwards be disabled from, and be incapable of, having or enjoying any benefit, privilege, or advantage of this act, and shall from thenceforth be liable to the same disabilities, incapacities and forfeitures, as if he, she or they had not taken the said oaths, and subscribed the declaration as aforesaid; any thing herein contained to the contrary notwithstanding.

IV. Provided always, That nothing in this act contained shall extend to take away or prejudice the right of any person intituled to any remainder or reversion in any such manors, messuages, lands, tenements, or hereditaments, in case such person shall pursue his or her said right by some action, or suit to be commenced within the space of *twelve calendar months* next after the

the precedent estate or estates, on which such remainder or reversion depends and is expectant, shall be determined; or within *twelve calendar months*, from and after the twenty-ninth day of *September* one thousand seven hundred and thirty-eight, if such precedent estate or estates be already determined by the death or deaths of any person or persons, whose deaths have been concealed from, or not known to, the person intitled to such remainder or reversion, by reason of their having been buried beyond the seas or in a private and clandestine manner at home, and shall prosecute such action or suit with due diligence.

V. And whereas by an act made in the twelfth year of the reign of queen *Anne*, for rendering more effectual an act made in the third year of the reign of king *James the First*, intituled, *An act to prevent and avoid dangers which may grow by popish recusants*; and also one other act made in the first year of the reign of king *William* and queen *Mary*, intituled, *An act to vest in the two universities the presentations of benefices belonging to papists*; It was Enacted, That every papist or person making profession of the popish religion, and every child, not being a protestant, under the age of one and twenty years, of every such papist or person professing the popish religion, and every mortgagee, trustee, or person any ways intrusted directly or indirectly, mediately or immediately, by or for any such papist or person making profession of the popish religion, or such child as aforesaid, *whether such trust be declared by writing or not*, should be disabled and made incapable to *present, collate, or nominate* to any *benefice, prebend, or ecclesiastical living, school, hospital, or donative*, or to grant any avoidance of any *benefice, prebend, or ecclesiastical living*, and that every such *presentation, collation, nomination and grant, and every admission, institution, and induction* to be made thereupon, should be utterly void and of no effect to all intents,

intents, constructions, and purposes whatsoever; and that in every such case the chancellor and scholars of the university of *Oxford*, and the chancellor and scholars of the university of *Cambridge*, should respectively have the *presentation, nomination, collation* and *donation* of and to every such *benefice, prebend* or *ecclesiastical living, school, hospital, and donative*, set, lying and being in the respective counties, cities, and other places and limits in the said act of the third year of king *James* mentioned, as in and by the said act is directed and appointed in the case of a *popish recusant convict*. And whereas for the better discovery of all *secret trusts* and *fraudulent conveyances* made by *papists* or *persons making profession of the popish religion*, of their *advowsons* and *right of presentation, nomination, and donation* to any *benefices* or *ecclesiastical livings*, several provisions were made by the said act of the twelfth year of the reign of queen *Anne*, which have been fraudulently evaded by persons obtaining from such *papists*, without a full and valuable consideration, grants of such *advowsons* and *right of presentation, nomination* and *donation*, upon confidence, only that such grantees will, at the request of such *papists*, present to such *benefices* or *ecclesiastical livings*, clerks nominated by such *papists*, who have been presented accordingly, contrary to the true Intent and meaning of the said acts, and to the great hurt of the protestant interest of this kingdom; Be it therefore Enacted by the authority aforesaid, That every grant, to be made from and after the sixth day of *May* one thousand seven hundred and thirty-eight, of any *advowson* or *right of presentation, collation, nomination, or donation*, of and to any *benefice, prebend, or ecclesiastical living, school, hospital, or donative*, and every grant or any avoidance thereof, by any *papist, or person making profession of the popish religion*, or any mortgagee, trustee or person any ways intrusted

intrusted directly or indirectly, mediately or immediately, by or for any such *papist* or *person making profession of the popish religion*, whether such trust be declared by writing or not, shall be null and void, unless such grant shall be made *bona fide*, and for a full and valuable consideration to and for a *protestant purchaser*, or *protestant purchasers*, and meerly and only for the benefit of a *protestant* or *protestants*; and that every such grantee, or person claiming under any such grant, shall be deemed to be a trustee for a *papist* or *person professing the popish religion* as aforesaid, within the true intent and meaning of the said act; and that all such grantees, or persons claiming under such grants, and their presentees, shall be compelled to make such discovery relating to such grants and presentations made thereupon and by such methods, as in and by the said act of the twelfth year of the reign of queen *Anne*, are directed in the case of trustees of *papists* or *persons professing the popish religion*, and that every devise to be made from and after the said sixth day of *May* by any *papist* or *person professing the popish religion*, of any such *advowson* or *right of presentation*, *collation*, *nomination*, or *donation*, or any such *avoidance*, with intent to secure the benefit thereof to the heirs or family of such *papist* or *person professing the popish religion*, shall be null and void; and that all such devisees, and persons claiming under such devises, and their presentees, shall in the like manner, and by such methods, be compelled to discover, whether to the best of their knowledge and belief, such devises were not made with the said intent.

1 Geo. 1. Stat. 2. cap. 55.

An act to oblige papists to register their names and real estates.

I. **W**HEREAS the papists within this kingdom, notwithstanding the tender regard that hath been shewn them for many years last past, by omitting to put in execution the many penal laws which (on occasion of the *many just provocations they have given, and horrid designs they have framed, for the destruction of this kingdom, and the extirpation of the protestant religion*) have been made against them; and notwithstanding they have enjoyed, and do still enjoy the protection and benefit of the government, as well as the rest of his majesty's subjects, have not only, *all or the greatest part of them*, been concerned in stirring up and supporting the late unnatural rebellion, for the detroning and murdering his most sacred majesty; for destroying our present happy establishment; for settling a popish pretender upon the throne of this kingdom, for the destruction of the protestant religion, and the cruel murdering and massacring its professors; by which they have brought a vast expence upon this nation: And whereas it manifestly appears by their behaviour, that they take themselves to be obliged, by the principles they profess, to be enemies to his majesty, and to the present happy establishment, and watch for all opportunities of fomenting and stirring up new rebellions and disturbances within the kingdom, and of inviting foreigners to invade it; and for as much as it is highly reasonable that they should contribute a large share to all such extraordinary expences as are or shall be brought upon this kingdom by their treachery and instigation:

And

And to the end that, by paying largely to the late great expences by them brought upon this nation, they may be deterred, if possible, from the like offences for the future; and that this nation may have the benefit of his majesty's gracious condescension, in giving his interest in the two third parts of all the papists estates, which are already forfeited to him by law, for the use of the publick, either *by seizing the said two third parts of their estates for the publick service, or by laying some tax or charge upon their estates in lieu thereof*; in such proportion and in such manner as shall be determined to be reasonable in parliament; and to the end that their estates may be certainly known and discovered, for the purposes aforesaid, or for such other ends as a parliament shall think fit, Be it Enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That all and every person and persons, *not having taken the oaths* herein after mentioned before the last day of *Trinity* term one thousand seven hundred and sixteen, in the manner by law required, *having any estate or interest in any lands, tenements or hereditaments, or who shall hereafter have any estate or interest in any lands, tenements or hereditaments* lying, being or arising in that part of *Great Britain* called *England*, or in *Wales*, or the town of *Berwick upon Tweed*, who is or shall be a *popish recusant or papist*, or is or shall be *educated in the popish religion*, or whose parent or parents shall be a *papist or papists*, or who shall use or profess the *popish religion*, shall, if he, she or they be, on the twenty-fourth of *June* one thousand seven hundred and sixteen, of the age of *one and twenty years*, on or before the twentieth day of *January* in the year of our Lord one thousand seven hundred and sixteen, and if he, she or they be, on the said twenty-fourth day of *June*, unborn or under that age, within the space of

six months next after he, she or they shall, respectively attain to that age, and have such estate or interest as aforesaid, *take the several oaths* * appointed to be taken by

* The oaths for the *English* are as follow.

I *A. B.* do sincerely promise and swear, that I will be faithful, and bear true allegiance to his majesty king *George*.

So help me God.

I *A. B.* do swear, that I do from my heart abhor, detest and abjure, as impious and heretical, that damnable doctrine and position, *That princes excommunicated or deprived by the Pope, or any authority of the see of Rome, may be deposed or murdered by their subjects, or any other whatsoever.* And I do declare, That no foreign prince, person, prelate, state, or potentate hath, or ought to have, any jurisdiction, power, superiority, pre-eminence, or authority, ecclesiastical or spiritual, within this realm.

So help me God.

I *A. B.* do truly and sincerely acknowledge, profess, testify and declare in my conscience, before God and the world, that our sovereign lord king *George* is lawful and rightful king of this realm, and all other his majesty's dominions and countries thereunto belonging. And I do solemnly and sincerely declare, that I do believe in my conscience, that the person pretended to be prince of *Wales*, during the life of the late king *James*, and since his decease, pretending to be, and taking upon himself the stile and title of king of *England*, by the name of *James* the Third, or of *Scotland*, by the name of *James* the Eighth, or the stile and title of king of *Great Britain*, hath not any right or title whatsoever to the crown of this realm, or any other the dominions thereto belonging; and I do renounce, refuse, and abjure any allegiance or obedience to him. And I do swear, That I will bear faith and true allegiance to his majesty king *George*, and him will defend to the utmost of my Power, against all traitorous conspiracies and attempts whatsoever, which shall be made against his person, crown or dignity. And I will do my utmost endeavour to disclose and make known to his majesty, and his successors, all treasons and traitorous conspiracies which I shall know to be against him, or any

by such persons who *bear any office under his majesty*, by an act made in this present session of parliament, intituled, *An act for the further security of his majesty's person and government, and the succession of the crown in the heirs of the late princess Sophia, being protestants, and for extinguishing the hopes of the pretended prince of Wales, and his open and secret abettors, and also repeat and subscribe the declaration set down and expressed in an act of parliament made in the thirtieth year of the reign of the late king Charles the Second, intituled, An act for the more effectual preserving the king's person and government, by disabling papists from sitting in either house of parliament, in the high court of Chancery, court of King's bench, court of Common pleas, or court of Exchequer, or at the general quarter sessions of the peace to be holden, for the county, riding or division, where such lands, tenements or hereditaments, or some part thereof, shall lie or arise, between the hours of nine and twelve of the clock in the forenoon, or in default thereof shall, within the space of six months next after the time hereby appointed for him, her or them to take the said oaths, and so,*

any of them. And I do faithfully promise, to the utmost of my power to support, maintain and defend the succession of the crown against him the said *James*, and all other persons whatsoever, which succession, by an act, intituled, *An act for the further limitation of the crown, and better securing the rights and liberties of the subject, is and stands limited to the princess Sophia, electress and duchess dowager of Hanover, and the heirs of her body, being protestants.* And all these things I do plainly and sincerely acknowledge and swear, according to these express words by me spoken, and according to the plain and common sense and understanding of the same words, without any equivocation, mental evasion or secret reservation whatsoever. And I do make this recognition, acknowledgment, abjuration, renunciation and promise heartily, willingly and truly, upon the true faith of a christian.

So help me God.

from

from time to time, within *six months* after he, she or they, or any trustee or trustees for him, her or them, or his, her or their benefit, or advantage, shall come into the possession or perception of the rents or profits of any other lands, tenements or hereditaments, register or procure to be registered, *bis, ber,* or their name or names, and all such lands, tenements and hereditaments, whereof, he, she or they, or any trustee or trustees, for him, her or them, or his, her or their benefit, or advantage, shall be in possession, or in the receipt or perception of the rents or profits, which are situate, lying, being or arising in *England, Wales,* or the town of *Berwick upon Tweed*; and shall express or cause to be expressed in such register, in what parish, township, or place such lands, tenements and hereditaments, and every part thereof lie or arise, and who, for the time being, is or are the possessors thereof, and of every part thereof, and what estate or interest he, she, or they, whose name or names is or shall be so registered respectively, have in the same, and in every part and parcel thereof respectively, and the yearly rent reserved to him, her or them for the same, if the same shall be let; and if the same shall be let upon lease, then by whom such lease was made, what yearly or other rent, is reserved thereupon, and what fine or sum of money was paid for such lease thereof, in case the same was made by himself or any person in trust for him, or that he was party or privy thereunto, and the time and day of the month and year when such entry shall be made, in a parchment-book or books, roll or rolls, which shall be kept by the clerk of the peace for every county, riding and division, where such lands, tenements or hereditaments shall respectively lie, arise or be; and to the end that all fraudulent or covenous registering any persons names or estates, who do not desire to have them registred, may be prevented, every person whose name and estate shall be, or ought to be registred

registred as aforesaid, is hereby obliged to *take care that his name be*, within the said *six months* hereby allowed for making such registry, *subscribed to such registry or entry* in the said books or rolls, *in the presence of two or more justices* of the peace for the county, riding or division, where such registry shall be, in open sessions, *either by the person himself* whose name and estate shall be so registred, or *by his attorney or attornies* thereunto lawfully authorized *by warrant of attorney under his hand and seal, executed by him in the presence of two or more witnesses, two of which witnesses at the least shall make proof of such execution upon their oaths* at the quarter-sessions where such name shall be subscribed or registry produced; and the justices of the said court of quarter-sessions are hereby impowered and required to examine such witnesses upon oath for that purpose; and *two of the justices of the peace then present shall subscribe their names to every such entry which shall be so made before them, as witnesses that the same was duly made as aforesaid*, and in default thereof each of the said justices then present shall forfeit *twenty pounds* to the king. And to the end that the parties concerned in the premisses may find no difficulty in procuring their names and estates to be registred as aforesaid, all and every such clerk and clerks of the peace are hereby required to keep parchment-books or parchment-rolls at some notorious place in the county, riding or division, in which they shall act as clerks of the peace; and shall by themselves or their lawful deputies register and enter in the said books or rolls the christian and surnames of all and every such person or persons, who shall come in person and desire to be registred as aforesaid, or shall send any writing under his, her or their hand to such clerk of the peace or his deputy desiring him to register his, her or their name or names; and shall also register the estate in *lands, tenements and hereditaments* of every

Z

such

such person and persons, in such manner and in such words, as he, she or they shall, by any writing signed by him, her or them respectively, desire such clerk of the peace or his deputy to register the same; Provided the person or persons who desire such registry to be made shall tender and pay to such clerk and clerks of the peace, or to his or their lawful deputies, the fees hereby appointed to be paid unto him or them for such registry, and so that they apply to him or them to enter such registry, and deliver to him in writing the words he or they respectively desire to have so registred or entred, ten days at the least before the quarter-sessions where the entries thereof are to be subscribed as aforesaid; and such clerk or clerks of the peace or their lawful deputy or deputies shall enter such persons names and registry of their estates before the next quarter-sessions of the peace after such delivery in the said books or rolls, and shall carry the said books and rolls in which such entries shall be so made with him or them to the next and every other quarter-sessions of the peace to be held for the county, riding, division or place where such entry shall be made, until the time of such subscribing the same shall be expired; to the end that all and every the persons whose names shall be or ought to be registred, as aforesaid, or their respective attorney or attornies, may have an opportunity to come to the said sessions, and subscribe the names of the persons so to be registred to the same; and such clerk and clerks of the peace shall also keep alphabetical tables of the surnames of all and every such person and persons whose names and estates shall be so registred, and of the parishes and townships where the lands so registred lie, with reference to the place in the book or books, roll or rolls, where such names and lands shall be registred; and shall also carefully keep all such warrants of attorney as shall be so proved, as aforesaid, upon a file,
together

together with such books and rolls; and shall likewise enter such warrants of attorney upon record, and shall have, for such registry and entry on record, a fee of three pence for every two hundred words which such registry and entry on record shall contain, and no more, to be paid by the person registering the same; and shall also have the sum of four pence, and no more, for every search that shall be made for the name or estate of any person; and is and are hereby required to make search on the request of any person or persons who shall pay such fees, and also shall permit and suffer such person and persons to inspect and search the said tables, books and rolls, and inspect such letters of attorney as shall be so filed, if he or they shall desire it; and every such clerk of the peace is hereby required to give copies of such registries, subscribed by himself or his lawful deputy, to every person and persons who shall desire such copies, and tender him the fees hereby appointed to be paid for the same; and shall suffer such persons who shall request him so to do, to examine the same with the roll or books by him kept, and for so doing shall take a fee of three pence for every two hundred words contained in every such copy as shall be so taken, and no more; and if any clerk of the peace shall neglect or refuse to do any of the matters or things hereby appointed to be done, by him and be thereof lawfully convicted, he shall thereby *forfeit his office*; and if any such person or persons, who is or are hereby required or intended to take and subscribe such oath, and repeat and subscribe such declaration, as aforesaid, or in default thereof, to register or cause to be registred, his, her or their name and names, estate and estates, as aforesaid, shall not either *take and subscribe such oath, and repeat and subscribe such declaration*, as aforesaid, in such manner, as aforesaid, or *register his, her or their respective name*

and names and estate in such manner as aforesaid, and also *subscribe his, her, or their respective name or names* to such registry, or procure the same to be subscribed there- to by his, her, or their respective attorney or attor- nies, lawfully authorized, as aforesaid so to do, with- in the respective times herein before limited or ap- pointed for his, her, or their doing thereof, or shall not register the same truly; that then and in every such case, the person and persons *wilfully neglecting or refusing so to do, or committing any fraud in such regi- stry, shall FORFEIT the FEE-SIMPLE and INHERITANCE of ALL such LANDS, TENEMENTS and HEREDITAMENTS not registred, or fraudulently regi- stred,* whereof he, she or they, or any person or per- sons in trust for him, her or them, was or were *seized in fee-simple* at the time of such default or fraud in registering as aforesaid, *and the FULL VALUE OF THE INHERITANCE of all such lands, tenements and here- ditaments not registred, or fraudulently registred,* as aforesaid, whereof he, she or they, or some person or persons in trust for him, her or them, was not or were not seized in fee-simple at the time of such default or fraud as aforesaid; *two third parts* thereof *to the king,* and the other *third part* thereof *to such person or persons, being a protestant or protestants, who shall sue for the same,* at the Common law, in any of his majesty's courts at *Westminster,* by such ac- tion, bill, plaint, suit or information, or other pro- cess as shall be proper, according to the nature of the case, and of the thing sued for, or in the high court of Chancery; and the person so suing shall be intitled in the high court of Chancery to *demand all such discoveries, as he might do if he were a purchaser upon a valuable consideration of the estate so sued for; and to demand a true discovery from all persons of all such incumbrances and titles which any way DO*

OR

OR MAY *affect the same*, and of ALL TRUSTS *relating thereto or protecting the same*, to which bill or bills *no plea or demurrer shall be allowed*, but the defendant or defendants shall *sufficiently answer the same* AT LARGE; and also that the person suing for any such real estate, may, if he shall think fit, bring an *ejectment for the same upon his own demise*, and give *this act and the special matter in evidence*; and if it shall appear upon trial of such ejectment, that *the estate sued for is the estate of the person so neglecting to register, or fraudulently registering*, and the defendant shall *not be able to make it appear that he took the said oaths, and repeated and subscribed the said declaration, in such manner as aforesaid*, or otherwise that *he registered his name and the estate so sued for in such manner as aforesaid*, a verdict shall be given for the lessor of the plaintiff in such ejectment, and judgment shall be thereupon had in such manner as is usual upon verdicts in ejectment, and the lessor of the plaintiff shall have costs of suit, as is usual when judgment in ejectment is recovered, by, or given for the lessor of the plaintiff; and by such judgment *two third parts* of the lands, tenements and hereditaments so recovered, shall be vested in *the king's majesty, his heirs and successors*, and the *other third part* thereof in *the person who shall be the lessor of the plaintiff* in the said ejectment.

II. Provided always nevertheless, and be it Enacted by the authority aforesaid, That if any person or persons, who is or are hereby required or intended to take and subscribe such oath, and make and subscribe such declaration, or to make such registry, as aforesaid, shall be *beyond the seas* upon the eighteenth day of *June* one thousand seven hundred and sixteen, that then and in such case, if such person or persons shall *take the oaths, or repeat and subscribe the declaration* hereby appointed to be taken, repeated and

subscribed, in such court, and in such manner as the same are hereby before appointed to be taken, repeated and subscribed, on or before the twentieth day of *May* one thousand seven hundred and seventeen, or in default thereof shall procure his or their respective name and names, estate and estates, to be registered in such manner, as aforesaid, at any time within six months next after the said twentieth day of *May* one thousand seven hundred and seventeen; that then and in such case, such taking the oaths, and repeating and subscribing the said declaration, or such registry of his or their respective name or names, and estate or estates, shall be as good and effectual, in respect of every such person and persons so being beyond sea upon the said eighteenth day of *June* one thousand seven hundred and sixteen, as it would have been if such person had taken the said oaths, and repeated and subscribed the said declaration on or before the twentieth day of *January* one thousand seven hundred and sixteen, in such manner as aforesaid, or had registered his name and estate in such manner as aforesaid, within six months next after the said twentieth day of *January* one thousand seven hundred and sixteen.

III. Provided, That in case such person or persons so making default, or committing any fraud, in registering, as aforesaid after such default or fraud committed, and before he, she or they, be thereof convicted, or any ejectment or suit brought for such forfeited lands, tenements, or hereditaments, shall bona fide, for a just and valuable consideration, CONVEY over, GRANT LEASE or INCUMBER all or any such lands, tenements or hereditaments omitted or fraudulently registered, as aforesaid; that then and in such case, the person or persons so purchasing, or having such grant, lease or incumbrance, as aforesaid, not knowing, at the time of such purchase or incumbrance made, the said offender to be a person within the description of this act,

act, shall not be prejudiced, nor his, her or their estate or interest in the said lands, tenements and hereditaments, impeached, for or by reason of such forfeiture, as aforesaid; but in that case the said offender shall forfeit the value of the inheritance of the said lands, tenements and hereditaments, to be distributed and recovered in manner as aforesaid.

IV. Provided always, and be it hereby further enacted and declared by the authority aforesaid, That nothing in this present act contained shall extend or be construed to extend to *compel any person whatsoever to register, or procure to be registred, any lands, tenements or hereditaments, until he or some other person or persons, as trustee or trustees for him or his benefit, or on his behalf, is, are, have or hath been, or shall be* ACTUALLY SEIZED and have NOTICE thereof, or possessed, or in the receipt of the rents or profits of the same, for the space of SIX MONTHS.

V. Provided, That nothing herein contained shall extend or be construed to extend to *compel any person or persons to register any lands, tenements or hereditaments, whereof he, she or they shall be ONLY FARMER or FARMERS, or TENANTS at a RACK-RENT, or who only do or shall hold by lease or leases, whereupon* TWO THIRDS of the FULL YEARLY VALUE, or more, is, are, or shall be reserved.

VI. Provided also, That nothing herein contained shall extend to defeat or prejudice any *protestant, or other creditor, who bona fide hath or shall have any charge or incumbrance upon any real estate or estates hereby directed to be registred; but then in case of such charge or incumbrance, the person or persons so making default, or committing any fraud in registering as aforesaid, shall forfeit the VALUE OF SUCH CHARGE AND INCUMBRANCE, one third part* thereof to and among the person and persons who shall by virtue of this act sue for and recover the lands,

tenements and hereditaments forfeited as aforesaid, and subject to such charge and incumbrance, or any part thereof, in proportion to the part so by him, her or them recovered, and *two third parts* thereof, to the king's most excellent majesty, his heirs and successors.

VII. Provided also, and be it further Enacted and declared by the authority aforesaid, That no person or persons, being in the *East or West Indies or America*, shall be *compelled to take the said oaths, and sign the declaration* before-mentioned, and register his, her or their estate or estates at the time within mentioned, but shall have *twelve months longer* than the times herein before respectively allowed to persons beyond the seas to take the said oaths, and sign the said declaration, and register their estate and estates; any thing herein to the contrary notwithstanding.

3 Geo. 1. cap. 18.

An act for explaining an act passed the last session of parliament, intituled, An act to oblige papists to register their names and real estates; and for enlarging the time of such registering; and for securing purchases made by Protestants.

I. THIS act reciting, That whereas by an act made in this present parliament, intituled, *An act to oblige papists to register their names and real estates*; it is Enacted, That all and every person and persons *not having taken the oaths* therein mentioned before the time therein expressed, should take the oaths and repeat and subscribe the declaration, or in default, should

should within *six months* register their names, and all their estates, upon pain of forfeiting the *fee-simple and inheritance thereof*, and the full value of the inheritance; It is Enacted, That the time for such registering be enlarged, and the same is hereby enlarged to the twentieth day of *October* one thousand seven hundred and seventeen.

II. And it is further Enacted, That no action or suit for any penalty or forfeiture contained in this or the said former act, for wilfully neglecting or refusing to register, or for committing fraud in such registry, shall be commenced or brought after two years after the offence committed against any person offending therein.

III. And it is further Enacted, That where it shall happen that any manors or reputed manors, demesne or other lands, or entire farms, do lie in more counties than one, the registering of such manors, lands, tenements and hereditaments in the county only where the manor-house, or the house or houses to the said farm or lands do lie, and not in several counties, taking notice thereof in the said registry that the same do extend to such other county or counties, shall be a sufficient registering of such entire manors, farms or lands within the true intent and meaning of the said recited act.

IV. And whereas some doubts have arisen, as well upon the said recited act, as also upon one other act made and passed in the parliament held in the *eleventh and twelfth* years of the reign of the late king *William the third*, intituled, *An act for the further preventing the growth of popery*; and upon another act made in the *first* year of the reign of the late king *James the first*, for the due execution of the statutes against *jesuits, seminary priests, recusants, and other acts made against papists and popish recusants*, touching the sale of the

real estates of persons professing the popish religion, or incurring the disabilities and incapacities in the said act mentioned; Be it Enacted by the authority aforesaid, That no sale for a *full and valuable consideration* of any manors, messuages, lands, tenements or hereditaments, or of any interest therein, by any person or persons being reputed owner or owners, or in the possession or receipt of the rents and profits thereof, heretofore made or hereafter to be made, to and for any protestant purchaser and purchasers, and meerly and only for the benefit of protestants, shall be avoided or impeached for or by reason or upon pretence of any of the disabilities or incapacities in the said acts or any of them contained, incurred or supposed to be incurred by any of the persons making or joining in such sale, or by any other person or persons from or through whom the title to such manors, messuages, lands, tenements or hereditaments, or any interest therein, is or shall be derived or supposed to be derived, unless before such sale the person intitled to take advantage of such disability or incapacity shall have recovered such manors, messuages, lands, tenements and hereditaments, or given notice of his claim and title thereto to such purchaser, or before the contract for such sale shall have claimed the said manors, messuages, lands, tenements and hereditaments by reason of such disability or incapacity, and have entred such claim in open court at the general session of the peace, for the county, city, riding or division wherein such manors, messuages, lands, tenements, or hereditaments lie, or arise, and *bona fide*, and with due diligence pursued his remedy in a proper course of justice for the recovery thereof; the said several acts above-mentioned and referred to, or any thing therein contained to the contrary notwithstanding.

V. Pro-

V. Provided nevertheless, That, whereas it was, amongst other things enacted by the said act of parliament made in the *eleventh* and *twelfth* years of the reign of the late king *William* the *third*, that from and after the *tenth* day of *April*, which should be in the year of our Lord one thousand seven hundred, every *papist* or *person making profession of the popish religion* should be disabled, and was thereby made incapable to purchase either in his or her own name, or in the name of any other person or persons, to his or her use, or in trust for him or her, any manors, lands, profits out of lands, tenements, rents, terms, or hereditaments within the kingdom of *England*, dominion of *Wales*, and town of *Berwick upon Tweed*: And that all and singular estates, terms and any other interests or profits whatsoever out of lands, from and after the said *tenth* day of *April*, to be made, suffered, or done, to or for the use or behoof of any such person or persons, or upon any trust or confidence mediately or immediately, to or for the benefit or relief of any such person or persons, should be utterly void and of no effect, to all intents, constructions and purposes whatsoever; It is hereby declared and Enacted, That the said recited part of the said act of parliament shall not be hereby altered or repealed, but the same shall be and remain in full force, as if this act had never been made.

VI. And be it further Enacted, by the authority aforesaid, That from and after the *nine and twentieth* day of *September* in the year of our Lord one thousand seven hundred and seventeen, no manors, lands, tenements, hereditaments, or any interest therein, or rent or profit thereout, shall pass, alter, or change from any *papist* or *person professing the popish religion*, by any deed or will, except such deed within *six months* after the date, and such will within *six months* after the death of the testator, be inrolled in one of the

the King's courts of record at *Westminster*, or else within the same county or counties wherein the manors, lands, and tenements lie, by the *custos rotulorum* and two justices of the peace and the clerk of the peace of the same county or counties, or two of them at the least, whereof the clerk of the peace to be one. [Such deeds &c. are good, if inrolled on 29 September 1731. 3 Geo. 2. c. 29. sect. 6. and see 8 Geo. 2. c. 25.]

We shall omit the 10th of Geo. 1st. c. 4. and the 3d of Geo. 2d. c. 29. §. 6 & 7. &c. with such other statutes as were made for giving further time to take the oaths, or in default to register, &c. excepting the 4th of Geo. 3d. which recites those statutes, and which being the last, and in substance the same with the others, we shall hereafter set forth at large the enacting part, that every one may readily understand, what the statute-law is, in those cases.

2 Geo. 2. c. 31. §. 9.

WHEREAS all persons having command or place of trust from or under his majesty, or who are of the household, or in the service of his majesty, are bound by an act passed in the twenty-fifth year of the reign of the late king *Charles the Second*, intituled, *An act for preventing dangers which may happen from popish recusants*, to make and subscribe a declaration against transubstantiation in the sacrament of the Lord's Supper; and the sworn servants of the king's or queen's majesty are bound by an act made in the thirtieth year of the reign of the said king *Charles the Second*, intituled, *An act for the more effectual preserving the king's person and government,*

ment, by disabling papists from sitting in either house of parliament, to repeat and subscribe a like declaration against transubstantiation, together with some additions, and the declaration only against transubstantiation being, as to these persons, sufficient; Be it further Enacted by the authority aforesaid, That so much of the said last-mentioned act as relates to the sworn servants of the king's or queen's majesty shall be repealed; and if any such person hath offended contrary to such part of the said act intended to be hereby repealed, he shall be freed from all penalties and incapacities incurred thereby.

By the land-tax act,

4 Geo. 3. cap. 2. §. 56.

IT is Enacted, That every papist, or reputed papist, in *England, Wales, or Berwick upon Tweed*, being at the age of *eighteen* years and upwards, who shall not have taken the oaths * mentioned and required to be taken by an act made in *England*, in the first year of the reign of king *William* and queen *Mary*, intituled, *An act for abrogating the oaths of supremacy and allegiance, and appointing other oaths*, shall yield and pay to his Majesty double the sums and rates, which by force and virtue of any clause in this act before-mentioned and contained, he or they should or ought to pay and be charged with, to be assessed, levied, collected, answered, and paid in such manner, by such ways and means, and according to such rules and directions, and under such pe-

* The oath, may be seen 273, 274, only in the second, the words *power, jurisdiction*, are transposed, and it is the same with that directed by 1 Geo. 1. *st.* 2. *c.* 55. to be taken by papists.

nalties

nalties and forfeitures, as are before in the act expressed or appointed, for and concerning the above-mentioned rates and sums.

And by section 113. of the same statute reciting, That whereas the sums that were assessed by virtue of the act for the former aid of four shillings in the pound, made in the fourth year of king *William* and queen *Mary*, do not only govern the proportions set upon every county, city, riding, town, or other place hereby charged with a certain sum in this act expressed; but are also to regulate the proportions thereof, in every hundred or division respectively, towards the said sum of one million nine hundred eighty-nine thousand nine hundred pounds eighteen shillings and nine pence: And reciting that whereas towards the assessments made by virtue of the act of the fourth of *William* and *Mary*, several lands, tenements, rents, or other hereditaments of *papists*, and other persons, *refusing or neglecting to take the oaths* therein contained, were assessed to pay *double* the rates therein expressed; and since the making those assessments several had taken the oaths, or their lands were come to *protestants*, whereby their estates would be charged on this act only to such an equal pound-rate, as is to be borne by their protestant neighbours; and several of the said *papists*, &c. were since dead, or had *bona fide* sold their estates, and the estates which belonged to such persons do now belong to persons *not liable to the said double assessments*; and by occasion of the former double rates, which were on the said *papists*, or persons who had since taken the oaths, or whose estates were since come to *protestants*, some parishes, might be overburdened, or charged with more than four shillings in the pound (reckoning by the rack-rent, and utmost improved value of their

their estates) towards the said sum, if a suitable remedy be not provided; It is Enacted, That where the lands, tenements, rents, or hereditaments of a whole parish, town or place which shall have a proportion to raise, in pursuance of this act, shall be charged with *more than four shillings in the pound*, upon the yearly value (reckoning by the rack-rents, and the highest improvements made of such lands, tenements or hereditaments) towards the said sum of one million nine hundred eighty-nine thousand nine hundred pounds eighteen shillings and nine pence, by this act granted, because the estates of papists, and other persons formerly doubly taxed, as aforesaid, by their taking the said oaths, or the estates being come to *protestants* by purchase *bona fide*, or the death of such papists, or any other persons formerly doubly taxed as aforesaid, are or may be liable only to a single assessment; in all and every such case and cases, it shall and may be lawful to and for the commissioners of the hundred, lathe, wapentake, rape, ward, or other division, in which such parish, town or place doth lie, or any two or more of them, and in like manner to and for the commissioners of any city, borough, port or town, for which commissioners are by this act appointed, or any two or more of them, upon complaint thereof to them made, for or on behalf of the owners or occupiers of the lands, tenements, rents and hereditaments in any such city, borough, port, parish, town or place respectively, to examine into the matter of such complaint; and if they are satisfied of the truth thereof, the said commissioners, or any two or more of them, are hereby required and impowered, at any time before the twenty-ninth day of *September* one thousand seven hundred and sixty-four, and not afterwards, to certify to the barons of his majesty's court of *Exchequer* for the time being, the names of such persons formerly doubly taxed, as

aforesaid, and how much their double tax did amount to, and how much the sum charged by virtue of this act, upon the lands, tenements, rents or hereditaments in such city, borough, port, parish, town, or place, by occasion of their lands being now liable to a single assessment, as aforesaid, doth exceed four shillings in the pound of the full and true yearly value thereof; and the said barons of the *Exchequer*, or any two or more of them, are hereby authorized and *required* to enquire and inform themselves, by the oaths of two credible witnesses, at least, concerning the truth of the said certificates, and in all cases where they shall be satisfied therein, the said barons, or any two or more of them, have hereby power by their discretions, at any time before the last day of *November* one thousand seven hundred and sixty-four, to discharge or cause to be discharged, the overplus, or so much of the sum by this act charged or chargeable upon such city, borough, town, parish, or place, towards the said sum of one million nine hundred eighty-nine thousand nine hundred pounds eighteen shillings and nine pence, as shall, by the occasions aforesaid, exceed the rate of four shillings in the pound; and the said overplus shall or may be discharged upon the duplicates to be returned for such city, borough, town, port, parish, or place respectively, and shall be allowed upon the account of the respective receivers general; and the inhabitants of every such city, borough, port, parish, town, or place, shall be acquitted against his Majesty, his heirs and successors, for and touching the payment of such overplus monies so discharged, or ordered to be discharged, by the barons of the *Exchequer*, or any two or more of them, as aforesaid; any thing herein contained to the contrary notwithstanding, and that such parish, town, port, or place, so discharged by the
 barons

barons, and no others, shall have the benefit of the sums so discharged by this act; and no other officer, or deputy or clerk whatsoever, shall take any fee, reward, or gratuity, for or upon account of such discharge, which said respective certificate or certificates, or a true copy or copies thereof, whereby the said parish or parishes, place or places, have been discharged by the said barons of the *Exchequer* of such overplus sums, shall be produced by the persons claiming the benefit thereof, to the commissioners of the land-tax at their next general meeting, to ascertain the proportion on each division, after such certificate or certificates have been obtained.

4 Geo. 3. cap. 38.

An Act for allowing further time for inrollments of deeds and wills made by Papists; and for relief of protestant purchasers.

THIS act recites That, Whereas by a clause in an act of parliament passed in the third year of the reign of his late majesty king *George the First*, intituled, *An act for explaining an act passed in the last session of parliament*, intituled, *An act to oblige papists to register their names and real estates, and for enlarging the time for such registering; and for securing purchases made by protestants*; it was Enacted, That, from and after the twenty-ninth day of *September* in the year of our Lord one thousand seven hundred and *seventeen*, no manors, lands, tenements, hereditaments, or any interest therein, or rent or profit thereout, should pass, alter or change from any *papist* or *person professing the popish religion*, by any deed or will, except such deed, within *six months* after the *date*, and such will, within *six months* after the *death* of the

A a

testator,

testator, should be inrolled in one of the king's courts of record at *Westminster*, or else within the same county or counties wherein the manors, lands and tenements lie, in such manner as therein for that purpose is particularly directed; and whereas by several acts of parliament made in the *tenth* year of his said late majesty's reign, and in the *third, sixth, ninth, eleventh, twelfth, sixteenth* and *nineteenth* years of the reign of his late majesty king *George the Second*, it was Enacted, That every deed and will which had been then made since the twenty-ninth day of *September* one thousand seven hundred and *seventeen*, in order to pass, alter, or change any manors, lands, tenements or hereditaments, or any interest therein, or rent or profit thereout, from any *papist* or *person professing the popish religion*, though not then inrolled, should be as good and effectual in the law, as the same would have been in case the said deeds and wills had been inrolled within the time limited, by the said clause in the said first mentioned act, for inrolment thereof, provided the said deeds and wills should be inrolled on or before the respective times in the said several acts respectively mentioned, in such manner as by the said first mentioned act was directed; and also recites That whereas by another act made in the *twenty-sixth* year of the reign of his late majesty king *George the Second*, it was Enacted, That every deed and will made since the first day of *December* one thousand seven hundred and *forty-six*, in order to pass, alter or change any manors, lands, tenements or hereditaments, or any interest therein, or any rent or profit thereout, from any *papist* or *person professing the popish religion*, to any *protestant* or *protestants*, or by or by reason of which deed or will any *protestant* or *protestants* may claim or derive any legal, equitable or other interest whatsoever, to his, her, or their use, for his, her or their benefit, or to the use or benefit of any other *protestant* or *protestants*, though not inrolled,

rolled, or not inrolled in due time, should be as good and effectual in the law, as the same would have been in case the said deeds and wills had been inrolled within the times limited by the said clauses in the said acts for the inrolment thereof; provided the same deeds and wills should be inrolled on or before the first day of *January* one thousand seven hundred and *fifty-four*, in such manner as by the said clause in the said first mentioned act is directed: And also recites an act of the twenty-eighth of *George the Second*, giving time till the first day of *January* one thousand seven hundred and *fifty-six*, and also recites an act of the thirty-first of *George the Second*, giving time until the first day of *Janurry* one thousand seven hundred and *fifty-nine*; and also recites an act of the thirty-third of *George the Second*, giving time until the twenty-fifth day of *December* one thousand seven hundred and *sixty*; and also recites an act of the second of his present majesty, giving time until the twenty-fifth day of *December* one thousand seven hundred and *sixty-two*, then Enacts, that every deed and will made since the twenty-ninth day of *September* one thousand seven hundred and *seventeen*, in order to pass, alter, or change any manors, lands, tenements, or hereditaments, or any interest therein, or any rent or profit thereout, from any *papist* or *person professing the popish religion* to any *protestant* or *protestants*, or by reason of which deed or will, any *protestant* or *protestants* may claim or derive any legal, equitable, or other interest whatsoever, to his, her, or their use, for his, her or their benefit, or to the use or benefit of any other *protestant* or *protestants*, though not inrolled, or not inrolled in due time, shall be as good and effectual in the law, as the same would have been in case the said deeds and wills had been inrolled within the times limited by the said clauses in the said acts for the inrolment thereof, provided the same deeds and wills shall

356 BRITISH LIBERTIES, &c.
be inrolled on or before the first day of *January* one thousand seven hundred and *sixty-five* in such manner as by the said clause in the said first mentioned act is directed.

II. Provided always, That nothing herein contained shall extend or be construed to extend to make good any such deed, will, or lease, already made and not inrolled, *of the want of inrollment whereof advantage shall have been taken* on or before the first day of *January* one thousand seven hundred and *sixty-four*, but every such deed, will, or lease, shall remain of such force and effect only, as the same would have had if this act had never been made, and of none other force and effect.

III. And reciting that whereas many purchases made by *protestants*, may be in danger of being impeached or called in question, in regard that some deeds or wills through which the title thereto is derived, ought to have been inrolled according to the said acts, but have not been so inrolled; It is therefore further Enacted, That no purchase made for *full and valuable consideration* of any manors, messuages, lands, tenements, or hereditaments, or of any interest therein, by any *protestant* or *protestants*, and meerly and only for the benefit of *protestants*, shall be impeached or avoided, for or by reason that any deed or will, through which the title thereto is derived, hath not been inrolled as required by the said
* *want of* acts, *so as no advantage was taken of*
inrollment thereof, before such purchase was
made, and so as no decree or judgment have been
obtained for want of the inrollment of such deeds or
wills.

IV. Provided also, That nothing herein contained shall extend, or be construed to extend, to make good any *grant, lease, or mortgage, of the advowson, or right of presentation, collation, nomination, or donation,*
of

of and to any *benefice, prebend or ecclesiastical living, school, hospital or donative, or any avoidance thereof,* made by any *papist or person professing the popish religion,* IN TRUST *directly or indirectly, mediately or immediately,* by or for any such *papist or person professing the popish religion,* whether such trust hath been declared by writing or not.

So far as to the Principal laws at large, immediately relating to *Papists.*

We have before mentioned the great number of *jesuits and popish priests,* that are at present within this kingdom and other his majesty's dominions, in some parts of which they openly, in others privately practice their religion, using all means possible; to pervert his majesty's subjects, from their own to the Romish religion, against which practices so many severe laws have been made, especially that of the 27th of *Eliz. c. 2.* intituled, *An act against jesuits, seminary priests and other such like disobedient persons,* the principal part of which we shall here set forth, that those who are subjected to its penalties, may by conformity, or flying the realm, avoid the fatal consequences of their disobedience to our laws, and that those whose duty it is, to carry the laws into execution may be reminded of them, and induced to proceed against such offenders, as obstinately persist to act in defiance of the laws, and which it is hoped will be, with all possible expedition, carried into due execution.

We would be understood not to recommend this for the sake of *persecution,* but *to prevent it,* by preserving our constitution, as at present established, that it's foundations may not be gradually sapped and undermined, by any, especially those who are connected with the see of *Rome.* Was that to happen, it's ruin would crush many thousand *protestants,* which the immediate banishment of the *jesuits* and

358 BRITISH LIBERTIES, &c.
other *popish priests*, that now infect his majesty's dominions, would entirely prevent.

By the last-mentioned act, §. 3. It is Enacted, That it shall not be lawful to or for any *jesuit, seminary priest, or other such priest, deacon, or religious or ecclesiastical person whatsoever*, being *born within this realm, or any other her highness dominions*, since the feast of the nativity of St. *John Baptist*, in the *first year* of her majesty's reign, *made, ordained, or professed, or hereafter to be made, ordained, or professed*, by any authority or jurisdiction derived, challenged or pretended from the *see of ROME*, by or of what name, title or degree soever the same shall be called or known, to come into, be or remain *in any part of this realm, or any other her highness dominions*, after the end of *forty days* after the expiration of that session of parliament, other than in such special cases, and upon such special occasions only, and for such time only, as is expressed in this act; and if he do, that then *every such offence* shall be taken and adjudged to be HIGH TREASON: and every person so offending shall for his offence be adjudged a TRAYTOR, and *shall suffer, lose and forfeit, as in case of HIGH TREASON*.

By §. 4. Every person which after the end of the same forty days, and after such time of departure as before limited, shall wittingly and willingly *receive, relieve, comfort, aid, or maintain* any such *jesuit, seminary priest, or other priest, deacon or religious or ecclesiastical person*, as is aforesaid, being at liberty, or out of hold knowing him to be a *jesuit, seminary priest or other such priest, deacon, or religious or ecclesiastical person*, as is aforesaid, shall also for such offence be adjudged a FELON *without benefit of clergy, and suffer death*

death, lose and forfeit, as in case of one attainted of FELONY.

By §. 5. It is further Enacted, If any of her majesty's subjects (not being a *jesuit*, *seminary priest*, or other such *priest*, *deacon*, or *religious* or *ecclesiastical person*, as is before-mentioned) now being, or which hereafter shall be of, or brought up in, any college of *jesuits*, or *seminary* already erected and ordained, or hereafter to be erected or ordained, in the parts beyond the seas, or out of this realm in any foreign parts, shall not within *six months* next after proclamation in that behalf to be made in the city of *London*, under the Great seal of *England*, return into this realm, and thereupon within *two days* next after such return, before the bishop of the diocese, or two justices of peace of the county where he shall arrive, *submit himself to her majesty and her laws, and take the oath* set forth by *act* in the *first* year of her reign; That then every such person which shall otherwise *return, come into, or be in this realm or any other her highness dominions*, for such offence of *returning or being in this realm or any other her highness dominions*, WITHOUT SUBMISSION, as aforesaid, shall also be adjudged a TRAYTOR, and *suffer, lose and forfeit, as in case of HIGH TREASON*.

By §. 6. It is further Enacted, If any person under her majesty's subjection or obedience shall *at any time after the end of the said FORTY DAYS*, by way of *exchange*, or by any other *shift, way or means whatsoever*, *wittingly and willingly*, either *directly* or *indirectly*, *convey, deliver or send*, or cause or procure to be *conveyed or delivered, to be sent over the seas, or out of this realm, or out of any other her majesty's dominions or territories, into any foreign parts*, (2) Or shall otherwise *wittingly or willingly yield, give or contribute any money or other relief to or for any jesuit, seminary priest, or such other priest, deacon, or religious*

or *ecclesiastical person*, as is aforesaid; (3) Or to or for the maintenance or relief of any *college of jesuits*, or *seminary* already erected or ordained, or hereafter to be erected or ordained, in *any the parts beyond the seas*, or *out of this realm in any foreign parts*; (4) Or of any person then being of or in *any the same colleges or seminaries*, and not returned into this realm with submission, as in this act is expressed, and *continuing* in the same realm; (5) That then every such person so offending, for the same offence shall incur the danger and penalty of a *præmunire*, mentioned in the statute of *præmunire* made in the sixteenth year of the reign of king *Richard the Second*.

By §. 8. It is Enacted, That every offence to be committed against the tenor of this act shall and may be inquired of, heard and determined, as well in the court commonly called the King's bench in the county where the same court shall for the time be, as also in any other county within this realm, *or any other her highness dominions where the offence is or shall be committed*, or where the offender *shall be apprehended and taken*.

By §. 9. It is Provided, and Enacted, That it shall and may be lawful for and to every owner and master of any ship, bark, or boat, at any time within the said *forty days*, or other time before limited for their departure, to transport into any the parts beyond the seas any such *jesuit, seminary priest, or other priest* aforesaid, so as the same *jesuit, seminary priest, or other priest* aforesaid, so to be transported, deliver unto the mayor or other chief officer of the town, port, or place, where he shall be taken in to be transported, his name, and in what place he received such order, and how long he hath remained in this realm, or in any other her highness dominions being under her obedience.

By

By §. 10. It is Provided, That this act, or any thing therein contained, shall not in any wise extend to any such *jesuit, seminary priest, or other such priest, deacon, or religious or ecclesiastical person*, as is before-mentioned, as shall at any time within the said *forty days*, or within *three days* after, that he shall hereafter come into this realm, or any other her highness dominions, submit himself to some *archbishop or bishop* of this realm, or to some *justice of peace* within the county, where he shall arrive, or land, and do thereupon truly and sincerely, before the same *archbishop, bishop, or such justice of peace*, take the said oath set forth in *anno primo*, and by writing under his hand confess and acknowledge, and from thenceforth continue, his due obedience unto her highness laws, statutes and ordinances, made and provided, or to be made or provided in causes of religion.

By §. 11. It is Provided, That if it happen at any time hereafter any peer of this realm to be indicted of any offence made *treason, felony, or præmunire*, by this act, that he shall have his trial by his peers, as in other cases of *treason, felony, or præmunire*, is accustomed.

By §. 12. It is Provided nevertheless, and declared, That if any such *jesuit, seminary priest, or other priest* aforesaid, shall fortune to be so weak or infirm of body, that he or they may not pass out of this realm by the time herein limited without *imminent danger of life*, and this understood as well by the *corporal oath* of the party as by other good means, unto the *bishop of the diocese and two justices of peace* of the same county where such person or persons do dwell, or abide; that then, and upon good and sufficient bond of the person or persons, with sureties, of the sum of *two hundred pounds* at the least, with condition, that he or they shall be of good behaviour towards our sovereign lady the queen and all her liege people,

people, then he or they so licensed and doing as is aforesaid, shall and may remain and be still within this realm, without any loss or danger to fall on him or them by this act, for so long time as by the same *bishop* and *justices* shall be limited and appointed, so as the same time of abode exceed not the space of *six months* at the most: (2) And that no person or persons shall sustain any loss, or incur any danger by this act, for the receiving or maintaining of any such person or persons so licensed as is aforesaid, for and during such time only as such person or persons shall be so licensed to tarry within this realm; any thing contained in this act to the contrary notwithstanding.

By §. 13. It is further Enacted, That every person or persons, being *subjects of this realm*, which after the said *forty days* shall know and understand that any such *jesuit*, *seminary priest*, or other *priest* aforesaid, shall abide, stay, tarry, or be within this realm, or other the queen's dominions and countries, contrary to the true meaning of this act, and shall not discover the same unto some justice of peace or other higher officer within *twelve days* next after his said knowledge, but *willingly conceal his knowledge* therein, that every such offender shall make fine, and be imprisoned at the queen's pleasure; (2) And that if such justice of peace, or other such officer to whom such matter shall be so discovered, do not within *eight and twenty days* then next following give information thereof to some of the queen's privy council, or to the president or vice-president of the queen's council established in the north, or in the marches of *Wales*, for the time being; that then he or they so offending shall for every such offence forfeit the sum of *two hundred marks*.

By §. 14. It is likewise Enacted, That such of the privy council, president, or vice-president, to whom such information shall be made, shall thereupon deliver

liver a note in writing, subscribed with his own hand, to the party by whom he shall receive such information, testifying that such information was made unto him.

By §. 15. It is also Enacted, That all such oaths, bonds and submissions, as shall be made by force of this act, as aforesaid, *shall be certified* into the Chancery by such parties before whom the same shall be made, within *three months* next after such submission, (2) upon pain to forfeit and lose for every such offence *one hundred pounds* of lawful *English* money; the said forfeiture to be to the queen, her heirs and successors.

By §. 16. If any person so submitting himself, as aforesaid, do at any time within the space of *ten years* after such submission made, come within *ten miles* of such place where her Majesty shall be, without especial licence from her Majesty in that behalf to be obtained in writing under her hand, that then and from thenceforth such person shall take no benefit of his said submission, but that the same submission shall be void as if the same had never been. *Farther provided for by 35 El. c. 2. 1 Jac. 1. c. 4. 3 Jac. 1. c. 5.*

So far as to the Principal laws, at large, immediately concerning PAPISTS. For some other articles, relating to them and declared TREASON, or the offenders guilty of a PRÆMUNIRE, *vide fol. 70*, and *vide* also on this subject 242 & *seq.*

There are other laws, relative to the same subject, exclusive of those mentioned at the end of the recital of the last act, but this work being already swelled beyond the intended size, and the Principal laws, having been set forth, we shall only now pursue Mr. Care in giving the substance of the others by way of abstract (some of which have been already cursorily

forily mentioned) and then close this part of our work.

To maintain or conceal those who persuade or are reconciled to the Roman religion, *Misprifion of treason*, 23 *Eliz.* 1.

To go and serve a foreign prince, having not before taken the oath of allegiance, and entred bond *not to be reconciled* to the Roman religion, *Felony*, 3 *Jac.* 4.

The first refusal of the oath of supremacy, is punished as in case of a *præmunire*, which imports a forfeiture of all lands and goods, imprisonment for life, and a deprivation of the benefit of the law, 5 *Eliz.* 1.

To set forth or defend power spiritual in the see of *Rome*, *Præmunire*, 5 *Eliz.* 1.

To bring or receive any *agnus dei*, crosses, pictures, or such like from *Rome*, *Præmunire*, 13 *Eliz.* 2. 23 *Eliz.* 1.

To aid any person who hath put in use any bull from the see of *Rome*, *Præmunire*, 13 *Eliz.* 2. 23 *Eliz.* 1.

Refusal of the *oath of allegiance* upon the second tender, a *Præmunire*, 3 *Jac.* 4. & 7 *Jac.* 6.

Upon indictment of recusancy by proclamation, *Imprifonment*, 29 *Eliz.* 6.

Those that are not able, or fail to pay their forfeitures, are to be imprisoned until payment or conformity, 23 *Eliz.* 1.

Woman covert convicted for recusancy, imprisoned till husband pays *ten pounds* a month, or a third part of his lands, 7 *Jac.* 6.

Standing excommunicated for recusancy, a house may be broken up for apprehension, 7 *Jac.* 6.

Those who shall forbear to come to church by the space of *twelve months*, bound to good behaviour, with surety in the *King's bench*, 23 *Eliz.* 1.

Every recusant is confined to five miles compass for life, 23 *Eliz.* 2. to ten miles distant from *London*, 3 *Jac.* 5.

Not to come into *the house* where the king or his heir apparent is, 3 *Jac.* 5.

For absence from church service every sunday *twelve pence* forfeited, 1 *Eliz.* 2.

And for every holyday *twelve pence* forfeited, 3 *Jac.* 4.

For absence from common prayer, every month, *twenty pounds* forfeited, 23 *Eliz.* 1. 3 *Jac.* 4.

For default of payment of *twenty pounds* a month, all goods, two parts of land, and leases forfeited, 29 *Eliz.* 6. & 3 *Jac.* 4.

At the king's election to take or refuse *twenty pounds* a month, or to take two parts of the recusant's estate, 3 *Jac.* 4.

All copyhold lands of recusants forfeited, 25 *Eliz.* 2.

The forfeitures of the ancestor charged upon his heir being a recusant, 1 *Jac.* 4.

A recusant forfeits for not receiving the sacrament according to the service book, the first year *twenty pounds*, the second year *forty pounds*, the third year and every year after *sixty pounds*, 3 *Jac.* 4.

To the presenter out of the recusant's goods *forty shillings* forfeited, 3 *Jac.* 4.

For every recusant, sojourner and servant *ten pounds* for every month forfeited, 3 *Jac.* 4.

Two parts of dower or jointure of a married woman forfeited, 3 *Jac.* 5.

Coming to court, an *hundred pounds* forfeited, 3 *Jac.* 5.

For not baptizing of children according to the service book publickly within a month after their birth, an *hundred pounds* forfeited, 3 *Jac.* 5.

For

For marrying otherwise than by a minister, an *hundred pounds* forfeited, 3 *Jac.* 5.

For burying out of the church or church-yard an *hundred pounds* forfeited, 3 *Jac.* 5.

For sending children beyond seas without licence, an *hundred pounds* forfeited, 1 *Jac.* 4.

For maintaining a schoolmaster not going to church, or allowed to teach, for every month *ten pounds* forfeited, 23 *Eliz.* 1. & 29 *Eliz.* 6.

And forty shillings *per diem* forfeited by the schoolmaster and recusant that keeps him, 1 *Jac.* 4.

All goods and lands during life, for breach of confinement forfeited, 23 *Eliz.* 2 & 3 *Jac.* 5.

The like forfeiture for going or sending children beyond the seas to be bred in popery, 3 *Car.* 2.

For residing within ten miles of *London*, an *hundred pounds* forfeited, 3 *Jac.* 5.

For practising any function expressed in the statute of 3 *Jac.* 5. an *hundred pounds* forfeited, 3 *Jac.* 5.

Disabled to reverse indictment for want of form or other defect, 3 *Jac.* 4.

Disabled from the practice of several functions, whereby to gain their livings, *viz.* from practising, Common law, Civil law, or being a steward, attorney, solicitor, or officer in any court, from practising *physick*, or being an apothecary, and from bearing any office in camp, troop or band of soldiers, or in any ship, castle, or fortrefs, &c. 3 *Jac.* 5.

By the wife's recusancy, the husband disabled from publick office or charge in the commonwealth, 3 *Jac.* 5.

By marrying otherwise than the church of *England* alloweth, the husband disabled to be *tenant by courtesy*, the wife disabled to have *dower*, *jointure*, *freebank*, or any part or *portion* of her husband's goods, 3 *Jac.* 5.

Disabled

Disabled to sue or prosecute actions, to present to a benefice, to be executor, administrator, or guardian, 3 *Jac.* 5.

Children sent beyond the seas without licence, are disabled to take benefit of gift, conveyance, descent, or devise, 1 *Jac.* 4. & 3 *Jac.* 5.

Notwithstanding these forfeitures, recusants are no less subject to ecclesiastical sentences, 23 *Eliz.* 1. & 3 *Jac.* 45.

HAVING

HAVING thus collected together divers of the most remarkable and advantageous of our laws, whereby the liberties of Englishmen are guarded and secured: Since the best laws are but insignificant cyphers, if not honestly put in execution; and since, in the execution of our laws, juries are greatly concerned, who, if ignorant of their duty, corrupt, or overawed, and fearful of making use of that just power, wherewith the law hath invested and intrusted them, may give up all those inestimable privileges, and subject us to the worst kind of slavery, under pretence of law: Therefore here in the last place, for the information of our countrymen, the freeholders of England, and others, who in corporations are daily called to this important service, we shall here subjoin a brief discourse,

On J U R I E S.

S E C T. I.

Of the advantages Englishmen enjoy from this trial by juries above any other nation.

AS Mr. Care observes, one of the miserable follies of depraved human nature, is, that it commonly neglects present enjoyments, and seldom estimates those good things it possesses at their true value, 'till deprived of them. This grand privilege of trials, by our *country*, that is by juries, seems to have been as ancient as the government, or first form of policy in this island; for it was not unknown to the ancient *Britons* (as appears by their books, and monuments of antiquity.) It was practised by the *Saxons* [*vide*

[*vide* king *Ethelred's* laws in *Lambert*, p. 218. and *Coke*, 1 Part Instit. fol. 155.] and confirmed since the invasion of the *Normans*, by *Magna Charta*, and continual usage; farther it is a thing of the highest moment, and a very great and an essential felicity, to all *British* subjects. For if we turn our eyes towards *France*, *Spain*, *Italy*, or, indeed, to almost every other state, and observe the miserable condition of the inhabitants, we shall find they are either intirely subjected to the arbitrary power of tyrants, who plunder, dismember, or destroy them, according to their caprice, oftentimes without the least provocation, meerly for sport, and to gratify a savage cruelty; or at best, subject to such laws, as render their lives, liberties and estates, liable to be disposed of, at the discretion of strangers appointed their judges, who are oftentimes mercenary, and creatures of prerogative; sometimes malicious, and oppressive, and too often partial and corrupt: or suppose 'em extremely just and upright, yet still the subject hath not any security against subornations and the attacks of malicious, false, and iniquitous witnesses. Even, when there is not sufficient evidence, only bare suspicion, they are obnoxious to the tortures of the rack, which often compells an innocent man to confess himself guilty, meerly to free himself from present pain, or should he with invincible courage endure the question, (as they call those torments,) he is many times so maimed in his limbs, as scarce ever after to have the use of them, and his future life thereby rendered extremely miserable.

Whereas such hath been the prudent care of our ancestors, (under protection of the Deity) that to our inestimable happiness, we are born, and live under a mild and most excellent constitution, where all these mischiefs may be prevented; where no one can be legally condemned, either by the power of superior enemies, the rashness or ill-will of any judicial minister,

nister, nor by the bold affirmations of profligate evidence. For by a fundamental law in our government, no man's life (unless it be in parliament, which is a supreme court, and it is supposed will never do any man wrong) shall be affected for any crime whatsoever, but upon being found guilty on two several tryals (for so may that of the grand and petit jury be called) and the judgment of twice twelve men at least, all of his own condition and neighbourhood, and upon their oaths, [*Coke, 3d Part of Instit. p. 40.*] that is to say, twelve or more to find the bill of indictment against him, and twelve others to give judgment upon the general issue of *Not guilty*: All which jurors must be honest, substantial, impartial men, and being neighbours of the party accused, or place where the supposed fact was committed, cannot be presumed to be unacquainted either with the matters charged, the prisoner's course of life, or the credit of the evidence: and all these must first be fully satisfied in their consciences, that he is *Guilty*, and so unanimously pronounce him upon their oaths, or else he cannot be condemned. For the office and power of these juries is judicial: They only are the judges, from whose sentence the indicted are to expect life or death, upon their integrity and understanding, the lives of all that are brought into judgment do ultimately depend; and from their verdict there lies not any *appeal*; by finding *Guilty* or *Not guilty*, they do complicately resolve both law and fact.

According to Mr. *Care*, *Judges* are made by prerogative, and many times heretofore they have been preferred by corrupt ministers of state, and may be so again in time to come; and such advanced as would serve a present turn, not always those of the most integrity and skill in the laws: Their places are so honourable and profitable, and their tenure, when he wrote, so ticklish, *viz. Durante beneplacito*, meerly during plea-

pleasure, that, as he justly observed, they were then under no small temptation.

Since Mr. *Care* wrote, in fact in the *first* of his present Majesty, an act was made (*viz. c. 23.*) continuing the judges *during good behaviour*, notwithstanding the demise of the crown.

Mr. *Care* observing on their number, says they are so few that they may be the easier corrupted; they cannot be challenged, and may be apt to think themselves above any action, and thence be encouraged to strain a point now and then. The major part of them agreeing, is enough; they are never sworn at each particular trial, but only once at first, and that in a very general manner. All these things have formerly happened to bias some judges, what may again happen, no one knows. Those honourable persons who now sit in our seats of justice, are out of the question. However they cannot always remain. As to a jury, as Mr. *Care* observes, nothing of that kind can reasonably happen to them. For 1. They are returned by a sworn officer. 2. They must be men of a clear reputation, and competent estate. 3. Being neighbours they may know something of the business on their own knowledge. 4. Their office is but a trouble not accompanied with any great honour, nor any profit. 5. They are all solemnly sworn to each particular cause. 6. The party may challenge thirty-five in case of treason, and twenty of them in felony, without shewing any cause, and as many more as he can assign cause against. 7. Of the Grand jury, twelve at least must join in the verdict, and of the petit jury, every man of the twelve must consent upon his oath, or else it amounts to nothing. And lastly, if they give a corrupt verdict between party

B b 2

and

and party, they are liable to an *attaint* *. [But we do not find any *attaint* lies in criminal causes, where the king is a party.]

Now

* If the jury give a false verdict (which is perjury of the highest degree) upon an issue joined between the parties in any court of record, and judgment thereupon, the party grieved may bring his writ of *attaint* in the *King's bench* or *Common pleas*, upon which twenty-four of the best men in the county are to be jurors, who are to hear the same evidence which was given to the petit jury, and as much as can be brought in affirmance of the verdict, but nothing against it. If these twenty-four (who are called the Grand jury) find it a false verdict, then followeth this terrible and heavy judgment, at Common law upon the petit jury.

1. That they shall lose *liberam legem* for ever, that is, they shall be so infamous, as never to be received as a witness, or of any jury.
 2. That they shall forfeit all their goods and chattels.
 3. That their lands and tenements shall be taken into the king's hands.
 4. That their wives and children shall be thrown out of doors.
 5. That their houses shall be rased and thrown down.
 6. That their trees shall be rooted up.
 7. That their meadow ground shall be ploughed up.
 8. That their bodies shall be cast into gaol, and the party shall be restored to all that he hath lost by their unjust verdict. So odious is perjury in this case in the eye of the Common law. The severity of the punishment is to this end *ut pœna ad paucos, metus ad omnes perveniat*, for there is *miseriçordia puniens*, and there is *crudelitas parcens*. And seeing all trials of real, personal, and mixed actions depend upon the oath of twelve men, prudent antiquity inflicted this severe punishment upon them if they were attainted of perjury.
- 1 *Inst.* 294.

But now by the statute 23 H. 8. c. 3. The severity of this punishment is moderated, if the writ of *attaint* is grounded upon that statute.

But the party grieved, may at his election, either bring his writ of *attaint*, at the Common law, or upon that statute, wherefore let the juror expect the greatest punishment, when he offends. 3 *Inst.* 163, &c. There ought to be a knight returned of the jury. *Co. Lit.* 156. a.

It is necessary to observe that when a verdict has been given by a former jury in the same cause, and on the same evidence, it is allowed

Now, let any man of sense consider whether this method is not more proper for sifting out and discovering the truth, for finding out the *guilty*, and preserving the *innocent*, than if the whole decision were left to the examination of a judge, or two, or three, whose interest, passion, haste, or multiplicity of business, may easily lead them into error.

Deservedly therefore is this privilege of trial by juries, ranked amongst the choicest of our fundamental laws, which whosoever shall attempt openly to suppress, or craftily to undermine, and render only a formality, does *ipso facto* attack the government: he brings in an arbitrary power, and is an enemy and

lowed to give the former verdict in evidence, and this has been introduced by counsel, as obligatory on the latter jury to find accordingly; intimating, that otherwise they do (in effect) perjure the former twelve men, which may amuse tender minds and draw them from a strict enquiry into the merits of the cause, in favour of their predecessors which is a very great mistake and misinformation for these reasons.

1. The same evidence in the former cause and trial (perhaps) was not delivered in so perspicuous a manner as in this.
2. This latter jury may be of more sagacious and comprehensive judgment than the former.
3. The directions of the court (which the jury most regard) may be more clearly delivered to this jury.
4. The matter in contest (perhaps) was not in the former trial so clearly managed by the counsel, not being so well instructed as afterwards.
5. And lastly, supposing the evidence equally delivered by the witnesses, apprehended by the jury, directed by the court, managed by the counsel, yet it is no fault to differ in judgment, for if twenty-four jurymen were to try a matter of fact, and twelve were of one opinion, and twelve of another, who is in fault? while they judge according to the best of their knowledge and skill, to which (only) they are sworn. *Trials per pais 330 & seq.*

As we have elsewhere observed, the judges sometimes differ in opinion, and nothing is more common than for men to draw different conclusions from the same premisses, &c.

traytor to his king and country; for which reason *English* parliaments have ever been most zealous for preserving this great jewel of liberty, *trials by juries*, the same having been many times since the *Norman* conquest established and confirmed by the legislative power, no one privilege besides having been so often remembered in parliament.

S E C T, II.

What persons ought to be jurymen, and how qualified.

AS the office of juries is of such great importance, so the wisdom of our law hath provided that the same shall be supplied with persons of ability, honesty, integrity, and indifference; for, (as Lord Coke saith, 1 Part *Instit. sect. 234. fol. 155.*) He that is of a jury must be *liber homo*, that is, not only a *freeman*, and not bond, but also one that hath such freedom of mind, as he stands indifferent, as he stands unsworn. 2. He must be *legalis*, and by the law every juror that is returned for the trial of any issue, or cause, ought to have three properties, 1. He ought to be dwelling most near, to the place where the question is moved. 2. He ought to be most sufficient both for understanding, and competency of estate. 3. He ought to be least suspicious, that is, to be indifferent as he stands unsworn, and then he is accounted in law *liber & legalis homo*, otherwise he may be challenged and not suffered to be sworn; but a man's being excommunicated (as was said before) is no bar to his being a jurymen, much less his being a dissenter, or non-frequenter of church ceremonies, if he be otherwise qualified with estate and understanding.

To

To use Mr. *Care's* words, if no statute excludes protestants unconvicted of any crime, or dissenters (*qua tales*) to serve on juries, I should think we ought to wait at least till an act of parliament be made to that purpose, before we deny them *liberam legem*; and to act otherwise, in my silly opinion, seems not only unwarrantable, but a daring usurpation of legislative power. In a word, jurors must be free of and from all manner of bondage, obligations, affections, relations, and prejudices; they must be the peers or equals of the party they are to try; they must be of full age, *viz.* 21 years old, or upwards, not outlawed, never attainted, or convicted of treason, felony, false verdict, perjury, or adjudged infamous; they were antiently all knights, as we read in *Glanvil* and *Bracton*, and they must still be persons of worth and repute; and as they are returned by a sworn officer, the sheriff, so they of the petit jury must be every one sworn every several trial by a particular oath, the more to remind them of their duty. Nay, it should seem in antient times, though the office and duty were still the same as at this day, yet their honour and dignity were much greater; the *Mirror of justices*, a great part of which was wrote before the conquest, and augmented by *Andrew Horn*, a learned lawyer, in the time of *Ed. 2.* p. 209. in the *French* and 153 in the *English*, makes no scruple to call 'em judges, *judges ordinaries sunt suitors*; and *Dr. Cowel* in his interpreter tells us juries *were antiently associates, and assistants to the judges of the court, in a kind of equality.* And cites the customary of *Normandy* and *Lambert*, as being of the same sentiments. Whereas now they attend them in great humility: Nay many wise and learned men have wondered that since the law has conferred such ample power on jurymen, why they should not have some mark of honour, or distinction, from the time they are sworn, until the

delivery of their verdict. As the custom is now, they sit among the crowd, undistinguished, and it is not easy to know them from the rest of the spectators. Though they have in general seats assigned them, yet many impertinent people, often injudiciously intrude among them, which must be some inconvenience and restraint, when they consult on giving their verdict, without going out of court. But we desire not to introduce innovations, only that *Englishmen* may preserve their antient and undoubted rights and privileges, to which purpose it will concern all that are liable to be summoned to serve on juries carefully to inform themselves of their duty and office by law, that so they may uprightly discharge the same to God, the King and their fellow subjects.

S E C T. III.

Of Grand juries their duty, and the great importance of their office.

JURIES are of two sorts. 1. The *Grand jury* so called both because it consists of a greater number than twelve, as commonly 21, 19, 17, or the like, [But note, they can make no verdict or presentment, unless twelve at least of them agree, and then what they do is valid, though the rest do not consent] as also because they are generally men of greater property and quality, and likewise in respect of their power, because the extent of their office is greater and more general, as extending to all offences throughout the whole county for which they serve. 2. The *Petit jury* (in cases criminal, and who are commonly called the jury of life and death) which always consists of twelve men *, and no more nor any

* Though by the writ the sheriff is commanded to return 12, yet by antient custom he must return 24; and this is for the expedition of justice. *Co. Lit.* 155. a.

less,

less, and they must every man agree, or else it is not a verdict.

The oath of a Grand juryman, as inserted in the collection, intituled, the book of oaths, is as follows :

Ye shall truly enquire, and due presentment make, of all such things as you are charged withal on the king's behalf, the king's council, your own, and your fellows you shall well and truly keep, and in all other things, the truth present. So help you God, and by the contents of this book.

But according to modern practice, and as we find it published in the account of the proceedings against the right honourable the earl of Shaftsbury, said to be published by royal and special command, is expressed somewhat more largely, viz.

You shall diligently enquire and true presentment make, as well of all such matters, articles and things that shall be given you in charge, as of all other matters and things as shall come to your knowledge touching this present service, the king's counsel, your fellows and your own, you shall keep secret : You shall present no person for hatred or malice, neither shall you leave any one unpresented for fear, favour, or affection, for lucre or gain, or any hopes thereof, but in all things you shall present the truth, the whole truth, and nothing but the truth, to the best of your knowledge. So help you God.

The office of a Grand jury, or Grand inquest, (for by both those names it is promiscuously called) is principally concerned in two things, *presentments* and *indictments*, the difference of which is thus : The first is, when the jury themselves, of their own knowledge or inquiry, do take notice of some crime, offence, or nuisance, to the injury of the publick, which they think fit should be punished or removed ; and in order thereunto do give the court notice thereof in writing

ting briefly and without form, only *the nature of the thing*, and the *person's name* and *the place*: and this is called a *presentment*, being the matter whereon to form an *indictment*, from which the *presentment* differs in these two respects. 1. In that it is always, originally, the act of the Grand jury. And 2. That it is not yet drawn up in form; whereas indictments are commonly drawn up either by the order of the court, or at the instance of some prosecutor, and are brought before and delivered unto the Grand jury, and the witnesses sworn, attend them, who examine those witnesses, and, as they think fit, return the indictments, indorsed either *billa vera*, (that is, *a true bill*, or *ignoramus* (*we are ignorant*) that is we do not find the matter; or, there does not appear to us such sufficient grounds for the accusation, that the person's life and reputation should be brought into question.

From hence it appears, that the end of their office is likewise two-fold, 1. To enquire after, and give notice of all crimes, offences, nuisances, &c. in the county for which they serve, which by reason of their residence and estates therein, they are presumed to have the best opportunity to discover, and to find bills against malefactors where there are good grounds for the same, that so they may be brought to trial, if they are forth-coming, or may be proceeded against to outlawry, if they are fled for their offences. 2. To preserve the innocent from the disgrace and hazards which ill men may design to bring them to, out of malice or through subornation, or other sinister ends; for so tender is the law of the reputation, and life of man, that it will not suffer the one to be sullied, by the party's holding up his hand at the bar, and the other endangered by a trial, until the matter and evidence against him have been first considered, examined and found by a Grand jury upon their oaths, against him: Therefore as appears by their oaths, they

they are sworn not only to enquire, but *diligently to enquire*, not to be negligent, or slothful, nor to take things upon trust, or hurry the matter over carelessly, but to weigh the circumstances, strictly examine the witnesses, and search out the truth of such informations as come before them, and to reject the indictment, if it is not sufficiently proved; and if they have reasonable suspicion of malice, subornation, or wicked designs against any man's life or estate, in such as offer, or come to swear to the bill of indictment, they are bound by law, as well as in conscience, to use all diligence to discover the villany; and if it appear to them, (whereof they are the legal judges) to be a conspiracy, or malicious conspiracy against the accused, they are bound, not only to reject such bill of indictment, but forthwith to indict all the conspirators, with their associates and abettors; and that this is a principal part of the Grand juries office, appears not only from legal reason, but by an express statute, *viz.* 25 Edw. 3. st. 5. c. 4. and 42 Edw. 3. 3. which says, *That for preventing mischiefs done by false accusers, none shall be put to answer, unless it be by indictment, or presentment of good and lawful people of the same neighbourhood where such deeds be done; that is to say, by a Grand jury.*

The grounds upon which Grand juries are to proceed in giving their verdicts, are either,

1. From their own knowledge; and so they may find an indictment against a person, though there is not any witness to it, and a Petit jury may in like manner find a person guilty of a felony, or murder, whereof he stands indicted, though no witnesses appear against him to prove it; and the reason thereof is, because the juries being always of the *vicinage*, the law supposes they may know the matter of their own knowledge, and therefore in all such cases, when a jury is charged with a prisoner, and after the indictment

ment read, witnesses fail to appear, the court always speaks thus to the jury: *Gentlemen, here is A. B. stands indicted of such a crime, but there are not any witnesses appear against him, so that unless, on your own knowledge, you know him guilty, you must acquit him*: And certainly, if the juries knowledge of a man's guilt is enough to condemn him, why should not their personal knowledge of a prisoner's innocence, or of the witnesses swearing falsely, be sufficient to acquit him. 2. The other ground upon which the Grand juries are to proceed, is *testimony of witnesses*, and this is called *evidence*, because it ought to be such as may make the matter clear, manifest, plain and evident to the jury, and of this evidence, the jury are the proper and only judges; therefore they ought (according to their oath) *diligently* to enquire into the *quality, repute and circumstances* of the witnesses, the *probability* of what they depose, and whether they do not swear out of *malice, subornation, self-interest, combination*, or some *ill design*, which to discover, they will do well to *examine them APART*, to *note their variations, and contradictions*, to ask them *sudden questions*; and what questions are *pertinent*, not the judges but the jury only. can determine; for they may know how to make use of them towards the discovery of the truth, though the judge do not, and it is they are upon their oaths, not he; it is they must satisfy their own consciences, the judge has nothing to do to intermeddle, he is bound by their verdict: Let witnesses be as positive as they will, yet if the jurors have good and reasonable grounds not to believe them, they will, they *must* remain as ignorant to the party's crime as before; we find this expressly asserted for law in our books, as *Stiles's Reports, Lib. 11.* though there are witnesses who prove the bill, yet the Grand inquest is not bound to find it, if they see cause to the contrary: so *Coke, lib. 6.* the judges are used to determine who shall

shall be sworn, and what shall be produced as evidence to the jury; but the jury are to consider *what credit or authority the same is worthy of*. If a Grand jury are not judges of evidence, they signify nothing, if (as some alledge) because witnesses swear desperately, though the jury do not believe them, they shall be bound to find the bill. This is absurd in the highest degree. Were this admitted, the Grand jury signify nothing, and are no security to preserve innocence. We will give an anecdote nearly in Mr. *Care's* words. A lewd woman once resolved to indict the then arch-bishop of *Canterbury*, for a rape, she swore it, no doubt, very heartily. According to this new doctrine of going according to evidence, the jury must presently have found the bill, the arch-bishop must have been committed to prison, suspended from ecclesiastical jurisdiction, and his goods and chattels throughout *England* inventoried by the sheriffs: would it, in that case, have been a good excuse for the Grand jury, to have said, that though they believed in their consciences the baggage swore false, yet the swearing it positively, they, as so many parish clerks, were but to say *Amen* to her oath of the fact, and to find *Billa Vera* against that eminent prelate? And if the jury are judges of the credibility of evidence in this case, and may go contrary to it, why, may they not have the same liberty, where they find good cause in others?

If an indictment is laid against a man for criminal words, said to be uttered in a *colloquium*, or discourse, though the witnesses positively swear all the express words in the indictment, yet unless they will relate and fully set forth the substance of the whole conversation, it is impossible, the jury should judge of the matter, for expressions that are in themselves when coupled with other words, innocent and loyal, when taken to halves and separated from those they were so coupled

coupled with, become very treasonable; as if one should say, *To affirm the king has no more right to the crown of England than I have (which is the opinion of the jesuits with respect to his Majesty, if once excommunicated by the pope) is detestable treason.* And two men at some distance, not well hearing, or remembering, or maliciously designing against his life, should swear, that he said, *The king had no more right to the crown than he had.* Now, that these very words were uttered is true; but if the evidence are interrogated as to the rest of the *colloquium*, they will perhaps say, there was much more discourse, but they cannot remember it; what satisfaction is this to a jury? Or would it not be hard, for a man to be obliged to hold up his hand at the bar, under the horrid charge of *treason* in this case? Or, if a minister, in his sermon, should recite that passage of the psalms, *The fool hath said in his heart there is no God.* Jesuited evidence may now come and charge him with blasphemy, and swear that he said, *There was no God:* And being asked what other expressions he used, may excuse themselves, and say, it is a great while ago, we cannot remember a whole sermon, but this we also positively swear, he said, *There was no God.*

The enquiry of a Grand jury should be suitable to their title, *a grand enquiry*; or else instead of serving their country, and presenting real crimes, they may oppress the innocent, as in the case of *Samuel Wright* and *John Good*, at a sessions in the *Old Bailey*, about Dec. 1681. *Good* indicts *Wright* for treasonable words, and swore the words positively; but after a grand enquiry, the *Grand jury* found that *Wright* only spoke the words as of others, thus, *They say so and so*—and concluded with this,—*They are rogues for saying it;* and *Good* also at last confessed that *Wright* was his master, and corrected him for misdemeanors, and then to be revenged, he comes and swears against him, and

and which he confessed he was instigated to by one *Powell*; so the *Grand jury* finding it to be but malice, returned the bill *Ignoramus*; whereas if they had not examined him strictly, they had never discovered the truth, and the matter had without cause been brought to great charge, ignominy, and hazard.

The judicious *Dalton* says well, No less care or concern at all lies on the *Grand jury*, than does on the *Petit jury*; people may tell you, that you ought to find a bill upon any probable evidence, for it is but matter of course, a ceremony, a business of form, only an accusation, the party is to come before another jury, and there may make his defence. But if this were all, to what purpose have we *Grand juries*? Why are the wisest, and best men in a county (for such they are, or should be) troubled? Why are they so strictly sworn? Do not flatter yourselves, you of the *Grand jury* are as much upon your oaths as the *Petit jury*; and the life of him against whom the bill is brought, is in your hands. *Lord Coke*, 3 *Instit.* 33. plainly calls the *Grand jurymen* all wilfully forsworn, and perjured, if they wrongfully find an indictment. And if in such case the other jury through ignorance &c. should find the person guilty too, you are guilty of his blood as well as they; but suppose he is acquitted by the *Petit jury*, do you think it nothing to accuse a man upon your oaths, of horrid crimes, your very doing of which, puts him, though in every respect innocent, to disgrace, trouble, damage, and danger of life; and makes him liable to outlawry, imprisonment, and every thing but death itself; and that too, for aught you know, may wrongfully be occasioned by it, your rash verdict gaining credit, and giving authority to another jury to find him guilty; for if the *Petit jury* find a man guilty never so unjustly, the law suffers no attain or other punishment, to lie against them; for this very reason, be-

cause another jury, *viz.* the Grand inquest, as well as they, have found him guilty. If a Grand jury find a bill wrongfully against a person, and it prove never so much to his damage, he has not any remedy; for being upon their oaths, the law will not suppose any malice. One of the Grand jury cannot afterwards be of the Petit jury, and why? Because, says the law, he has once already found the party guilty, and if he should not again, he must perjure himself. From all which it appears, what a weight and stress the law puts upon the verdict of a Grand jury, and it is remarkable, that the law directs them only to say, either *Billa Vera*, it is true; or, *Ignoramus*, we know not; and never, that it is not true; which shews, that if they are doubtful, or not fully satisfied, the indictment must be indorsed not *Billa Vera*, we know it is true, but *Ignoramus*, we doubt it, we do not know it, we are not certain it is true. If they find a bill where they ought not, they wound their own consciences, and do an irreparable damage to the party; but where they do not find the bill, there is not the least injury done to any one, for another *indictment* may be brought when there is better evidence.

S E C T. IV.

That juries are judges of law, in some respects, as well as fact.

AMONGST other devices, to undetermine the rights and power of juries, and render them insignificant, there has an opinion been advanced, that they are only judges of *fact*, and are not at all to consider the *law*, so that if a person is indicted for a fact, which really is not a crime in itself by law,

law, but is worked up by words of form, as *treasonably, seditiously, &c.* if the fact is but proved, to have been committed, though these wicked circumstances do not appear, they shall be supplied by the law, which a jury are not to take notice of, but find the bill for bringing in the person guilty, and leave the consideration of the case in law to the judges, whose business it is.

Thus some argue, but it is an apparent trap, at once to perjure ignorant juries, and render them so far from being of good use, only tools of oppression, to ruin and murder their innocent neighbour with the greater formality; for though it be true, that matter of *fact* is the most common and proper object of a jury's determination, and matter of *law* that of the judges; yet, as law arises out of, and is complicated with fact, it cannot but fall under the jury's consideration. *Littleton, sect. 368.* teaches us, that the jury may, at their election, either take upon them the knowledge of the law, and determine both the *fact* and *law* themselves, or else find the matter specially, and leave it to the judges*; it is by applying matter of fact and law together, and from their due consideration of, and right judgment upon both, that a jury brings forth their verdict. Do we not see in most general issues, as upon *Not guilty* pleaded in trespass, breach of the peace, or felony, though it is matter in law, whether the party is a trespasser, a breaker of the peace, or a felon, yet the jury do not find the fact of the case by itself, leaving the law to the court, but find the party guilty or not guilty generally; so that though they answer not to the question singly, what is *law*, yet they determine the *law* in all matters where issue is joined. Is it not every day's practice, when persons are indicted for murder,

* Lord *Coke* agrees to this, though in special cases he thinks it hazardous for the jury.

the jury not only find them guilty, or not guilty; but many times, upon hearing and weighing of circumstances, bring them in either guilty of the murder, or else only of manslaughter, per-misadventure, or *se defendendo*, as they see cause? Besides, as juries have ever been vested with such power by law, so to exclude them from, or disseise them of the same, were utterly to defeat the end of their institution. For then, if a person should be indicted for doing any common innocent act, if it is but clothed and disguised in the indictment with the name of treason or some other high crime, and proved by witnesses to have been committed by the party accused, the jury, though satisfied in conscience, that the fact is not any such offence, as it is called, yet because (according to this opinion) They have no power to judge of *law*, and the *fact* charged is fully proved, they should be bound to find the party guilty: And being so found, the judge may pronounce sentence against him, for he finds him a convicted traytor, &c. by his peers; and so juries, to use Mr. Care's words, should be made meer properties to do the drudgery, and bear the blame of unreasonable prosecutions. But all this is absurd and abhorred by the wisdom, justice and mercy of our law.

In every indictment, information, &c. there are certain words of course, called matter of form, as *maliciously, seditiously*, with such and such an intention, &c. And these are sometimes raised by a just and reasonable implication in law, and sometimes are introduced meerly to raise a pretence or colour of crime, where there is really none, so that *every jurymen ought well to understand this distinction*, where the act or naked matter of fact charged, is in itself a crime or offence against law; as killing of a man, levying of war against the king, &c. there the law does in pleading require, and will supply those words; and if the jury do find, and are satisfied, that the *sub-*
stance

stance of the charge is such a crime, and the person guilty thereof, they are bound to find it, though no direct proof be made of those circumstantial. But where the act or matter of fact, is in itself innocent, or indifferent, where the purport of these words (as that it was done maliciously, or with such or such a design) is necessary to be proved; for ELSE THERE IS NO CRIME, and consequently no fit matter to be put to trial. In which case the Grand jury is bound in conscience and law, to return an *Ignoramus*, and a Petit jury to find *Not guilty*.

To this section we may add, by way of confirmation, that in a small work published, in 1681, intituled, *The security of Englishmen's lives, or the trust, power and duty of GRAND JURIES of England explained according to the fundamentals of the English government, and the declarations of the same made in Parliament by many statutes*, and which though then published without the author's name, was afterwards, as Mr. Worrall observes published with the name of Lord Somers to it, p. 32. of the small edition, it is said "No directions can be legally imposed on them by any court or judges."

Again pag. 59. the same author says,

"The king's interest and honour is more concerned in the protection of the innocent, than in the punishment of the guilty. This maxim can never run them (the jurors) into excesses."

In pag. 9. speaking of the Petty jury, he particularly says, "By finding *Guilty* or *Not guilty*, they do complicitely resolve both *law* and *fact*. And in p. 9. & 10.

He farther saith, "As it hath been the law, so it hath always been the custom and practice of these juries (the petty) upon all general issues, pleaded in cases civil as well as criminal, to judge both of the *law* and *fact*."

My Lord quotes judge *Vaughan* as to juries determining the law, and that the court cannot oblige them to find against their wills.

And Sir *M. Hale* in his *Hist. law*, p. 140. says, that the juries are judges not only of the fact, but of the law. *Vide Dr. Ellis on Liberty, Part 2. p. 29.*

It is hoped, the authority of Lord *Somers*, judge *Vaughan*, *Littleton*, Lord *Coke* before-mentioned, and Sir *Mathew Hale*, are sufficient to determine this point.

S E C T. V.

That juries are not fineable, or any way to be punished, under pretence of going contrary to evidence, or against the judge's directions.

MUCH of what we have said of Grand juries, is also applicable to Petit juries; so that we need not repeat it, only must answer one objection,

Some jury-men may be apt to say—If we do not find according to evidence, though we have reason to suspect the truth of what the witnesses swear, or if we do not find as the judge directs, we may come into trouble, the judge may fine us, &c. Mr. *Care* in answer justly says, this is a vain fear. No judge dare offer any such thing, you are the proper judges of the matters before you, and your souls are at stake: you ought to act freely, and are not bound, though the court demand it, to give the reasons why you bring a verdict in thus, or thus; for you of the *Grand jury* are sworn to the contrary, viz. *To keep secret your fellows council, and your own.* And you of the *Petit jury* are no way obliged to declare your motives, it may not be convenient. It was a remarkable case before
Chief

Chief Justice *Anderson*; in queen *Elizabeth's* time: A man was arraigned for murder, the evidence was so strong, that eleven of the jury were presently for finding him guilty, the twelfth refused, and kept them so long that they were ready to starve, and at last made them comply with him, and bring in the prisoner not guilty. The judge, who had several times admonished this jury-man to join with his fellows, being surprized, sent for him, and discoursed him privately, to whom upon promise of indemnity, he at last owned that he himself was the man that did the murder, and the prisoner was innocent, and that he was resolved not to add perjury and a second murder to the first. But to convince every one that a jury is no way punishable for going according to their conscience, though against seeming evidence, and the reasons why they are not, nor ought to be questioned for the same, we shall here recite an adjudged case, viz. that of *Bushel*, in the twenty-second year of *Charles II.* reported by the learned Sir *John Vaughan*, whose book was licensed by the then lord Chancellor, the lord Chief Justice *North*, and all the judges then in *England*. The case at large fills near 15 pages and is well worth reading: But we shall select only certain passages from it.

The case was this:

BUSHEL, and others of a jury, having at a sessions for London, Sept. 1670. acquitted Pen and Mead (two quakers) of a trespass, contempt, unlawful assembly and tumult, whereof they had been indicted, were fined forty pounds a man, and committed 'till they should pay it *. *Bushel brings his Habeas Corpus, and upon the*

* The translator of *Fortescue* in his preface p. 13. says, "The jury was treated more like a pack of felons, than a jury of honest men. No

the return it appeared he was committed, For that contrary to law and against full and clear evidence openly given in court, and against the directions of the court in matter of law, they had acquitted the said W. P. and W. M. to the great obstruction of justice, &c. which, upon solemn argument, was by the judges resolved to be an insufficient cause of fining and committing them, and they were discharged, and afterwards brought actions for their damages. The reasons of which judgment, are reported by judge Vaughan, and amongst them he useth those that follow, which we shall give you in his own words: One fault in the return is, That the jurors are not said to have acquitted the persons indicted against full and manifest evidence, Corruptly and knowing the said evidence to be full and manifest against the persons indicted: For how manifest soever the evidence was, if it were not manifest to them, and that they believed it such, it was not a finable fault, nor deserving punishment: upon which difference the law of punishing jurors, for false verdicts, principally depends.

I would know whether any thing be more common, than for two men students, baristers, or judges, to deduce contrary and opposite conclusions out of the same case in law? And is there any difference, that two men should infer distinct conclusions from the same testimony? Is any thing more known, than that the same author, and place in that author, is forcibly urged to maintain contrary conclusions, and the decision hard which is in the right? Is any thing more frequent in the controversies of religion, than to press the same texts for opposite tenets? How then comes it to pass, that two persons may not apprehend, with reason and honesty, what one

jury for many ages received so many instances of displeasure and affront, because they preferred not the humour of the court before the quiet of their own consciences, even to be esteemed as perjured, though they had really been so, had they not done what they did. After two days and two nights restraint for a verdict, they were in the end fined and imprisoned, for giving it.

witness

witness or many say, to prove in the understanding of one plainly one thing, but in the apprehension of the other, clearly the contrary? Must therefore one of these merit fine and imprisonment, because he doth that which he cannot otherwise do, preserving his oath and integrity? And this is often the case of the judge and the jury.

I conclude therefore, That this return, charging the prisoners to have acquitted P. and M. against full and manifest evidence first, and next, without saying that they did know and believe that evidence to be full and manifest against the indicted persons, is no cause of fine and imprisonment.

In the margin of that fol. 142, it is thus noted: Of this mind were ten judges of eleven; the Chief Baron Turner gave no opinion, because not at the argument.

And in the same fol. he saith, The verdict of a jury, and evidence of a witness, are very different things, in the truth and falsehood of them: A witness swears to what he hath heard or seen generally, or more largely, to what hath fallen under his senses: But a jury-man swears to what he can infer and conclude from the testimony of such witnesses by the act and force of his understanding, to be the fact inquired after; which differs nothing in reason, though much in the punishment, from what a judge, out of various cases considered by him, infers to be the law in the question before him.

If the meaning of these words, finding against the direction of the court, in matter of law, be, That if the judge having heard the evidence given in court (for he knows no other) shall tell the jury, upon this evidence, the law is for the plaintiff, or for the defendant, and you are under the pain of fine and imprisonment to find accordingly, and the jury ought of duty so to do, then every man sees, that the jury is but a troublesome delay, great charge, and of no use in determining right and wrong; and therefore the trials by them may be better abolished than

than continued; which were a strange new found conclusion, after a trial so celebrated for many hundred years.

It is true, if the jury were to have no other evidence for the fact but what is deposed in court, the judge might know their evidence, and the fact from it, equally as they, and so direct what the law were in the case: Though even then, the judge and jury might honestly differ in the result, from the evidence, as well as two judges may, which often happens; but the evidence which the jury have of the fact, is much otherwise than that: For, 1. Being returned of the vicinage where the cause of action ariseth, the law supposeth them thence to have sufficient knowledge to try the matter in issue (and so they must) though no evidence were given on either side in court; but to this evidence the judge is a stranger.

2. They may have evidence from their own personal knowledge, by which they may be assured, and sometimes are, that what is deposed in court is absolutely false, but to this the judge is a stranger; and he knows no more of the fact than he hath learned in court, and perhaps by false depositions, and consequently knows nothing.

3. The jury may know the witnesses to be stigmatized, and infamous, which may be unknown to the parties, and consequently to the court.

To what end is the jury to be returned out of the vicinage, where the cause of action ariseth? To what end must hundredors be of the jury, whom the law supposeth to have nearer knowledge of the fact, than those of the vicinage in general? To what end are they challenged so scrupulously to the array and poll: To what end must they have such a certain freehold and be *probi et legales homines*, and not of affinity with the party concerned; to what end must they have, in many cases the view for exacter information chiefly? To what end must they undergo the punishment of the villainous judgment, if (after all this) they must implicitly give a verdict by the dictates and authority
of

of another man, under pain of fine and imprisonment, when *sworn to do it* ACCORDING TO THE BEST OF THEIR OWN KNOWLEDGE? A man cannot see by another's eye, nor hear by another's ear; no more can a man conclude or infer the thing to be resolved by another's understanding or reasoning; and though the verdict be right the jury give, yet they being not assured that it is so, from their own understanding, are forsworn, at least *in foro conscientie*.

And it is absurd to fine a jury, for finding against their evidence, when the judge knows but part of it: For the better and greater part of the evidence may be wholly unknown to him; and this may happen in most cases, and often doth. *Thus far judge Vaughan.*

We intended to have closed this work, with the last preceding essay, but must intreat the Reader's pardon, for inserting the following, as having by mistake been omitted, for it should have followed the 1st *W. & M.* which ends *p. 102.*

12 & 13 *William 3.* Cap. 2.

An act for the further limitation of the crown, and better securing the rights and liberties of the subject.

THIS recites the above-mentioned act of 1 *W. & M.* then declares princess *Sophia* next successor to the crown, after the king and princess *Anne* of *Denmark*, and her issue, and to the heirs of the princess *Sophia's* body being protestants. Then the act goes on as follows:

§. 2. Provided always and it is hereby enacted, that all and every person and persons, who shall or may take or inherit the said crown by virtue of the limitation

tion of this present act, and is, are, or shall be reconciled to, or shall hold communion with, the see or church of Rome, or shall profess the popish religion, or shall marry a papist, shall be subject to such incapacities, as in such case or cases are by the said recited act provided, enacted, and established; and that every king and queen of this realm, who shall come to and succeed in the imperial crown of this kingdom, by virtue of this act, shall have the coronation oath administered to him, her, or them, at their respective coronations, according to the act of parliament made in the first year of the reign of his majesty, and the said late queen Mary, intituled, *An act for establishing the coronation oath*, and shall make, subscribe and repeat the declaration in the act first above recited mentioned, or referred to, in the manner and form thereby prescribed.

3. And whereas it is requisite and necessary that some further provision be made for securing our religion, laws and liberties, from and after the death of his majesty and the princess *Anne of Denmark*, and in default of issue of the body of the said princess, and of his majesty respectively; Be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in parliament assembled, and by authority of the same,

That whosoever shall hereafter come to the possession of this crown, shall join in communion with the church of *England*, as by law established.

That in case the crown and imperial dignity of this realm shall hereafter come to any person, not being a native of this kingdom of *England*, this nation be not obliged to engage in any war for the defence of any dominions or territories which do not belong to the crown of *England*, without the consent of parliament.

That

That no person who shall hereafter come to the possession of this crown, shall go out of the dominions of *England, Scotland, or Ireland*, without consent of parliament.

Repealed by 1
Geo. 1. st. 2.
c. 51,

That from and after the time that the further limitation by this act shall take effect, all matters and things relating to the *well governing of this kingdom*, which are *properly cognizable in the privy council by the laws and customs of this realm*, SHALL BE TRANSACTED THERE, and all resolutions taken thereupon shall be *signed* by such of the privy council as shall advise and consent to the same.

Repealed by 4
Ann. c. 8. §.
24.

That after the said limitation shall take effect as aforesaid, no person born out of the kingdoms of *England, Scotland, or Ireland*, or the dominions thereunto belonging, (although he be naturalized or made a denizen, except such as are born of *English* parents) shall be capable to be of the privy council, or a member of either house of parliament, or to enjoy any office or place of trust, either civil or military, or to have any grant of lands, tenements or hereditaments from the crown, to himself or to any other or others in trust for him.

This clause does not extend to persons naturalized at the accession of Geo. 1. to the crown.

That no person who has an office or place or profit under the king, or receives a pension from the crown, shall be capable of serving as a member of the house of commons.

Repealed by 4
Ann. c. 8. §. 25.
Also vide 6 Ann.
c. 7. §. 25. &
seq. Vide also 1
Geo. 1. st. 2.

c. 56. & 15 Geo. 2. c. 22.

That after the said limitation shall take effect as aforesaid, judges commissions be made *quamdiu se bene gesserint*, and their salaries ascertained and established; but upon the address of both houses of parliament it may be lawful to remove them.

That

That no pardon under the Great seal of *England* be pleadable to an impeachment by the commons in parliament.

All laws for securing the established religion, &c. confirmed. See farther 13 W. 3. c. 6.

4. And whereas the laws of *England*, are the birth-right of the people thereof, and all the kings and queens, who shall ascend the throne of this realm; ought to administer the government of the same according to the said laws, and all their officers and ministers ought to serve them respectively according to the same; the said lords spiritual and temporal, and commons, do therefore further humbly pray, That all the laws and statutes of this realm for securing the established religion, and the rights and liberties of the people thereof, and all other laws and statutes of the same now in force, may be RATIFIED and CONFIRMED, and the same are by his majesty, by and with the advice and consent of the said lords spiritual and temporal, and commons, and by authority of the same, RATIFIED and CONFIRMED accordingly.

F I N I S.

