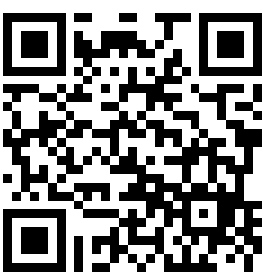

THE LAWRENCE S. FLETCHER
MEMORIAL FUND

STANFORD SCHOOL OF LAW

OBSERVATIONS

ON

THE STATUTES,

CHIEFLY

THE MORE ANCIENT,

FROM

MAGNA CHARTA

TO

The Twenty-first of James the First, Ch. xxvii.

WITH

AN APPENDIX;

BEING

A Propoſal for new modelling the Statutes.

"——tabulas peccare vetantes,
"Quas bis quinque viri ſanxerunt." HOR.

"Nam tametſi non integras contineant politiarum deſcriptiones, habent tamen memora-
"bilia quædam inſtituta, nec in vulgus nota, quæ quidem talia ſunt, ut, qui ea rectè adhi-
"bere voluerit, ſæpe in conſiliis, in legibus, in judiciis commodare potuerit." Nich. Cragius in præf. ad Heraclidæ Pontici de politiis libellum.——

LONDON:

Printed by *W. Bowyer*,
And ſold by S. BAKER, in *York-Street*; and W. SANDBY, in *Fleet-Street*.
MDCCLXVI.

" Alienæ gentis legibus, ad exercitium utilitatis imbui et permittimus, et opta-
" mus; ad negotiorum verò diſcuſſionem, et reſultamus, et prohibemus"—Inter Leges Wiſigothorum. Lindenbrog.

" Bien ſofremos, e queremos que todo ome ſepa otras leges, por ſer mas enten-
" didos los omes, e mas ſabidores; mas no queremos, que ninguno por ellas ra-
" zone, ni juſque, mas todos los pleytos ſean juſgados, por las leys deſte libro,
" que nos damos a nueſtro pueblo, que mandamos guardar"—Inter Leges Alphonſi Sapientis, Fuero Real de Eſpanna, lib. i. titl. 6—Salamanca, 1569.

" Il eſt tems de chercher à preſent dans l'importante affaire du gouvernement, et
" des loix, de nouveaux traits, qui nous peignent au naturel le peuple dont nous
" etudions l'hiſtoire." Hiſt. de Dannemarc, par Mallet, vol. i. p. 100—Copenhagen, 1755.

" Qui ignore les loix et couſtumes de ſon pais, eſt digne d'etre reputé au nombre
" des eſtrangers"—Pref. aux Ordinances Royalles—Paris, 1552.

PREFACE.

IT is believed that few lawyers, or hiſtorians, have peruſed the Statute Book in a regular courſe of reading—If a particular act of parliament hath been neceſſarily examined into, either by the one or the other, the reſearch hath probably gone no farther than to that particular ſtatute, or, at moſt, to thoſe only which relate to the ſame ſubject matter—It muſt be admitted, that this would not be the beſt method of illuſtrating, or explaining, any other author (for the ſucceſſive parliaments muſt be conſidered in this light); and it hath always been allowed, that the beſt commentator upon any literary work, is other parts of the ſame work.

I muſt own, that I did not read the Statute Book with attention, from the motive I have above alluded to; my only object was to take notice of ſuch acts of parliament, from which no good effects could be expected; and which, on the contrary, might contribute to the vexation and oppreſſion of the ſubject, as well as to the unneceſſary ſwelling the collection of ſtatutes.

If it be aſked what purpoſe this could anſwer, beſides the ſatisfaction of my own private curioſity, I muſt admit, that I had a view of laying a propoſal before the publick, that ſuch unneceſſary and prejudicial ſtatutes might (with proper precautions) be entirely repealed, as well as that acts, which related to the ſame ſubject, might be reduced to one regular and conſiſtent law [*a*].

[*a*] See a propoſal with regard to this in the Appendix.

This very thought or idea may, perhaps, by ſome be conſidered as highly preſumptuous; but it would have been ſtill more ſo, if I had not given to each ſtatute a diligent, and careful peruſal.

At the ſame time that many ſuch ſtatutes occurred in every reign, other obſervations at the ſame time naturally aroſe—I imagined that the old acts of parliament were (as far as they went) the very beſt materials for an Engliſh hiſtory; and that they were likewiſe ſtrongly deſcriptive of the manners of the times—It will be found, that the inhabitants of this country were, three or four centuries ago, guilty of many crimes, which we have at preſent ſcarcely an idea of; and that we are not indebted to them (at leaſt in their capacity of legiſlators) ſo much as hath been generally imagined—At the ſame time we owe much to them, as there were greater ſtruggles for a conſtitutional freedom, than in any other country of Europe during the ſame period.—This, however, ſhould not reſt upon aſſertion merely without having examined the materials proper for forming a comparative judgment; I have, therefore, looked into the *Ordinances* of moſt countries of Europe, during the thirteenth and three following centuries (to which time I mean to confine my obſervations); and it will appear, that our laws are much ſuperior [*b*]—I have particularly examined the Scots acts of parliament, ſince the year 1424 [*c*], which, though continued regularly from one reign to another, have been moſt unaccountably neglected by all our lawyers and hiſtorians—It is well known, that the preface and introduction to their *Regiam Majeſtatem*, as well as many other parts of that ancient book of the Scots law, are exactly the ſame with our *Glanville*; and though formerly there were great wars and animoſities between the two nations, yet, from their vicinity, there was, to a certain degree, a communication of laws

[*b*] Theſe *Ordinances* are likewiſe frequently expoſitory of our Statutes, eſpecially when they happen to have been made nearly at the ſame time.

[*c*] The collection of Statutes, publiſhed by Sir *Thomas Murray of Glendook*, in 1681, clerk of the council, begins with this firſt year of *James* the Firſt of *Scotland*—The firſt edition of them, however, was by *Lipprevick*; and from the black character in which they were printed, they were called *Acta Nigra—Skeen*, afterwards, who was clerk of the parliament, and hath written a Gloſſary to explain ſome of the antiquated words, continued the *Black Acts* to the year 1597—Traces, however, are to be found of much earlier laws, in *Hector Boethius*, and other chroniclers and hiſtorians.

and

and manners.—The learned *Craig* ſuppoſes, that the Engliſh law is the foundation of the Scots law: other writers upon the Scots law (particularly *Bruce*) have denied this, and ſuppoſed the Engliſh to be derived from the Scots; but (be this as it may) the very point in litigation neceſſarily ſuppoſes an agreement, and connexion.

As for the opinion of Engliſh writers upon this head, I have not happened to meet with one, who ſeems ever to have looked into the Scots law—And it is very particular, that even in *Calvin's* caſe [*d*] when they might have paid their court ſo well to James the Firſt, by ſhewing a connexion between the two laws, there is not even an alluſion to ſuch an agreement.

With regard to the laws of the other parts of the world, I have chiefly confined my obſervations, in illuſtration of any of the ſtatutes, to thoſe of the more northern parts of Europe—If we conſider part of the inhabitants of this iſland as deſcended from the *Angles*, or *Saxons*, the ancient cuſtoms and laws of theſe people muſt be ſuppoſed to have been adopted by us—If the inhabitants of the more northern parts of England are deſcended from the *Danes*, the laws of *Denmark*, *Sweden*, and *Norway*, muſt likewiſe be ſuppoſed to bear a great affinity to our's.

The ſame obſervation holds equally with regard to the ancient laws of Normandy, and other provinces of France; and if it is contended, that ſome of our laws and cuſtoms are merely of *Britiſh* origin, the laws of *Hoel Dda* muſt be conſulted, which are the moſt regular collection and ſyſtem of ancient laws that are any where extant [*e*].

The following obſervations are, therefore, the reſult of a very attentive reading, of whatever materials might moſt contribute to the more fully underſtanding the ſtatutes; and notwithſtanding great diligence hath not been wanting in procuring thoſe materials, as well as in the peruſal of them, I yet fear that I muſt beg a more than common ſhare of indulgence from the reader.

I do not by this mean, that I have advanced any thing, which, upon further conſideration, or the procuring of new materials, I

[*d*] 7 Cok. Rep. p. 1.

[*e*] Perhaps *les Aſſiſes de Jeruſalem* may be excepted; for an account of which, ſee obſervations on the 27th of Henry VIII.

think

think it neceſſary to retract; if what is ſaid (in page 82) with regard to a *Retrait Lignager* be excepted—A *Retrait Lignager* reſembles an *entail* only in it's tendency to a perpetuity; and great part of the citation from *Godefroy* might, therefore, have been omitted [*f*].

They are, therefore, inaccuracies of a leſs material nature, for which I muſt beg indulgence; and many of theſe poſſibly will be corrected by conſulting the *errata* [*g*].

I can hardly flatter myſelf, that any one will give a regular peruſal to what conſiſts of ſuch miſcellaneous matter—I will only requeſt, therefore, that thoſe who may look into what relates to any particular ſtatute, would afterwards caſt their eye upon the Index, as, perhaps, it may furniſh a reference to what may tend to illuſtrate the ſame point.

It may be proper likewiſe to mention, that, in ſome inſtances, the reading the ſtatute itſelf may be neceſſary for the more clearly underſtanding the *Obſervations*—If it be ſaid, that in ſuch inſtance the ſtatute itſelf ſhould have been printed, the anſwer is, that this would have greatly ſwelled the book; and as moſt of thoſe, who will ever look into theſe remarks, will probably be of the profeſſion of the law, it is needleſs to ſay, that every lawyer muſt have ſome edition of the Statutes in his ſtudy—In order likewiſe not to ſwell the book to too great a ſize, I have ſcarcely, in any inſtance, tranſlated any citation, or authority.

Since two-thirds of this work were printed off, Mr. *Blackſtone* hath publiſhed the firſt part of his Commentaries. Some few things are aſſerted in that very valuable work, which, I have the ſatisfaction to find, confirm what I have ventured to advance—Theſe accidental agreements between two writers, on partly the

[*f*] I ſhould likewiſe here apologize for what I have ſaid with regard to the doctrine in the caſe *De Libellis Famoſis*, in Sir *Edward Coke's* fifth report, being inſerted as a comment on the 34th ch. of Weſtminſter the firſt, which might be more properly applicable to the 2d Rich. II. ch. v.—I was led into this miſtake, by ſuppoſing a word in the text of the 34th ch. of *Weſtm. the firſt*, which, upon a more accurate peruſal, I do not find there.

[*g*] I muſt here likewiſe apologize for a miſtake of the printer, in the Statute of *Merton's*, following two other Statutes of *Henry* the Third, which were in reality ſubſequent to that ſtatute.

ſame

ſame ſubject, are not to be wondered at; nor ſhould I have mentioned them, was I not incapable of borrowing from another, what I do not make an acknowledgment of, and refer to the real author.

As ſome few of the Obſervations are verbal, it may not be improper to inform the reader, that the edition of the Statutes, which I have generally made uſe of, is that of Mr. *Cay*—I do not by this pretend to enter into the comparative merit of this and the later editions; but am perſuaded, from the great learning and accuracy of the editor, that it will not eaſily be rendered more perfect, except by the addition of the Statutes of the preſent reign—I have likewiſe very frequent occaſion to ſupport what I have advanced, by citations from *Rymer's Fœdera*; it may not be improper, therefore, to inform the reader, that the edition I have made uſe of, is that printed at the *Hague* in 1745—As for other authorities, when they are taken from books which are not eaſily to be procured, I have generally mentioned the place, and time, when ſuch work was printed, in a note ſubjoined to ſuch authority---Having, however, omitted this in ſome few inſtances, I had thought of prefixing a liſt of the authors cited (which hath not been uncommonly practiſed) — I have, however, been deterred from this, by it's being condemned by many, as oſtentatious.

Dec. 30, 1765.

OBSER-

STATUTES

OBSERVED UPON.

Statutes

OBSER-

OBSERVATIONS

ON

THE STATUTES.

MAGNA CHARTA.

9 Hen. III. A. D. 1225.

BEFORE any observation or comment is made upon the particular articles of Magna Charta, it may not be improper to give a general reference to those writers who have professedly considered this most ancient of our statutes, which may at present be inforced —

It is unnecessary to mention, that Sir Edward Coke hath written such a comment in his second Institute — It would be the highest presumption in any one to pretend to add to what this great Lawyer hath advanced, if his observations did not happen to be made with a view totally different, and to arise from different materials — It seems almost as unnecessary to say, that, during the troubles, the 29th article [*a*] of this Great Charter, deemed the basis of our liberties and constitution, was frequently enlarged upon by Mr. Selden, and the other great Lawyers of those times.

Since that period, though this 29th article hath been introduced into almost every political pamphlet, yet it is not, perhaps, worth while to refer the Reader to any thing which hath since been published [*b*], till the introductory discourse by the learned and ingenious Mr. Blackstone, prefixed to his publication of the Great Charter, and Charter of the Forest — In the fourth page of that introduction Mr. Blackstone says, that what the Reader is to expect from him is, *An authentic and correct edition of the Great Charter, and Charter of the Forest*—This the public hath received from his hand, and great is his merit with the constitutional Lawyer, the Historian, and the Antiquary: it appears however, from what I have said in my Preface, that this no way interferes with, but rather promotes, the plan I have proposed to myself in these remarks—Mr. Blackstone hath procured and collated all the originals of the Charters which he could collect; I have only to add to this, that, besides the common editions of the Statutes, all of which necessarily include Magna Charta, there is an edition of it by Pynson, in 1519—another by Redman, in 14 Hen. VIII.—and another by Berthlet,

[*a*] Nullus liber homo, etc.

(*b*) Nath. Bacon hath written a comment upon some few of the ancient Statutes—I shall rely upon the greatest authority in saying, that he is a *partial, and systematical writer on the constitution.* *Law of Forf.* p. 108.

in 1532; beſides its being inſerted in many of the old Chronicles—Theſe cannot certainly be compared to originals, but may poſſibly deſerve to be collated.

Having ſaid thus much with regard to thoſe who have already written with a view to explain or illuſtrate Magna Charta, it may not be improper to conſider what was the intention of the Barons in this collection of Laws [c], as far as it can be inferred from the Laws themſelves, or the Hiſtory of the times—It is well known, that, in the expoſition of a Statute, this is the leading clew in the conſtruction to be made; and I cannot therefore but with diffidence ſubmit it, that it was not propoſed to renew the Saxon Law, or Laws of Edward the Confeſſor [d]; though this hath been ſo often advanced, and contended for—If this had been the intention, theſe Laws of Edward the Confeſſor would have been expreſly mentioned; and there is not one Saxon term for any thing that relates to Feudal Tenures, which are the great objects of many of the chapters —There was, on the other hand, the ſtrongeſt inducement to the Barons to wiſh the continuance of the Norman and Feudal Law introduced with the Conqueſt—Half the kingdom was held by Feudal Tenures under them—They were themſelves the Judges (having what the French call *Haute* and *Baſſe Juſtice*)—They expounded their own Laws, the pleadings of which were likewiſe in their own tongue—The native Engliſh therefore, or their deſcendants, could not receive juſtice from Courts ſo conſtituted, and which gave the Barons at the ſame time every kind of influence and power—It appears by the laſt chapter of the Charter, that every one of the atteſting witneſſes who were laymen (as for the Biſhops, Abbots, and Priors, they ſign by their chriſtian names, and that of their biſhopric or priory) were of Norman extraction—Whence then could ariſe the inducement to make it an expreſs article that the Saxon Laws ſhould be reſtored?—The introducing the Feudal Law, on the other hand, with its attendant Vaſſalage, was inſiſted upon by their anceſtors, who had incurred ſo conſiderable an expence and riſque, when they embarked with William the Firſt in his enterprize—Such adventurers had a right to claim their own terms, as we find likewiſe to be the caſe with the firſt adventurers in the conqueſt of Ireland, and the *Lacies* and *Mortimers*, who, as Lords Marchers, were employed to extend the Engliſh dominion in the adjacent counties of Wales. In ſhort, is it probable, that, having every thing in their power, they would inſiſt upon reſtoring a Law by which every grant made to their

[c] Such a collection of Laws is called, by Baluzius, a *Capitularium*, a term, which I ſhall have frequently occaſion to make uſe of—See his Pref. to the Capitularia Regum Francorum.

[d] "Non quas tulit Sanctus Edwardus, ſed quas obſervavit," ſays Tyrrell.

anceſtors

anceſtors (and from which their own power and influence at that time aroſe) ſhould be rendered doubtful, or at leaſt ſtript of its greateſt advantages, and emoluments?—I will not anticipate any obſervations upon the differerent chapters of Magna Charta any further, than by ſaying it will moſt fully appear, that the deſcendants of theſe Norman Barons were by no means forgetful of their own peculiar intereſts on this occaſion; and therefore could never mean to aboliſh the Norman and Feudal Law, which was in every reſpect ſo highly advantageous to them.

MAGNA CHARTA, though it is printed in all editions of the ſtatutes as a law made in the ninth year of Henry the Third, is, more properly, a tranſcript from the Parliament Roll of 25 Edw. I. who then confirmed it, after reciting the Magna Charta of his father by *Inſpeximus* [e]—This confirmation [f] was occaſioned by Edward's having (from his great neceſſities) rifled all the monaſteries in that very year—*fecit omnia regni monaſteria perſcrutari, et pecuniam inventam Londonias aſportari, fecitque coria et lanas arreſtari.* Camden's Angl. Norm. p. 165.—There is a record in Rymer, which relates to this confirmation by Edward the Firſt, which I ſhall here inſert.

"De Octavâ levandâ et Magnâ Chartâ *propter eandem* confirmandâ, anno "25 Edw. I. Clauſ. 25 Edw. I.

"Edwardus Dei gratiâ, Rex Angliæ, dominus Hiberniæ, et Dux "Aquitaniæ, Vicecomitibus Bedf. et Bucks ſalutem—Quia, in releva- "tionem omnium incolarum et populi regni noſtri, pro octavâ omnium "bonorum ſingulorum laicorum per totum idem regnum pro urgen- "tiſſimâ nunc dicti regni neceſſitate contra Gallicos levandâ, conceſſimus "pro nobis et hæredibus noſtris cònfirmari et firmiter teneri facere "Magnam Chartam de libertatibus Angliæ, et chartam de libertatibus "Foreſtæ—Et conceſſimus omnibus et ſingulis ejuſdem regni literas "noſtras patentes, quod dictæ octavæ levatio non cedat eiſdem in præju- "dicium, ſervitutem, exhæreditationem, uſum, vel conſuetudinem in fu- "turum [g];—Tibi præcipimus quòd ſine dilatione aliquâ quatuor de "probioribus et legalioribus militibus comitatuum tuorum, videlicet de

[e] The collectors of French records ſtyle this kind of exemplification a *Vidimus*.

[f] It is atteſted by Edward the Second, then Prince of Wales, and who was but thirteen years of age; Edward himſelf was then at Ghent, in Flanders—I ſhould imagine, that the atteſtation by the Prince of Wales (being of ſo tender years) was to give him a pretence of diſputing the confirmation when he came to the throne.

[g] This part of the record fully explains the fifth chapter of the 25 Edw. I. [See the Remarks on that Statute.]

"quolibet

" quolibet comitatu duos, eligi, et eos plenam poteſtatem pro ipſis, et tota " communitate dictorum comitatuum habentes, ad Edwardum filium " noſtrum cariſſimum, tenentem in Angliâ locum noſtrum, venire facias. " Ita quod ſint London' ad eundem filium noſtrum modis omnibus in " octavis Sancti Michaelis proximò futuri ad ultimum, charta ſuper con- " firmatione noſtrâ chartarum prædictarum, et literas noſtras ſupra præ- " dictâ conceſſione pro ipſa communitate in formâ prædictâ accepturi, et " facturi ulteriùs quod per dictum filium et concilium noſtrum ibidem " fuerit ordinatum.—Teſte Edwardo filio noſtro, apud Sanctum Paulum, " 15 die Septembris, anno regni noſtri 25."—Then follow, on the back, the names of thoſe who were deputed by the counties of Bedford aud Buckingham, Rymer, vol. i. par. iii. p. 189. Hague edit. 1745,—Edward the Firſt himſelf afterwards ſealed this confirmation, with the Great Seal of England, at Ghent, on the 5th of November.

Magna Charta conſiſts of Thirty-ſeven Chapters, which relate to things of ſo different a nature, that it is impoſſible to reduce the obſervations, by way of comment upon it, to any regular order or connexion. I ſhall therefore introduce any remark I may have to make, by only printing ſo much of a chapter (by way of text) as may give occaſion to the explanatory remarks.

CAP. I.

IN primis conceſſimus Deo—quod eccleſia Anglicana libera ſit, et habeat omnia jura ſua integra, et libertates ſuas illæſas.] It is an obſervation of Sir G. Mackenzie [*b*], that every reign of the ancient kings of Scotland begins with a proviſion of a ſimilar nature in favour of the liberties of the church. —The ſame may be obſerv'd with regard to almoſt all the compilations of ancient laws.—The reaſon is obvious. I ſhould ſuppoſe, that the liberties of the *Engliſh Church* hereby inſiſted upon were chiefly its immunities from the papal juriſdiction, which had been ſo far extended in the reign of Henry's predeceſſor.—Thus likewiſe the French, to this day, inſiſt upon the liberties of the *Gallican Church* in oppoſition to the pope, relative to which *du Tillet* compiled a treatiſe from the *French* archives in 1602. The laborious Prynne hath likewiſe collected three large Folios of Records to prove theſe immunities of the Engliſh church; the greateſt part of the printed copies of his ſecond volume was deſtroyed by the fire of London, ſo that it is not only ſcarce, but ſold at an immenſe price: it contains however many curious, and valuable records.

[*b*] In his Obſervations on the Scots Statutes.

CAP.

CAP. IV.

CUSTOS terre hujuſmodi heredis non capiat de terra heredis niſi rationabiles exitus,—et hoc ſine deſtructione et vaſto hominum, et rerum.] From the expreſſion of *vaſto hominum et rerum* it appears, that the villains who held by ſervile tenures were conſidered as ſo many negroes in a ſugar plantation.

There is in the Dialogus de Scaccario, written by Fitz-Niel, biſhop of London, and treaſurer in the reign of Henry the Second, a very particular deſcription of what ſhould be deemed vaſtum, or waſte—"Si nemora ſic "exciſa ſint, ut ſubſiſtens quis in vix exſtante ſucciſæ arboris ſtipite circum- "ſpiciens quinque ſucciſas viderit, vaſtum reputabitur," p. 24. This dialogue hath uncommon merit as a literary production for thoſe times.

There is likewiſe a very ſingular deſcription of what ſhall be deemed waſte in the Collection of the laws of Ina, in the Chronicle of Joannes Brompton, publiſhed amongſt the Decem Scriptores, —"Si quis lignum "truncaverit ſub quo triginta porci ſtare poſſint, 30 ſol. emendet ad "witam."

Waſte is thus deſcribed in an Ordonnance of Philip le Bel, in the year 1302.—"ne facent aucun gaſt, et s'il y a aucun arbre, qui ait eſté gardé "pour ſa beaulté, ou pour ſubſtentation de Maiſons, qu'il ſoit encore "gardé [*i*]," which does honour to the good taſte of thoſe times. Ordonn. Royales, p. 1. (Paris 1586.)

CAP. VII.

VIDUA poſt mortem mariti ſui ſtatim et ſine difficultate aliqua habeat maritagium ſuum, nec aliquid det pro dote ſuâ, et maneat in capitali meſuagio mariti ſui per quadraginta dies poſt obitum mariti ſui.] The Daniſh and Swediſh laws [*k*] ſpeak of the *annus luctûs*, which is expected from the widow, and during which ſhe hath particular exemptions and privileges, and Tacitus obſerves, that, amongſt the ancient Germans, it was eſteemed *feminis lugere honeſtum*; *viris meminiſſe*—By the laws of Canute, if the wife marries within the year, ſhe loſes her dower; and by the ancient laws of Spain, "ſi la moyer depoſt la morte del marito ſi caſa con otro o fizier adulterio, "la meatad di todas ſos coſas receban los fijos dela e del primer marido." Fuer. Juſgo [*l*], lib. iii. p. 189.

There was an abſolute neceſſity for the proviſion of dower for the widow by act and operation of law, as women at this time had no perſonal

[*i*] Sciendum autem eſt eos qui *arbores*, & maximè vites *ceciderint*, tanquam latrones puniri. Caius in Duod. Tab.

[*k*] Jus Danicum, Hafniæ, 1698. Leges Sueciæ, Holmiæ 1743.

[*l*] This collection of laws, called the *Fuero Juſgo*, is perhaps the moſt ancient in Europe; as thoſe of Lindenbrogue and Baluzius go no further back (except in ſome few inſtances) than the time of Charlemagne; whereas Villadiego, in his Preface to the *Fuero Juſgo*, printed at Madrid in 1600, ſays, that ſome of theſe laws were then of more than a thouſand years antiquity.

fortune

fortune to entitle them to a jointure by way of bargain on the marriage—If they had indeed any ſmall portion of this ſort, it was contrary to the cuſtoms and laws of the Northern nations that the huſband ſhould receive it.—" Apud Gothos non mulier viro, ſed vir mulieri dotem aſſignat, ne " conjux ob magnitudinem dotis inſoleſcens, aliquando ex placidâ conſorte " proterva evadat, atque in maritum dominari contendat." Olaus Magn. Goth. Diſt. p. 235.—And it may not be improper here to obſerve, that the Engliſh would more probably borrow a law or inſtitution from the Goths [*m*] and Swedes, than any other of the Northern nations, as there was a perpetual and conſtant alliance between the two nations, in oppoſition to the common enemy the Danes—Thus Olaus Magnus, in another part of his hiſtory, obſerves—" Nunquam enim legi Gothorum aut Sueonum reges " ſponte Angliæ bellum intuliſſe, ſed quandam cognatam amicitiam contra " Danorum violentiam et arma conſervaſſe," p. 164. It muſt be admitted however, that the Daniſh law prevailed on the Eaſtern coaſt of England, and particularly Norfolk, Suffolk, and Cambridgeſhire [*n*]. One of the reaſons for the widow continuing forty days within the capital meſſuage was to prevent a ſuppoſititious child, which deceit was not uncommonly practiſed in theſe times, as may be inferred from the old writ *De ventre inſpiciendo*—Thus likewiſe by the laws of Hoel Dda, there is ſtill a greater anxiety to prevent this impoſition, " Fœmina, quæ ſe prægnantem affirmaverit tem-" pore mortis mariti ſui, in domo ejus manebit, donec conſtiterit utrùm " prægnans fuerit vel non; et tunc, ſi non fuerit prægnans, mulctam ſol-" vat trium vaccarum, et domum et fundum hæredi relinquat," p. 78.—See alſo the Laws of Robert the Firſt, p. 34.—Reg. Maj. And for many regulations to prevent ſuppoſititious children, ſee Fuer. de Eſpan. and likewiſe *Pradilla's* Suma de las leyes penales (printed at Madrid 1639), where the midwives (*comadres*) are ordered to be whipped.

It is the faſhion at preſent to laugh at what is called *Biſhop Burnet's warming-pan-ſtory*; it appears however, by Lord Clarendon's Journal (publiſhed by Dr. Powney) that Queen Anne, then princeſs of Denmark, gave credit to this report: and this impoſition was actually carried into execution (according to ſome Hiſtorians) by the queen of Louis the Eleventh of France.

CAP. XI.

COMMUNIA placita non ſequantur curiam noſtram, ſed teneantur in aliquo loco certo.] The beſt comment on this chapter of Magna Charta.

[*m*] The laws of Erick, who lived in the twelfth century, were held in as great veneration by the ancient Swedes and Goths, as our laws of Edward the Confeſſor by the Engliſh—Olaus ſays, " ad quas etiam noſtris temporibus" (viz. the ſixteenth century) " injuſtè oppreſſi perinde atque " unicum innocentiæ ſuæ præſidium confugiunt."

[*n*] Script. poſt Bedam, 607. Vid. et Duck, p. 176.

ſeems to be the parliamentary expoſition by 28 Edw. I. ch. 4 and 5. which ſhortly ſays, that Common Pleas ſhould not be held in the Exchequer contrary to the form of the Great Charter—Now this is the only mention made where Common Pleas are to be determined throughout Magna Charta, and conſequently it ſhould ſeem that the legiſlature meant to prevent the undue influence of the Crown in the court of Exchequer, which probably was then a mere court of Revenue [g].

Prynne, in his Animadverſions on the fourth Inſt. p. 52. cites a writ at length of 6 Edw. III. by which that king fixes the court of Common Pleas *in Ireland* to the city of Dublin in the ſame manner that it is fixed by this chapter of Magna Charta.

It appears likewiſe, that the Judges of the King's Bench and Barons of the Exchequer attended Edward the Firſt to Shrewſbury in one of his expeditions into *Wales*, and continued there a conſiderable time: Annal. Waverl. in Gale's Coll. vol. iii. p. 235.—And therefore the judges of the Common Pleas continuing at Weſtminſter, in conſequence of this article of Magna Charta, muſt have been attended with great benefit to the ſubject, whoſe ſuit muſt have otherwiſe been ſuſpended, or proſecuted with an unneceſſary and extraordinary expence at Shrewſbury, or ſome perhaps more diſtant place from the capital.

CAP. XIV.

LIBER homo non amercietur pro parvo delicto, niſi ſecundum modum ipſius delicti; et pro magno delicto, ſecundum magnitudinem delicti, ſalvo contenemento ſuo —et villanus alterius quam noſter eodem modo amercietur, ſalvo wanagio ſuo] Selden, in his Table talk, ſays, that the word *contenementum* ſignifies the ſame with countenance, as uſed by the country people, when, meaning to receive a perſon with hoſpitality, they ſay, *I will ſhew you the beſt countenance*, &c. So that the meaning of Magna Charta is, that a man ſhall not be ſo fined, but that he may be able to give his neighbour good entertainment—A Spaniard, on the other hand, inſiſts upon his horſe or arms not being taken in execution, "Ni les ſean tomadas por deudas ſus armas, ni cavallos." Las Leyes de Navarra, p. 226. collected and printed at Pampeluna, 1614—and ſee the ſame laws, nearly in the ſame words, in the Fueros de Viſcaya, p. 36, printed at Bilbao without date.

[g] It appears by later ſtatutes, that the Barons of the Exchequer were not conſidered in every reſpect as bearing the ſame offices with the Juſtices of the King's Bench, and Common Pleas. 27 Edw. I. ch ii. 3 Edw. I. ch. xlv.

The *Wenagium* here mentioned, or what is neceſſary for the labourer and farmer for the cultivation of his land, hath always been favoured by the laws of moſt countries — Thus, by the laws of Provence — "Item "que per inquiſition ou autra cauſa, neguna perſona de Provenſa non "deia eſſe agaida en armes, cavale, buous, ou autras beſtias d'arayre, "ſi non en defaltiment dautres bens, juxta le ſtatut Provenſal en formâ de "drecht [*b*]." Du Moulin, vol. ii. p. 1245. —The poinding *Averia Carucæ* is even criminal by the law of Scotland. The Chronicle of St. Albans explains the neceſſity there was for moderating both amercements and diſtreſſes. The Commons complained; "quod rex (ſcil. Henricus) "quicquid habuerint in eſculentis et potulentis rapuit—Ruſticorum enim "equos, bigas, vina, victualia ad libitum cepit"—The repreſentations againſt this oppreſſion, however, afterwards occaſioned the king's giving a charge in perſon to the Barons of the Exchequer, "Nullus Ruſticus di-"ſtringatur pro debitis domini ſui, quamdiu dominus habuerit per quod "diſtringi poſſit—Inquirendum eſt etiam qualiter magnates ſe gerunt "verſus homines ſuos; at ſi invenerint ipſos tranſgredientes, corrigant "quatenus poterint." Prynne's Rec. vol. iii. in pref.—From this it appears, that the tenant was not only oppreſſed for his own debts, but likewiſe for thoſe of his Lord.—The law with regard to amercements is laid down by *Bracton* in the words uſed in this 14th chapter of *Magna Charta*, without taking notice of its depending upon this ſtatute, which ſeems to prove that it is only declaratory of the Common Law.

CAP. XVIII.

SI aliquis tenens de nobis laicum feodum moriatur, et Vicecomes vel Ballivus noſter oſtendat litteras noſtras patentes de ſummonitione noſtra de debito quod defunctus nobis debuit, liceat Vicecomiti vel Ballivo noſtro attachiare et imbreviare omnia bona et catalla defuncti—Ita tamen quod nichil inde amoveatur, donec perſolvatur nobis debitum quod clarum fuerit] Vid. Prynne, vol. iii. p. 221. As this collection of records by Prynne is ſo voluminous as not to be read by every lawyer, or indeed found in his ſtudy, I ſhall inſert his Comment on

[*b*] As this citation from Du Moulin is in the *Baſque* language, or the language ſpoken by the inhabitants of Gaſcony, and the other Southern provinces of France, I ſhall here ſubjoin a tranſlation of it, as it conſiſts of a mixture of French and Spaniſh — *Alſo that by inquiſition* (Ferner's Dictionaire de droit thus explains this word] "Inquiſition eſt la recherche que le juge fait des "crimes qui ſont venus à ſa connoiſſance par commune renomée, ſans q'uil y ait aucun denoncia-"teur") *or on any other account, no inhabitant of Provence ſhall be aggrieved (agaida* uſed corruptly for *agraviada) in his arms, horſes, oxen, or other beaſts uſed for ploughing* — Du Moulin is generally ſtyled the French Papinian. Gianone however ſays of him, *Carlo Molineo di quanti ſconci errori e pieno per ignoranza d'iſtoria?* Iſtor. di Nap.

this

this eighteenth chapter of Magna Charta in his own words, with the records he cites in ſupport of what he hath advanced—"Walter de Merton biſhop of Rocheſter, the King's Chancellor, having made his will by the king's licence, and owing ſeveral debts to the king and queen at the time of his death, the king thereupon ſeized all his goods and chattels, till his executors had put in good ſecurity in the Exchequer to ſatisfy theſe debts to him and his queen; which done, he iſſued writs to reſtore his goods to his executors, granted them protections, and ſummoned all indebted to him into the Exchequer, ſpeedily to pay the debts they owed, to enable his executors to perform his will by ſeveral writs and patents; which becauſe they more clearly expound the ſtatute of Magna Charta, cap. 18. then Sir Edward Coke's inſtitutes and expoſition thereof, I ſhall here inſert for the benefit of thoſe of my profeſſion.—"Rex Vic. Suthſ. ſalutem. Quia bonæ me-"moriæ W. nuper Roffenſis epiſcopus jam defunctus nobis et kariſſimæ "conſorti noſtræ Alianoræ reginæ Angliæ, in diverſis debitis tenebatur "die quo obiit, tibi præcipimus, quod omnes terras et tenementa quæ "fuerunt prædicti epiſcopi in balliva tua, una cum omnibus bonis et ca-"tallis in eiſdem aut alibi in balliva tua prædicta exiſtentibus, ſine dilatione "capias in manum noſtram, et ea ſine aliqua diſtractione vel diminutione "inde facienda, ſalvo cuſtodiri facias. Ita quod nullus ad ea manum ap-"ponat, donec aliud inde tibi præceperimus."—"Rex Vic. Suthſ. ſalutem. "Quia bonæ memoriæ W. nuper Roffenſis epiſcopus jam defunctus nobis et "kariſſimæ conſorti noſtræ Aliamoræ reginæ Angliæ, in diverſis debitis "tenebatur die quo obiit, et executores teſtamenti ſui ſufficientem ſecuri-"tatem nobis jam fecerint de debitis illis, nobis et præfatæ reginæ fide-"liter ſolvendiis ut tenentur; tibi mandamus, quod occaſione alicujus man-"dati noſtri tibi directi, de bonis et catallis dicti defuncti arreſtandis occa-"ſione debitorum illorum nullatenus omittas, quin dictis executoribus de "bonis et catallis quæ fuerunt dicti epiſcopi, ubicunque inventa fuerint, in "balliva tua liberam adminiſtrationem ſine quolibet impedimento habere "facias."—The town of Ayleſbury held lands by the ſervice of keeping the diſtreſſes made for the king, and the manor of Byker, in Northumberland, was held by the ſame tenure. Phillips on Purveyance, p. 208. which ſhews, that theſe diſtreſſes were very frequent formerly, and therefore probably often oppreſſive.

CAP. XXII.

NOS non tenebimus terras illorum qui convicti fuerint de felonia, niſi per unum annum et unum diem; et tunc reddantur terre ille dominis feodorum.] The ſame law prevails in France with regard to the king's holding the lands

of criminals, and for the ſame time.—" Les fruits des immeubles de celuy " qui eſt condamné par juſtice royale appartiennent au roy pour la premiere " année exempts de toutes dettes, autres que les rentes ſeigneuriales et " foncieres deuës pour ladite année: et outre il a les meubles du condamné " les dettes prealablement payées."—" Ce droit eſt donné au roy à cauſe " de ſa ſouveraineté, et peut-eſtre auſſi en conſideration de la charge qu'il " a de faire fuire les proces par ſes officiers, et que par fois ſelon les oc- " curences l'on prend les frais ſur la recepte du domaine." Vid. Couſtume Reformée de Normandie, vol. i. p. 387.—The addition of the day ſeems to have been made with an intention of preventing all diſputes about inclusive and excluſive.

This term of a year and a day is likewiſe uſed in the Daniſh law. " Si " Agricola domum reliquerit, vicini per annum et diem, quo minus de- " ſtruatur cuſtodiant." Jus Dan. p. 292.

CAP. XXIII.

OMNES kidelli deponantur decetero penitus per Tamiſiam et Medeweyam et per totam Angl', niſi per coſteram maris.] Theſe Wears or Cruves (as the word *Kidellus* is ſometimes tranſlated) both obſtructing the navigation of rivers, and being the means of deſtroying the fiſh, are frequently prohibited both by the ancient Engliſh and Scots Statutes—The navigation of rivers hath been more early attended to [*i*] in all countries, than the other method of conveying commodities by land carriage; and as moſt of the countries of Europe were at this time of the Roman Catholic perſuaſion, the preſervation of fiſh was neceſſarily a greater object than it is at preſent.—It appears by the old Chronicles, that there were Kidelli or Wears anciently below London-Bridge, as well as above it.—Theſe were not deſtroyed till 7 Hen. IV. when all the Wears, from Stanes to the Medway, were removed. Stow, p. 333.—The archbiſhop of Canterbury gave great oppoſition to this, who probably owned ſome of theſe Wears, and, from his great power, had prevented this chapter of Magna Charta from being put in execution till that time.

The Wears, beſides other inconveniences, prevented flotes of wood from coming down the rivers, which muſt have been very ſenſibly felt formerly in this country, as coals were little uſed.—This right of floating wood down a river makes a conſiderable head of German Law, under the name of Jus

[*i*] Henry I is ſaid to have joined the rivers of Trent and Witham. And there is another regulation in Magna Charta de *Ripariis*—The firſt ſtatute which relates to the highways is 13 Edw. I. ch. v.

gratiæ

gratiæ die flot-oder flot-gerechtichfects. Krebs de Jure Lign. et Lapid. p. 418 [k].

The pulling down Kidelli is one of the articles given in charge at the court of Eyre. Fleta, p. 25.

CAP. XXV.

UNA menſura vini ſit per totum regnum noſtrum, et una menſura cerviſie, et una menſura bladi, ſcilicet et una latitudo pannorum. De ponderibus vero ſit ſicut de menſuris.] It is remarkable, that, in the old Scotch laws, the meaſure of Caithneſs is referred to as a ſtandard, which was probably, from its ſituation, the moſt unciviliſed part of the country. Vid. the Laws of David II. ch. 14.

It is a very early regulation in all the laws of Europe, that there ſhould be a ſtandard of one meaſure throughout the kingdom [l]. This is likewiſe very frequently injoined by ſubſequent laws, and which appear never to be carried into execution.—Monteſquieu, in his Eſprit des Loix, ſays, *It is the mark of a little mind in a legiſlator to attempt regulations of this kind*; but he ſhould rather have ſaid, that it does not ſhew wiſdom in a legiſlator to attempt what appears, by long experience, to be impracticable, though in theory it ſeems to be attended with no great difficulties, and much to be deſired for general convenience.—With us it hath been attempted by at leaſt ſix different Statutes, all of which have proved ineffectual.

It appears, by Fabian's Chronicle, that in buying and ſelling, in the time of Henry the Third, the ſcales were ſo hung, that the buyer was to have an advantage of 10 or 12 pounds in a hundred.—There was about that time, however, a regulation made by the corporation of London, that the ſcales ſhould hang even; and that the buyer ſhould be entitled to an allowance only of 4lb. p. 62.—This regulation however, reaſonable as it was, they were obliged to defend before the king in council. ibid.

CAP. XXVIII.

NULLUS Ballivus de cetero ponat aliquem ad legem manifeſtam, nec ad juramentum ſimplici loquela ſua, ſine teſtibus fidelibus ad hoc inductis.] Before this Statute, they admitted of the Wager of Law in inferior courts, without

[k] Coals were firſt uſed in London in the reign of Edward I. and the ſmoak was ſuppoſed to corrupt the air ſo much, that he forbad the uſe of them by proclamation. Stowe's London, vol. i. p. 2.

[l] Henry I made this ſtandard (for a yard) to be taken from his own arm; and one of the chronicles ſays, that he was *magni et proceri corporis*.

producing

producing witneſſes. 1 Inſt. p. 168. and it is ſo far from being peculiar to England, that mention is made of it in all the antient laws of Europe.

As Slade's caſe in Coke's reports is the great leading caſe with regard to the wager of law; it may, not be improper to inform the reader, that Lord Chief Juſtice Vaughan ſays, it is founded upon arguments, not fit for a declamation; much leſs for a ſolemn judgment.

CAP. XXIX.

NULLUS liber homo capiatur vel impriſonetur aut diſſeiſetur de libero tenemento ſuo, vel libertatibus, vel liberis conſuetudinibus ſuis, aut utlagetur, aut exulet, aut aliquo modo deſtruatur: nec ſuper eum ibimus, nec ſuper eum mittemus, niſi per legale judicium parium ſuorum, vel per legem terre. Nulli vendemus, nulli negabimus aut differemus rectum vel juſtitiam.] Much hath been written upon the antiquity of the trial by jury, in this country; and whether the ſame form of trial hath been uſed in other countries—It is clear by the Regiam Majeſtatem (which in moſt particulars is the ſame with our Glanvill) that this trial was us'd in Scotland, in civil matters, ſo early as David the firſt, who began his reign in 1124.—[This book is conſider'd as authentic by Lord Coke, and all the writers upon the Scots law, except Craig, whoſe opinion Macdoual ſtrongly combats.] "When the *twelve* "*loyal men* compeer and paſs upon the aſſize, they ſhall proceed and try "qhuilk of the parties the perſewer or the defendant hath beſt richt to "the londs clamed." This is cited from Skeene's tranſlation of the Regiam Majeſtatem.

There is a paſſage in Clarke's Preface to the Laws of Hoel Dda, which, at theſame time that it ſhews this method of trial was in uſe amongſt the Welſh, accounts for the unanimity required from the petit jury, and which is not required from the grand jury—His words are theſe: p. xiv. "Sacra-"mentum minus, vel (ut cum Wallis loquar) *Llw rheithwr nod*, juramen-"tum compurgatorum inferiorum, hoc erat; cum homines non ingenui "jurabant ſe credere juramentum accuſati eſſe verum: ſacramentum alter-"rum, *Llw rheithwr arall*, cum homines ingenui jurabant, ſibi veriſimilius "videri, quod accuſatus ante juraverat. In inferiori genere, ſi unus ſo-"lummodo compurgatorum juramentum detrectaverit, reliquorum teſti-"monium nihil valuit; in altero, licet pars tertia jurare noluerit, tamen "ſecundum beſſem judicatum eſt: ad abnegandum idem delictum, eodem "numero utriuſque generis compurgatorum ſaepius utebantur, quod unice "probat, hanc majoris minoriſque ſacramenti diſtinctionem a conſacramen-"talium numero oriri non poſſe: et quod magis ſuadet errâſſe in hac re "Hickeſium, apud Anglo-Normannos a multis retro ſaeculis luculenta

"ſunt

" ſunt hujuſce moris paululum immutati veſtigia. In judicum itineran-
" tium curiis, quas *grandes aſſizas* vocamus, ubi criminales provincialium
" actiones expediuntur, de eodem delicto duo conſtituta ſunt ad veritatem
" inquirendam juratorum genera, qui ſub majoris minoriſve juratae no-
" mine diſtinguuntur. His, niſi in eandem omnes ſententiam conceſſe-
" rint, veredictum ſive reſponſum apud judicem proferre non licet; illis
" licet, ſi vel duodecim conſenſerint. Ex hoc veteri compurgatorum in-
" ſtituto emanâſſe demum duodecimviratus judicium, nec ab eo (ut cenſuit
" Hickeſius) toto coelo differre, quae dicta ſunt, nullum dubitandi locum
" videntur reliquiſſe."—There is a record in the Appendix to the ſecond volume of Dr. Brady's Hiſt. which gives the whole form of the judgement, with the intervention of a jury, in the time of Charlemagne.

The unanimity of the twelve jurors in their verdict muſt be admitted to be a very ſingular inſtitution.—It ſhould ſeem that the reaſon for requiring this unanimity aroſe from compaſſion to the criminal, who was to be tried; againſt whom, if the offence was not proved beyond all poſſibility of doubt in the moſt ſcrupulous juror, it was thought to be erring on the merciful ſide, that this ſingle *veto* ſhould acquit him — There are perhaps many Engliſhmen, and even lawyers, who do not know, that in Scotland the unanimity of a jury is not required (except in revenue cauſes before the court of Exchequer) and that the chancellor or foreman gives the verdict upon a majority of a ſingle juror — They therefore conſiſt of an odd number, viz. fifteen, and are choſen out of five and forty returned by the ſheriff; the pannel or criminal having a right to challenge, as by the Engliſh law. We find that the jury's conſiſting of an odd number is a very ancient regulation of the Scots law.—" Such as be accuſed of any crime
" that deſerves death, let them paſs by the ſentence of ſeven honeſt men,
" or elſe nine, eleven, or fifteen." Law of Kenneth mentioned by Boëthius (Hollinſhead's tranſlation.)

It ſeems extraordinary, that we have no account of men of conſequence being tried in criminal caſes either by a jury or their peers, in the early parts of the Engliſh hiſtory.—The earl of Glouceſter was executed for treaſon ſo late as the reign of Richard II. without any trial by his peers [*m*].

[*m*] Notwithſtanding this article of Magna Charta was chiefly intended to prevent the undue influence of the crown in the trial of a peer, it turned out afterwards to be the great cauſe of their oppreſſion, as before the ſtatute of William III. which directs *all the Lords* to be ſummoned, a peer of England was the only ſubject of this country who had not a fair and indifferent trial. It ſeems to be a very extraordinary conſtruction of this ſtatute, which is rather inſinuated, than contended for by Mr. Juſtice Foſter, in his treatiſe on Treaſon, that the Spiritual Lords need not be ſummoned under the words *all* who have a right *to ſit, and vote* in Parliament, which I apprehend to have meant only the making it unneceſſary ro ſummon Peers who were minors, or profeſſed Papiſts — As for the Biſhops uſually requeſting to retire before the condemnation,

Brady, vol. iii. p. 160. and Fabian, in his Chronicle, gives a very particular account of the mayor and aldermen of London, claiming privileges in the reign of Henry III.—viz. that for a treſpaſs againſt the king, a citizen ſhould defend himſelf by twelve of his citizens—for murder by thirty citizens—And for treſpaſs againſt a ſtranger, by the oath of ſix citizens, and himſelf—Is it poſſible to contend after this, that the trial by twelve jurymen was thoroughly eſtabliſhed, or are there any paſſages, in the old hiſtorians, which clearly prove it to have been ſo eſtabliſhed, before the time of Henry III?

It appears from Olaus Wormius's Mon. Dan. lib. i. ch. 10. p. 72. that the trial by twelve men was firſt introduced into Denmark by Regnerus, ſurnam'd Lodbrog, who began to reign in the year 820; and from whom Ethelred is ſaid to have borrowed this inſtitution—Pontoppidan, in his Geſta Danorum extra Daniam (Hafniæ, 1740) ſays, "Deſiit apud nos duodecim-"virale hoc judicium, remanentibus tamen ejuſdem veſtigiis," and they are called in the Daniſh law *Sande Mænd.* i. e. *Viri veraces.*—The material difference between theſe twelve judges, and an Engliſh jury, conſiſts in this; that the Engliſh jury is only impanelled for the deciſion of a particular cauſe, whereas theſe twelve judges in Denmark determine all cauſes, within the juriſdiction of their court—It is not improbable, that our jury formerly decided all cauſes within a certain diſtrict, without the aſſiſtance of a judge, as queſtions were not then ſo intricate as they are at preſent: and we are very much in the dark, about their manner of proceeding, till the time of Edward the Second, when the year books begin—It is much to be lamented, that we have not a collection of the caſes, which Chaucer ſays, *his man of law* carried in his head:

"In Termes had he caſe and domes al
"That fro the time of Kinge Williame was fall."

as, going further back, they muſt have neceſſarily thrown infinite light upon queſtions of this ſort.

It was uſual to pay fines anciently for delaying law proceedings—This delay ſometimes was extended to the defendant's life—Sometimes fines were pay'd, to expedite the adminiſtration of juſtice and to obtain right [n]—And in ſome caſes, the party litigant offer'd part of what they were to recover, to the crown—Madox, in his hiſtory of the Exchequer, collects likewiſe

or acquital, I have endeavoured; p. 113, to account for the reaſon of that *Canon's* being eſtabliſhed at the Council of *Toledo*.

[n] The county of Norfolk (always repreſented as a litigious county, in ſo much that the number of attornies allowed to practiſe in it is reduced, by a ſtatute of Henry VI. to eight) payed an annual compoſition at the Exchequer, that they might be *fairly dealt with*. Madox's Hiſt. Exchq. p. 205.

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many inſtances of fines to be paid in for *the king's favour*, and there is a particular inſtance, of the dean of London paying twenty marks, as a fine to the king, that he might aſſiſt him againſt the biſhop, in a law ſuit.

To the honour of the very pure adminiſtration of juſtice in this country (at leaſt ſince the Revolution), we can hardly ſuppoſe ſuch a practice to be avowed and eſtabliſhed in a civilized country—But it muſt be remembered, that Charles the Second, in appeals to the houſe of lords, us'd to go about whilſt the cauſe was hearing, and ſolicit particular lords, for appellant and reſpondent [*l*]—And England is perhaps the only country in Europe, where the judges are not ſolicited; and in the face of the ſun.

CAP. XXX.

OMNES mercatores, niſi publice antea prohibiti fuerint, habeant ſalvum et ſecurum conductum exire de Angl', et venire in Angl', et morari et ire per Angl', tam per terram quam per aquam, ad emend' et vendend' ſine omnibus toltis malis, per antiquas et rectas conſuetudines.] By an antient law of the Wiſigoths, merchant ſtrangers are not only to be well treated, but tried by their own laws, Fuero Juſgo, lib. ii. p. 436. Monteſquieu much commends the national humanity of this article of Magna Charta, the leſs to be expected from us as iſlanders, who, like the inhabitants of Ithaca in the time of Homer, are always repreſented as *hoſpitibus feri:*

Οὐ γὰρ ξείνους οἵδε μάλ' ἀνθρώπους ἀνέχονται,
Οὐδ' ἀγαπαζόμενοι φιλέουσ' ὅς κ' ἄλλοθεν ἔλθοι. Hom. Od.

By the Saxon law, "Quinetiam ſi maris acta tempeſtatibus ad domicilium "aliquod illuſtre, ac pacis beneficio donatum, navis appulerit inimica, "nautæ ac res illorum omnes auguſta pace potiuntor." Ll. Æthelr &c.

The plunder of ſhipwreck'd goods is likewiſe made capital, in the year 1221, by a law of Sicily [*m*]. It is rather to our reproach, that the ſame offence hath not been made capital with us, till the firſt year of the late king.

There is a law in Lindenbrogue's collection (which does great honour to the ancient Bavarians) in protection of foreigners and ſtrangers—"Si "autem aliquis tam præſumptuoſus fuerit, ut peregrinis nocere voluerit, 14 "ſol. mulctetur. Deus nam dixit, *Peregrinum et pauperem non contriſtabis de "rebus ſuis.*" Lindenb. p. 412.—On the contrary, the ſtranger had not the ſame protection from the Welſh Laws—"Tres ſunt homines, qui-"bus multa pro injuriâ eis illatâ non debetur; ſcilicet furioſus, alienigena, "et leproſus." Leg. Hoel Dda, p. 330.

It may be ſaid, to the honour of humanity, in every part of the globe where any ſort of civil policy or ſettled government is eſtabliſhed, that the

[*l*] Burnet's Hiſt. [*m*] Pragmaticæ Regni Siciliæ. Panormi, 1637.

making priſoners thoſe who are ſhipwreck'd on their coaſts is peculiar to Japan (Vid. Kempf. in Append. p. 53.)—And this regulation (barbarous as it is) ariſes from the total excluſion of Foreigners ſince the expulſion of the Portugueze, who attempted to alter the eſtabliſhed religion of the country, as their ports before this were open.

CAP. XXXIV.

NULLUS capiatur aut impriſonetur propter appellum femine de morte alterius, quam avi ſui.] Appeals are ſo much diſuſed at preſent, that we may be apt to conceive, that no regulations with regard to them can be of any great conſtitutional importance—There were reaſons however to proſecute offences in this manner, rather than by indictment, which do not hold at preſent—One of the methods, by which not only the kings of England, but of other parts of Europe, raiſed money at this time, was by pardoning crimes for conſiderable ſums of money; which appears by the many antient laws reſtraining this moſt excellent and humane prerogative as it is now exerciſed—The antient puniſhment for murder was a *weregild*[n], payed as a ſatisfaction to the neareſt relation; and it was therefore a moſt crying abuſe of power in the king, not only to pardon this moſt heinous crime, but to grant this pardon for what otherwiſe ſhould have been payed to the relation who proſecuted—It is in this ſenſe (I ſhould apprehend) that Lord Chief Juſtice Holt hath ſomewhere called an appeal, *a moſt noble birthright of an Engliſhman*, becauſe it is a right which the crown cannot deprive him of—Bracton and Glanville, almoſt contemporary expoſitors of this ſtatute, ſay, that the appeal given to a woman is confined to the death of her huſband *inter brachia ſua interfecti—ſi de viſu loquatur*—the occaſion of which reſtriction ſeems to be that, when a woman proſecuted, the appellee loſt his right of defending himſelf by combat—It is ſaid indeed (1 Sid. 193.) that, if the wife did not bring ſuch an appeal, ſhe forfeited her inheritance; but the authority for this aſſertion, as well as many other things to be found in that reporter, ſeems to be doubtful—There are regulations with regard to appeals in many antient laws of Europe—Thus by the Daniſh law, *jus accuſandi ex hoc delicto hæredibus proximis competit.* Leg. Dan. lib. vi. ch. 6. art. 3.—So likewiſe by the antient law of Scotland, "It is to wit, that in the plea anent murder, the wife may be admitted to "to accuſe, becauſe the man and his wife are but one fleſh." Reg. Maj. lib. iv. ch. 5.—In other caſes, as by the Daniſh law, the neareſt of blood is to appeal. Upon this citation from a Scots ſtatute, it may not be improper to take notice of the different methods of paſſing a Scots act of parliament,

[n] Uno enim infelici caſu duos de medio tolli non ferebant.

from

from thoſe ſteps or ceremonies through which an Engliſh ſtatute paſſes before it becomes an obligatory law —About twenty days before the holding of the parliament, proclamation was made to deliver into the king's clerk, or regiſter, all bills to be exhibited that ſeſſions —*Then only ſuch as I allow of are put into the chancellor's hands to be propounded to parliament; and after this, before I put my ſcepter to a law, I order what I pleaſe to be eraſed. Surely this amounts in me to a negative voice* [o].

That, in many reſpects, there is an affinity between the laws of the two kingdoms, may be inferr'd, not only from their vicinity, but from what is mentioned by the Royal Author previous to this citation—" All the law " of Scotland, for Tenures, Wards, Liveries, and Seignories, is drawn " from England; and James the firſt of Scotland, being educated in Eng- " land, brought the Engliſh Laws, in a written hand"—See alſo Maitland's Hiſtory of Scotland, vol. ii. p. 320. where he cites this paſſage, from Hume's Diſſ. on Feudal Law: " When one dives into the antiquities of " Scotland and England, it will appear, we borrow'd all our laws and " cuſtoms, from the Engliſh. No ſooner is a Statute enacted in England, " but on the firſt opportunity it is introduced into Scotland; ſo that our " oldeſt Statutes are mere copies of theirs. Let the Magna Charta be put " into the hands of any Scotſman, without giving its hiſtory; and he will " think, no doubt, that he is reading a collection of Scots Statutes, or " Regulations." And Skene ſays, in his Dedication to James the Firſt, " Intelligo tuas tuorumque leges cum legibus Angliæ plerumque con- " ſentire."

CAP. XXXVI.

NEC liceat de cetero alicui dare terram ſuam, &c.] Haltaius, in his Gloſſarium Germanicum, printed at Leipſic in 1758, in the article *Todtehand*, gives this account of this very ſingular expreſſion of *Mortmain*, which is uſed in moſt of the antient laws of Europe —" Manus mortua per ſynec- " dochen eſt perſona, cujus vires ad agendum vel præſtandum defecerunt, " idque vel naturaliter, vel civiliter —Et inde manus mortuæ dicuntur ec- " cleſiæ, et collegia ſacra, non aliâ certe de causâ quam quod ea corpora " (ratione immobilium bonorum, ſive vetuſtiſſimi privilegii) exempta ſunt " a civilibus oneribus; et clerici habent manum mortuam ad omnia rei- " publicæ munera torpentem."

In the next century the giving of land to the clergy became ſubject of ſatyre; for we find in Piers Plowman's Viſion,

[o] King James the Firſt's Speech at Whitehall to the Parliament, in King James's Works, p. 523.

" The Friars followed folke that were rich,
" And folke that were poor at little price they ſet;
" And no Cors in the Kirke yard nor Kirke was buried,
" But quick he bequeath'd them ought or quit part of his debt."

And Chaucer ſays of a fryar,

" Full ſweetly heard he confeſſion,
" And pleaſant was his abſolution.
" He was an eaſy man to give pennance,
" There as he wiſt to have a good pittance."

Nor was this ſatyr, on the rapaciouſneſs of the clergy, confined to England (always repreſented as a country of libertiniſm); for the famous Jehan de Mehun, author of the Romaunt of the Roſe, left to a monaſtery in France, a cheſt filled with nothing but vetches; and the friars, enraged at the ridicule and diſappointment, would not ſuffer him to have Chriſtian burial.—Annales d'Acquytayne, Paris, 1537.—This Jehan de Mehun likewiſe tranſlated Boëthius De conſolatione Philoſophiæ into French; and it is probable that Chaucer, as he tranſlated the Romaunt of the Roſe, likewiſe tranſlated Boëthius from the French tranſlation, which was very commonly practiſed at the revival of letters.

CAP. XXXVII.

IN cujus rei teſtimonium &c.] Such a number of witneſſes being found inconvenient in atteſtation, Mabillon ſays, " Lapſo tempore, inventa eſt " ab Anglicanis regibus compendioſior via, ut non aliis teſtibus, quam " teſte rege ipſo uterentur—Hujuſce ritûs originem Richardo Primo " antiquiorem eſſe non puto, cujus complures literæ ſub hac forma " reperiuntur." De re dipl. p. 160.—However, this might not be thought an atteſtation of ſufficient ſolemnity to the Great Charter, though Richard might have confirmed inſtruments of leſs conſequence in that more compendious manner.

Some laws of different countries of Europe have been mentioned in the preceding Notes and Comment upon Magna Charta—In order not to ſwell theſe notes unneceſſarily, I have thought it more proper to reſerve for the concluſion ſome laws of the French parliament, whilſt it continued to have that freedom which the Comte de Boulainvilliers hath ſo clearly proved it was antiently poſſeſſed of, at the ſame time that he pathetically laments, that

that his countrymen had not the ſame ſpirit in preſerving their juſt rights, as our anceſtors have ſo nobly exerted.—And I ſhall firſt give an ordinance of Louis the Eighth, in the year 1223, from which it will appear, that the French parliament at that time was conſtituted nearly in the ſame manner with that of England.

" Louis &c. Sçachez que par la volonté et conſentement *des Arche-*
" *véques, Evêques, Comtes, Barons, et Chevaliers du Royaume de France*, Nous
" avons fait établiſſement ſur les Juifs, lequel ont juré d'obſerver ceux dont
" les noms enſuivent.

" Guillaume Evêque de Chalons.
" Le Comte de Perche.
" Philippe Comte de Boulogne.
" Robert de Courtenay Bouteiller de France.
" Mathieu de Montmorency Connêtable.

" Remarquez que voici une conſtitution generale, etablie, non par la
" volonté abſolue du Roi, mais diſtinctement par celle des Comtes,
" Barons, et Chevalerie du Royaume." Boulainvilliers, Etat de la France, vol. iii. p. 56.

In the following reign of Phillipe le Bel, many of the different provinces of France (and amongſt the reſt of Normandy) obtained likewiſe charters and conceſſions from the king, which may be properly ſtyled *Chartæ Libertatum*; and one of them indeed Boulainvilliers expreſly calls the French Magna Charta—In the Norman charter (if I may ſo call it) there are two points inſiſted upon and allowed by the king, which exactly agree in ſubſtance, and indeed expreſſion, with the twenty ninth chapter of Magna Charta, viz. that all nobles ſhall be tried *par leurs Pairs (per Pares)*; and that all cauſes ſhall be determined *par la loy du Pays (per legem Terræ)*—Theſe laws, as they are made ſo very near the time of our Magna Charta, and by the ſame perſons, viz. the powerful nobles and barons in both kingdoms, ſeem to be expoſitory of each other; and I ſhould therefore conceive, that the trial *per Pares*, in the twenty ninth chapter of Magna Charta, was meant chiefly to relate to the trial of the Barons by their Peers, though it hath, fortunately for the liberties of this country, been expounded to extend to the trial of all perſons by a jury—It muſt be ſaid (to the honour of the French barons), that there are ſome moſt material proviſions, in favour of liberty and the right of the ſubject, which are not to be found in Magna Charta—They particularly aboliſhed torture (though the practice may have ſince prevailed in France [*p*]); and likewiſe expreſly ſtipulated, that no

[*p*] It will be proved in ſome obſervations on the 3 Edw. I. ch. xii. that torture was formerly uſed in England.

money ſhould be raiſed for the king without the expreſs conſent *des trois Etats*—Of which moſt eſſential right we have no declaratory ſtatute till the 25 Edw. I. ch. v. [q].

[q] The article of Magna Charta, which relates to Scutage, was not ſufficiently expreſs with regard to this great conſtitutional point; otherwiſe the ſtatute of the 25 Edw. I. would not have been neceſſary, and which, in many reſpects, likewiſe goes further, and is infinitely more explicite.

CHARTA

CHARTA FORESTÆ.

THE Charter of Foreſts, in all editions of the Statutes, immediately follows the Great Charter [*p*], though by the preamble it appears to be an Ordinance or Statute of Edward the Firſt, reciting the Charter of Henry the Third, his father, by *Inſpeximus*, and re-enacting and confirming it. From the great alteration between the circumſtances of the preſent times, and thoſe when this law firſt took place, it does not ſeem to contain any point of great conſtitutional importance, though, by being joined to Magna Charta, they are generally ſtyled (taken together) *Chartæ Libertatum.*

A king of England could not formerly amuſe himſelf in his library, or by promoting and encouraging the more elegant arts, and from the dignity of his ſtation he could not fill up his time by intermixing with common ſociety—It was therefore neceſſary for him to move from one place to another, and at each of his palaces to have a great extent of Foreſt ſurrounding it for the purpoſe of hunting, whilſt at the ſame time a large tract of uncultivated deſart was ſuppoſed to contribute to magnificence—This extent of Foreſt, always imagined by a hunter (even if not a king) to be too contracted—

Ut brevibus clauſus Gyaris, parvâque Seripho,

naturally produced oppreſſion and encroachment on thoſe whoſe property unfortunately bordered on ſuch a Foreſt [*q*]; and Sir Robert Cotton (in his *Poſthuma*) mentions, that Robert de Parnſlow, in the reign of Henry the Third, had procured large ſums of money, under pretence of encroachments and aſſarts—The firſt article therefore of this charter of the Foreſts reducing them by the view of a jury of ambulators to their limits, in the time of Henry the Second, was certainly a point of no inconſiderable importance—Eſpecially when we find, by the tenth chapter of this charter, that the killing of the king's deer was before that puniſhed with the loſs of life or limb, at the ſame time that a murderer only payed his were-gild, or was entitled to his benefit of clergy.

[*p*] Magna Charta is indeed likewiſe printed in the different editions of the Statutes, from the Statute of confirmation by Edward the Firſt, reciting an *Inſpeximus*.

[*q*] The great attention of the kings of France about this time to the preſervation of the deer in their Foreſts, appears by a record of a grant mentioned by Mabillon, in his treatiſe De re diplomaticâ, p. 611. "Conceſſimus Oatlando abbati et monachis ex monaſterio Sitthin, quod "liberè poſſint venari unde fratres conſolationem habeant, tam ad volumina librorum con-"tegenda, quam ad manicias et zonas faciendas, *ſalvis tamen foreſtis noſtris.*"

CAP.

CAP. IX.

UNUSQUISQUE liber homo agiſtet boſcum ſuum in Foreſtâ pro voluntate ſuâ, et habeat pannagium ſuum.—Concedimus etiam quod unuſquiſque liber homo poſſit ducere porcos ſuos per dominicum boſcum noſtrum liberè, et ſine impedimento ad agiſtandum eos in boſcis ſuis propriis—et ſi porci alicujus liberi hominis unâ nocte pernoctaverint in Foreſtâ noſtrâ, non inde occaſionetur, unde aliquid de ſuo perdat.] It appears from this, that pannage (or pawnage, as it is improperly ſpelt in the tranſlation of the Statutes) was conſidered as being of great profit to thoſe who lived in the neighbourhood of the Foreſts, for the feeding of ſwine, though at preſent it is little attended to—The people of this country, in the winter, chiefly ſubſiſted upon ſalted meat, even in the caſtles of the great men and barons; and we therefore find in Domeſday, that it is always ſtated for how many hogs the eſtate hath maſt or pannage.—This animal, notwithſtanding its great uſe, is now conſidered as ſo contemptible, that the contempt, in ſome meaſure, is extended to thoſe who have the care of them; and yet in the time of Homer Eumæus is ſtyled the Διος συβωλης, and is one of the moſt conſiderable perſons in the iſland of Ithaca.

CAP. X.

QUICUNQUE Archiepiſcopus, Epiſcopus [*r*], *Comes, vel Baro, veniens ad nos ad mandatum noſtrum tranſierit per Foreſtam noſtram, liceat ei capere unam beſtiam vel duas per viſum Foreſtarii, ſi preſens fuerit; ſin* [*aliter* (*s*)] *autem, faciat cornari, ne* videatur furtivè *hoc facere. Idem liceat eis in redeundo.*] This privilege of killing a deer *or two* is confined to an Archbiſhop, Biſhop, Earl, or Baron (which poſſibly many of thoſe who are ſtill entitled to it under this ſtatute may be not acquainted with)—The privilege indeed is not granted in the moſt polite manner, by injoining the neceſſity to ſuch reſpectable perſonages coming to the king, *per mandatum noſtrum*, on moſt ſpecial *and important buſineſs undoubtedly*, to give notice by blowing a horn, *ne videatur furtivè hoc facere.*—It may likewiſe be inferred, from this privilege being confined to barons and ſuperior degrees of nobility, that the members of the lower houſe were not conſidered as of much import-

[*r*] Prynne, in his Collection of Records, hath often occaſion to obſerve upon the great eſteem that veniſon was held in by the biſhops and abbots of thoſe times—The archbiſhop of Canterbury, *who loved veniſon more than his ſovereign's or people's ſouls*, claimed *thirteen bucks*, vol. iii. p. 267. and afterwards, how *well the biſhops loved veniſon and hunting in thoſe days*, will appear by another record, &c.

[*s*] *Aliter*, or ſome ſuch word is here wanting.

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ance—When the crown at preſent gives any ſmall favours (as places for public fireworks, or medals upon a coronation) the members of the houſe of commons are not forgotten.

CAP. XII & XIII.

UNUSQUISQUE liber homo de cætero ſine occaſione [*t*] *faciat in boſco ſuo, vel in terra ſua, marleram — et habeat in boſcis ſuis aërias accipitrum, eſparvariorum, falconum, aquilarum, et heironum, ſimiliter* mel *quod inventum fuerit in boſcis ſuis.*] This ſtatute paſſed in the year 1225, and the privilege of ſinking a marl pit, is a proof of an earlier attention and knowledge in the improvement of land, than is to be found in any other country in the ſame century.

From the proviſion with regard to falcons, &c. it ſhould ſeem that the king claimed them wherever found as royal birds—It is well known, that falconry, together with hunting, was the principal amuſement of the great barons, and conſequently that hawks were very valuable—It was indeed ſo expenſive, and required ſo many attendants, that few could afford ſuch an eſtabliſhment; but thoſe who did not themſelves keep falcons, or falconers, were frequently obliged, by the grants of their lands, to procure them annually for thoſe under whom they held their eſtates—Littleton, in his treatiſe upon Tenants in Common, puts the inſtance of two tenants in common granting a leaſe of land, upon condition of the tenant's paying every year a falcon, and he determines very ſeriouſly, that they ſhall have but one aſſiſe for it, *car homme ne doit faire un pleint en aſſiſe de le moitié d'un eſperver*—Now caſes are generally put by lawyers, which moſt commonly happen in the times they live in, and it need not be ſaid, that ſuch a caſe could not at preſent be mentioned without ridicule.

The expreſs privilege inſiſted upon with regard to every man's being entitled to the honey which he finds on his own ground, may in more modern times appear ſingular, when perhaps there hath been no law-ſuit, or queſtion about honey, for the laſt three hundred years; before however the plantations of ſugar in the Weſt-Indies, it muſt neceſſarily have been in much greater requeſt and born a much higher price—The wax likewiſe muſt have been of conſiderable value, as the manufacture of tallow candles is not very

[*t*] The word *occaſione* is tranſlated in all the editions of our Statutes, and even in Mr. Ruffhead's, who hath rectified ſome miſtakes of this kind by the word *danger*—Du Cange however makes the ſignification of it to be a fine or tribute, and cites Rodericus Tolit. in Hiſt. Arabum—*Fiſcum diverſis occaſionibus augmentavit*; and likewiſe from the ſame author, *remotâ omni occaſione reguli et papali*—It ſhould therefore be much more properly tranſlated, every *man may ſink a Marl pit in his own ground, without paying a fine to the king.*

antient—There is a ſtatute of Henry the Sixth with regard to wax chandlers, from which it appears that wax was uſed in great quantities, not only for the purpoſe of making candles, but likewiſe images of ſaints; and it appears by the laws of Hoel Dda, that the wax of bees was applied chiefly to this uſe—Beſides this, mead was now the liquor of luxury, and ſtill continues in great requeſt in Wales and the northern parts of Europe, where bees make a principal head both of the Daniſh and Swediſh laws even to this day.

CAP. XVI.

PLACITA de Foreſtâ, ſive de viridi—preſententur capitali Foreſtario noſtro cum in illas partis venerit ad tenendum placita de Foreſtâ.] Thoſe who may have a curioſity to ſee the method of proceeding before the juſtice in Eyre, may conſult Dr. Brady's Appendix to his Hiſtory; and likewiſe a record now firſt printed in Mr. Blackſtone's Introduction to the *Charters*.—The laſt inſtance of the juſtice in Eyre having held a court in the different Foreſts, is believed to have been in the reign of Charles the Second—This is mentioned by Mr. Roger North, in his Life of the Lord Keeper, and he himſelf attended as king's council—It hath ſince been dropt (though not perhaps without its uſe) from the great expence to the crown.

STATUTUM HIBERNIÆ de COHEREDIBUS.

14 Hen. III. A. D. 1229.

THIS *Statutum Hiberniæ* follows the two Great Charters in all editions of the Statutes — Mr. Cay very properly obſerves, that it is not an act of parliament, and cites the old abridgement, Title *Homage* — He allows it a place however in his edition of the Statutes, not to differ from former editors [*u*] — This, in ſome meaſure, gives the authority of legiſlation to the king's law printers; and yet, if ſuch an ordinance is inſerted in every edition of the Statutes, for near three centuries together, by printers known to print under the authority of the king's patent, and the parliament permits this for ſuch a length of time, it becomes a queſtion of ſome difficulty to ſay what force it may have acquired [*w*] — No ſuch queſtion fortunately can ever ariſe upon this ſtatute, as it is merely a *reſcriptum principis* to certain *milites* (adventurers probably in the conqueſt of Ireland, or their deſcendants), who had doubts *how lands holden by knight ſervice deſcending to coparceners within age ſhould be divided* [*x*] — The king informs the juſticiary of Ireland what is the law and cuſtom in England with regard to this; and I cannot ſay, that he does it in the moſt preciſe and intelligible manner. — There is a paſſage however at the latter end of the anſwer, which is too ſingular to be omitted, "et ſi primogenita ſit heres "omnium aliarum ſororum ſuorum, vel puerorum ſuorum, ſi obierint ſine "hærede de ſeipſis, poſſet habere cuſtodiam ſuarum ſororum; *ſed hoc eſſet* "*quaſi committere lupum agno devorandum.*" — It ſhould ſeem from this, that the right of primogeniture amongſt brothers was by no means thoroughly eſtabliſhed at this time, as it muſt otherwiſe have occurred, that the rea-

[*u*] There is not perhaps in the great collection of Rymer any act which may not as much be conſidered as a ſtatute, as this *Statutum Hiberniæ*.

[*w*] This is a very ſtrong reaſon, amongſt others, given in the introduction for a proper reviſion of our ſtatute code.

[*x*] Lyttleton, in his chapter of Pareners, takes no notice of the doubt in this ſtatute, which he muſt neceſſarily have done, if this ordinance was conſidered as a law in the time of Edward the Fourth — As he lived however before the invention of printing, poſſibly the greateſt lawyers had only a collection of thoſe ſtatutes which were moſt frequently in uſe.

ſoning ſuch (as it is) held equally ſtrong againſt the eldeſt brother, as againſt the eldeſt ſiſter [*y*].

All the editions of the Statutes have marked this ordinance as *obſolete*, which introduces another queſtion of great importance, whether any ſtatute can be obſolete, or any way loſe its force but by actual repeal — *eodem ligamine quo ligatur*. — No Engliſh lawyer hath ever advanced ſuch a doctrine, though by the law of Scotland a ſtatute is ſaid to loſe its force by *deſuetude* [*z*], if it hath not been put in execution for ſixty years [*a*]; and a diſtinction is made between ſtatutes which are as it were *half obſolete*, and thoſe *in viridi obſervantiâ*.

[*y*] More on this head will be obſerved on the ſtatute of Entails.

[*z*] Stair, Macdonal, Wallace.

[*a*] *Some Scots lawyers have extended this to a century.* It appears by the 13 Edw. I. ch. vi. entitled, *Forma exemplificationis Chartarum*, that it was ſuppoſed at that time that ſome of the articles of Magna Charta might be obſolete; and the Treaſurer and Barons of the Exchequer, together with the Judges of both Benches, are ordered to inquire *de uſu articuli, vel articulorum*, et ſi plenè fuerit uſitatus.

ASSISA

ASSISA PANIS ET CEREVISÆ [a].

51 Hen. III. A. D. 1266.

THE parliament or council upon this occaſion was held at Wincheſter, *quò vocati ſunt omnes magnates terræ*; and, what is more extraordinary, "omnes uxores comitum, et baronum qui in bello occiſi fuerunt, vel captivorum." Annal. Waverl. Gale, vol. iii. p. 220.—I ſhall conſider this as being part of another ſtatute made the ſame year (which is entitled, *Judicium Pillorie*, being the puniſhment of a baker, who ſhall offend againſt theſe regulations) notwithſtanding four other acts of parliament (and relative to very different matter) intervene.

The author of Fleta hath made theſe regulations part of his work, without taking notice that they ariſe from any authority of the legiſlature; and, with regard to the meaſures of thoſe times, thoſe who have curioſity on this head, may conſult him from p. 74 to 76; as likewiſe ſimilar regulations in France, by King John, contemporary with Edward the Third, Ord. Royal. p. 5. & ſeq.

The preſent ſtatute recites the king's *Inſpeximus* of *certain ordinances of Aſſiſe*, made in the time of his progenitors kings of England; and indeed thoſe who ſupply the people with their common and neceſſary food and drink (as bakers, brewers, and millers) have not only always been ſuſpected [b] more than other traders of impoſitions, but have likewiſe been ſubject to regulations of particular ſeverity—It might perhaps be going too far to ſay, that all regulations of this ſort are rather prejudicial to the public, than beneficial; it may however be ſaid, that much judgement and caution ſhould be uſed by the magiſtrate who carries them into execution.

I ſhall not enter into the *minutiæ* of the regulations contained in the preſent ſtatute, eſpecially as it is repealed by the ſtatute of Queen Ann—There are however ſome particularities in it which deſerve notice.

The offender againſt this law, for the firſt and ſecond offence (if a baker) is to be amerced, and for the third *patiatur judicium corporis* (ſc. *colliſtrigum*)

[a] This *Aſſiſa Panis et Cereviſiæ* is to be found in Matthew Paris, with ſome additions.

[b] Thus Chaucer ſays of a miller,

"Well couth he ſteal corne and told it thriſe."

And in another place,

"For whiche this miller ſtole both whete and corne,
"An hundred times more than beforn."

colliſtrigium) if a brewer (*braciatrix*) the puniſhment is *trebucheium* ſive *caſtigatio* — It ſeems difficult to aſſign any reaſon why the baker and brewer ſhould, for very ſimilar offences, be puniſhed in a different manner by the ſame law, if the word *braciatrix* is not attended to, which ſignifies a *woman* brewer, though it is tranſlated as if it was *braſiator*, which is the only word to be found in Du Cange — Women therefore at this time probably carried on this trade; and we find by the citation from Gale, that many women attended this parliament — The puniſhment of the *braciatrix* is the *trebuchetum* [*c*], tranſlated the *tumbrel*, which is the ſame with the ducking or cucking ſtool; and a puniſhment uſed antiently for women offenders in this country — The baker is to be puniſhed by the *colliſtrigium*, and not, *as it is improperly tranſlated*, by the pillory; for Sir Henry Spelman, in his Gloſſary, very judiciouſly obſerves, that *pillory* [*d*] is the offence, and not the mode of puniſhment.

" *Pilloria, riæ.*] Et *Cowello* Pillorium, aliàs *Colliſtrigium*. A Gall. *Pil.* Eſt " ſupplicii machina ad ludibrium, magis quàm pœnam, quo quis ſuper " pegmate conſtitutus, comprehenſoque inter fauces duarum tabularum " ideo cavatarum collo, ſpectaculum populo præbetur deridendum. Ori- " ginem vocis *Cowellus* expetit à Græc. πύλη pro *janua*, et ὁράω, i. *video*, " quod delinquens ac ſi per januam emiſſo capite proſpiceret: quod ipſe " certè non probo, nec habeo tamen quod proferam. Sua Gallis relinquo " erimanda, hujus enim ipſi nobis ſunt authores. Et fortè à notiori fonte " deducent: utpote è vernaculo ſuo *pilleur*, quod depeculatorem ſignificat; " cujuſmodi eſſe noſcuntur ipſi quibus hoc ſupplicii primo inſtitutum fuit, " ſcil. piſtores, qui ſuis in pane fallaciis rempub. depeculantur; à quo " et ipſa ſua nequitia *pillieurie* dicta fuit, quaſi depeculatio: et ſic vox pro- " priè ad delicti naturam ſpectat, non ad ſupplicii inſtrumentum, quod ſuo " vocabulo *colliſtrigium* nuncupant: licet ad hoc etiam poſtea deferatur. " Suadere id mihi quidem videntur ipſa verba Statuti de Piſtoribus, " ubi dicitur, *ſubeat judicium pilloriæ*, ac ſi legeretur *ſubeat judicium depecu-* " *lationis.*"

Both the *trebuchetum* and the *colliſtrigium* were intended *magis ad ludibrium, et infamiam, quam ad pœnam*, ſay the Gloſſaries. It may therefore well deſerve the conſideration of a judge, who inflicts the puniſhment of the pillory (as it becomes at preſent the great occaſion of mobs and riots), whether it

[*c*] The moſt common ſignification of *trebuchetum* is a machine, antiently uſed in the ſiege of towns — The etymology of the word, in the ſenſe we uſe it, ſeems to ariſe from the Celtic, *tre*, which Bullet renders *ville*; and our common word *bucket*, which is likewiſe probably Celtic (though there is an old French word of Baquet), it will then ſignify the *town* or *village* — *bucket*.

[*d*] *Pilleurie* is frequently uſed in the old French chronicles in this ſenſe.

can be reconciled to the original intention of the law in this mode of punishment; and particularly, if this riotous ſcene ends in the death [e] of the criminal, whether the judge is not in ſome meaſure acceſſary both to the riot and the murder.

[e] There hath been more than one inſtance of ſuch a murder within theſe twenty years.—The chief intention of ſetting an offender in the pillory is, that he ſhould become infamous, and known for ſuch afterwards by the ſpectators—Can an offender, whoſe face is covered with rotten eggs and dirt, be known again, ſo as to prevent his gaining a new credit with thoſe who have occaſion afterwards to deal with him? It may perhaps appear too refined to derive this cuſtom of pelting a criminal from the antient Germans—"Infames luto ac cœno aſpergunt" &c.

STATU-

STATUTUM DE SCACCARIO[e].

51 Hen. III. A. D. 1266.

I SHALL conſider this and the preceding ſtatute, entitled, *Statutum de diſtrictione Scaccarii*, as different chapters of the ſame law, though they are in all editions printed as diſtinct ſtatutes.—There being at this time no commiſſioners of cuſtoms, or exciſe, the whole revenue of the crown was not only received, but accounted for before the officers of the Exchequer. As for the Lord Treaſurer, I have a very fair and compleat Court Kalendar (if I may ſo call it) for the year 1553, and firſt of Queen Mary, in which the *Lord Treaſurer* is placed at the head of the officers of theReceipt of the Exchequer, without any one ſubordinate officer to him, as Lord Treaſurer.—Whatever his powers might have been, they were exerciſed in concurrence with the officers of the Exchequer, and perhaps he was himſelf only the chief and ſupreme officer without any diſtinct board or department as at preſent[f]—Every ſubject therefore had more or leſs to do with theſe revenue officers, who were armed with the terrors of the crown proceſs; and it was naturally to be expected, that there ſhould be great abuſes and oppreſſions, which could only be prevented by the interpoſition of the legiſlature—What theſe oppreſſions were appear by the proviſions of the ſtatute—The ſherives at this time generally farmed the king's revenue, and conſequently were guilty of thoſe enormities and exactions which the farmers of the public revenue have in all countries been juſtly charged with.—One means of oppreſſion was by diſtraining the farmers cattle uſed for ploughing (which the ſtatute emphatically ſays, *gaignent la terre)*; and not content with this, he was not permitted to feed his cattle whilſt impounded—The poor beaſts were either ſtarved, or, if fed by the king's bailiff, the owner was charged at an immoderate price for their ſuſtenance[g]—The debt was frequently very trifling; and yet the diſtraining a whole team of oxen, prevented the farmer from cultivating his land; the ſtatute therefore directs, "que les deſtreſces "ſoient raiſonables à la mountance de la dette (the value to be ſettled), "par l'eſtimacion des veſins"—Even after the debt was payed, the op-

[e] The ſtatute of Roteland is ſtyled *Statutum novum de Scaccario.*

[f] It is almoſt unneceſſary to refer the reader to Mr. Madox's learned Collections on this and other matters of antiquity relative to the Exchequer.

[g] The ſtatute therefore allows him to feed his own cattle whilſt impounded.—It hath been before obſerved in the Comment of Magna Charta, that land was frequently held by the tenure of feeding the cattle which were diſtrained for the king's debts.

preſſion

preſſion did not end; for the officers of the crown harraſſed the accountants by pretending that the whole demand was not ſatisfied; the ſtatute therefore moſt humanely declares, that, if any receipt could be produced, it ſhould be taken to be a receipt in full.

The firſt part of the ſtatute having provided againſt the extortions of the officers of the crown, proceeds to make regulations, which may prevent impoſition in demands made upon the king.—The principal revenue of the crown upon exports was, at this time, the cuſtoms upon wool, which was then ſent chiefly to Flanders, and there manufactured.—Accounts could not be ſettled in the compendious and accurate manner which prevails at preſent, and the crown was defrauded in the duties upon wool exported, by the articles not being ſufficiently particularized.—The ſtatute therefore directs, that it ſhall be ſtated how much wool was exported in each particular ſhip, and how much was ſhipped on board at the different ports the ſhip might touch at [*b*].

The next material regulation of the ſame kind is to prevent the king's being overcharged by his artiſans and workmen, which ſeems *in more modern times* to deſerve much to be inforced [*i*].—The method taken is, "que les *veours* des oyreigner le roy ſoent elus per ſerment des prodes "hommes" (able men); and if the king or barons of the Exchequer have any ſuſpicion of impoſition, the reaſonable price is to be ſettled by ſuch viewers or ſurveyors.

As this is the firſt ſtatute in the French language, it may not be improper to conſider whence it might ariſe, that the antient ſtatutes, from the preſent to 1 Rich. III. A. D. 1483, ſhould be generally in the French language; and even after the ſtatute of Edward the Third had aboliſhed it in pleadings [*k*].—The antient laws of ſome other countries in Europe are indeed in the Latin language, in which there was a peculiar convenience from the frequent appeals to the pope; but there is no other inſtance of any country in Europe permitting their laws to be enacted in a

[*b*] It ſhould ſeem from this regulation, that there were no officers at any port but that of London, or perhaps two or three more principal ports.

[*i*] The ſtatute continues unrepealed.

[*k*] Forteſcue, in his 48th Chapter, *De laudibus legum Angliæ*, gives the following account of this: "In univerſitatibus Angliæ, non docentur ſcientiæ niſi in Latina lingua: et leges "terræ illius in triplici lingua addiſcuntur: videlicet, Anglica, Gallica, et Latina. Ang-"lica, quia inter Anglos lex illa maximè inolevit. Gallica, quia poſtquam Galli, Duce "Wilhelmo Angliæ Conqueſtore, terram illam obtinuerunt, non permiſerunt ipſi eorum advo-"catos placitare cauſas, niſi in lingua, quam ipſi noverunt, qualiter et faciunt omnes advocati in "Francia, etiam in curia parliamenti ibidem. Conſimiliter Gallici, poſt eorum adventum in "Angliam, ratiocinia de eorum proventibus non receperunt, niſi in proprio idiomate, *ne ipſi inde*

modern European [*l*] *language*, and that not their own —The antient laws of Scotland are in Latin; the laws of the Saxons in the Saxon tongue; and the antient ſtatutes of Ireland, which begin with the ſtatute of Kilkenny, in the reign of Edward the Second, are in Engliſh [*m*] —The laws of Sweden and Denmark were originally in their own languages [*n*]; but have, within the laſt century, been tranſlated into Latin —The laws of Spain are in Spaniſh, and that infinitely more pure than could be expected from their antiquity [*o*] —They may probably indeed have fixed that language, as the tranſlation of the Bible is ſaid to have fixed our own [*p*] —The antient laws of Sicily are in Latin; and the ſame may be ſaid of other Italian ſtates —At the beginning of the ſixteenth century, a return was made of all the laws and cuſtoms of the different provinces of France —Theſe have been collected and publiſhed by Du Moulin, in two very large volumes, *folio* —The only collection of theſe cuſtoms, which is in the Latin language, is thoſe of Tholouſe; all the reſt are in the provincial dialects or patois; and, from thoſe provinces which border on Spain, the language uſed is the Baſque, or a corrupt mixture of French and Spaniſh [*q*] —The reaſon generally given for our laws being in the French language, viz. that it was the will of the conquering Normans, is by no means ſatisfactory —If this

" *deciperentur. Venari* etiam, et jocos alios exercere, ut *talorum et pilarum ludos*, non niſi in pro-
" pria lingua delectabantur. Quo, et Anglici ex frequenti eorum in talibus comitiva, habitum
" talem contraxerunt, quod *huc uſque ipſi in ludis hujuſmodi, et compotis, linguam loquuntur Gallica-*
" *nam:* et placitare in eadem lingua ſoliti fuerunt quouſque mos ille, vigore cujuſdam ſtatuti,
" quam plurimum reſtrictus eſt; tamen in toto hucuſque aboleri non potuit, tum propter *terminos*
" quoſdam, quos plus propriè placitantes in Gallico, quam in Anglico, exprimunt, tum quia *de-*
" *claraciones ſuper brevia originalia*, tam convenienter ad naturam brevium illorum pronuntiari
" nequeunt, ut in Gallica, ſub quaſi ſermone *declarationum hujuſmodi formulæ addiſcuntur.*"

Suetonius ſays, that Caligula, when he intended to take advantage of his penal edicts, cauſed them to be wrote in ſo ſmall characters, and to be hung up at ſuch a height, that no one could read them —This Hayward, in his Life of William the Conqueror, applies to the Engliſh laws being wrote in French.

[*l*] There is an ordinance of Cromwell's (in Scobell's Collection) for the tranſlation of all the law reporters from the old law French into Engliſh —The ſame ordinance directs all the law proceedings to be tranſlated from Engliſh into Latin.

[*m*] There is at leaſt no mention in the edition of the Iriſh ſtatutes, publiſhed by authority, of their having been tranſlated.

[*n*] *Baſnage* is therefore moſt groſly miſtaken, when he aſſerts, that the Normans are the only nation in Europe, whoſe antient laws and cuſtoms are not in the Latin language.

[*o*] See the Obſervations upon Magna Charta.

[*p*] There is a Spaniſh letter, from the Black Prince to the Count of Traſtamarra, which ſcarcely differs either in the language or ſpelling from that of the modern Spaniſh —Rymer's Fœd.

[*q*] This fully proves that Bullet is miſtaken, when he aſſerts, in his Preface to the Dict. Celtique, that all the laws of France were in Latin till the time of Francis the Firſt.

was

was the true reaſon, the laws, from William the Firſt to the reign of Henry the Third, would have been in that language — Now, in the Collection of theſe laws publiſhed by Wilkins, there is but one ſuch inſtance, and that is printed as being a tranſlation from the Latin, which is conſidered as being the original — Beſides this very concluſive proof, there is no French record in Rymer's moſt large and ſtupendous collection, till the year 1256, and 40 Hen. III[r]. which Collection begins above a century before, viz. in the year 1101, during which period every record is in Latin — And agreeable to this remark, the preſent ſtatute (the firſt in the French language) is juſt two centuries after the conqueſt — What might have contributed to continue our laws in the French language after this firſt inſtance, ſeems to have aroſe from there being a ſtanding committee in parliament to receive petitions from the provinces of France, which formerly belonged to the crown of England; and as theſe petitions were in French, and the anſwers likewiſe in that language, it might probably be a reaſon why all the parliamentary tranſactions ſhould be in French by way of uniformity [s] — This conjecture ſeems to be ſtrongly confirmed by the ſtatutes having continued to be in Engliſh, from the time in which we *fortunately* [t] were diſpoſſeſſed of the French provinces, as moſt of the ſtatutes, in the reign of Henry the Sixth, continue to be in French.

Another reaſon for the ſtatutes being in French, aroſe from the general affectation which prevailed at this time of ſpeaking the French language, inſomuch that it became a proverb, that *Jack would be a gentleman, if he could ſpeak French* [u] — It was very corrupt indeed; and therefore Chaucer, in his Prologue to the Prioreſs's Tale, ſays,

[r] Vol. ii. p. 13. Hague edition — The firſt Engliſh record in Rymer is in the year 1386; it is ſcarcely however intelligible to a modern Engliſhman — After this, there are ſome few Engliſh records, which begin with the reign of Henry the Fifth; and particularly the poſtſcript to a letter by that king — Rymer, vol. ii. part i. p. 15a.

[s] This likewiſe ſeems to be the reaſon of a law receiving the royal aſſent in French, which, as foreigners generally attend that ceremony, ſhould be aboliſhed. — I have heard of its being difficult to tranſlate theſe old forms: I ſhould conceive that theſe three words would anſwer every purpoſe, and unexceptionably; BE IT SO — The forms might likewiſe be tranſlated literally into Engliſh.

[t] The Maid of Orleans may be more truly ſaid to have been our deliverer, than of the French; notwithſtanding the Engliſh were ſo ungrateful as to burn her — The only real benefit we ever received from being poſſeſſed of theſe provinces, was the breaking of Queen Mary's heart by the loſs of Calais; if that really occaſioned her death — Every year of her reign was a prolongation of papacy.

[u] Verſtegan mentions this proverb, but ſays, that ſome of the Engliſh adhered ſtrongly to the uſe of their native language; and that he had himſelf ſeen many monuments of the antient Engliſh in Normandy, which were in the Engliſh language, p. 182.

" Entewned ſhe her voice full ſeemly,
" And French ſhe ſpoke moſt feteouſly;
" After the ſchoole of Stretford at Bow,
" For *French of Paris* was to her unknowe."

It was however ſo neceſſary, that Robert of Engleſield, who founded Queen's College in Oxford, and was confeſſor of Philippa of Hainault, queen of Edward the Third, directed, by his ſtatutes, that the ſcholars ſhould either ſpeak French or Latin. Fuller's Worth. p. 222.

But the ſtrongeſt reaſon for permitting our laws to be in the French language aroſe from the Engliſh, and the inhabitants of the French provinces, under the Engliſh dominion, conſidering themſelves in great meaſure as the ſame people [x]—The lawyers of the time therefore not only made uſe of it in their pleading, but converſation: thus, Chaucer makes his man of law, in the Prologue to his Tale, ſay,

Hoſte (quoth he) de parde jeo aſſent.

We never hear, in the very antient chronicles, of any of that national animoſity ſubſiſting between the Engliſh and the French [y], which hath ſince been occaſioned by the long and obſtinate wars during the reigns of Edward the Third and thoſe of Henry the Fifth and Henry the Sixth—And ſtill more by Louis the Fourteenth affecting the monarchy of Europe—It was re-

[x] This holds at preſent with regard to the inhabitants of Jerſey and Guernſey.

[y] The foreigners, againſt whom the clamour at this time ran the ſtrongeſt, were the Italian clergy, who procured the moſt lucrative benefices from the court of Rome to the prejudice of the native Engliſh—This clamour occaſioned very dangerous riots in the reign of Henry the Third. Carte, vol. ii. p. 34.—I ſhall likewiſe here inſert a note of Selden's on Forteſcue, *De laudibus legum Angliæ*, to the ſame purport. " I remember alſo King Stephen's publique edict " againſt the laws of Italy, but remember not any ſtory or authority teaching that any of our kings " would have had them here uſed. That of Stephen is related by that noble and moſt learned " Frier Roger Bacon, in his *Compendium Theologiæ*, or his *Opus minus* (both thoſe names are of one " MS book), where ſpeaking of the civil laws of Italy, and that they are abuſed, and too much " affected by clergymen, leaving their profeſſion to ſtudy thoſe laws: he thus adds, *Præterea omne* " *regnum habet ſua jura quibus laici reguntur; ut jura Angliæ et Franciæ, et ita ſit juſtitia in aliis* " *regnis per conſtitutiones quas habent ſicut in Italia per ſuas. Quapropter cum jura Angliæ non cum-* " *petant ſtatui clericorum, nec Franciæ, nec Hiſpaniæ, nec Almaniæ, ſimiliter nec jura Italiæ ullo modo.* " *Quod ſi debeant clerici uti legibus patriæ, tunc eſt minus inconveniens ut clerici Angliæ utantur legi-* " *bus Angliæ et clerici Franciæ utantur legibus Franciæ; quapropter maxima confuſio clericorum eſt* " *quod hujuſmodi conſtitutionibus laicalibus ſubdantur colla. Rex quidem Angliæ Stephanus allatis* " *legibus Italiæ in Angliam publico edicto prohibuit, ne ab aliquo retinerentur; ſi igitur laicus princeps* " *laici principis alterius leges reſpueret, multo magis omnis clericus deberet reſpuere leges laicorum.* " *Addo etiam quod magis concordant jura Franciæ cum Angliæ, et è converſo, propter vicinitatem* " *regnorum et communicationem majorem gentium iſtarum, quam Italiæ et illarum. Quare deberent* " *magis clerici Angliæ ſubjicere ſe legibus Franciæ, et è converſo, quam legibus Lombardiæ.* This " was a kind of invective againſt the receiving of the civil law amongſt the clergy in any other " nation, ſaving that wherein it was firſt bred, that is, the Italian."

ſerved

ſerved for the reign of Louis the Fifteenth, in a royal edict, to ſtyle the Engliſh *nos veritables enemies* [z].

I cannot conclude theſe obſervations without taking notice, that the preſent ſtatute of Henry the Third, in French, is inſerted between others in Latin; and that, during the ſame ſeſſions of parliament, there is an inſtance, in the ſtatute of Weſtminſter the ſecond (which is, properly ſpeaking, a *Capitularium* [a]) of French chapters being inſerted in the ſame law, preceded and followed by chapters in Latin.

From a very diligent and attentive peruſal of the Statute-book, the beſt general rule which can be given with regard to an act of parliament's being in Latin or French, is, that, when the intereſts of the clergy are particularly concerned, the ſtatute is in Latin—I do not however pretend to ſay, that this rule is without its exceptions.

[z] We do not find that the alliance between Cromwell and the French was an unpopular meaſure even ſo late as the laſt century—Nor in the century before was the Engliſh nation at all alarmed with the propoſed alliance between Queen Elizabeth and the Duke of Anjou.

[a] See the Notes on Magna Charta, p. 1.

STATU-

STATUTUM DE MERTON.

20 Hen. III. A. D. 1236.

THIS ſtatute [a], as well as many others in this century, ſeems to be only an ordinance; the difference between an ordinance and ſtatute (according to Lord Coke) conſiſting in this, that the ordinance wants the conſent of one component part of the legiſlature, which is, in all inſtances, *that of the Commons* [b]—It hath however been long printed, and conſidered as an act of parliament, and improvements of waſte grounds by incloſing are not unfrequently made under the fourth chapter of it.—It is called the Statute of Merton, from the parliament, or rather council, ſitting at the Priory of Merton, in Surrey, which belonged to Canones Regulares, according to Dugdale—Though ſome of the priories might have had very large and ſpacious houſes, yet it is not probable that there could have been accommodation for what is now called a Parliament, with the intervention of the Commons, and it ſhould ſeem, from Dugdale's ſhort account of this Priory, that it was by no means largely endowed—This ſtatute, in its different chapters, contains many wiſe regulations—The kingdom was at peace, and the king had the ſpirit to refuſe his aſſent to a very tyrannical requeſt of the barons, that, if any offence was committed in their parks or ponds [c], the offender was to be ſent to their *own priſons*, and tried, undoubtedly, in their own courts.—And when in the year 1329, a ſtatute was made, entitled, *De Malefactoribus in Parcis*, this oppreſſive clauſe is

[a] This ſtatute is inſerted in the Annal. Monaſt. Burton. Gale, vol. i. p. 287.

[b] Elſinge ſtates the diſtinction thus: "What begun in the Commons was only termed a "petition (for they had no power to *ordain)*; and what begun in the Lords was ſtyled an or-"dinance—*Actus Parliamenti* was an act made by the Lords and Commons; and it became "*Statutum* when it received the King's conſent." Elſinge, p. 26.

[c] The word in the original is *vivarium*, which I have tranſlated a *pond*, agreeable to the Vulgar tranſlation of the ſtatutes—It is very true, that the claſſical ſignification of the word is often *pond* or *ſtew*.

Plures annabunt thynni et vivaria creſcent.
Fugitivum dicere piſcem,
Depaſtumque diu vivaria Cæſaris.— Juvenal.

But the Latin of the Gloſſaries muſt fix the ſignification of a word in an antient ſtatute—Spelman ſays, "*parci* et *warennæ noſtræ*, ſub *vivariorum* appellatione ſæpe veniunt"—And to confirm this ſenſe of the word, *carp*, which is the moſt valuable pond-fiſh, was not known in England at this time.—It ſhould therefore be tranſlated *warren*, and not *pond*; *warren*, from the old French word *garrenne*, ſignifying a tract of ground in which the lord had a right *garrenner*, or to forbid others killing the game.

omitted:

omitted: though in other reſpects the puniſhment of ſuch offenders is very ſevere.—One of the old Chronicles ſays, that the barons, after they had carried their points by the proviſions in Magna Charta, "evaſerunt "totidem tyranni;" and as the commons could not at this time reſiſt their oppreſſion, the only altar of refuge was in the crown.

CAP. I.

DE viduis primo, quæ poſt mortem virorum ſuorum expelluntur de dotibus ſuis, et dotes ſuas, vel quarentenam [ſuam] habere non poſſunt ſine placito,] There is great humanity in making the redreſs of the grievances of the widow the principal object of this parliament, *De viduis* primo.

We find by the ſeventh chapter of Magna Charta (already obſerved upon) that the widow was to remain forty days in the capital meſſuage after the death of the huſband—As the law required this mark of reſpect to the memory of the deceaſed, it likewiſe provided for her ſubſiſtence during that time; and this ſubſiſtence was called her *quarentena*, which ſhe had a right to demand againſt the heir—The other regulation of this chapter is a confirmation of the ſeventh article of Magna Charta, which ſays, *Vidua nil det pro dote ſuâ.*

CAP. IV.

ITEM quia multi magnates Angliæ, qui feoffaverunt milites et alios libere tenenentes ſuos de parvis tenementis in magnis maneriis ſuis, queſti fuerunt, quod commodum ſuum facere non potuerunt de reſiduo maneriorum ſuorum, ſicut de vaſtis, boſcis, et paſturis (communibus), cum ipſi feoffati habeant ſufficientem paſturam, quantum pertinet ad tenementa ſua &c.] There is a reading of Fitzherbert (who was Judge of the Common Pleas in the reign of Henry the Eighth) upon the ſtatute of 4 Edw. I. entitled, *Extenta Manerii*—In this reading, he hath occaſion to explain what ſhall be deemed *ſufficient common of paſture*, and gives his explanation in theſe words: "*It is neceſſary to knowen what is ſufficient common of paſture, and that me ſeemeth by reaſon ſhould be thus, To ſe how muche cattel the hay and the ſtrawe that a huſbandman getteth upon his own tenements, will find ſufficiently in winter, if they lye in the houſe, and be kept therwith all the winter ſeaſon; for ſo much cattel ſhould he have common in ſommer, and that is ſufficient.*" As improvements are ſometimes, even now, made under this ſtatute (thongh the facility of procuring private acts of parliament for the ſame purpoſe makes it every day leſs frequent), and the great queſtion on theſe occaſions is, *whether ſufficient common is left*; I thought it might not be improper to give the conſtruction of this great lawyer and father of

huſbandry upon theſe words of the ſtatute —This reading of Fitzherbert's is entitled *Surveyenge*, and is printed by Berthelet in 1539.—This clauſe, which is confined by the preſent ſtatute to lord and tenant, is extended to others by 13 Edw. I. ch. viii.

CAP. V.

SIMILITER proviſum eſt, et a domino rege conceſſum, quod de cetero non current uſure contra aliquem infra ætatem exiſtentem,] The effects and debts of an uſurer were antiently forfeited to the king, as appears by many records in Prynne's Collection; Tacitus ſays, that, amongſt the antient Germans, "fœnus agitare ignotum, ideoque magis ſervatur, quam *ſi vetitum eſſet*"—The true reaſon probably for its not prevailing amongſt them, or our anceſtors, was, that they had little or no perſonal property, and thoſe who have large landed eſtates have always been envious of the ſudden fortunes raiſed by commerce, and the improvement and increaſe of perſonal eſtates —Treatiſe may be wrote on treatiſe to prove that theſe two intereſts mutually ſupport and ſtrengthen each other; the prejudice may indeed be ſomewhat leſſened, but cannot be eradicated.

CAP. VII.

DE dominis qui maritaverint illos quos habent in cuſtodia, villanis vel aliis, ſicut burgenſibus ubi diſparagentur:] This diſparagement of marriage was formerly a very conſiderable head of the law, whilſt the feudal tenures ſubſiſted; and this chapter of the ſtatute, by mentioning the inſtance of a marriage with a burgenſis to be a diſparagement, explains what the ideas of theſe times were with regard to a proper marriage. Feudal notions of pride had ſo far prevailed, that the only thing to be conſidered was the rank and family of the perſon tendered in marriage to the ward.

By the antient law of Scotland, "*If an over-lord cauſes marry the heirs "of his vaſſal, if the heir be within the age of fourteen years, he ſhall tine and amit "the wardſhip till the perfect age of the heir.*" Skene's Tranſlation of the Quon. Attach. ch. 92.—This book of the antient Scots law is entitled, *Quoniam Attachiamenta*; from the initial words, *Becauſe the Attachments are the beginning of Pleas.*

CAP. IX.

ET rogaverunt omnes epiſcopi magnates, ut conſentirent, quod nati ante matrimonium eſſent legitimi, ſicut illi qui nati ſunt poſt matrimonium, quantum ad ſucceſſionem hereditariam, quia eccleſia tales habet pro legitimis. Et omnes comites et barones

barones una voce reſponderunt quod nolunt leges Angliæ mutare, quæ hucuſque uſitatæ ſunt et approbatæ.] Selden, in his *Diſſertatio ad Fletam*, ſays, that Robert Groſeteſte, biſhop of London, wrote about this time a treatiſe to prove the neceſſity of introducing the civil law into this country [*a*]; and Lord Coke, in his 3d Inſt. p. 208. mentions, that William de la Poole, duke of Suffolk, attempted the ſame innovation in the reign of Henry the Sixth; which occaſioned Forteſcue's writing his treatiſe *De laudibus legum Angliæ* [*b*]. It was one of the articles of impeachment againſt Cardinal Wolſey, "quod ipſe intendebat finaliter antiquiſſimas Anglicanas leges "penitus ſubvertere, et hoc regnum Angliæ, et ejuſdem regni populum "dictis legibus civilibus, et canonibus ſubjugare."

Notwithſtanding the oppoſition to the introducing this part of the Civil law to legitimate the children of thoſe who married after living in a ſtate of fornication (which ſeems to be a very humane law in favour of the innocent) it by no means prevails to the full extent, in thoſe countries which are ſuppoſed to have adopted the civil law — For example, by the antient laws of Spain the legitimation of the children, by a ſubſequent marriage, is confined to the caſe of a batchelor marrying a ſpinſter, *Si ome ſoltero con muger ſoltera fiziere fijos, e deſpue caſare con ella, eſtos fijos ſean herederos.* Fuer. Real de Eſpan. p. 134. printed at Salamanca, 1569.

The remarkable oppoſition to the introducing this part of the civil law, probably aroſe from its being propoſed by one of the Poictevine favourites of Henry the Third — The ſturdy barons, not approving of the propoſer, rejected the propoſal *una voce — You are a foreigner, and ſhall not introduce foreign laws, be they good or bad.*

[*a*] Selden likewiſe mentions in the ſame diſſertation, that, notwithſtanding this unanimous diſſent of the barons, in another reign the children of John of Gaunt, by his wife Catherine *before marriage*, were made legitimate by act of parliament.

[*b*] The author, who ſpeaks the moſt diſreſpectfully of the common law of England, is a French writer, "Leges Angliæ plenæ ſunt tricarum, ambiguitatumque, et ſibi contrariæ. "Fuerunt ſiquidem excogitatæ atque ſancitæ a Normannis, quibus nulla gens magis litigioſa, at- "que in controverſiis machinandis, et proferendis fallacior reperiri poteſt." Philip. Honor.

STATUTUM DE MARLEBRIDGE[c].

52 Hen. III. A. D. 1267.

THIS is the laſt ſtatute in the long reign of Henry the Third, and it contains many wiſe regulations with regard to civil property, which had been in a very precarious ſtate during the preceding troubles — Of this, if other proof was wanted than the general hiſtories of the times, it would be ſufficient to read the *Edictum de Kenilworth*, which was made the preceding year, and which is printed in moſt editions of the ſtatutes — The firſt chapter relates to diſtreſſes, which, it hath already been obſerved, were moſt oppreſſively uſed — If complaint was made of this oppreſſion, the barons inſiſted upon determining the complaint againſt their own officers in their own courts, and would not permit the king's courts to hold conuſance. — It hath already been obſerved on the twelfth chapter of the ſtatute of Merton, which was made two and thirty years before the preſent law, that the king refuſed his aſſent to an attempt of the ſame kind, when the barons inſiſted upon deciding all offences committed in their own foreſts, and warrens, by their own juriſdictions. — Thoſe powers which they could not obtain from the king, they exerciſed (as it appears by this ſtatute) during the enſuing troubles; and it was high time to put a ſtop to theſe enormities and violations of juſtice, which was effected by removing the complaint from the court of the Great Baron to thoſe of the King, where the judges were indifferent between the oppreſſed peaſant and the tyrannical lord.

CAP. XI.

Proviſum eſt etiam, quod nec in itinere juſtic', nec in comitatibus, in hundredis, nec in curiis baronum de cetero capientur fines ab aliquibus pro pulchrè placitando,] Lord Coke is very anxious to explain, that this fine was not impoſed upon the *pleader* for his miſtake, but that it was payed by the party, for leave to amend a bad plea [*d*]. — He does not however cite any record

[*c*] Marlebridge, where this parliament was held, is ſuppoſed to be the ſame with the town at preſent called Marlborough, of which there ſeems to be ſome reaſon to doubt, as the terminations are very different. — The city of Lincoln, in the old ſtatutes, is however always called Nicoll or Nichole, which is a greater variation from the modern name.

[*d*] The opinion of Lord Coke with regard to this fine *pro ſtultiloquio*, is what he ſays in his 2d Inſt. p. 122. In the Preface however to his Book of Entries, when he had occaſion to be more accurate on this head, he allows that at common law this fine was payed by the pleader, and not by the client — His words are theſe: "Radulphus de Bardfield qui *narravit* pro filio "Furoldi in miſericordia pro ſtultiloquio;" and cites a record of 5 Hen. III. (adding by way of

or authority in proof of what he aſſerts, and *(pace tanti viri)* I ſhould imagine that this fine was payed by the pleader, who was certainly the moſt in fault—In other countries, advocates have been ſubjected to penalties even for prolixity, and particularly by an ordinance of Charles the Seventh of France; as alſo many to the ſame purport by his ſucceſſors. V. Ord. Royales, Paris 1552. This power of fining for a bad plea however (whether it might be impoſed on the party or the advocate) had been undoubtedly much abuſed, and particularly in the inferior courts, where the fine was payed to the lord. And we find by the nineteenth chapter of the preſent ſtatute, as well as by an article of Magna Charta, that the power of amercing was equally abuſed in the inferior courts, and for the ſame reaſon.

CAP. XX.

DE eſſoniis autem proviſum eſt, quod in comitatibus hundredis, aut in curia baronum, vel aliis curiis, nullus habeat neceſſe jurare pro eſſonio ſuo warrantizando.] The Eſſoyn, being uſed generally for the purpoſe of delay, is taken away by almoſt every modern act of parliament—This indulgence to the defendant had however a reaſonable commencement. Few could at this time either read or write, and the communication between one part of the country and another was frequently interrupted [*e*]; ſo that the parties had not often accurate and proper notice of the ſuit.

CAP. XXVI.

JUSTICIARII itinerantes de cetero non amercient villatas in itinere ſuo, pro eo quod ſinguli XII *annorum non venerint coram vicecomitibus et coronatoribus, ad inquiſitionem de roberiis, incendiis domorum, vel aliis ad Coronam ſpectantibus faciendis. Dum tamen de villatis illis veniant ſufficientes, per quos inquiſitiones hujuſmodi plene fieri poſſunt, exceptis inquiſitionibus de morte hominis faciendis, ubi*

comment) " quod inter alia acta publica evincit manifeſtè juridicum eâ tempeſtate, non clien-
" tem mulctatum fuiſſe; iniquum enim cenſebatur clientem pœnas luere pro delicto jurecon-
" ſulti, quod ſane nihil aliud fuiſſe, quam in miſerum cumulâſſe miſeriam"—He then adds,
" Dominus Robertus de Willoughby anno 24 Edw. tertii juriſperitos ad ſeptum curiæ allocu-
" turus dixit, *Jeo ay view le temps que ſi vous uſſez* plead un erronious plea, *que vous alaſtes al* " *priſon.*"—By a ſtatute of James the Firſt of Scotland the advocate is to take the following oath:

" Illud juretur, quod lis ſibi juſta videtur,
" Et ſi quæretur, verum non inficietur;
" Nil promittetur, nec falſa probatio detur,
" Ut lis tardetur, dilatio nulla petetur."

[*e*] One of the moſt common Eſſoyns was antiently, a flood preventing the party's attendance—By roads having been turned, bridges and cauſeways built, this accident ſeldom prevents communication at preſent.

omnes XII *annorum venire debent, niſi rationabilem cauſam habeant abſentiæ ſuæ.*] It was an antient regulation of police, that every inhabitant of a county, who was above the age of twelve years, ſhould attend the ſheriff's turn in order to hear the *capitula coronæ* read over, and given in charge.—This, before the eſtabliſhment of juſtices in Eyre, was the only opportunity of their being inſtructed with regard to the crown law, and it was probably ſuppoſed that ſuch a charge would not only be underſtood by a child above that age, but make a very laſting impreſſion.—As it was very inconvenient however and expenſive for all the inhabitants of a county to attend, the ſtatute of Magna Charta very properly confines the holding theſe *tourns* [*f*] (as they are called) of the ſheriff to be held only twice in a year; but as whole townſhips were frequently amerced for neglecting to attend, this ſtatute diſpenſes with ſuch attendance, provided there is a jury, conſiſting of a ſufficient number to puniſh offenders.—It excepts indeed the caſe of murder, which crime the legiſlature thought it incumbent upon every one to attend either to proſecute, or to conceive a juſt horror of.—There was at this time another great abuſe in proſecutions for murder, which is regulated by the next chapter; the words are, "*Murdrum de cetero non adjudicetur, ubi infortu-*" *nium tantummodo adjudicatum eſt; ſed locum habeat murdrum de interfectis per* "*feloniam tantum.*"—The word *murdrum* is in the common tranſlation very improperly tranſlated murder [*g*], whereas in this place it ſignifies a fine impoſed upon a townſhip, where (as Bracton expreſſes it) *occulta hominis occiſio intervenerat.*—If the townſhip did not produce or proſecute ſuch a murderer, it was but a proper puniſhment to fine the inhabitants for ſuch neglect, or concealment.—I have before obſerved, that fines impoſed

[*f*] Magn. Ch. c. 23.—Stiernhook gives the beſt account of the ſignification of this word *tourne* or *turn*—"Judicia antiquitùs *Hwarp* dicta fuerunt, quæ vox hodie circuitum, revolutionem, ſeu "viciſſitudinem, ſignificat, ſive quod judicia ad revolutiones ſolares vel lunares haberentur, ſive "quod in unum conveniens multitudo judici circumfuſa conglomeraretur, ſive denique quod "per vices, facto circuitu ſinguli territorii, patresfamiliæ ad judicia convenire tenerentur, prout "in antiquo et novello jure præceptum exſtat." Ch. 2.—This agrees with the common meaning of the Saxon word *turne* and Engliſh *turn*, and the ſheriff's court ſo called was held for theſe very purpoſes—The biſhop of Dumblain, in Scotland, had a writ on this chapter of the ſtatute of Marlebridge. V. Prynne's Records, vol. iii. p. 183.

[*g*] This word however ſignified ſometimes, in the old Saxon laws, what we now underſtand by it—For example, there is a chapter amongſt the laws of Canute, *De murdro occulte perpetrato.* Dec. Script. p. 915.—It were to be wiſhed, that the writers of the crown law would call man-ſlaughter (a word that conveys no preciſe idea) by the old Saxon word of *febthe* (the ſame with *fight*), and which therefore ſignifies what is now meant by the word *man-ſlaughter*, *i. e.* the killing a man upon a ſudden provocation which occaſions a fight or ſcuffle—By the law of Scotland there is no ſuch thing as man-ſlaughter, nor by the civil law; and therefore a criminal indicted for murder, under the ſtatute of Henry the Eighth, where the judges proceed by the rules of the civil law, muſt either be found guilty of the murder, or acquitted.

by

by the ſheriffs was antiently one of the great branches of the king's revenue; and we therefore find that the power was always perverted from the purpoſe of juſtice, to the filling the king's coffers, eſpecially if there was an opportunity of fining a whole diſtrict, as ſuch fine was proportionably larger.—If a man therefore was killed *per infortunium tantum* [*b*], as the ſtatute expreſſes it, the townſhip was equally amerced, as if a ſecret and concealed murder had been committed.

CAP. XXIX.

SI clericus aliquis pro crimine aliquo, vel retto, quod ad coronam pertineat, areſtatus fuerit, et poſtmodum per preceptum domini regis in ballivum traditus [fuerit] vel replegiatus extiterit, ita quod hii quibus traditus fuerit in ballivum, eum habeant coram juſticiariis, non amercientur de cetero illi quibus traditus fuerit in ballivum, nec alii pleg' ſui, ſi corpus ſuum habeant coram juſticiariis, licet coram eis propter privilegium clericale reſpondere noluerit, vel non potuerit propter ordinarios ſuos.] When the great diſpute firſt began between Henry the Second and Thomas of Becket, it aroſe from this privilege claimed by the clergy (or rather the archbiſhop), which that wiſe king endeavoured to aboliſh.—The arguments *pro* and *con* may be ſeen in Stephanides's Life of Thomas of Becket, who was his archdeacon, and preſent at the aſſaſſination. It is not only the curious anecdotes which commend this life of Thomas of Becket, but the ſtyle, which is in ſome parts indeed too figurative, but ſhews a very familiar knowledge of the claſſical poets.—The Latinity of the writers, during the reign of Henry the Second, was more pure than in many of the following ones—It hath indeed been too generally preſumed, that the monks of theſe times were ignorant of claſſical learning, from Caxton ſpeaking (in one of his Prefaces) of Virgil's Æneis as a ſtory then hardly known, and without any commendation of the poetry; but it appears by Stephanides, that there were ſchools in London during the reign of Henry the Second, in which he ſays, that the ſcholars daily *torquent enthymemata* (an expreſſion which ſhews he was well verſed in

[*b*] The law of Spain is ſo far from allowing a forfeiture in a caſe of accident or ſelf-defence (of which there ſeems to have been ſome doubt amongſt our writers on the crown law), that it exhorts every one to make uſe of it, "ca meyor mientre que vive que ſe defenda que dexar que lo "venge depoys ſu morte." Fuer. Juſg. p. 330.—*for it is better that he ſhould defend himſelf when alive, than to leave it to others to avenge him when he is killed*—Self-defence is indeed forbid by the law of Japan; Kempfer (who from his two years reſidence in that country muſt have been well informed) ſays, that if the aggreſſor is killed, the perſon killing muſt equally ſuffer, having only permiſſion to kill himſelf—The Japaneſe are not only *toto diviſos orbe* by ſituation; they are ſtill more ſo by their laws and cuſtoms.

Juvenal)

Juvenal [*i*]); from which and many other circumſtances it may be inferred, that this king was not undeſervedly ſtyled *Beauclerk*.

I have now made ſome obſervations upon nearly all the ſtatutes of the reign of Henry the Third [*k*]; and as they are the moſt authentic materials, upon which any hiſtory can be founded, I cannot but ſay, that he by no means deſerves to be conſidered in ſo contemptible a light, as he hath generally been repreſented [*l*]—The truth is, that, in the earlier parts of the hiſtory of any country, we are apt to read it as a romance, in which he who fights the greateſt number of battles in perſon, is the hero of the tale, and the wonder of the reader.

ſævas curre per Alpes,
Ut pueris placeas.

The reign of Henry was not ſet off with the glare of conqueſt, but as a legiſlator he certainly had uncommon merit; and if it is alledged, that the confirmation of the two Great Charters was extorted from him, the laws againſt the oppreſſion of Revenue-officers [*m*], and the wiſe and beneficial regulations of the ſtatutes of Merton and Marlebridge in oppoſition to the tyranny of the barons, muſt be allowed to him on the other ſide of the ac-

[*i*] curtum ſermone rotato
Torqueat enthymema. Sat. vi.

[*k*] All except the two ſtatutes entitled the *Dies Communes in Banco*.

[*l*] It is not by this intended to inſinuate that he was a perfect character, or a truly great king, but only that his diſpoſition ſeems to have been good—He had the misfortune to come to his crown between the age of nine and ten, and there are few inſtances of a king who comes ſo early to his throne anſwering the expectations of his people—In our own hiſtory, Richard the Second and Henry the Sixth are ſtriking inſtances of this obſervation, for which there ſeems to be an obvious cauſe, as a minor king hath generally a worſe education than he who is only deſtined to a throne—Flattery hath often been ſaid to be the bane of crowned heads; and an infant king, exerciſing moſt acts of authority in his own perſon, is eaſily taught to conceive more highly of himſelf than a mortal ſhould do—A moſt extraordinary inſtance of this proſtitution of adulation to a minor king is mentioned by Fabian, in his Chronicle, which I ſhall give in his own words—"Henry the Sixth, when but eight months old, ſat in his mother's lap "in the parliament chamber, and the ſpeaker made a famouſe *prepoſition*, in which he ſaid much "of the providence of God, who had endowed the realm with the preſence of *ſo toward a prince* "and *ſoveragn governor*," p. 410.—As men advance in years, ſome new wants muſt ariſe, new powers graſped at, and new deſires gratified, otherwiſe there is an inſipidity even in the poſſeſſion of a throne—When a minor king therefore arrives at more mature years, the common preeminences of his ſtation begin to pall, which he hath already ſo long exerciſed and enjoyed—Might it not poſſibly be owing to the minority of Louis the Fourteenth, that, tired of governing France only, he at laſt involved his own country and Europe in ſuch diſtreſſes, by affecting the general empire of it?

[*m*] Statutum de diſtrictione Scaccarii.

count

count—We ſhall find in the courſe of theſe obſervations, that ſome of the reigns of thoſe kings, ſo much celebrated for their conqueſts [*n*], produced laws of infinite oppreſſion—The time will come, when a king revered by Europe, adored by his ſubjects, having no occaſion to repel the invaſion of an enemy, nor cruſh a home-bred rebellion, will ſhew that a ſteady attention to the true welfare of his ſubjects will form the moſt amiable and reſpectable character in hiſtory, without his having become the general of his army.

[*n*] I will juſt mention, by way of inſtance, the ſtatute of *quo warranto* of Edward the Firſt—and which Hollinſhed likewiſe informs us to have been inforced in Ireland by Edward the Third—See Obſervations afterwards on this ſtatute—and likewiſe the 2 Hen. V. ch. vii. againſt Heretics.

WESTM. PRIMER.

3 Edw. I. A. D. 1272.

CEUX ſont les eſtabliſhments le roy Edward fitz le roy H. faits a Weſtm. a ſon primer parliament general apres ſon coronement, lendemaine de la cluſe de Paſche, lan de ſon raigne 3. per ſon counſel, et per laſſentments des Archeveſques, Eveſques, Abbes, Priors, Counties, Barons, et tout la Cominaltie de la terre illonques ſummones:] This parliament was not held by Edward the Firſt till the third year of his reign, on account of his being in the Holy land [*o*] at the death of his father.—The preamble to this ſtatute makes the firſt uſe of the word Parliament, which is ſaid to be a *general one*; *per ſon counſel, et per laſſentments des Archeveſques, Eveſques, Abbes, Priors, Counties, Barons, et tout la Comminaltie de la terre illonques ſummones*—The laſt words *tout la Comminaltie de la terre*, ſeem to explain what a *general parliament* was, in contradiſtinction to a more confined one, where perhaps only lords and prelates attended [*p*]—The word Parlement, or Parliament, was by no means reſtrained at this time to the ſignification of a convention of the king, lords, and commons, as it is uſed at preſent, but ſignified nothing more than a conference—In this ſenſe Froiſſart frequently uſes the word, as p. 136. *les Chevaliers François et Anglois qui au parlement etoyent venus*—So Thomas Wykes, in his Chronicle, ſays, *Rex Edwardus habiturus parliamentum cum Lewelino principe*—Lord Coke's etymology of the word Parliament, from *ſpeaking one's mind*, hath been long exploded—If one might preſume to ſubſtitute another in its room, after ſo many gueſſes by others, I ſhould ſuppoſe that it was a compound of the two Celtic words, *parly*, and *ment* or *mend*—Both theſe words are to be found in Bullet's Celtic Dictionary, publiſhed at Beſançon in 1754, 3d vol. Fol.—He renders *parly* by the French infinitive *parler*; and we uſe the word in Engliſh as a ſubſtantive, viz. *parley: ment* or *mend* is rendered *quantité, abondance*; the word Parliament, therefore, being reſolved into its conſtituent ſyllables, may not improperly be ſaid to ſignify what the Indians of North America call a *Great Talk*.

[*o*] He had been out of the kingdom on this expedition nearly five years, viz. from 1269 to 1274.

[*p*] In the Chronicle Thomæ Wykes it is ſaid, "Quod anno 1284, Rex Edwardus venit "Briſtoll, et habito ibidem cum quibuſdam regni ſui magnatibus *non univerſali, ſed tanquam par-* "*ticulari, et ſpeciali parliamento.*" Gale, vol. iii. p. 112.—"Sous les deux premieres races, on "aſſembla ſouvent la nation, c'eſt à dire les *Seigneurs* et les *Eveques:* il n'etoit point encore "queſtion des *Communes.*" Monteſq. t. iii. p. 176. Duodecimo.

Having

Having riſqued this conjecture upon the etymology of the word Parliament, on which ſo much hath been already hazarded by different writers, I ſhall now proceed to conſider ſome of the chapters of this collection of laws, which is generally ſtyled Weſtminſter the firſt, to diſtinguiſh it from another collection of laws made by Edward the Firſt, in a parliament likewiſe held at Weſtminſter in the thirteenth year of his reign, and which is therefore called Weſtminſter the ſecond.—I have already obſerved from the words of the preamble, that this was a *general parliament* [q], and the attendance was the greater, as the ſame opportunity was taken to ſwear allegiance to their new king, who was in the Holy land at his acceſſion to the throne—The Chronicles therefore call this *famoſum et ſolemne parliamentum*—The firſt chapter (according to Sir G. Mackenzie's obſervation before alluded to in the Comment on Magna Charta, ch. i.) begins with a declaration of the rights of the clergy—The crown in all countries have always thought it good policy to procure the ſupport of this body of men; and a king juſt then arrived from a religious expedition, was undoubtedly willing to promote what was repreſented to him as beneficial and advantageous to their intereſts.—It appears by the proviſion in Magna Charta, that bequeſts to monaſteries had even then extended ſo far, that it was thought neceſſary to reſtrain them.—The clergy were not contented however with engroſſing eſtates to the diſheriſon of heirs, and near relations; but by this ſtatute inſiſted to hold theſe eſtates without any burden or inconvenience whatſoever.—At this time there was little or no accommodation for travellers, eſpecially if they travelled with a ſuite [r]—Here and there a caſtle was indeed to be found; but the great baron who was the owner rather conſidered the ſtrength of the fortifications, than any conveniences of reception.—The religious houſes, on the other hand, being protected by the ſacred characters of thoſe who lived in them, had no occaſion to expend any thing with a view to their defence, and had nothing to conſult but what might contribute to accommodation—It was not ſufficient to provide lodgings merely for their own body; their benefactors, at the ſame time that they diſinherited their heirs, commonly gave them what

[q] Thoſe who have an inclination to ſee all the learning which hath been collected, with regard to the commons having been antiently a part of the legiſlature, may conſult Tyrrel's Bibl. Polit. It ſeems to be at preſent little more than a point of ſpeculation, for the diſcuſſion of an antiquary. I will only ſay, that no one can read the old hiſtorians and chronicles, who will obſerve the leaſt alluſion or trace of it, if he does not ſit down to the peruſal with an intention of proving that they formed a component part—It is an indiſputable proof, that feudal tenures were not known to the Saxons, by their having no terms for ſuch tenures; and it is as ſtrong a proof, that there is no direct mention of the intervention of the commons by the old hiſtorians.

[r] The lodging the king's officers, and particularly the juſtices in Eyre, and ſheriffs, who had many attendants, is complained of.

was called a *corrody* [*s*], and which was the general annuity and proviſion to prevent their poor relations from ſtarving—The monaſteries were therefore to ſubſiſt theſe annuitants during their lives, who, as they died off, left a vacant bed (if not an apartment) for the reception of the traveller—Beſides this, proviſions could not every where be procured [*t*], and the monaſtery had always ſuch a provident care for themſelves, that the addition of a few mouths was ſcarcely felt—The clergy however, now in full poſſeſſion of their large eſtates, began to repine at this occaſional and trifling inconvenience, and poſſibly, during the troubles in the late reign, they might have been over-loaded with gueſts on their march from one part of the country to another—They therefore, by the firſt chapter of this law (and which is a very long one) procure a declaration, that no one is to lodge in their monaſtery without their conſent, alledging, "*quils ſont di*" "*abates et impovers que ils ne poient eux meſmes ſuſteigner.*"—It is believed, however, if it had been neceſſary to prove this allegation, that the proof muſt have been offered to a committee in parliament very favourable to their intereſts—Similar cauſes will always produce ſimilar effects, and therefore we find that Philippe le Bel made an ordinance, "*que les juges*" "*n'yront en egliſes ou abbayes, pour diſner ou giſer, ſans grande cauſe ou occaſion.*" Ord. Royales, p. 1. And by a conſtitution of Pope Boniface, in 1295, even the clergy were limited in the number of their attendants; for an archbiſhop is not permitted to travel with a ſuite of above fifty officers, a biſhop of thirty, and an archdeacon of ſeven: and they are likewiſe injoined not to travel with hounds or hawks—The next year a writ iſſued to the Abbot of Bellieu, grounded on this chapter of Weſtminſter the firſt. V. Prynne's Records, vol. iii. p. 180.

CAP. IX.

ET pur ceo que la peace de la terre ad eſtre feeblement garde avant ces heures, pur defaut de bon ſuit fait ſur les felons ſolonque due maner, et noſmement pur enchefon des franchiſes ou les felons ſont reſceues. Purview eſt, que touts communement ſoient priſtes, et aparailes, au commaundement et a les ſummons des viconts, et au crie de pays, de ſuer et arreſter les felons.] The cry of the country, or, as it is generally called, the *hue* and *cry*, ſeems to be a corruption of what

[*s*] See 9 Edw. II. ch. i.

[*t*] There were few or no markets to ſupply the country, and therefore it is another regulation of this chapter, that the religious houſes ſhall not be obliged to *ſell* their proviſions.—They were at this time the only inns, and were therefore treated as ſuch; and yet, by this part of the law, they endeavoured to put a ſtop to this their only uſe to ſociety.

in

in the Couſtumier of Normandy goes under the appellation of *haro* [*u*], or *harou*; which Denyaldus, in his *Rollo Normanicus*, ſays, is nothing but the calling to aſſiſtance Rollo duke of Normandy, who was famous for his adminiſtration of juſtice; and that after the invocation of this great name, all treſpaſſes and crimes are to ceaſe—By an Iriſh ſtatute of 2 Hen. VI. ch. iii. a reward is given not only for raiſing the hue and cry, and by that means apprehending a thief, but likewiſe for the *actual killing* of him, to which pariſhes, within a certain diſtance, are to contribute.—But, in the preamble of an Iriſh ſtatute of 11 Charles I. ch. xiii. this regulation of raiſing hue and cry is complained of [*w*]; and it hath been found neceſſary, in the reign of the late king, to make ſtill further regulations with regard to hue and cry, which, if properly purſued, is certainly a very effectual method of apprehending a felon.

CAP. XII.

PURVIEW eſt enſement, que les felons eſcries, et queux ſont appertment de male fame, et ne ſoy voilent mettre en enqueſte des felonies que l'on mette ſur eux devant juſtices a le ſuit de roy, ſoyent miſes en la priſon fort et dure, come ceux quëux refuſent eſtre al comen ley de la terre.] Lord Chief Juſtice Hales, in his Hiſtory of the Pleas of the Crown, ſays, that the puniſhment of preſſing to death did not ariſe from this ſtatute, but was antiently a puniſhment by the common law—The words of the ſtatute are, that notorious felons "*qui ne ſoy voilent mettre en enqueſtes des felonies, ſoyent mis en la priſone fort* "*et dure*"—As this law therefore is ſo highly penal, I cannot think that judges, who have tied the thumbs together of criminals, in order to oblige them to plead, can be juſtified under theſe words of the ſtatute, though their intentions have been merciful [*x*]; eſpecially as whatever might have

[*u*] We find by Chaucer, that the word *haro* was made uſe of in England in the time of Edward the Third—In the Miller's Tale, he ſays,

"Or I will cry out, *Harrowe* and alaſs."

So in the Reve's Tale,

"That down he goeth, and cried, *Harrowe* I die."

Baſnage derives *haro* from the Daniſh word *herre*, or lord.—The French word *hué*, from which it may perhaps be thought more natural to derive this word, is always an indication of contempt, and therefore not to be uſed in a purſuit of juſtice.

[*w*] This Iriſh ſtatute however is little more than our 27 Eliz. ch. x. re-enacted.

[*x*] It appears by the Seſſions Paper, that this was practiſed at the Old Baily in the reign of Queen Ann, and perhaps there are later inſtances—Fulke Greville was preſſed to death in the reign of Queen Elizabeth.

been the common law, this ſtatute hath ſuperſeded it—*Priſone forte et dure*, can mean nothing further than, if the criminal will not ſubmit to a trial, he ſhall be remanded to a moſt cloſe and ſevere confinement; how is it poſſible then to include preſſing to death, with all its apparatus of torture, under theſe words? eſpecially, as the felon, when convicted, had his benefit of clergy. There is a record in Rymer, part xi. p. 137. which proves beyond diſpute, that what is contended for is the true meaning of theſe words of the ſtatute, and that it was nothing more than a confinement without any nouriſhment, which was juſtified under the word priſone *dure*—"Rex omnibus &c. cum *Cecilia*, quæ fuit uxor *Johannis de Rygeway*, nuper "indictata de morte viri ſui &c. pro eo quod ſe tenuit *mutam* et *ad pœnam* "*ſuam* exſtitit adjudicata *ut dicitur*, in quâ fine cibo et potu in *arctâ priſonâ* "per quadraginta dies vitam ſuſtinuit viâ miraculi, et contra naturæ or-"dinem; nos eâ de cauſâ pietate moti perdonavimus," &c.—This pardon was granted by Edward the Firſt, in the thirty firſt year of his reign, and is therefore a *cotemporanea expoſitio* of his own law.—Notwithſtanding Lord Chief Juſtice Hales aſſerts, that this puniſhment was by the common law, Bracton makes no mention of it, who ſome have ſuppoſed to have writ before this ſtatute. Britton, on the other hand (who is generally agreed to have wrote after it) mentions the puniſhment, "*ſi les felons ne ſe* "*voilent acquitter, ſi ſoient mis a leur penance juſqu à tant quils ne pledent.*"—The ſtatute ſays, that only notorious felons are to be thus confined; and therefore in an appeal, where the ſuppoſed guilt was not ſo ſtrongly proved as when there is an indictment found by a grand jury, the priſoner was not ſubjected to the puniſhment. The firſt queſtion, with regard to the *peine forte et dure* (a word ſubſtituted inſtead of *priſone forte et dure*) is in the Year Book of 14 Edw. IV. p. 7.—A criminal, on an appeal for murder, pleaded *not guilty*; and upon being aſked, according to the common form, how he would be tried [*x*], would make no further anſwer: Upon this, the court doubted whether he ſhould be hanged, or ordered to ſuffer the *peine forte et dure*—Though all the judges were met in the Exchequer Chamber upon this doubt, it does not appear that it was finally decided, notwithſtanding the clauſe in this ſtatute was under their conſideration, as the report of the caſe concludes by citing it—The next caſe in the Year Book, which relates to the *peine forte et dure*, is in the 8 Hen. IV. T. Mich. where the form of the judgement is firſt given—The

[*x*] I cannot here help obſerving, that the common queſtion aſked the criminal, viz. *Culprit, how wilt thou be tried?* is improperly anſwered, *By God* and *my country*—It originally muſt have been, *By God* or *my country*, i. e. either by *ordeal* or by *jury*; for the queſtion aſked, ſuppoſes an option in the priſoner.

Marſhal

Marſhal of the King's Bench is ordered to put the criminals into *diverſes meaſons baſes et eſtoppes, que ils giſent per la terre touts nuds forſque leurs braces, que il mettroit ſur chaſcun d'eux tant de fer et poids quils puiſſent porter, et plus iſſint quils ne ſe puiſſent lever, et quils naver aſcun manger, ne boire, ſi non le plus pier pain quil puiſſent trouver, et de leau plus pres al gaole (excepte eau courante) et que le jour quils ont pain quil nayent de leau, et e contra, et quils giſent iſſint tantquils furent morts* — Notwithſtanding this concluſion of *tant-qu'ils furent morts*, we find in the Year Book of 8 Hen. IV. T. Mich. fol. 1. that one of the judges, in a queſtion relative to this puniſhment, ſays, that, notwithſtanding the *penance*, the criminal may live many years — The form of this judgement ſeems to have been never ſtrictly adhered to, as the judgement cited above differs, in ſome particulars, from the form in Raſtell's Entries, and, conſiſting of ſuch very minute directions, could not probably have been at once ſettled: V. Stanford's Pleas of the Crown, p. 150, & ſeq. — There is likewiſe, in Babington's advice to Grand Jurors, another form of this ſentence, which differs in this, that the criminal is to drink but three times in a day, which muſt be a great addition to the torment, as the agony probably muſt bring on a violent thirſt and fever, as happens to thoſe who are broken on the wheel — Hollinſhead likewiſe mentions another circumſtance in the puniſhment as uſed in his time, viz. that the back of the criminal was placed upon a ſharp ſtone, vol. i. p. 135. — Other precedents likewiſe mention the tying of the arms and legs of the criminal with cords faſtened at different parts of the priſon, and extending the limbs by theſe cords as far as they could be ſtretched — From this it appears, that there is no ſettled form of this terrible judgement, which is contrary to a fundamental principle of the criminal law of England in capital offences; and no one form (at leaſt that I have been able to meet with) takes notice of the preparatory torture of tying the thumbs with whipchords, which, though mercifully intended to prevent the more ſevere puniſhments by obliging the criminal to plead, cannot (it ſhould ſeem) be juſtified — As it is very unuſual for criminals to ſtand mute on their trials in more modern days, and it was not unfrequent if we go ſome centuries back in the Engliſh Hiſtory, it may not be improper to obſerve, that the occaſion of it was to prevent forfeitures, and involving perhaps innocent children in the conſquences of the parent's guilt — Theſe forfeitures only accrued upon judgement of *life and limb*, and, to the diſgrace of the crown, were too frequently inſiſted upon and levied with the utmoſt rigour — It however ſtill continues to be part of the law of this country; and I have already mentioned an inſtance in the reign of Queen Anne, of putting this ſentence in execution, and perhaps more inſtances may have happened

even

even ſince that time — I ſhould conceive upon the whole, that the words in the preſent ſtatute, which have occaſioned theſe obſervations, viz. *priſone forte et dure*, have been miſconſtrued, by ſubſtituting in the room of *priſone* the word *peyne* — The record cited from Rymer proves beyond a poſſibility of doubt, that, ſoon after this ſtatute, the puniſhment was merely impriſonment, and an injunction to the officers, in whoſe cuſtody the criminal was, not to provide him with any nouriſhment — I ſhould imagine, that the alteration in this puniſhment, by the different tortures afterwards uſed, aroſe from juſtices in Eyre and juſtices of gaol delivery not ſtaying above two or three days in a county town, and who therefore could not wait for this tedious method of forcing the criminal to plead; and the record from Rymer ſhews, that, in the inſtance already obſerved upon, the criminal had been forty days in this cloſe confinement — It ſeems likewiſe clear, that, whatever this puniſhment might have been by the common law, this ſtatute hath ſuperſeded it; and it is a preſumption (againſt even ſo great authorities as Lord Chief Juſtice Coke and Lord Chief Juſtice Hales) that there was no ſuch puniſhment by the common law, as it is admitted that a traytor cannot receive this puniſhment, becauſe the words of the ſtatute confine it to the caſe of felons — And the argument is very ſtrong, that if felons were ſubjected to this ſentence, traytors would ſtill leſs have eſcaped it — After all, the having recourſe to this puniſhment, when the criminal ſtands mute and will not plead, ſeems to be very unneceſſary — The common reaſon given, that the criminal muſt acknowledge the juriſdiction of the court, ſeems not to have much weight — If the court knows they have the power to try him, what ſignifies this forced acknowledgement of their juriſdiction? — It would be much more reaſonable to adopt the practice of the Scots law, "if the criminal ſtands mute and will not "plead, the tryal proceeds as uſual, and it is left to the criminal to manage "his own defence as he ſhall think proper." Innes's Sum. View of the Scots Law.

As I have had occaſion to mention the different tortures to which the criminal hath been ſubjected by the varying of the puniſhment of the *peyne forte et dure*, I ſhall here endeavour to prove what I have aſſerted at the end of the Comment on Magna Charta, that torture was formerly not unknown in this country — Torture was uſed by the antient Germans, from whom we are ſuppoſed to have derived our laws — Haltaii Gloſſ. Germ. — And therefore its being uſed in moſt of the countries of Europe does not ariſe perhaps entirely from their having adopted the Civil law — The Inſtitutes of Juſtinian were diſcovered at Amalfi, in the year 1127; and, though leſs of the Roman law hath been introduced into that of England

than in any other country of Europe[y], yet certain parts of it have, undoubtedly, been incorporated—The Preface to Glanville is moſt clearly an imitation of the Introduction of Juſtinian, and not only the Norman kings[z], but the Italian clergy, who poſſeſſed the beſt benefices in the kingdom, muſt be ſuppoſed to have never loſt an opportunity of interweaving from time to time parts of the Roman into our municipal law—The denying a felon to make his defence by an advocate, and the not permitting his witneſſes to be examined upon oath [a], till the late ſtatute (which hath always been conſidered as ſo great a hardſhip) ſeems to have been borrowed from the Roman law [b], which is indeed ſtill more ſevere againſt the criminal, as he is not permitted to produce any witneſſes in his favour; and Monteſquieu, in his Eſprit des Loix, gives this as a reaſon why perjury is a capital offence in France, and not in England—As there is a very curious paper in the firſt volume of the Journals of the Houſe of Commons, p. 378. which relates to this practice of the Civil law, I ſhall here inſert it.

Die Jovis, 4° Junii, 1607.

"A paper was delivered to and read by Mr. Speaker, declaring the manner of proceeding in Scotland for point of teſtimony, upon trials in criminal caſes for ſatisfaction of ſome doubts.

"In Scotland, in civil cauſes before the civil judges, witneſſes are admitted for probation, but that only in favour of the perſuer; for the defender would prove againſt the libel, if he had the benefit of witneſſes, which is

[y] Duck aſſerts, that the Roman law prevailed in England during the reign of Domitian, and ſome of his ſucceſſors—In juſtice to the authority of this writer, I cannot but mention that Giannone and other the moſt celebrated Civilians ſtyle him their Coryphæus—We are too apt in this country to defer to foreign authors, as the Roman law is ſo little attended to or practiſed in England.

[z] It muſt be recollected likewiſe, that Richard the Firſt and Edward the Firſt were ſome years abroad in their expeditions to the Holy land—We know that Richard the Firſt either made or adopted the laws of Oleron during his expedition; nor is it improbable, that Edward the Firſt might have likewiſe deſired to introduce any regulations he might have ſeen attended with advantages when carried into execution.

[a] The Attorney General's power of filing informations *ex officio* ſeems to be borrowed from the civil law, where there is always a *partie publique*, or public proſecutor.

[b] Duck, in his treatiſe De Auth. Jur. Civ. ſays, that he had converſation with Noy (a *great* though not a good lawyer) with regard to the civil law's having prevailed in England; and that it was agreed, that the regiſter of writs, known to be of the greateſt authority in our municipal law, was drawn by men thoroughly verſed in the Roman law—If that collection was made by the Maſters in Chancery, it is ſome confirmation of what Strahan informs us, that the reaſon of their attendance on the Houſe of Lords was originally to be conſulted upon points of civil law.

altogether

altogether unlawful—And therefore in many civil actions, the defendant will preſs by all means, either by another croſs libel, or by one trick or another, to change the nature of his cauſe from a defender to a perſuer.

In criminal cauſes, by the civil law, there is no jury called upon life and death; and therefore the judges admit witneſſes in favour of the perſuer, but none in favour of the defender: becauſe in all cauſes (either criminal or civil) no man can be admitted to prove the contrary of his own accuſation, for it is his part who relevantly alledges the ſame to prove it—As if *A.* accuſed *B.* for breaking his ſtable, and ſtealing his horſe ſuch an hour of the night; the perſuer may be well admitted to prove what he hath alledged, but the defendant can never be admitted to prove that he was *alibi* at that time, for that would be contrary to the libel, and therefore moſt unformal—In Scotland we are not governed by the civil law, but *ordanes* (ordinaries probably), and juries are to paſs upon life and death much the ſame as here; which jury, as it comes from the neighbourhood where the fact was committed, is preſumed to know much of their own knowledge, and therefore they are not bound to examine any witneſſes, except they chooſe to do it on the part *of the perſuer*; but this is not *lawful to be done in favour of the defendant* [*c*]—It is of truth, the judge may either privately before hand examine *ex officio* ſuch witneſſes as the party perſuer will offer to him; and then when the jury is publicly called, he will cauſe theſe depoſitions to be read, and likewiſe examine any witneſſes which the perſuer ſhall then deſire, but *never in favour of the defender*."—This paper was delivered to the Speaker, with regard to a trial of one Barrett in Scotland; and the further proceedings of the houſe thereupon, may be ſeen in the Journals, p. 378 and 379.—The king ſent a meſſage to the houſe, declaring it to be *his gracious opinion*, that no one by the law of Scotland could take upon himſelf *patrocinium latrocinii.*

Having thus endeavoured to ſhew that ſome parts of our law may have probably been borrowed from the civil law, I ſhall now mention the actual proofs of torture having been formerly, at leaſt in ſome inſtances, uſed in this country.—Fuller, in his Worthies, p. 317. informs us, that one Hawkins was tortured in the reign of Henry the Sixth, in order to extort evidence from him; and Lord Coke, in the caſe of Lady Shrewſbury, 12 Rep. ſays, that *the nobility of England are not ſubject to torture in* crimine læſæ majeſtatis; which ſeems to admit, that in other crimes they were ſubject to it [*d*]—King James, in his Works, mentions, that the rack was

[*c*] A grand jury in England only examines witneſſes on the part of the proſecutor.

[*d*] Lord Coke was Attorney General at the trial of the Earls of Eſſex and Southampton, and he highly extols the clemency of Queen Elizabeth, who had neither uſed torture againſt the accomplices or witneſſes. State Trials, vol. i.

ſhewn

ſhewn to Guy Fawkes during his examination; and yet this attempt of procuring evidence is not taken notice of by any hiſtorian or lawyer of the times, though every circumſtance relating to the powder plot muſt have been moſt publicly known, and univerſal matter of converſation and diſquiſition.—Upon the murder of the duke of Buckingham by Felton, the queſtion was put to the judges, whether he could be tortured in order to extort a confeſſion? Ruſhw. Coll.—They anſwered indeed to their honour in the negative; but the queſtion's being aſked ſhews, that, in the apprehenſion of ſome of the king's counſellors, they might have uſed torture.—It is not pretended by this, that the inſtances were frequent [e]; and, fortunately for this country, this moſt horrid practice was diſcontinued, ſo that there cannot be the leaſt legal pretence ever to revive it.—Torture indeed by no means prevails ſo univerſally in the other countries of Europe as is generally apprehended: there are expreſs laws againſt it both in Navarre and Biſcay, though in Biſcay it hath of late been permitted in treaſon and hereſy. Fuer. de Viſcaya, p. 20 and 66.—It is uſed in China, and in moſt parts of Aſia. Du Halde, vol. ii. p. 162. Hague edit.—The act of union hath forbid the uſe of it in Scotland.

CAP. XXXIV.

POUR ceo que pluſours ſont ſouvent trove en counte controveurs, dont diſcorde ou manner diſcorde ad eſte ſouvent entre le roy, et ſon peuple, ou aſcuns hauts hommes de ſon royaume: eſt defendu pur le damage que ad eſté, et uncore en purreit avenir, que deſore en avant nul ne ſoit ſi hardi de dire ou de counter nul faux *novel, ou controveure, dont nul diſcorde ou manere de diſcord, ou de ſlandre puiſſe ſurdre entre le roi, et ſon poeple, ou les hauts hommes de ſon royaume, et qui le fra, ſoit pris, et detenus en tantquil a trove en courte, celui dont le poeple ſera mové.*] Scandal and defamation muſt at this time have been chiefly propagated by converſation, as few could read, and ſtill fewer could write.—The Rev. Mr. Percy, in his curious Collection of antient Ballads (publiſhed in 1765) hath given us a ſatyre or libel upon Richard, king of the Romans, and brother to Henry the Third, which was wrote by one of the

[e] It may likewiſe perhaps ſurprize the reader to find, by the 43 Eliz. ch. iv. publiſhed at length by Raſtell, that the *gallies of this realm* ſeem to have been not an unuſual puniſhment; and Lord Coke mentions it in his 3d Inſt. without taking notice of its being uncommon.—What ſort of ſhips or veſſels theſe gallies were, I do not pretend to determine; the gallies of the Mediterranean, to which the French criminals are condemned, are not proper for our ſeas.

adherents to Simon de Montfort, earl of Leiceſter. This Ballad, Mr. Percy ſays, affords a curious ſpecimen of the liberty aſſumed by the good people of this land, of abuſing their kings and princes at pleaſure—As the Ballad (by a circumſtance) is fixed to have been written in the year 1265, which was but ſeven years before the paſſing of the preſent ſtatute, it is not improbable, that it might have occaſioned this part of the law—Be this as it may, we do not find much in the Year Books, or other old Reporters, till the great caſe, entitled, κατ' ἐξοχήν, *de libellis famoſis* (in Lord Coke's 5th Report) which is the foundation of what hath ſince been conſidered as law with reſpect to libels, and which was determined in the third year of King James the Firſt, by which time printing began to be tolerably cheap.—As every thing which relates to the publication of what may be deemed a libel, is of ſo intereſting a nature to the liberty of the ſubject (ever ſo cloſely connected with the liberty of the preſs), I hope I may be indulged in ſome few obſervations upon the doctrine delivered in that caſe, and the particular circumſtances which might occaſion an extraordinary zeal and warmth in the court—The libel then condemned was a ſatyrical Ballad (at leaſt it is ſtated to be a compoſition in metre) upon an archbiſhop of Canterbury, who was then dead, and likewiſe his ſucceſſor—An archbiſhop of Canterbury, in more modern times, would probably have only laughed at it, or invited the author to dinner; but the then archbiſhop (under pretence of the inſult upon the memory of his predeceſſor) brought the *confitentem reum* before that Engliſh Inquiſition the Star-chamber—The archbiſhop was the firſt judge, from his rank at leaſt, in this tyrannical court, and therefore an inſult upon the preſident could not but excite their warmeſt indignation—As the libeller is ſtated to have confeſſed both the writing and publication of the libel, the only queſtion before the court muſt have been what fine or puniſhment they ſhould inflict. The judges however were determined to lay down general rules, in order to ſuppreſs this growing evil, every one of which will appear either to be extrajudicial, or not to be maintained; and one of which Lord Coke himſelf contradicted upon another occaſion—The firſt rule which is layed down is, *that if the libel is againſt a magiſtrate, it is a greater offence than againſt a private perſon*—I do not mean to controvert the reaſon upon which this rule is grounded, but it was moſt clearly extrajudicial, as the archbiſhop of Canterbury could not properly be deemed a magiſtrate—If, indeed, his ſeat in the Star-chamber is ſuppoſed to have given him a temporal office, it muſt be recollected, that he ſat there *pro ſalute animæ* of the criminals—The next rule was not extrajudicial, but can never he ſupported to the extent in which it is delivered, without a limitation of time—The rule is, that, if the perſon libelled is dead at the time of its being written, the offender

offender is equally puniſhable, as it may provoke the friends and relations of the deceaſed to revenge and breaches of the peace: and there is ſomething very quaint in what follows: "That if the dead perſon libelled is a "*magiſtrate*, it is *a reflexion on government, which never dies.*"—The third rule is, that it does not ſignify, whether the libel is true or not? — This rule in the firſt place is extrajudicial; as the criminal confeſſed his offence, it is impoſſible, that before that terrible court he could have inſiſted upon having aſſerted nothing which was not true: this would have prevented his only chance for mercy in an intire and implicite ſubmiſſion after a full confeſſion—But the rule is not *only* extrajndicial: Sir Edward Coke himſelf, in the caſe of Lake and Hutton, (Hob. 252.) aſſerts directly the contrary; as does Mr. Juſtice Powel, in the caſe of the Seven Biſhops [*g*].

The next rule is, that a perſon may be guilty of a libel by drawing a ridiculous picture, or by raiſing a gallows oppoſite to a houſe—Both theſe *dicta* are moſt clearly extrajudicial, and it is much doubted whether there ever was ſuch a proſecution—The laſt rule is, that if a libel is found, and it relates to a private perſon, it muſt be either burnt, or delivered to a magiſtrate: and if it relates to a public perſon, it muſt *not be burnt*, but delivered to a magiſtrate—Of this laſt rule it may be ſaid not only to be extrajudicial, but abſolutely impoſſible to be carried into execution.—The reaſon of this, and the other abſurdities contained in this caſe, ariſes from every one of theſe rules being borrowed from the [*b*] civil law (V. Cod. ix. 36.) which taking place before the invention of printing, made this laſt regulation at that time practicable—No one who was ever in a coffee-houſe will ſuppoſe it to be ſo at preſent—Notwithſtanding the obſervations which I have here taken the liberty to make on this very extraordinary caſe, I cannot conclude them without expreſſing my deteſtation of libels, which cannot be too much diſcouraged in a well-regulated government, nor is ſuch reſtraint wanting by the Common Law, if the principles laid down in this *ſtar-chamber* deciſion are not reſorted to.

[*g*] If the judges had conſidered the words of this ſtatute, which are *faux nouvel*, rather than the civil law, they would not perhaps have made this deciſion—Bacon (or rather Selden) hath a very ſpirited obſervation upon this chapter of the ſtatute, "that it is an equal offence in the "king to conceive ill of his people, as it is in the people to conceive ill of their king."

(*b*) The caſe is therefore entitled by Lord Coke, who was no great civil lawyer, *De libellis famoſis*, which is the title of the chapter in the Roman law. And what ſeverity muſt we not expect from a country in which, by the twelve tables in the time of the Decemvirs, a libeller was puniſhed with death?

CAP. XXXVIII.

PURCEO que aſcuns gens de la terre doutent meyns faire faux ſerment, que faire ne deuſſent, per que mults des gens ſont deſinherités, et perdent leur droite: Purvu, eſt que deſormes, le roi (de ſon office [i]) durra atteint ſur enqueſtes en pleint de terre ou de franchiſe, ou de choſe que touche frank tenement.] This chapter of the ſtatute lays an obligation on the king (or rather the king's courts) to grant a writ of attaint againſt a jury, who have given a verdict contrary to their oaths—The tranſlation of this part of the ſtatute makes it rather ridiculous, than a law carrying its proper terrors againſt ſo heinous an offence—"Foraſmuch as certain people of this realm doubt "very little to make a falſe oath *(which they ought not to do)*."

It is generally agreed, that no proſecution by attaint hath been carried on againſt a jury for the laſt three hundred years; this ariſes partly from the more modern practice of granting new trials, and partly from the great difficulty there is in convicting, as the jury may give their verdict upon what is known to themſelves, though it hath not appeared in evidence during the courſe of the trial—It is indeed ſaid, that a juror having ſuch private knowledge of a fact, ſhould diſcloſe it in open court; but what ſignifies the mere advice of a judge, which cannot be enforced?—Attaints were ſo frequently brought, even ſo late as the reign of Henry the Sixth, that Forteſcue, in his treatiſe *De laudibus legum Angliæ*, makes it one of his principal arguments for the trial by jury, that each of them, in caſe of a falſe verdict, is ſubject to have their lands and tenements ſeized into the king's hands, and their wives and children thrown out of their houſes [k].—It may therefore deſerve conſideration, whether this method of puniſhment being now totally diſuſed may not have occaſioned a moſt material alteration, and deviation from the principles upon which juries were originally inſtituted [l].—The attaint was tried by twenty-four jurors, of double the ſubſtance with the firſt jury; and it is to be obſerved, that, it lay only in civil caſes, either by the common law, or by this ſtatute—The reaſon of which ſeems to have been grounded upon the ſtrong preſumption, that no jury would condemn a criminal contrary to the evidence,

[i] *De ſon office* ſhould be tranſlated *of right* and *not of his office—durra*, which follows, is put corruptly for *donera*.

[k] This terrible puniſhment hanging over the head of each juror, may poſſibly have occaſioned the neceſſity of an unanimity of the whole twelve in their Verdict. V. Obſ. on the 29th Art. of Magn. Charta.

[l] We find frequent mention of the attaint in the ancient law of Scotland. V. Reg. Maj.

and that it would be inconſiſtent with the principles of liberty, to permit the crown (when it might intend oppreſſion) to call in queſtion a verdict of acquittal—It is for the ſame reaſon when a crime is proſecuted by appeal (the remedy of an individual) and not by indictment (which is the ſuit of the crown), that there is no intervention of a grand jury to find the bill—Happily for this country, ſince that glorious æra the Revolution, the kings of England have only proſecuted as *Pater Patriæ*, when puniſhment hath been neceſſary for the ſafety of the whole; but when we look into trials during preceding reigns, and particularly that of Throckmorton, we cannot but revere the wiſe and noble conſtitution eſtabliſhed by our anceſtors, againſt the vindictive proſecutions of a Plantagenet, or a Stewart.

EXTENTA

EXTENTA MANERII.

4 Edw. I. A. D. 1276.

THIS Statute hath not been taken notice of by any of our Hiſtorians, though it ſeems to have been made with the ſame view that the Domeſday Survey was carried into execution, in the reign of William the Firſt—It is moſt certainly no act of parliament in any ſenſe of the word, but is merely inſtructions to the *Extender* [*m*] of the crown with regard to what he ſhall inquire into, and upon what heads and particulars he is to make his report—The crown had two things chiefly in view, the taxation of the ſubject, and the power or force to reſiſt ſuch a taxation—The firſt inſtruction is therefore, "*Inquirendum eſt de caſtris, et aliis edificiis, foſſatis* "*circumdatis*"—The articles of inquiry which follow after this, relate to moſt minute particulars with regard to every man's eſtate upon the ſame plan as the Survey of Domeſday [*n*]: "*De pannagio, et herbagio,* "*melle, oleribus, et omnibus aliis exitibus vivariorum, mariſcorum, morarum,* "*bruerarum, turbariorum, et vaſtorum, quantum valeant per annum.*"—This ſtatute, made with the views I have before ſuggeſted, was followed, in two years, by the oppreſſive ſtatute of *quo warranto*—The occaſion of both probably took its riſe from Edward's want of treaſure to carry on the wars which he now meditated againſt Lewellin prince of North-Wales—It may perhaps be imagined, that ſuch wars did not require great ſubſidies, or taxes; but it was not merely the common expences of the pay, or ſubſiſting an army, which exhauſted the royal coffers—Edward not only conquered, but was determined to keep poſſeſſion of his conqueſts—I ſhall have occaſion to obſerve upon the ſtatute of Ruthland, made in the tenth year of his reign, that he was above a year in North-Wales without ever leaving it; and during that reſidence in the country probably compleated the caſtles of Carnarvon, Beaumaris, and Conway, which ſhew, by the extent and grandeur of their venerable ruins, that the expence of ſuch fortifications would alarm in an eſtimate from a modern Board of

[*m*] Du Cange ſays, the *Extenſor* is the ſame with the *Æſtimator Publicus*—Thus likewiſe Bracton, "Officium extenſorum eſt in rebus hæreditariis extendendis, et in ſummâ omnia quæ "veniunt de corpore manerii, et e quibus commodum evenire poſſet."

[*n*] This law was never carried into execution, otherwiſe the complaints occaſioned by it muſt have appeared in the Chronicles.

Ordnance,

Ordnance, and that too in a year wherein twelve millions had been expended [o].

This ſtatute of inſtructions to the *Extender*, is followed by another of the ſame kind to the coroner.—This officer is, in the Scots law, termed the *crowner*, in the manner that the common people now pronounce the word—Both *coroner* and *crowner* moſt evidently are ſo called from this officer's having conuſance only *de placitis coronam tangentibus*.—With this moſt obvious etymology, it may not perhaps be deemed arrogant to differ even from the great Lord Bacon, who derives it *a coronâ populi*.—The croud attending in a circle is by no means peculiar to this particular magiſtrate.—Almoſt every one of the directions to this officer relates to the view of the dead body and the proſecution of the murderer, and moſt of them are now put in execution, particularly with regard to the very minute deſcription of the wound, which hath undoubtedly occaſioned the now ſettled form of one part of the indictment for murder—*Item de omnibus plagis videndum eſt, quæ ſit longitudo, latitudo, et prounditas, et quibus armis vulneratus ſit. læſus, et in quâ parte corporis.*

[o] Giraldus Cambrenſis, in his *Topographia Hiberniæ*, mentions, that, in the time of Henry the Second, there was but one church in Ireland built of ſtone.—I ſhould therefore think, that Edward the Firſt muſt have planned theſe magnificent caſtles from ſome which he had ſeen in his expedition to the Holy land.—This country, at that time nor ſince, hath not furniſhed any ſuch models, nor is it believed any country in Europe.—The army of the Cruſades was infinitely numerous, and at times muſt have been employed in building fortifications.

THE

THE STATUTE OF BIGAMY.

4 Edw. I. A. D. 1276.

THE title of this ſtatute is very ſingular; it conſiſts of ſix different chapters, five of which relate to matter entirely heterogeneous—The fifth chapter takes away the benefit of clergy from him who is a bigamiſt, or who hath married two wives ſucceſſively (not a polygamiſt, as the word Bigamiſt is generally underſtood) which offence no ſtatute hath made penal till the ſtatute of James the Firſt—A canon of Pope Gregory the Tenth, at *Lyons*, had taken away the benefit of clergy from a bigamiſt; and this canon having been adopted in this country, the biſhops had a doubt whether a bigamiſt, before the canon took place, ſhould loſe his privilege; and this ſtatute, by a law *ex poſt facto*, declares he ſhall not be entitled to ſuch privilege—Prynne, in the third volume of his Records, p. 151. takes notice of two miſtakes made by Sir Edward Coke, in his 2d Inſtitute—The firſt relates to the name of the pope, who made the canon; and the ſecond with regard to the preamble, which is miſ-recited. The pope who ſummoned the council at *Lyons* was Gregory the Tenth, and not Boniface the Eighth, who was not elected till the twenty eighth of Edward the Firſt, and conſequently not till four and twenty years after this ſtatute was enacted—If it is ſaid, that this miſtake of Sir Edward Coke is not of any very material conſequence, the anſwer is, that, his Inſtitutes and Reports being the beſt law chart, and implicitely truſted to, it is proper to take notice of every ſhoal and rock miſplaced, though perhaps not in the common track of navigation.

STATU-

STATUTUM GLOUCESTRIÆ.

6 Edw. I. A. D. 1278.

THIS parliament was held at Glouceſter, and, as the preamble of the ſtatute informs us, in the month of Auguſt—I ſhould think, from that circumſtance, rather in the return [p] of Edward from Wales, than, as Mr. Carte [q] ſuppoſes, in his march thither—It appears by [r] Dugdale's Summ. Parl. p. 5. that another parliament was held the year before at Worceſter; but probably no law of any conſequence paſſed during that ſeſſion, as the Statute-book is totally ſilent with regard to it—

[p] This conjecture ſeems to be confirmed by the preſent ſtatute's conſiſting of fifteen chapters, or ſo many diſtinct laws; for which there would have hardly been leiſure whilſt Edward was on his march againſt the enemy.

[q] In this early part of the Engliſh hiſtory, I ſhould always prefer the authority of Carte to any other Hiſtorian—He was indefatigable himſelf in his reſearches, having dedicated his whole life to them, and was aſſiſted, in what relates to Wales, by the labours of the Rev. Mr. Lewis Morris of Penbryn, in Cardiganſhire—As for his political prejudices, they cannot be ſuppoſed to have had any bias in what relates to a tranſaction 500 years ago, and which hath nothing to do with the royal touch for the cure of the king's evil—I ſhould here make an apology for introducing what hath no relation to the preſent ſtatute; but I cannot help mentioning what I once heard from an old man, who was witneſs in a cauſe with regard to this ſuppoſed miraculous power of healing.—He had, by his evidence, fixed the time of a fact by Queen Anne's having been at Oxford, and touched him, whilſt a child, for the cure of the evil—When he had finiſhed his evidence, I had an opportunity of aſking him whether he was really cured? Upon which he anſwered with a ſignificant ſmile, that he believed himſelf to have never had a complaint that deſerved to be conſidered as the evil; but that his parents were poor, *and had no objection to the bit of gold*—It ſeems to me, that this piece of gold, which was given to thoſe who were touched, accounts for the great reſort upon this occaſion, and the ſuppoſed afterwards miraculous cures.

[r] Upon a more careful peruſal of this ſummons in Dugdale, it is left very doubtful, by a chaſm in the record, whether this convention at Worceſter was a parliament or not.

"Edwardus Dei gratiâ rex Angliæ, Dominus Hiberniæ, et Dux Aquitaniæ, chariſſimo fratri "et fideli Edmundo Comiti Lancaſtriæ, ſalutem. Quia Lewellinus filius Griffini, Principis "Walliæ, et complices ſui, rebelles et inimici, terras noſtras et fidelium noſtrorum, in partibus "marchiæ, invaſerunt, die in diem invadunt, et homicidia et alia damna et enormia perpetra- "runt: et idem Lewelinus nobis, prout debet, obedire, contempſit et contemnit, in noſtri præju- "dicium, et contemptum, et veſtri, et aliorum fidelium noſtrorum grave damnum et exhæredi- "tationem manifeſtum, per quod jam—noſtram ſummoneri fecimus, quòd ſit apud Wygorniam "in Octab. Sti Johannis Baptiſtæ, proximè futuris, ad rebellionem dicti Lewellini, et fautorum "ſuorum reprimendam; vobis mandamus, quòd dictis die et loco interſitis, cum equis et armis, "et cum ſervitio veſtro nobis debito, nobiſcum parati, exinde proficiſci ad expeditionem noſtram "contra prædictum Lewellinam et complices ſuos inimicos noſtros. Teſte meipſo apud "Wyndſor XII die—Anno regni noſtri quinto."

The chief purpoſe for which the king aſſembled this parliament, was to oblige thoſe who claimed any franchiſes or liberties to ſhew their title to them before the king's juſtices, or otherwiſe to ſeiſe them into the king's hands—Mr. Cay hath therefore very properly printed the ſtatute of *quo warranto* (as it is generally called) at the end of this ſtatute, inſtead of making it an act of the thirtieth year of Edward the Firſt, as it had been erroneouſly printed in the preceding editions—We find that this law was moſt reaſonably thought to be oppreſſive when carried into execution—The Annales Waverleienſes give this account of it: "In hoc anno exiit edictum a "curiâ regis ad univerſos comitatus totius Angliæ, per breve quod vocatur "ab incolis *quo warranto*, ad certos juſtitiarios directum, ad inquirendum de "libertatibus quibuſcunque quomodo a domino rege tenebantur; cujus "brevis occaſione omnes archiepiſcopi, epiſcopi, abbates, priores, comites, "barones, et cæteri libere tenentes, *variis laboribus et expenſis* fuerunt præ-"gravati, et etiam *rex ne parum quidem emolumenti inde aſſecutus eſt.*" Gale, vol. iii. p. 235.—Which is indeed (I had almoſt ſaid providentially) the neceſſary conſequence of a tyrannical law. Beſides what I have here tranſcribed from the Annales Waverlenſes, Falle, in his account of Jerſey, mentions ſome moſt violent proceedings under this ſtatute, during the reign of Edward the Firſt in that iſland.

I have been informed, that Cardinal Fleury, at the latter end of his adminiſtration, either iſſued, or intended to iſſue, an *arret* very ſimilar to this oppreſſive ſtatute of *quo warranto*—Upon the general alarm [*s*] occaſioned by this deſign, the French inhabitants of thoſe provinces, which formerly belonged to the crown of England, were furniſhed in ſeveral inſtances with evidence of their titles to franchiſes from our records—This ſtatute conſiſts of fifteen chapters, moſt of which relate to the amendment of the common law as it was then practiſed, but which at preſent are not very material—From theſe I muſt except the firſt chapter, which relates to *damages*; the eighth chapter, which enacts, that the cauſe of action in the king's ſuperior courts ſhall exceed forty ſhillings [*t*]; and the ninth

[*s*] This alarm probably occaſioned the publication of the *Rolles Gaſcoynes* by Carte, in the year 1743.—This valuable collection of the *titles* of all the records in England (which relate to the French provinces, formerly under the Engliſh dominion, and chiefly Gaſcony) being calculated for the uſe of the French, was publiſhed at Paris, and is preceded by a French Preface—The titles only of theſe records make two folio volumes—It would certainly however be a work deſerving the encouragement of both nations, and of all learned men throughout Europe, to print theſe records at length—The ſame may be ſaid with regard to the records in the Bermingham Tower at Dublin, ſome of which go as far back as the reign of Edward the Firſt.

[*t*] The ſpirit of this law deſerves to be much attended to at preſent, when the value of forty ſhillings is ſo very conſiderably lowered—Many diſſertations have been written with regard to

chapter,

chapter, which takes away a very extraordinary doubt at the common law, whether a man killing another in his own defence, or by misadventure, should be prosecuted as a felon [*u*].—The 11, 12, 13, 14th chapters relate to the city of London only; which is a further proof (besides what hath been observed in the Comment on Magna Charta) of the great influence this city had even so early in our history.

the comparative value of money in the different reigns of the kings of England; I shall choose to fix this by some statutes which make mention, either expressly or by implication, of this comparative value — By the statute of Westminster the first (3 Edw. I. ch. v.) no man is to be refused bail for a larceny under 12 *d.* *— Sir Henry Spelman hath observed on this part of the statute, that, when every thing else is growing dearer, a man's life is forfeited every day for what is of less and less value — Judges and juries indeed, from commendable motives of humanity, do not weigh the price of goods stolen in *golden scales*; but is there not a great impropriety in a jury's finding on their oaths that goods produced in court, (and which every one sees are perhaps of twenty times the value) are only worth 12 *d.*?—And may not this liberty taken with their oath make them and the audience less attentive to it upon more material points?—But not to digress—There is a statute of † 21 James I. ch. vi. which says, that a woman shall not lose her life for a larceny under ten shillings: this therefore shews, that, in the year 1623, the value of money was ten times less than at the time of making the statute of Westminster the first; and it might perhaps be very proper to extend it, in the year 1766, to twenty shillings—There is another statute 13 Ch. II. St. i. (first printed by Mr. Ruffhead) which regulates the fees of the Masters in Chancery; the preamble to this act recites, that these offices were as antient as the Conquest, and that 4 *d.* at that time was more than two shillings in the year 1661. It must be admitted, that these statutes do not entirely agree in their comparative value of money, but at the same time a medium between them may perhaps be the best direction to form a judgement upon.

[*u*] It is recited by the preamble to the 24 Hen. VIII. ch. v. to have been doubtful by the common law, whether a forfeiture of goods and chattels was not incurred by the killing of a thief or murderer.

* There is an antient law to the like effect in Scotland, "It is statute, that no man shall be "hanged for a less fault than twa scheep, whereof ilk ane is worth 16 pennies." The law of Burdinseck—Reg. Maj. translation by Skene. 16 *d.* Scots is at present only 1 $\frac{1}{3}$ *d.* and a fraction.

† The title of this statute is, *An act concerning women convicted of small felonies*, who, by the common law (it cannot be said to its humanity), were excluded from the benefit of clergy.

A STATUTE 30 DIE OCTOBRIS.

7 Edw. I. A. D. 1279.

To all Parliaments and Treaties every one ſhall come without force of arms.

THIS *and the following law with regard to Mortmain* are the only ſtatutes of the year 1279—The firſt of theſe recites *ſundry debates between the King and certain Great Men*—Hiſtory is entirely ſilent with regard to the cauſe of theſe debates, or indeed that there were any diſputes at this time between the king and his barons—There ſeems to be little doubt however, that the ſtatute, entitled *Extenta Manerii*, made three years before (which was another Domeſday Survey); and the ſtatute of *Quo warranto*, made the preceding year, might occaſion theſe troubles, eſpecially as the firſt article of the *Extenta Manerii* relates to fortified caſtles, and which probably might (at leaſt in part) have been carried into execution—That the points conteſted were of conſequence, may be inferred from the tumultuary proceeding, which this ſtatute forbids, when there ſhould be any further treaty, or meeting between the king and his barons—Both this and the following ſtatute are directed to the juſtices of the King's Bench, to be inrolled and proclaimed in their courts: and as the firſt relates to dangerous riots, there was a peculiar propriety in tranſmitting it to the court of King's Bench, as being the court of the higheſt criminal juriſdiction in this country.—The firſt of theſe laws is in French; the ſecond, making ſome new proviſions with regard to diſpoſing of lands in Mortmain, is, in Latin, agreeable to an obſervation which I have before made, that when the intereſt of the clergy is concerned, the ſtatute is generally in the Latin language.

Biſhop Kennet, in his Gloſſary, at the end of his Parochial Antiquities *(verbo Religioſi)* obſerves, that, before any ſtatute of Mortmain, the nation was ſo ſenſible of the inconvenience ariſing from it, that it was often made an expreſs condition in grants and conveyances, "*Tenendum ſibi et hæredi-*"*bus ſuis, vel cuicunque vendere, dare, vel aſſignare voluerint, exceptis viris* "*religioſis, et Judæis.*"—Baker [*u*], in his Chronicle, informs us, that the

[*u*] Baker is by no means ſo contemptible a writer as he is generally ſuppoſed to be—It is believed, that great part of the ridicule on this Chronicle ariſes from its being part of the furniture of Sir Roger de Coverley's Hall—Spect.

number of monaſteries built in the reign of Henry the Firſt was ſo great, that almoſt all the labourers of the country became bricklayers and carpenters—We have already found, that this growing [*w*] abuſe was endeavoured to have been prevented by an article of Magna Charta; but, that proviſion having been evaded, the preſent ſtatute ſays, that it ſhall not be done *quâcunque arte vel ingenio*—The oppoſition to Mortmain at this time aroſe from very different reaſons, than thoſe which have occaſioned the later ſtatutes againſt it—As the land was given *to God*, the king and the barons loſt all the uſual profits of lands held under them; they had no notion of an inconvenience or miſchief to the publio from a ſtagnation of property—It is this inconvenience which hath chiefly occaſioned the laſt moſt effectual ſtatute againſt lands being given in Mortmain—As for the teſtator's diſpoſing of his effects, in prejudice to his relations, that is ſtill left open as to perſonal eſtate, from which a benefaction of this kind is much more likely to ariſe, than from a gift of lands; as men poſſeſſed of landed eſtates have generally ſo much pride, that they will leave it to any one who can keep up their name or family, which a religious houſe or college can never do.—A law however might be ſo framed, as to encourage and promote the circulation of landed property by benefactions to Mortmain purpoſes, if the bequeſt of lands was made void, unleſs the eſtate was ſold within a year after the deviſe took effect.

[*w*] Dugdale, in his Monaſticon, makes Roger de Morteymer exclaim ſtrongly againſt this practice, vol. ii. p. 218. "Veez beals ſeigneurs, comment mon pere me deſheritat, a qui per "tuts reaſons duſt aver vouch-ſafe tut ſon heritage, ſans demembrer ces champs—Mes il a done "a *ceux Vyleins* del Abbey."—Theſe words of Sir Roger de Morteymer are taken from an account of the priory of *Wigmore* in Herefordſhire, in the time of King Stephen.

A NEW

A [x] NEW STATUTE OF THE EXCHEQUER;

CALLED, THE STATUTE OF RUTLAND.

Made 24 Maii, Anno 10 Edw. I. A. D. 1282.

I SHOULD not have made any obſervations upon this ſtatute, which contains regulations that concern few except the officers of the *Receipt* of the *Exchequer*, was it not to introduce the remark of Prynne on ſome miſtakes of Lord Coke, and others: I ſhall give the whole citation in his own words (V. the Appendix), as it contains many curious particulars not only with regard to the preſent ſtatute, but with relation to Edward's expedition againſt Wales, eſpecially as it is inſerted, like many other things in this laborious compiler, where it cannot be eaſily found.—This indefatigable antiquary hath proved beyond all doubt, that no parliament was held either at Rutland in England, or Rhydland in Flintſhire, in this year of Edward the Firſt—With regard to *Rutland* in England, I cannot find any *town* with ſuch a name—As for Rhydland in Flintſhire, Edward the Firſt built a very conſiderable caſtle there; but Prynne hath ſhewn, that though he was in North-Wales, yet all patents ſigned by him bear date from other places during the year 1282.

[x] It is called, *A New Statute*, being after the *Statutum de diſtrictione Scaccarii*, already commented upon.

STATU-

STATUTUM DE MERCATORIBUS;

THE STATUTE OF ACTON BURNEL.

Made Anno 11 Edw. I. A. D. 1283.

THIS ordnance bears date at *Acton Burnel* [y], in Shropshire, the 12th day of October, in the 11th year of this king's reign—This parliament must therefore have been held in Edward's return from Wales; and the attendance could not have been very numerous, as it is believed that *Acton Burnel* was never even a market town—I should imagine, that Edward's inducement to hold a parliament in so insignificant a place [z], arose from its lying on the borders of Wales, where he probably planned that chain of castles in the western part of Shropshire, the ruins of some of which remain to this day.

The preamble to this law seems to explain a term used by lawyers, viz. the *Purview of a Statute*, of which I have never yet met with a satisfactory account—" Purceo que merchauntes queux avant ces heures ont pristes " lour avers, as divers gents que sont cheux en povertie, purceo que ils " n'avoient pas cy redy ley *purvieu*." Hence the *Purview of the Statute* seems to have signified that part which recites the inconveniences intended to be remedied, which naturally makes the preamble, before any enacting part is introduced.—The law is entitled, κατ' ἐξοχήν, *Statutum de Mercatoribus*, and taken together with the provisions made, by Magna Charta, in the favour of merchants who are aliens, does particular honour to the humanity and wisdom of our ancestors—How different is the policy and laws of France for example, who suppose that they are patterns to the rest of Europe for the civil reception and indulgences granted to foreigners!—

[y] There are, in Spelman's Index Villaris, no less than eighteen towns, or villages, with the name of Acton, which is not extraordinary, as it signifies no more than *Oak Town*—Acton Burnel is in Condover Hundred, and was so called probably from the family of Burnel, which, Camden informs us, is one of the most antient in Shropshire.

[z] The end of the building in which this parliament was held is now said to form part of a barn—There is, in the town of Machentleth in Montgomeryshire, a building, in which, by tradition, Owen Glendower is said to have held a parliament, by which must be meant a conference in the sense I have before contended for—The building (as far as I can trust my memory) is sixty feet in length, thirty in breadth, and about twenty-four feet high—Three or four poor families now live within the walls, and under the roof.

An

An alien indeed cannot in this country purchaſe land, any more than in France; but he knows the law, and hath no occaſion to make ſuch purchaſe—No one can travel however [a] without conſiderable ſums, much leſs can he merchandize; and yet, by the *droit d'aubaine* [b], all the perſonalty belonging to a ſtranger is forfeited, upon his death, either to the king, or his grantee; and this continues to be the law of France in the *eighteenth century*, and a law frequently put in execution.

There are two regulations [c] in this ſtatute which deſerve to be taken notice of: the firſt, that, if the creditor [d] impriſons the debtor, and the debtor hath nothing to live upon during his confinement, the creditor muſt provide him with bread and water [e]—And if the creditor is *a ſtranger*, the debtor is not only to pay the debt, but likewiſe the extraordinary expence which the *ſtranger* hath incurred during his ſtay in England to proſecute his ſuit, till the time that he hath execution againſt the debtor's goods—The humanity of this further proviſion in favour of an alien merchant, is ſomewhat tainted by the concluſion of this law, which ſays, that a Jew ſhall in no caſe be entitled to it [f].—This is however in ſome meaſure pardonable, from the ſtrong prejudices which prevailed at this time throughout Europe againſt this unhappy people; prejudices, which are not totally eradicated at preſent, and which occaſioned the ſhameful repeal of a late law, founded upon the wiſeſt principles of commerce.

This ſtatute was further explained, and new proviſions added by the thirteenth of Edward the Firſt, Statute the 3d, and which bears the ſame title, viz. *The Statute of Merchants.*—Mr. Cay hath, in this law of the thirteenth of Edward the Firſt, very properly inſerted a various reading from a manuſcript in the Cotton Library, which ſays, that the recogniſance ſhall be taken before the Mayor of *London*, inſtead of the Mayor of *Appleby* in *Weſtmoreland*; as the ſeſſion of parliament, in the thirteenth year of this king's reign, was held at Weſtminſter immediately after Edward's return from Bury, where he had continued during the preceding Eaſter, Appleby could never have been thought of, unleſs by a parliament held in the North of England.—This explanatory ſtatute of the

[a] As for bills of credit, they were probably not uſed at this time.

[b] This is rendered *jus alibi natorum*. Boileau, in one of his Satires, inveighs againſt the barbarity of this law.

[c] The debtor's recogniſance is ordered to be taken before the Mayors of *London*, *Briſtol*, or *York*—Theſe were therefore undoubtedly the principal towns of the kingdom at this time for trade. York became a place of commerce, from the trade with the Northern powers, which was antiently very conſiderable.

[d] Selden ſays, with our anceſtors, *Vinculis coërcere rarum erat.*

[e] On the contrary, by 13 Edw. I. ch. i. the ſervant, who hath not accounted with his maſter, is to be committed in *vinculis*, and to live in goal *de proprio*.

[f] This part of the ſtatute is not tranſlated in any of the editions.

thirteenth

thirteenth of Edward the Firſt, likewiſe gives us the form of the writ, upon ſuch a recogniſance having been entered into, and the debtor's not having ſatisfied his creditor.—See alſo 27 Edw. III. ch. ix. 15 Rich. II. ch. ix. 23 Hen. VIII: ch. vi. and 8 Geo. I. ch. xxv.—There is an ordinance of Francis the Firſt, in the year 1536, very ſimilar to this ſtatute, which ſhews the more early attention to commerce in this country.

STATUTUM WALLIÆ.

12 Edw. I. A. D. 1284.

THIS ſtatute bears date "apud Rothelanum" (what is now called Rhuydland [g] in Flintſhire) "die dominicâ in medio quadra-"geſimæ anno regni noſtri duodecimo"—It is certainly no more than regulations made by the king in council, for the government of Wales, which the preamble informs us was now totally ſubdued [b]—This law deſerves moſt particular notice, though hitherto unobſerved upon either by any lawyer or hiſtorian, except Carte, who touches upon it but tranſiently—It not only informs us of what were ſome of the cuſtoms and laws in Wales at that time, but likewiſe, by the remedies provided, what was the law of England.

In order to make theſe new regulations upon the beſt conſideration of the different laws of the two countries, Edward had, the year before, directed inquiries upon oath before certain commiſſioners (with the biſhop of St. David's for their preſident) whoſe certificates and returns are printed in the Appendix to Hoel Dda's laws, and which contain many curious particulars [i]—Of theſe laws and cuſtoms, which prevailed in Wales be-

[g] There is a manuſcript of this law in the Hengwrt Collection. V. Lhwyd's Arch.

[b] Though the total conqueſt of Wales is here recited, I ſhould doubt whether it extended to any other counties than thoſe which are mentioned, viz. Merioneth, Carnarvon, Angleſey, and Flintſhire—As likewiſe the counties of Carmarthen and Cardigan in South-Wales—Edward had only built his caſtles in theſe counties, viz. Rhuydland, Conway, Beaumaris, Carnarvon, Harlech, and Aberyſtwith; all of which we know, either from hiſtory or records, were royal works of this reign, except Harlech, which ſeems to ſpeak for itſelf to have been planned by Edward—Without ſuch caſtles, it was impoſſible to keep an entire or permanent dominion over ſuch a country as Wales.

[i] I ſhall here inſert the interrogatories upon which the commiſſioners were to examine; as for the anſwers, ſee the above-mentioned Appendix.

Interrogaciones de Certificacione vel Apriſa facienda ſecundum formam predictarum Literarum.

"Primo, Inquiratur ſi vidit aliquis placitum moveri inter principem Wallie et barones Walenſes "Wallie.

"Secundo, Inter quem principem et quos barones, vel quem baronem, et coram quibus judicibus.

"Tertio, Si vidit aliquod placitum motum inter baronem Walenſem Wallie et parem ſuum.

"Quarto, Inter quem baronem et quem parem vel quos pares, et coram quibus judicibus.

"Quinto, Si vidit placitum inter minorem vel inferiorem et parem ſuum vel pares ſuos.

"Sexto, Inter quem minorum vel inferiorem et parem ſuum vel pares ſuos.

"Septimo, Si vidit placitum, per quas leges et per quas conſuetudines in placito fuit proceſſum.

fore

fore Edward's conqueſt, ſome are ſtill retained, others altered, and ſome entirely aboliſhed, by this ſtatute — I ſhall here take notice of but two or three of them — All the witneſſes agree [*k*], that the princes of Wales could alter the laws at their pleaſure, nor do they make the leaſt mention of a parliament, or even a council? — The inference from this ſeems to be, that the inhabitants of this iſland have adopted the inſtitution of parliaments, from ſome of the invading ſtrangers — The next obſervation I ſhall make upon the examination of theſe witneſſes is, that there is not the leaſt alluſion to any ſort of feudal tenure, which confirms what I have before advanced, that they were unknown in this country before the Norman conqueſt — There is at preſent in North-Wales (and it is believed likewiſe in South-Wales) no copyhold tenures, and ſcarcely an inſtance of what are called manerial rights; but the property is entirely free and allodial — We find likewiſe, that gavelkind prevailed throughout Wales; the right of ſucceſſion to lands in the eldeſt ſon muſt have therefore been derived alſo from the Normans; as was alſo the trial by battle, which was likewiſe unknown in Wales.

The preamble to the ſtatute recites, that Wales was, before the conqueſt of Edward, *jure feudali ſubjecta* to the crown of England, which expreſſion is very remarkable, as it is belived no inſtance can be found in any record, or antient hiſtorian, of a *jus feudale* prevailing in England — We hear indeed of the word *feudum*; and the diſtinction between the *feudum novum* and the *feudum antiquum*; but a regular ſyſtem of feudal law (which this expreſſion

" Octavo, Coram quibus juſticiariis vel judicibus, et in cujus curia, et ubi, in placito illo fuit pro-
" ceſſum.

" Nono, Si per breve regium coram judicibus per oppoſicionem et reſponſionem, et deinde per in-
" quiſitionem fuerit proceſſum.

" Decimo, Si fuerit judicatum ſecundum dictum et aſſercionem illorum de inquiſitione, vel alio
" modo.

" Undecimo, Si judicatum fuerit ſecundum legem Howel Da, que vocatur Keuerick *, et quotiens
" vidit judicatum, et coram quibus, et ubi.

" Duodecimo, In quibus caſibus conſuevit ſecundum legem illam judicari, et utrum in mobilibus,
" vel immobilibus vel in utroque.

" Tertio decimo, Si per partium confeſſionem non poſſit liquere de judicio utrum procedi debeat
" per inquiſicionem vel per Aſſiſam, et ſic cognita veritate judicari.

" Decimo quarto, Utrum de rebus tantum antiquis, et de quibus memoria non habetur, an de re-
" bus omnibus tam novis quam antiquis judicari debeat ſecundum legem predictam Howel Da."

[*k*] One hundred and ſeventy-two were examined at the four different places, where theſe commiſſions were executed.

* There is a law of Hoel Dda's perpetually alluded to by thoſe who were examined, with regard to the cuſtoms of Wales, under the name of Keverick or Keverith, which I cannot in any Dictionary or Gloſſaries find the meaning of — The ſignification of this word is ſubmitted to thoſe who are well verſed in the Welſh language — There is indeed no ſuch letter as K in the Welſh alphabet. — C is uſed inſtead of it.

ſeems to ſuppoſe) there are not the leaſt traces of [*m*].—Edward however was conqueror, and he had a right to make uſe of his own words in the preamble to his law.

After the preamble, very complete directions are given to the ſheriff and coroner, upon whom ſo much depends with regard to the execution of the law, which I ſhall here inſert, as they throw great light not only on the powers of theſe officers, but likewiſe are explanatory of other circumſtances relative to the ſtate of the criminal law at this time [*n*].

[*m*] There is likewiſe another expreſſion borrowed from the Norman and feudal law in this preamble, viz. "qui *alto et baſſo* ſe ſubmiſerunt."—Though there have been of late years two or three very ingenious treatiſes to explain the antient Common law by feudal principles, yet it is very clear, that neither Lyttelton, nor his Commentator, Lord Coke, ſeem to have known that ſuch a law prevailed in any part of Europe—much leſs in England.

[*n*] "Vicecomes faciet turnum ſuum in ſingulis commotis ſuis bis in anno in aliquo certo loco "ad hoc aſſignato, ſcilicet ſemel poſt feſtum Sancti Michaelis, et ſemel poſt Paſcha, ad quem tur- "num omnes libere tenentes et alii terram tenentes et in commoto illo reſidentes, tempore ſum- "monitionis turni tenendi, exceptis religioſis, clericis et feminis, ibidem venire debent. Et vice- "comes per ſacramentum duodecim libere tenentium de diſcretioribus et legalioribus, vel plurium "pro diſcretione vicecomitis, diligenter inquirat de capitulis coronam domini regis tangentibus "ſubſcriptis.

"De ſeductoribus domini regis et regni, domine regine, et liberorum ſuorum, et eorum con- "ſentaneis.

"De furibus, de homicidiis, de robatoribus, de murdritoribus, de incendiariis incendia feloniter "facientibus, et eorum receptatoribus, et eis conſentientibus.

"De macecrariis, carnes furatas ſcienter vendentibus et ementibus.

"De whittanwariis, ſcilicet qui coria bovina et equina furata ſcienter albificant ut ſic non "agnoſcantur.

"De redobatoribus pannorum furatorum eos in novam formam redigentibus, et veterem mutan- "tibus, ut de mantello tunicam vel ſupertunicam facientibus, et ſimilia.

"De utlagatis, et illis qui regnum abjuraverunt, reverſis.

"De hiis qui contra adventum et iter juſticiarii ſe ſubtraxerunt, et poſt iter juſticiarii redi- "erunt.

"De raptoribus virginum ſanctimonialium et matronarum honeſte viventium.

"De theſauro invento.

"De curſu aquæ diverſo.

"De via obſtructa, vel reſtricta, vel artata.

"De muris, domibus, portis, foſſatis et marleris levatis et factis juxta iter publicum ad nocu- "mentum ipſius itineris et in periculum tranſeuntium, et de predicta levantibus et facientibus.

"De falſariis monete et ſigilli domini regis.

"De malefactoribus in parcis et vivariis.

"De frangentibus priſonam domini regis.

"De capientibus columbas volantes de columbariis.

"De facientibus *Puntbreche*, hoc eſt [de, *Tot. et al.*] fractoribus parcorum in quibus animalia "inparcantur.

"De forſtallis, hoc eſt, de reſcuſſu averiorum.

"De *Homeſokne*, hoc eſt, de invaſione domus.

"De *Thefbote*, hoc eſt, de emenda furti capta ſine conſideratione curie domini regis.

"De impriſonantibus liberos quoſcunque.

After the duty of the ſheriff in the execution of his office is explained, the ſtatute then proceeds in the ſame manner with regard to the coroner [o], in which he is directed (amongſt other particulars) to attend upon information, that a man is ſo dangerouſly wounded that his life is deſpaired of, and he is likewiſe ordered to ſummon a jury—This branch of duty in a coroner is now totally neglected, as his proceedings are only *ſuper viſum corporis*—It is a regulation however which deſerves much to be revived; and I ſhould conceive, that this attendance of the coroner and a jury, upon a dangerous wound's being received, was to prevent the dying words of the perſon murdered from being evidence—This kind of evidence as allowed at preſent cannot be too cautiouſly admitted—It is preſumed indeed, that the words of a dying man cannot but be true, conſidering the ſituation under which he gives the information—But may not a dying man (though a good Chriſtian) deprived of expected happineſs in life by a wound received perhaps from an enemy, rather wiſh his puniſhment more eagerly than he ſhould do? and may not thoſe about the dying perperſon (who are generally relations) repeat what he hath ſaid more ſtrongly on the trial than poſſibly the words were delivered?

After this, the duty of the coroner in caſes of *abjuration* is explained, which is now indeed aboliſhed, and of which more will be ſaid hereafter—It may not however be improper to mention the particulars of this puniſhment, as deſcribed by the ſtatute—If a felon or murderer fly to a ſanctuary after the offence is committed, the coroner is to ſend to the king's bailiff of the commote [p], who is to ſummon a jury of the neighbour-

" De uſurariis.
" De amoventibus vel corrumpentibus diviſas.
" De aſſiſa panis et cerviſie non obſervata, et [de, *Tot.*] eam infringentibus.
" De buſſellis, galonibus et aliis menſuris injuſtis [et per ea vendentibus. *Tot.*]
" De ulnis et ponderibus injuſtis, et per ea vendentibus.
" De hoſpitantibus ignotos ultra duas noctes.
" De ſanguine effuſo.
" De hutheſio levato.
" De tondentibus multones noctanter in ovilibus, et eos excoriantibus, vel etiam alia animalia.
" De capientibus et colligentibus noctanter blada in autumpno, et ea aſportantibus; et de omni-
" bus aliis hujuſmodi malefactoribus."

[o] The two ſtatutes of Exeter, made in the fourteenth year of this king, relate almoſt entirely to the office of coroner, though they are not taken notice of by any writer on the law, and probably becauſe the French is very corrupt, and hath never been tranſlated—I ſhould imagine, theſe laws were made to reſtrain the rapine and violences of the people, called *Gubbins*, who lived on *Dartmore*, being the marches between Devonſhire and Cornwall, and who continued to be lawleſs in the time of Queen Elizabeth. V. Carey's Cornwall.

[p] A *commote* in Wales ſignifies a portion of land equal to the fourth part of a *cantred*—*Unius* commoti *ſolum*, i. e. *quartæ partis* cantredi—Girald. Cambr. ch. ii.—" Habet autem

hood.

hood [q].—The felon is then to make his abjuration in the preſence of the jury, after which he to be led to the porch of the ſanctuary, and the coroner is to appoint a port, from which he is to embark for baniſhment; to which port he is to proceed by the neareſt highway without ever turning to right or left, and to carry a torch in his hand till he arrives.

After what relates to the ſheriff and coroner, the ſtatute then gives the form of writs in thoſe actions which were at that time moſt commonly uſed.—The form of theſe writs was antiently thought to be of ſuch conſequence, that it was one of the articles inſiſted upon by the barons in the year 1258, that the chancellor ſhould not only be elective, but ſhould take an oath, *Que il ne enſelera nul brief per brief de curs ſans le commandement le roi et le cunſeel.* Gale, vol. i.

It is likewiſe well known, that there is no legal argument which hath ſuch force in our courts of law, as thoſe which are drawn from the words of antient writs; and that the *Regiſtrum Brevium* is therefore looked upon to be the very foundation of the common law—I have compared the writ of *Novel Diſſeiſin*, as ſet forth in this ſtatute, and likewiſe the writ of *Mort-danceſter*, with the forms in the regiſter, which ſeem to tally exactly *(mutatis mutandis)* for England and Wales—I have likewiſe compared them with the forms in that antient book in the Scots law, entitled, *Quoniam Attachiamenta*; which, as they vary in ſome particulars, I ſhall inſert theſe writs firſt from the ſtatute of Roteland, and afterwards the ſame writs from Skene's tranſlation of the *Quoniam Attachiamenta.*

Forme Brevium regiorum originalium placitandorum in Wallia.

Breve de nova Diſſeiſina de libero tenemento, de quo quis liber homo injuſte et ſine judicio fuerit diſſeiſitus.

" Rex vicecomiti Angleſeye ſalutem. Queſtus eſt nobis A quod B et " C injuſte et ſine judicio diſſ. eum de libero tenemento ſuo in N poſt pa- " cem noſtram in Wallia proclamatam anno regni noſtri undecimo. Et " ideo tibi precipimus quod ſi predictus A fecerit te ſecurum de cleamo " ſuo proſequendo, tunc facias tenementum illud reſeiſiri de catallis que in " ipſo capta fuerunt, et ipſum tenementum cum catallis eſſe in pace uſque

" hæc inſula *(Mona)* trecentas quadreginta villas, et pro tribus *cantredis* reputatur."—The word " *cantred* is compounded of *cant*, which ſignifies a hundred; and *tre*, a town.

[q] The common reaſon for a jury's coming from the neighbourhood, viz. *quòd vicini vicinorum facta præſumuntur ſcire*, does not ſeem to be ſatisfactory—Neighbours indeed know the facts; but they often know too much, and with too ſtrong prejudices—The reaſon given afterwards in this ſtatute ſeems better founded, *ne patria laboribus et expenſis fatigetur.*

" ad

" ad certum diem quem juſticiarius noſter tibi ſcire faciet. Et interim " faciet duodecim liberos et legales homines de viſneto illo videre tene- " mentum illud, et nomina eorum inbreviari. Et ſum. eos per bonos " ſummonitores quod tunc ſint coram prefato juſticiario noſtro parati in- " de facere recognitionem. Et pone per vadium et ſalvos plegios pre- " dictos B et C vel ballivos ſuos ſi ipſi inventi non fuerint, quod tunc ſint " ibi aduituri illam recognitionem. Et habeas ibi ſum. nomina plegiorum " et hoc breve. Dat. apud Karnarvan, tali anno et tali die, vel alibi."

Brevia de morte Anteceſſor.

" Rex vicecomiti ſalutem. Si A fecerit te ſecurum de clameo ſuo " proſequendo, tunc ſummone per bonos ſummonitores duodecim liberos " et legales homines de viſneto de N quod ſint coram juſticiario noſtro " parati ſacramento recognoſcere ſi B pater predicti A fuit ſeiſitus in do- " minico ſuo ut de feodo de manerio tali cum pertin. vel de tanta terra " cum pertin. die quo obiit, et ſi obiit poſt pacem noſtram in Wallia pro- " clamatam anno regni noſtri undecimo, et ſi idem A propinquior heres " ejus ſit; et interim manerium illud vel terram illam videant, et nomina " eorum inbreviari fac. Et ſummone per bonos ſummonitores C qui " manerium illud vel terram illam tenet, quod tunc ſit ibi ad aud. illam " recognitionem. Et habeas ibi ſum. et hoc breve. Dat." &c.

[*The Brieve of Diſſaiſing. From the Quoniam Attachiamenta.*

" James be the grace of God, King, &c. To our Juſtitiar, It is ſhawin " and declared to vs be *A.* heavelie complenand that *B* hes diſſaiſed *(ejected)* " him unjuſtlie, and againſt order of law, forth of ſic lands, in ſic ane " tenement, quherein he was vaiſt and ſaiſed diverſe dayes and zeares, as " of his fie. Quherefore we command and charge zow, that ze take and " receave certaine and ſure pledges fra the ſaid *A.* that he ſall perſew his " clame and complaint; and thereafter cauſe take inquiſition be gude and " leil men of the cuntrie, conforme to the law of the land: gif it be ſwa, " as the ſaid *A.* did ſhaw to us. And gif ze finde it to be ſwa, as he com- " pleined, be ane recognition made and done, conforme to the law of the " land: ze ſall deliver to the ſaid *A.* complainer, ſaiſing of the ſaids lands, " with the pertinents, according to his complaint made to vs. And this " ze ſall doe without delay. Likewiſe ze ſall take to our vſe, the amercia- " ment perteining to vs, fra the ſaid *B.* be reaſon of vnjuſt diſſaiſing, and " ejection committed be him. And gif it be found otherwiſe, be the ſaid " recognition, or aſſiſe; ze ſall take fra the ſaid *A.* the amerciament per- " teining to vs, be reaſon of his vnjuſt complaint, and inbring the ſamine " to our vſe."

The

The Brieve of Mortanceſtrie. From the Quoniam Attachiamenta.

" JAMES be the grace of God, &c. to our Juſtitiar, greeting: We " command and charge zow, that be the beſt and eldeſt men of the land, " juſtlie, and according to the law of the land, ze cauſe inquiſition to be " taken, gif vniquhile *A.* father to *B.* bearer of thir preſents, deciſſed veſt " and ſaiſed as of fie, in the lands of *F.* with the pertinents, ſic ane tenement, " and within the Schireſdome of *P.* And gif the ſaid *B.* ſonne of the ſaid " *A.* his father, be narreſt and lawfull heire to his father, of the ſaids lands " with the pertinents: except lands given for frie almes, lands of frie- " halders, annuell rents, and wemens dowries, quhilks are in the ſaids " lands. And gif there be any thing, quhilk may ſtay and ſtop him to " obteine be the law, ſaiſing of the ſaid lands, except before excepted. " And gif ze finde ſwa, be the ſaid recognition done juſtlie, and be the " law of the land; and ſic ane man, quha vnjuſtlie deteines and poſſeſſes " the lands with the pertinents *(except before excepted)* being lawfullie ſum- " moned, to heare and ſee the ſaid recognition orderlie led and deduced; " alledges na reaſonable cauſe; for puhilk the ſaid recognition be the law, " ſould not procerd; ze ſall cauſe deliver juſtlie, and without delay to the " ſaid *B.* ſic likeſaiſing of the lands, with the pertinents *(except before ex-* " *cepted)* as the ſaid *A.* umquhile father to him, had of the ſamine lands " with the pertinents, the day quhen he was livand, and dead. *Teſte me* " *ipſo.*"

The compariſon of theſe writs ſeems moſt fully to prove the great authority which is due to our *Regiſtrum Brevium* [*r*]; and likewiſe that the law of Scotland (as hath before been contended) agreed antiently not only with the principles of the law of England, but in its practice, though there might be ſome variances of no great importance.

[*r*] Lord Coke, in the Introduction to the 10th Part of his Reports, ſuppoſes *the Regiſter of Writs* to be the book of the greateſt antiquity in our law.

STATUTA

STATUTA REGIS EDWARDI

Edita apud Weſtmon' in Parliamento ſuo, Paſch. anno Regni ſui tertio decimo, A. D. 1285.

THIS collection of laws, which is divided into fifty different chapters, contains matter of ſo heterogeneous a nature, that it is impoſſible to reduce the obſervations to be made upon it into any ſort of connexion any more than the obſervations upon Magna Charta—Moſt of theſe chapters were made with an intent to amend the law as it was then underſtood and practiſed, and more particularly, as the preamble informs us, to explain ſome parts of the ſtatute of Glouceſter, which paſſed in the ſixth year of this king's reign—I ſhould imagine, that it is from this collection of laws (generally called Weſtminſter the ſecond) that Lord Coke, in the Introduction to one of his *Commentaries* [s], hath ſtyled Edward the Firſt, *the Engliſh Juſtinian.*

The firſt chapter ſecures the eſtate given to a man, and the heirs of his body (called an Eſtate tail), to his iſſue; and in caſe he hath no iſſue of his body, then to the donor or his heirs—The ſtatute very properly ſays, that the firſt taker's alienating, is *contra formam doni*, and it being ſo, ſuch alienation ſhould have been void at common law; as, if the law permits the limitation, the intention of him who creates the eſtate ſhould always not only be attended to, but carried into execution; otherwiſe, why is any one allowed to diſpoſe of his eſtate, and expreſs his intention by a deed ſolemnly executed in the preſence of witneſſes?

This chapter of Weſtminſter the ſecond is generally ſuppoſed to have introduced *Eſtates tail*, but it ſhould more properly be ſaid to have eſtabliſhed them—*Selden* thinks he hath found traces of this kind of eſtate, in the laws of *Alfred*, "Qui terram habuerit per ſcripturæ ſeriem "(ſc. *Bocland*) ſibi a majoribus relictam, ab hæredibus ad alios alienandi "poteſtas non eſto, ſiquidem præſentibus cognatis coram rege, aut epiſ-

[s] I call the different parts of Lord Coke's Reports his *Commentaries*, as this is the name which he generally diſtinguiſhes them by himſelf.—I ſhould perhaps make an apology for having cited this great lawyer, under the title of *Lord Coke*, but it is the name of pre-eminence which he hath obtained in Weſtminſter-Hall—The late publication of the Journals of the Houſe of Commons ſhews, that he did not proſtitute his amazing knowledge of the municipal law to political purpoſes, as he generally argues in the ſame manner and from the ſame authorities which he cites in his Inſtitutes.

" copo, ſcripturâ aut teſtimonio probetur, omni alienatione interdixiſſe " ei illum, qui priùs conceſſit, talemque ei impoſuiſſe legem cum primò " dederit — Ll. Alfr. et Edg. ch. xxxvii. — En, juriſperiti, feudum quod " dicitis *talliatum*, Edwardi Primi decimo ſupra tertium anno hic multo " antiquius habetis ;" Seld. vol. ii. p. 926. — Though what Struvius ſays, in his *Juriſprudentia Feudalis*, " Quod apud Anglos præcipue ob- " tinet," may be true, yet it is more or leſs uſed in every country in Europe, under the names of *Maggiorati*, *Majorats*, and *Retraits lignagers*, and ſeems likewiſe to have been univerſally condemned wherever it hath been introduced — *Gianone* (who derives the *Maggiorati*, uſed in the Neapolitan territories, from the Norman and feudal law, and not from that of the Lombards, in which there is no trace of any ſuch eſtate) ſpeaks thus of them : " Nel ſecolo decimo ſeſto i maggiorati, e le primogeniture (quaſi " che incognite agli antichi) ſi reſero coſi frequenti, che la lora materia " diffuſa empì la Giuriſprudenza di nuovi termini, di nuove diſpute, e " nuovi trattati." Gian. vol. iv. p. 294. — *Godefroy*, in his Comment on the Cuſtoms of Normandy, printed at Rouen in 1684, ſpeaks thus of them [*t*].

[*t*] *De Retraits* —— *Godefroy.*

" Le droit de retrait eſt par aucuns appellé *jus prothomiſeos*, par les autres *jus congrui*, *retractus* " *gentilius*, duquel on rapporte l'origine aux loix des Hebreux au Levitique 23. Ruth. 4. " Hieremie 32. Mais on conclud de là mal à propos qu'il ſoit de droit divin, par la diſtinction " des Scholaſtiques, qu'il y a de troit ſortes de préceptes dans les livres de Moyſe, les moraux, " les ceremoniaux, et les legaux, deſquels il n'y a que les premiers tenus pour loy divine. Que " ce droit ait eſté autrefois pratiqué entre les Romains, il eſt conſtant par la conſtitution de Valenti- " nien, Theodoſe, et Arcade, qui en prohibent l'uſage à l'advenir, *ne homines de rebus ſuis aliquid* " *facere cogantur inviti in l. dudum C. De contrab. empt.* Mais de quand il a eſté reſtably et receu " en uſage, il n'eſt pas bien conſtant, car advant Frederic auquel on attribuë ledit reſtabliſſement, " il eſtoit en uſage entre les Saxons et autres lieux d'Allemagne, et eſt vray-ſemblable que les " François l'ont apporté de ces Provinces-là : droit duquel la cauſe finale eſt fondée *ſur la conſer-* " *vation des familles, dont les François, et ſpecialement les Normands, ont toûjours eſté curieux*, " quoy que Cujas ſemble reprouver cette opinion livre quatriéme des fiefs chapitre quatorze. Car " c'eſtoit la meſme raiſon des Hebreux défendans l'alienation des heritages d'une famille en l'au- " tre, qui autrement permettoient le retrait au plus prochain.

" C'eſt une queſtion aſſez controverſe, ſi le droit de retrait eſt favorable ou odieux. Ceux qui " le font favorable diſent, que l'affection de conſerver les biens de ſes prédeceſſeurs eſt approuvée " par toutes loix, et pour confirmation alleguent l'hiſtoire de Nabot au troiſiéme livre des Roys : " que Conſtantin prohibant de vendre la maiſon des mineurs en la loy *lex quæ tutores C. De ad-* " *miniſtr. tut.* adjoûte ces belles raiſons, que c'eſt choſe lugubre et digne de commiſeration, d'eſtre " privé de la maiſon *in qua pater defecit, minor crevit et in ea majorum imagines aut non videre* " *fixas, aut videre revulſas :* que la prohibition faite au ſoldat d'acheter en la Province *in qua* " *militabat*, reçoit cette exception, *niſi paterna venierint l. milites prohibentur D. De re milit.* Que " le mineur eſt reſtitué contre l'adjudication faite à un tiers des biens de ſon prédeceſſeur *in l. ſi* " *emptionem D. De minor.* Que pour l'une des principales raiſons ſur laquelle le Praticiens fon- " doient le contredit des loix agraires, ils mettoient en advant la tranſlation en autre famille des " monumens de leurs prédeceſſeurs : de ſorte que Tibulle, pour montrer l'extréme obeiſſance

From

From the inconveniences mentioned in this Comment of *Godefroy's* it probably aroſe, that even the French nobility had the extraordinary public ſpirit [*u*], in the year 1560, to oppoſe *ſubſtitutions* beyond three lives. Boulainvilliers, vol. iii. p. 147.—The ſame inconveniences could not fail of being ſoon experienced in England; for Chaucer, in his character of the *Man of Law*, ſays,

" *All was fee ſimple to him in effect:*"

Beſides the intricacy and perplexities in the law; beſides the ſtagnation of landed property, ſo contrary to the promotion of induſtry, theſe eſtates have been productive of perpetual diſagreements between the father and his eldeſt ſon, which indeed he well deſerves from his moſt unnatural treatment of his younger children, though from cuſtom the hardſhip does not perhaps ſtrike him, when he makes his marriage ſettlement.—Younger children in this country are not indeed expoſed as they were amongſt the antient Greeks and Romans, and as they are to this day in China; but the very ſcanty proviſion made for them, in compariſon with the eldeſt ſon, ſeems to approach nearly to this barbarity.

This unequal diſtribution of the father's eſtate was unknown antiently [*w*] in any nation, whether civilized or barbarous; nor do we hear of it at preſent in any part of the world, but in certain ſtates of Europe—It can as little be ſaid, that we derived this cuſtom from our anceſtors the Germans; for Tacitus, in his treatiſe *De moribus Germanorum*, informs us, that *ſucceſſores ſui cuique liberi*, and this equality of diſtribution, even at this day, generally takes place in perſonal property, which being of a more

" qu'il portoit à ſa maiſtreſſe, n'a pû rien dire de plus pathetique, ſinon que par ſon commande-
" ment il vendroit la propre maiſon de ſes peres,

" *Quin etiam ſedes jubeat ſi vendere, avitas,*
" *Ite ſub imperium ſub titulumque lares.*

" Mais nonobſtant la belle apparence deſdites raiſons, c'eſt la plus commune reſolution des Do-
" cteurs, que le retrait lignager eſt *contre le droit commun, et partant odieux, par* ce qui eſt remar-
" qué en la conſtitution deſdits Empereurs Valentinien, Theodoſe, et Arcade *in d. l. dudum*, que les
" vendeurs ſont contraints par le moyen d'iceluy de ſouffrir que leur bien tranſiſſe contre leur vo-
" lonté en autre main que celle des acheteurs, leſquels ſont auſſi par meſme raiſon forcez de quitter
" ce qu'ils avoient acheté de bonne foy, et en ce faiſant la liberté du commerce eſt violentée:
" c'eſt pourquoy les Coûtumes qui parlent dudit droit de retrait ne reçoivent point d'extenſion,
" ains ſont reſtreintes aux termes de leur diſpoſition: de ſorte que le mineur, quoy que favoriſé
" par toutes les loix, n'eſt point reſtitué contre la preſcription dudit droit de retrait."

[*u*] I call it public ſpirit in the French nobility, becauſe entails are chiefly calculated for the pride of great families; and from this reaſon the preſent ſtatute hath by ſome been called the *Statute of Great Men.*

[*w*] τοὶ δὲ ζωὸν ἰδάσσαιλο
Παῖδες ὑπὲρθυμοι, ᾗ ἐπὶ κλήρους ἐβάλοιλο. Odyſſ. l. xiv. ℣ 208.
So Petyt, in his Leges Atticæ, ἅπαιλας τὸς γνησίους ὑὸς ἰσομοίρους ἦ. p. 51.

 fluctuating

fluctuating nature, pride does not interfere with the natural and equitable diſtribution of [x].

The perpetuities eſtabliſhed by this ſtatute in proceſs of time had ſo much contributed to the increaſe of power in the Great Barons, that about two centuries afterwards it was in a great meaſure evaded, by the invention of what is called a common recovery—It was impoſſible for the crown to procure a repeal of the law in the houſe of lords, and therefore the judges had probably an intimation, that they muſt by *aſtutia*, as it is called, render a ſtatute of no effect, which the king could not extort an alteration of, from one part of the legiſlature.

The great benefit ariſing from this method of cutting off an entail, ſeems to have made us ſhut our eyes on two very glaring improprieties in this fiction of a common recovery—The firſt is, that it is directly in oppoſition to the expreſs and clear words of a ſubſiſting law; and let the inconveniences of a ſtatute be what they may, no judge, or bench of judges, can conſtitutionally diſpenſe with them; their office is *jus dicere*, not *jus dare*—As then the miſchiefs ariſing from this chapter of Weſtminſter the ſecond are univerſally ſeen and acknowledged, why ſhould it not be repealed by (that power which can only repeal it) the legiſlature [y]—I never heard but of one objection to this, which is, that certain officers and patentees would loſe the fees which they are entitled to upon common recoveries—If there are ſuch claimants, who would be injured by the alteration, it is but juſt that they ſhould have a reaſonable compenſation, and the repealing act need not conſiſt of many words—It is only neceſſary to ſay, that every tenant in tail *ſhall, to all intents and purpoſes, be conſidered as a tenant in fee ſimple*, which he is indeed at preſent, with this only difference, that a tenant in tail can diſpoſe of his land by one method of conveyance (that of a common recovery), and a tenant in fee ſimple may chooſe out of many different modes of conveyance.

[x] Mr. Hakewill, in one of the Antiquarian Diſſertations, publiſhed by Hearne, gives this very extraordinary reaſon for the whole eſtate being limited to the eldeſt ſon, viz. that in the northern countries population goes on ſo faſt, that the eſtate would otherwiſe be frittered to nothing.

[y] Biſhop Burnet, in his Hiſtory, ſomewhere mentions a ſtatute of Charles the Second, with regard to the drawing of horſes a-breaſt on the highways, which was ſo impracticable, that the judges on their circuits directed the grand juries not to put it in execution—This ſeems to have been aſſuming a very extraordinary liberty with an act of parliament, and that ſo recent a one—I cannot help here taking notice of a very great impropriety (permitted every day in the courts of law) of treating ſtatutes, and particularly *modern ones*, as being ill penned, and not having been properly conſidered—They are the acts of the legiſlature of this country, and therefore this ridicule eternally thrown upon them is ſurely not inculcating a reverence to the laws.

The

The other impropriety in the common recovery is the very ridiculous and abſurd fiction by which the ſtatute is evaded—There have formerly been many queſtions ariſing upon miſtakes in ſuffering recoveries, which as often as they have been argued, it hath been attempted with great ingenuity to decide upon principles: but how can ſuch a fiction be ſupported, or any thing relative to it, upon ſolid ground or argument?—Moſt men of fortune and rank in this country never enter a court of juſtice, but to go through this moſt ridiculous ceremony: can the ſerjeants who mutter certain jargon, or the judges who preſide, explain [z] to ſuch a perſon what is going forward? what an impreſſion muſt this leave with regard to other legal proceedings? In this enlightened age, when other queſtions are decided with ſuch ſtrength and force of reaſoning (without that refined ſubtlety which formerly prevailed to the diſgrace of the law), it is high time that there ſhould be an end of ſuch unintelligible trumpery.

CAP. XIII.

QUIA vicecomites multotiens coram eis aliquos in turnis ſuis indictatos de furtis et aliis malefactis capiunt homines non culpabiles, et eos impriſonant, et ab eis pecuniam extorquent, cum legitimo modo per duodecim viros non ſint indictati: ſtatutum eſt, quòd per duodecim legales homines ad minùs *faciant inquiſitiones ſuas.*] From this chapter of the ſtatute ariſes the neceſſity of a bill of indictment's being found by twelve of the grand jury at leaſt, and it is therefore improper, that more than twenty-three ſhould be ſworn (which hath however been ſometimes practiſed) as a bill of indictment may otherwiſe be found by the minority, and the finding by twelve is ſufficient by this law—Beſides, whatever may be the caſe with *a multitude of counſellors*, public buſineſs is ſeldom well done when the aſſembly is too numerous.

CAP. XIV.

CUM de vaſto facto in hæreditate alicujus conſuevit fieri breve de prohibitione vaſti, per quod breve multi fuerunt in errore, credentes quòd illi, qui vaſtum fecerunt, non habuerunt neceſſe reſpondere, niſi tantum de vaſto facto poſt prohibitionem eis factam, dominus rex ut hujuſmodi error tollatur, &c.] This chapter of the law deſerves notice, as it ſhews that the ſtatutes of the greateſt con-

[z] It is to be wiſhed, that the fictitious proceedings in the common action of an ejectment were altered; no client can poſſibly be made to underſtand the reaſon of ſuch a fiction—If it is anſwered that there is no occaſion for his underſtanding it, I ſtill inſiſt that myſtery ſhould always be removed, eſpecially when no one bad conſequence can be ſuggeſted from ſuch a removal.

ſequence

ſequence at this time were little known to the generality of the ſubjects—Waſte had been expreſly forbid both by Magna Charta and 3 Edw. I. ch. xxi. and yet we find that theſe ſtatutes either were not known, or not conſidered as binding; for they expected to evade the penalties for diſobedience, if they had not expreſs notice by a writ to forbid the committing waſte—It is a neceſſary maxim in all laws that ignorance ſhall not excuſe; and yet, before the uſe of printing, it was in many caſes a hard maxim, and is even ſo now at preſent, from the multiplicity of penal ſtatutes.

CAP. XXV.

QUIA non eſt aliquod breve in Cancellariâ, per quod querentes habent tam feſtinum remedium, ſicut per breve nove diſſeiſine, dominus rex volens ut celeris fiat juſtitia, &c.] Glanville (probably alluding to this chapter of the ſtatute) calls the aſſiſe of *novel diſſeiſin*, "*regale beneficium clementiâ principis* "*indultum.*"—The remedy by this, or any other writ of aſſiſe, is now ſeldom uſed, but was formerly the common remedy [*a*], from the greater expedition in attaining the right—Lord Coke, in his firſt Inſtitute, informs us, that it was called an aſſiſe of *novel diſſeiſin*, in oppoſition to an *antient diſſeiſin*—The juſtices in Eyre at this time went their circuits but once in ſeven years, and no diſſeiſin before the Eyre (if not complained of in the Eyre) could be queſtioned afterwards; and therefore a diſſeiſin committed before the laſt Eyre, was called an *antient diſſeiſin*, whereas that committed after the laſt Eyre, was called a *novel diſſeiſin*—The reaſon why aſſiſes were more expeditious than other remedies, aroſe from no eſſoin being allowed in them, and likewiſe that in an aſſiſe the jury is to appear as ſoon as the defendant; but in other original writs no jury is to be returned, till the parties have appeared, and are at iſſue—This chapter, in every part of it, ſpeaks with proper warmth againſt delays in procuring juſtice—Thus an ordinance of Charles the Seventh of France, in the year 1454, directs, "Que les matieres poſſeſſoires et de novel deſſaiſin, ſeront decidées le plus "brief que faire ſe peut; car autrement, par la longeur des plaidoiries, les "proces ſeront *quaſi immortels.*" Ord. Royales, p. 21.

It appears by this chapter, that the ſheriff uſed to take an ox both from the *diſſeiſee* and the *diſſeiſor*—His claim upon the *diſſeiſee* probably aroſe from the reſtoring him to poſſeſſion; the ſtatute however very properly

[*a*] One volume of the Year Books is entitled, *Le Livre des Aſſiſes*, and contains hardly any deciſions, but upon writs of this kind. Aſſiſe is likewiſe one of the principal heads in Fitzherbert and Brook's Abridgement.

directs, that for the future he ſhould only claim this fee from the *diſſeiſor*, who was certainly the perſon to be puniſhed; and it likewiſe directs, that, if there are more diſſeiſors than one named in the writ, the ſheriff ſhall only be entitled to *one oa*, and that the value of the beaſt ſhall not exceed 5*s.* and 4*d.*—From this a very ſtrong argument may be drawn againſt the practice in moſt offices, who, when the names of many perſons are inſerted in one inſtrument, are but too apt to charge ſeparate fees.

There is a right of *tronage* mentioned in this chapter, for which a *novel diſſeiſin* will lye. As I do not recollect to have met with this right or word elſewhere, it may not be improper to mention, that Du Cange ſays it is a right of toll for weighing goods (probably at a fair), and that *trona* ſignifies a pair of ſcales—Du Cange likewiſe derives Troy weight from this word, how juſtly I will leave to etymologiſts.

CAP. XXX.

ITEM ordinatum eſt quòd juſtitiarii ad aſſiſas capiendas aſſignati, non compellant juratores dicere preciſe, ſi ſit diſſeiſin vel non; dummodo voluerint dicere veritatem facti, et petere auxilium juſticiariorum: ſed ſi ſponte velint dicere quod diſſeiſina ſit, vel non, admittatur eorum veredictum ſub ſuo periculo.] The latter part of this chapter ſhews, that the conteſt between judges and juries was of a very different nature at this time, from what it hath been of late years—The reaſon of this ariſes from what I have before obſerved, with regard to its being very common to bring attaints againſt juries, and an angry or diſhoneſt judge therefore drove them to the finding an improper verdict, in order to ſubject them to the proſecution by attaint: *Admittatur eorum veredictum ſub ſuo periculo.*—As this law is unrepealed, there can therefore be no doubt but a jury may find what verdict they pleaſe, and the misfortune is, that they run no riſque at preſent of an attaint—There is however generally that moderation in juries, that they ſeldom abuſe this liberty.

This chapter is generally called the Statute of *Niſi Prius*, it relates to actions depending in *utroque Banco*, without any notice of the court of Exchequer; nor is there any mention in 14 Edw. III. ch. xvi. (which likewiſe relates to the authority of Juſtices of *Niſi Prius*) but only of the Chief Baron of the Exchequer, which is a further proof of what I have before obſerved in the Comment upon Magna Charta, that the Barons of the Exchequer were not antiently conſidered as having the ſame office or powers with the Juſtices of the King's Bench and Common Pleas.

CAP.

CAP. XXXIII.

QUIA multi tenentes erigunt cruces in tenementis ſuis, aut erigi permittunt, in prejudicium dominorum ſuorum, ut tenentes per privilegium templariorum et hoſpitallorum tueri ſe poſſint contra capitales dominos feodorum: ſtatutum eſt, quòd hujuſmodi tenementa capitalibus dominis aut regi incurrantur, eodem modo quæ ſtatuitur alibi de tenementis alienatis ad mortuam manum.] Both this and the 43d chapter of this ſtatute, which directs, that the Knights Templars ſhall not bring any one before the Conſervators of their own privileges for any matter of which the king's courts had conuſance, together with their large endowments [*b*] and riches, ſeem to have been the cauſe of the diſſolution of this Order in the following reign [*c*], and not the crimes of which they were accuſed. Many learned men have wrote in defence of this Order, and particularly Mariana, Boccace, and Dupuy [*d*]: Stubbs likewiſe aſſerts, that they had done nothing which deſerved this perſecution —Voltaire ſays, "Que deux et un temoins les accuſerent de renier "Jeſus Chriſt (en entrant dans l'ordre) de chracher ſur la croix, et d'adorer "une tete dorée montée ſur quatre pieds, et que le novice juroit de "s'abandonner à ſes confreres."—This agrees with the charge likewiſe in Dugdale's Monaſticon, vol. ii. p. 559. where the examinations are printed; but the proof is very defective —Their excluſive privileges were equally inconvenient in other parts of Europe, and produced the ſame perſecution of the Order: poſſibly the preſent proceedings againſt the Jeſuits, in the Roman-catholic part of Europe, may ariſe from the ſame cauſes.

CAP. XXXIV.

PURVEU eſt que ſi homme raviſe femme, eſpouſe, damoiſelle, au autre femme deſormes, par la ou elle ne ſe eſt aſſentue, ne avant, ne apres, eit jugement de vie et membre. Et enſement par la ou homme raviſt femme, dame, eſpouſe, damoiſelle, au autre femme à force *(tut kel ſe aſſente apres) eit lel jugement comme avant eſt dit.*] This is the only chapter in the old law French (and that more corrupt than uſual) in this whole ſtatute, which conſiſts of fifty chapters;

[*b*] "For wealth is crime enough to him that's poor." DENHAM.

[*c*] There is in Cox's Hiſtory of Ireland, p. 89. an order to Sir John Wogan Lord Deputy, in the year 1307, to ſuppreſs the fraternity of Knights Templars.

[*d*] *Puteanus* in Latin—See likewiſe Mariana's Hiſt. de Eſpan. vol. i. p. 597. Madrid 1669.

and

and what is ſtill more ſingular, the latter part of this very chapter is in Latin—It likewiſe makes a very extraordinary diſtinction between a rape, and a rape *by force*, which, I muſt confeſs, I do not thoroughly comprehend [*e*].—By ſome of the antient laws of Europe, the conſent of the woman raviſhed, after the rape, purges the offence; by others not—By the law of Scotland, the conſent afterwards prevents the puniſhment of the criminal. Erſkf. Inſt. p. 482. With this agrees the law of Bretagne: D'Argentrè, p. 2050.—On the contrary, by the Engliſh and many other laws, the conſent afterwards does not alter the offence.

Great attention is ſhewed, by ſome of the old laws (of what are called barbarous nations), to the protection of the chaſtity of women—"Si qua "fœmina vadit in itinere inter duas villas, et obviavit cum aliquo, et per "raptum denudat caput ejus, VI ſol. mulctetur—Si ejus veſtimenta leva- "verit, ut uſque ad genitalia denudet, VI ſol. ſolvat—Et ſi eam denuda- "verit, ut genitalia ejus appareant, vel poſteriora, XII ſol. ſolvat." Lindenbr. Leg. Alemann. p. 378.—In the warm climates of Spain and Italy leſſer injuries, or even the approach to a woman, is made penal—There is a law of the Wiſigoths (whilſt in Spain), "ne, abſentibus propinquis, mu- "lierem medicus phlebotomare præſumat," Lindenbr. p. 203.—By a law of Naples, in 1571, this is ſtill carried further, and it is made a capital crime in thoſe, "*che per forza baciaſſero le donne, anche per ſotto preteſto di* "*matrimonio.*" Gianone, vol. iv. p. 249.

It hath always been required in every country, that the complaint for this offence ſhould be made within a certain time. Thus, by the laws of Navarre: "*Las mocas y doncellas deſtrupadas non puedan pedir ſu virginidad* "*o eſtrupo, ſin dentro de quatro meſes deſpues que fueren desfloradas, o que a ſolo* "*ſu dicho dellas non ſe de ſe ninguna ni credito.*" p. 256.—By the Sicilian *conſtitutions*, the complaint ſhould be made in eight days.—By our law no particular time is fixed for the complaint of this injury; but if not recently made, it always affords the ſtrongeſt argument of preſumption in favour of the perſon accuſed.

This part of the ſtatute having made it felony in the man to commit a rape, ſuddenly changes from French to Latin, and enacts, "*Si uxor ſponte* "*reliquerit virum ſuum, et abierit, et moretur cum adultero ſuo, amittat imper-* "*petuum actionem petendi dotem ſuam, niſi vir ſuus ſponte et abſque coërtione* "*eccleſiaſticâ, eam reconciliet et ſecum cohabitare permittat*"—The occaſion of this ſudden change of the language, and in the middle of a chapter, pro-

[*e*] Rape is puniſhed with death by the laws of *Bretagne*, if the woman is not a public ſtrumpet; or, though a public ſtrumpet, if ſhe lives with her huſband. *D'Argentrè*, 2050.

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bably aroſe from what I have before obſerved, that when a law relates to the intereſts or concerns of the clergy, it is generally in Latin—Now adultery and fornication are only offences of ſpiritual conuſance, and never were criminal in this country either by the common or ſtatute law, but in the time of the commonwealth and protectorate—By two ordinances, in 1650 (*Veneri Martique timendas*), it is made felony, without benefit of clergy, in both man and woman to commit adultery and fornication; the firſt offence is puniſhed with impriſonment for three months, and the ſecond with death.—Theſe ſtatutes could not have continued unrepealed, *even if Charles the Second* had not ſucceeded to the throne—Though adultery and fornication is made a temporal offence by the laws of many countries in Europe, yet I cannot find any which approaches to the ſeverity of the ordinances of the commonwealth, except a law of Sicily, "*Si* "*quis cum volente et acquieſcente viduâ ſtuprum commiſerit, flammis ultricibus* "*exuretur.*" Conſt. Sic. p. 251. *Panormi*, 1637. Fol.

CAP. XLII. & XLIV.

DE mareſcallis domini regis, de feodo camerar', cuſtod' hoſtiorium in itinere juſtitiariorum—Ordinatum eſt quod de qualibet aſſiſa et jurata quam cuſtodiunt, capiant quatuor denarios tantum, et de chirographis nichil—De his qui vocati ſunt ante juſtitiarios ad defendendum placitum ſuum nichil pro ingreſſu vel egreſſu capiant, ad placita coronæ de qualibet duodenâ XII *denarii tantum capiantur.*] I have in the text taken part of the 42d chapter and part of the 44th, which both relate to fees claimed by certain officers, and between which a chapter relative to the Knights Templars is moſt improperly inſerted—The chief reaſon of my making any obſervation upon this part of the ſtatute ariſes from the words affording a ſtrong inference, that the courts of law were not at this time *open courts* in the ſenſe [*f*] that they are now underſtood ſo to be—An open court at preſent is generally ſo crouded by idle ſpectators, that no one who hath any real buſineſs to do can have acceſs; or, if he procures acceſs, he is not ſo much at his eaſe, as thoſe whoſe intereſts are depending have a reaſonable right to inſiſt upon—This ſtatute therefore directs, that the plaintiff, or defendant, ſhould pay nothing for admittance; but that the idle part of the audience, which more particularly throngs a criminal court, ſhould pay one penny each for admittance, which may be nearly equal to a ſhilling at preſent: ſo that if

[*f*] In the modern ſenſe of an *open court*, the legiſlature could never have allowed any fees to be taken for admittance.

the

the ſpirit of the law was attended to, it would, in a great meaſure, prevent what is now ſo ſenſibly felt as an inconvenience—The ſtatute then injoins the judges, in theſe emphatical words: "Quod dominus rex juſti-"tiariis injungit in fide et ſacramento quibus ei tenentur, quod ſi hujuſ-"modi miniſtri contra prædictum ſtatutum in aliquo iverint, pœnam "eis infligant rationalem."—When the ſervant of judges at the Old Baily, and the officers of the courts in Weſtminſter-Hall, have, upon certain occaſions, taken not only a *penny* from the ſpectator, but even inſiſted upon gold; are they not within both the letter and ſpirit of this law, and is it not incumbent upon the judges to put it in execution agreeable to what is injoined by the ſtatute?—Other parts of the law relate to the fees of the chamberlain, who was entitled to a palfrey [*g*] *de tenentibus per baroniam*; and, if ſuch a tenant is an abbot or prior, the chamberlain is to be contented with his upper veſtment, or rather the price of it: for, ſays the law, it is more decent "quòd viri religioſi finem faciant pro ſuperiori "indumento, quàm exuantur."—Theſe little circumſtances ſhew ſtrongly the manners of the times.

CAP. XLVII.

PROVISUM eſt quod aque de Humbre, Ouſe, Trente, Doon, Eyre, Dervent, Werf, Nid, Yore, Swale, Teeſe, et omnes alie aque *in quibus ſalmones capiuntur in regno, ponantur in defenſo quoad ſalmones capiendos; a die nativitates Beate Marie, uſque ad diem Sancti Martie, et ſimiliter quod ſalmuneti non capiantur, nec deſtruantur per retia, vel per aliqua ingenia, a medio Aprilis, uſque ad nativitatem Beati Joannis Baptiſte.*] There are many antient acts of parliament in the Statute-book, for the preſervation of the ſalmon, and ſtill more in the Scots [*b*] ſtatutes—The reaſon of this particular attention aroſe from

[*g*] This of a palfrey was probably claimed by the chamberlain, for introducing the *tenentes per baroniam* to do homage.

[*b*] By one of the Black acts, it is made penal in Scotland to take any ſalmon for the ſpace of three years, which muſt have been very difficult to inforce, as it made one of the great ſtaple commodities of the country for exportation.—There is likewiſe a very ſingular proviſion by an Iriſh ſtatute of 11 Eliz. ch. iv. for the preſervation of ſalmon—All ſwine, which feed on the ſtrand where the ſea ebbs and flows, are forfeited; it being ſuppoſed, by the peamble of the ſtatute, that they feed on the ſpawn of fiſh, and particularly the ſpawn of ſalmon and eels.—By one of the laws of the antient Wiſigoths in Spain, no perſon is to fiſh for ſalmon, but on one ſide of the river, and that only to what in our law is called the *filum aquæ*, and which they deſcribe to be that half of the water, included between the bank of the river, and the greateſt force of the ſtream. Fuero Juſgo, p. 591.—There are likewiſe very minute regulations to the ſame purpoſe (during the reign of St. Louis) in France. V. Ord. Royales, p. 1.

ſalted fiſh, and eſpecially ſalmon, forming great part of the winter's proviſion, which appears, by the accounts of ſtores for the religious houſes, in Dugdale's Monaſticon.

Not only private houſes relied upon a ſupply of ſalted fiſh for the winter's conſumption, but armies at this time could not be marched or ſubſiſted without them—There is, in Rymer [*i*], an order of Edward the Second, to provide 3000 dried ſalmon for this very purpoſe—Thus likewiſe Monſtrelet, in his Chronicle [*k*], vol. ii. p. 251. mentioning the defeat of the Engliſh, and their convoy being taken, ſays, "Que grande partie du "charoy des dits Anglois eſtoient charges de harene, et a ceſte cauſe la "battaile fut appellé la battaile des harenes."—The regulations of this ſtatute were principally intended for the Northern rivers of England, which empty themſelves into the Eaſtern ſea, as appears by the names of thoſe which are enumerated — It would be indeed highly abſurd to fix the ſame time for all rivers indiſcriminately, as rivers even upon the ſame coaſt, if at a conſiderable diſtance, often vary in the time of the Salmons coming up to them; and, between the Weſtern and Southern rivers compared with the Eaſtern, there is the difference of months.—It muſt be admitted however that there are general words which follow, and which include all rivers in the kingdom; but I ſhould think that the word *all*, after the enumeration of the North Eaſtern rivers, would receive a limited conſtruction, as it ſometimes does; for if the Thames was meant to be included, could this parliament ſitting at Weſtminſter upon its banks, have [*l*] omitted the particular mention of it, and that before the other Eaſtern rivers—After all, theſe regulations are either neglected, or, if put in force, do not ſeem to have any great effect—There are ſometimes, for many years together, great quantities of fiſh, and at other times great ſcarcity, both the one and the other probably ariſing from cauſes, which we are totally ignorant of; and indeed we know leſs of the natural hiſtory of fiſh, than of any other kind of animals — If any new law ſhould be thought neceſſary, why ſhould not the policy of the late Game act be adopted? and why ſhould it not be penal for any perſon to have at his table fiſh in the ſpawning ſeaſon, as well as it is penal to have a partridge or pheaſant in the prohibited times? — It cannot however be done by a general law, as I ſaid before; and the particular times muſt be ſettled for the different rivers.

[*i*] Rymer, vol. iv. [*k*] Paris, 1572.

[*l*] Upon looking into the ſtatute of 13 Ric. II. ch. xix. which recites this chapter of Weſtminſter the ſecond, the Thames is mentioned before the Humber, &c. This ſhews the great inaccuracy in the citing or referring to ſtatutes formerly, before the uſe of printing.

This ſtatute, from the many regulations which it contains, together with the ſtatutes of Wynton, and the ſtatutes of Labourers, Liveries, and Maintenance, were ordered to be proclaimed in every county by Edward the Fourth. This is mentioned in the Year Book of the firſt of Henry the Seventh (T. Mich. p. 3.); but the Chief Juſtice obſerves, that ſome of the privy counſellors, who had juſt taken an oath to obſerve theſe laws and put them in execution (before the king in council), broke through ſome of them, *even in going down ſtairs.*

STATU-

STATUTUM WYNTON.

13 Edw. I. A. D. 1285.

THE preamble to this ſtatute recites [*m*], that when murders, burnings, robberies, and theſts were committed, the inhabitants of the county were more willing to excuſe the offender, than to puniſh for the injury to a ſtranger; and that if the felon was not himſelf an inhabitant of the county, yet the receiver of the ſtolen goods frequently was ſo, which produced the ſame partiality in juries, who did not give proper ſatisfaction in damages to the party robbed [*n*] —This preamble therefore ſhews the particular propriety of the regulation of *hue* and *cry* at this time, which made the whole county anſwerable, and therefore took away from juries the inducement to ſpare their countryman when indicted — It continues however an excellent regulation of police even at this day (when juries do not determine between the criminal and the public from the ſame blameable prejudices), as I have before obſerved on the 9th chapter of Weſtminſter the firſt, which relates to *hue* and *cry* — The proviſions of the ſtatute however have been much neglected; and Hollinſhed complains, that, in the reign of Queen Elizabeth, the conſtable, upon a complaint of robbery, did not conſider it as part of his office to raiſe the country —We find by the preamble, that it is by no means confined to the offence of robberies, as generally underſtood; but extends likewiſe to murders, burning, and theſts, being thoſe offences which require an immediate purſuit and puniſhment of the offender — I have before obſerved, in the Comment on Weſtminſter the firſt, with regard to the original of the word *hue*, and ſuppoſed that it might have been derived from the Norman cry of *haro*; and we accordingly find, that it was an old inſtitution in parts of France, " et pluſors " fois avons nos commandes en nos aſſiſe, que tuit ſaillent à *cris* qui aven- " ront, et que caſcun met pein en arreſter les malfaiteurs ſuſdits." Beaumanoir, ch. lxvii [*o*].—Mr. Mildmay, in his account of the Police of France, informs us, that at this day the Lord of the Seigneurie is obliged

[*m*] I have given the ſubſtance of this preamble, which is abſolutely unintelligible in the common tranſlations.

[*n*] We do not hear at preſent of damages or ſatisfaction for a robbery — Robberies however at this time were generally proſecuted by appeal, as the appellor was entitled to reſtitution of the ſtolen goods, when he proſecuted by appeal, but not when he proſecuted by indictment, till the ſtatute of Henry the Eighth.—This reſtitution is here expreſſed by the word *damages*; the reaſon of the reſtitution to the party when he appealed, aroſe from his being at the expence of the proſecution.

[*o*] Beaumanoir is the moſt antient writer on the French law, except Des Fontaines.

to

to profecute every felon at his own expence, and which is often a very heavy one: it is believed however, that the raiſing the hue and cry is at preſent as much diſuſed in France, as it is in England.

This law, which conſiſts of ſix different chapters, relates only to regulations of Police, which is very uncommon in theſe *capitularia*, or collection of laws—Thoſe of Magna Charta, Weſtminſter the firſt and ſecond, containing very heterogeneous matter, without any kind of connection—The 4th chapter directs, that the walls of the great towns ſhall be ſhut from ſun ſitting to ſun riſing, and that watchmen ſhall patrole the ſtreets—The 5th directs, that the highways ſhall be cleared of wood to the breadth of 200 feet, in order to prevent the felon's concealing himſelf [*p*]—And the 6th and laſt directs, that every man ſhall, according to his ſubſtance, have arms in his houſe, in order to purſue the felon effectually; and the conſtables are ordered to view the houſes at ſtated times, in order to ſee whether the owners have provided themſelves with ſuch proper armour [*q*].

There are ſo many miſtakes in the tranſlation of this ſtatute, that I ſhall here take notice of them—In the 3d chapter, *cheſcun vile* is tranſlated *every country*, but it ſhould be *every town*, as the word *vile* is tranſlated in the following chapter—The tranſlation of the beginning of the 4th chapter is indeed very intelligible, but it by no means follows the original, the meaning of which is obſcure, but ſhould probably be thus underſtood: "*Nor ſhall any one lodge in the ſuburbs of the town, if* NOT *in* "*the day time, nor even in the* DAY TIME, *if his hoſt will not anſwer for him.*"—In the 5th chapter, the wood is ordered to be cleared in the highways, "Iſſint que cet eſtatut ne extende pas as keynes ne as gros fuſz—This is tranſlated, ſhall not extend to aſhes, nor to great trees—Now an aſh-tree, in French, is *freſne*, and an oak is *cheſne*, or *queſne*; and therefore the word *keyne*, uſed in the ſtatute, moſt clearly ſignifies an *oak*, and not an *aſh*—Though it is admitted that an *aſh*, from the thinneſs of the foliage, is leſs likely to conceal a robber than an *oak*—At the latter end of the ſame chapter, he who makes a park, is ordered to fix his wall, "atant quil "*joyt* la leeſte de deux cens pes pres del haut chenun."—This word *joyt* ſhould moſt clearly be *ſoyt*, and the tranſlator hath entirely omitted the words *la leeſte*, or *at leaſt*—In the 6th and laſt chapter, the word *chapel de fer* is tranſlated a *breaſt plate*, which can mean no other part of armour than a *Helmet*.—Cotgrave, in his Dictionary, ſays, that *chapel* ſignifies the ſame with *chapeau*—And Du Cange ſays, that *capellus* is ſynonymous with *galerus* or *pileus*.

[*p*] The word, in the original, is *taper*, which ſignifies to hide himſelf like a mole.

[*q*] This is the firſt inſtance of a power given to officers to enter a houſe, in order to ſee if a parliamentary regulation is put in execution.

STATUTA

STATUTA CIVITATIS LONDON[r]

Edita apud Weſtm' anno 13. Edwardi regis, A. D. 1285.

THE Statute of *Circumſpectè agatis*, as well as the *Statute of Merchants* (already taken notice of in what hath been ſaid on the Statute of *Acton Burnel*), follow next in the Statute-book, but I ſhall make ſome obſervation upon the preſent law out of its order, as it relates to Police, and was made the ſame ſeſſions with the Statute of *Wynton*—Whether from this law's being local, or from what other reaſon I cannot pretend to conjecture, this ſtatute hath never been tranſlated, though it contains ſome very curious particulars—The preamble ſtates, that there were both by night and day continual affrays in the ſtreets of London; it therefore directs, that no one "ſoit ſi hardi etre truve alaunt ne *batraunt* [s] parmi "les ruves apres *cover feu* [t]; and that they ſhould carry no arms of any kind, unleſs he was *Grant Seigneur, ou autre prodome de bone ceniſſaunce*; and even if ſuch a perſon was in the ſtreets during the night he was to carry a light with him [u]—The puniſhment for offending againſt this part of the law is, that the *Gardein de la Pes* (the Conſervator of the Peace) ſhall ſend him for that night to the *Tonel*, which word I cannot find in any of the Gloſſaries—It certainly means however the ſame with the *Round-houſe*, and was either antiently an old butt or hogſhead, or ſomething built in the ſhape of one—We ſtill retain the name of *Round-houſe* for this *temporary gaol*, though ſometimes they are Octogon or Hexagon

[r] London was at this time (as it hath continued ſince) the metropolis of this iſland, and without a ſecond—Stephanides, who wrote in the reign of Henry the Second (amongſt many other curious and entertaining particulars) ſays, that this city could then raiſe 20,000 horſe and 6000 foot—And that when the citizens of other cities were ſtyled Cives, the Londoners had the appellation of Barones—Their liberties therefore make an expreſs article of Magna Charta—Fuller, in his Engliſh Worthies, ſays, that foreigners often conceive London to be the iſland, and England the metropolis.

[s] I gueſs *batraunt* to ſignify the ſame with *barreterant*, or quarrelling.—The French is very corrupt, and the Gloſſaries give no light.

[t] We find the *cover feu* is here mentioned as a common and approved regulation—It was uſed in moſt of the antient monaſteries and towns of the North of Europe; and the intent was merely to prevent the accident of fires—Buildings were then of wood; and Moſcow, being built of this material, generally ſuffers once in twenty years.

[u] There is a general vulgar error, that it is not lawful to go about with a *dark lantern*: All popular errors have ſome foundation, and I ſhould ſuppoſe this regulation to have been the occaſion of it.

buildings,

buildings, as thoſe at the end of the New Church in the Strand, and another in the Church-yard of Weſtminſter-Abbey—As this puniſhment ſhould ſubject the perſon confined to ridicule, it might not perhaps be amiſs to reſtore the original hogſhead, inſtead of theſe more elegant and modern buildings.

The next regulation is, that no tavern, in which either wine or beer is ſold, ſhould receive gueſts after *cover feu*—This might have been well intended by the legiſlature, but it probably was the occaſion of greater drunkenneſs; as, to evade it, they were obliged to begin their debauch earlier—The penalty upon the tavern-keeper for this offence is remarkable, as the fine is increaſed even to the *fourth offence*; and I do not recollect any other inſtance of a ſtatute going beyond the *third*—There were however deeper cauſes of theſe affrays and tumults in the ſtreets than the reſort to taverns, as the inhabitants of this country were formerly much more iraſcible and vindictive than they are at preſent—The number of different ſtatutes againſt going armed, and wearing liveries, are ſtrong proofs of ſuch a diſpoſition and temper.—Riley, in his Pl. Parl. p. 292. (and in the thirty-firſt year of Edward the Firſt) mentions an intolerable and increaſing grievance of proſecuting by appeal in the name of infants, "par queux ils ſont empriſones et mult grevez;" and which occaſioned the 31 Edw. I. St. ii. entitled, *A Definition of Conſpirators*—Many of the old writs in the Regiſter likewiſe prove this, as the writ *De manſo obſeſſo per quod terra fuit inculta*—*Quod feneſtras in minutas partes ſecuit*—and *Quia tenentes non audent morari ſuper terris ſuis*—Theſe are injuries *non noſtri generis, nec ſæculi*—Notwithſtanding the general inclination to decry every thing modern, I cannot but imagine, that the inhabitants of this country are, in the eighteenth century, infinitely more virtuous, than they were in the thirteenth; and that the improvements of the mind and regard for ſocial duties have gone hand in hand with the improvements by learning and commerce—Nor have I any doubt, but that, if any thing like a regular government continues in this iſland, ſucceeding ages will not only be more refined and poliſhed, but conſiſt of ſtill more deſerving members of ſociety [*w*].

At the end of this ſtatute, power is given to the king to make what alterations, from time to time, he ſhall think proper in theſe regulations; and the ſame power (though it might alarm at preſent) was given to

[*w*] I would aſk thoſe who think otherwiſe of the compariſon between antient and modern times, whether they ſuppoſe that, in the thirteenth century, any one would have thought of ſending 100,000 *l.* to the inhabitants of *Liſbon* after the earthquake? or would have ſubſcribed to cloath the French priſoners?

Henry the Eighth, by the ſtatute of Union between England and Wales, till repealed by the ſtatute of James the Firſt.—There ſeems likewiſe to have been a doubt at this time, whether an act of parliament, paſſed by the predeceſſor, bound the ſucceeding king; for by the *forma conceſſionis chartarum* (a law of the ſame ſeſſions) the prelates, counts, barons, &c. apply to the king, "Quòd cartas à progenitoribus conceſſas de *gratiâ ſuâ* "confirmaret:" and the anſwer is, "Nos autem prædictas conceſſiones "*gratas habentes, confirmamus eas* pro nobis et hæredibus noſtris."

There is a period at the end of this law, which, as it is printed in all the editions, is abſolutely unintelligible, "Le rey pur ceo que ſes "mynyſtres ſovent *ou ceſte enquerelez* devant les *avotours* des pleintes."—This ſhould be read *ont eté* enquerelez &c.—As for the ſignification of the words *avotours des pleintes*, it is explained afterwards to mean the ſame with *auditours des pleintes*—I ſhould take theſe auditors to be the *Maſters of Requeſts*; and ſome other antient ſtatute mentions the Vowters in Chancery, which ſignifies the *Maſters* in that court.

THE

THE STATUTE OF CIRCUMSPECTE AGATIS.

Made 13 Edw. I. A. D. 1285.

LORD COKE expreſly lays it down that this is a ſtatute, and the words *Circumſpectè agatis de negotiis tangentibus epiſcopum Norwicenſem, et clerum*, are only put by way of example, and that they extend to the clergy in general.—Prynne, in the third volume of his Records, p. 336. ſtrongly oppoſes this opinion of Lord Coke's, and it ſhould ſeem upon good grounds; his arguments are however too prolix to inſert, and I ſhall therefore only refer to him—One of Prynne's arguments is, that this is not mentioned as a law by any of the Chronicles of the time, and particularly by *Thomas de Walſingham*—This aſſertion hath been found to be true, but Thomas de Walſingham, though he does not take notice of it as a law, yet furniſhes us with the real occaſion of making this ſuppoſed ſtatute; and this occaſion ſhews, that it was really a writ iſſued by Richard the Second, inſtead of a ſtatute of Edward the Firſt—The biſhop of Norwich had preached up a Cruſade, in oppoſition to the king, and with ſuch effect, that the parliament diverted a fifteenth granted to the king *pro bellatoribus conducendis*, to this bigot's expedition againſt the Holy land—I ſhall inſert here Thomas de Walſingham's own account [*x*]. The king

[*x*] "Diebus quadrageſimalibus factum eſt parliamentum Londoniæ, in quo per plures dies "tractatum fuit de poteſtate conceſſa per ſummum pontificem epiſcopo Norwicenſi, et de pro- "fectione ſua contra ſchiſmaticos, et factus eſt ibi motus varius animorum. Nam pars, quorum "corda Deus tetigerat, volebat eum proficiſci tanquam eccleſiæ pugilem contra hoſtes Chriſti: "pars adverſa repugnabat, aſſerens non eſſe tutum committere plebem regis et regni preſbytero "inexperto: et ſchiſma erat inter eos. Ob quam cauſam pontificale negotium, ſimulque totius "eccleſiæ, protelatum eſt uſque ad Sabbatum, quo de paſſione cruceque dominica in univerſali "eccleſia fit mentio ſpecialis. Tandem poſt multas tergiverſationes per duces regni factas, poſt "plures altercationes interpoſitas per comites, barones, et magnates terræ plurimos, ſed omnino "Dei virtute et laudabili conſtantia militum parliamentalium conquaſſatas, ipſa die Sabbati hora- "que quibus ſancta eccleſia vexilla crucis prodiſſe decantat, omnis repente turba quæ illi conſilio "vel parliamento interfuit, et quæ maxime ſteterat contra crucis negotium cruciſque fidei pro- "motionem, conſentit tanquam perculſa tonitru ſolemnis illius Antiphonæ, Ecce crucem Domini, "fugite partes adverſæ; decrevitque pro votis epiſcopi cruce ſignari. Aſſignatur ergo ſibi per "commune decretum quinta decima regi præconceſſa in ſuperiori parliamento pro bellatoribus "conducendis. Decima vero Oxoniis præconceſſa per epiſcopos regi remanere ſtatuitur pro "maris cuſtodia, dum epiſcopus agere deberet in remotis. Quibus ita ſe habentibus, miſit epi- "ſcopus literas ſigillo ſuo munitas per omnes regni provincias, committens rectoribus et vicariis, "aliiſque curatis per univerſam Angliam conſtitutis, poteſtatem audiendi ſuorum confeſſiones

afterwards iſſued a writ of *ne exeat regno* to this turbulent eccleſiaſtic, which he would not obey; and therefore ſays the Chronicle, "Rex cepit "temporalia epiſcopi Norwicenſis in manus ſuas, eò quod inobediens erat "voci ejus, quando (ut præmiſimus) revocavit eum per breve ſuum, cum "paratus eſſet ad transfretandum, ſed tamen epiſcopus redire noluit."— This ſeems moſt clearly to explain the occaſion of iſſuing this writ, and indeed the initial words of it; for as this biſhop was popular, it was neceſſary that the king having ſeized his temporalties, ſhould direct his officers "circumſpecte agere de negotiis tangentibus epiſcopum Norwicen-"ſem, et *clerum*"—for his chapter and clergy were probably involved in the conſequence of this ſeizure of the temporalties, and perhaps many of them were ready to embark on this fanatic expedition.

"parochianorum, eiſque qui de bonis à Deo ſibi collatis aliquid erogarent, unde negotium cruce "ſignatorum promoveri poſſet, abſolutionis beneficium pariter et remiſſionis authoritate apoſtolica "impendendi, juxta formam bullæ prænotatæ. Igitur regni totius incolæ, audito tantæ bene-"dictionis dulcedinem Anglicis adveniſſe, tantam gratiam nec abijcere in vacuum prorſus ſuſcipere "voluerunt, ſed devotionis fideique calore ſuccenſi, qui bello ſe reputaverunt idoneos, ad pro-"ficiſcendum ſe cum omni feſtinatione præparabant: qui vero profectioni videbantur inhabiles, "juxta conſilia confeſſorum de bonis ſuis liberaliter ad opus proficiſcentium erogarunt, ut tan-"tæ remiſſionis et indulgentiæ eſſe participes mererentur. Et ita generaliter (Deo volente) "ſunt accenſa devotione corda cunctorum, ut pene nullus in tam ſpatioſo regno reperiretur qui "non vel ſemetipſum offerret dicto negotio, vel de bonis ſuis aliquid erogaret. Factumque eſt, "ut in brevi magnæ pecuniarum ſummæ ex multis regni partibus acervatæ epiſcopo deferrentur, "ut jam incepit videri poſſibile, quod ante regis conſiliariis, vel hujuſmodi profectionis adver-"ſariis impoſſibile viſum fuit, unde videlicet epiſcopo, et inter epiſcopos regni pauperrimi ſub-"ſtantiam tantæ profectioni neceſſaria miniſtraretur. Epiſcopus autem non dominos præpotentes, "nec eos qui in incerto divitiarum ſuarum ſperant, elegit in conſodales ſibi, ſed mediocres, et "qui ſine ſtrepitu vel ſine pompa diſponere bellum ſcirent et regere bellatores. Primus et princi-"palis illorum erat dominus Hugo de Calverla, vir ab antiquo exercitatus in armis, et qui in "cunctis locis opera militaria laudabiliter et prudenter adimpleverat, et jam pulchrum ſibi vide-"batur bellando bella dominica finem imponere operi militari. Secundus vero dicebatur do-"minus Welhelmus de Faringdon, ſane vir prudens et callidus, ſed cujus opera non reſponde-"rent ultima primis, quia quod laudabiliter inchoavit, expoſt perfidia maculavit. Hic primo ut "apparuit, minas judicum non timuit, nec à facie ducum ſupercilioſa verba ructantium formida-"vit, quando pene cuncti magnates regni crucis negotio reſtiterunt, ſed conſtanter atque pru-"denter pro epiſcopo cruce ſignato differuit, et ipſius profectionem non ſolum ſacroſanctæ ec-"cleſiæ promotionem futuram, ſed totius regni provectionem, palam argumentis evidentiſſimis "allegavit. Sed tamen more Cayphæ prophetavit, ut poſterius elucebit. Habuit epiſcopus ſecum "et alios nominis non parvi milites, puta, dominum Wilhelmum Elinham et dominum Thomam "Trivet, et plures quos longum foret inſerere. Quibus Deus proculdubio dediſſet bene expe-"diendi gratiam in rebus militaribus, ultra quam meruerunt duces et marchiones Angliæ, quia, "multis annis elapſis, bella Gallica frequentarunt, ſi eodem anno eadem intentione iter illud ar-"ripuiſſent, quibus epiſcopus et ſimplicioris conditionis homines qui profecti ſunt cum eo: ſed in-"erat eis (ut expoſt apparuit) mens invidia corrupta, animus obſeſſus avaritia, et cor proditionis "felle toxicatum, ut ex ſequentibus apparebit."

Abſtracted indeed from this explanation from Thomas de Walſingham, by what rule of grammar or conſtruction can a law, which only mentions the biſhop of Norwich, be extended to all eccleſiaſtics in general? By the ſame rule of conſtruction, the ſtatute of regulations for the city of London (laſt commented upon) might be extended to all the great towns in the kingdom [*y*].

[*y*] There is conſiderably more of this ſtatute in the original Latin, than what hath been tranſlated by the Editors of the ſtatutes.

ORDINATIO

ORDINATIO PRO STATU HIBERNIÆ.

Anno 17 Edw. I. A. D. 1288.

IT is very ſingular, that, though this Ordinance hath found a place amongſt the Engliſh ſtatutes, the collection of Iriſh ſtatutes, printed by authority at Dublin, begins only with the Ordinances of *Kilkenny*, in the third year of Edward the Second—There can be no doubt however, that this law extends to Ireland, if not repealed by ſome Iriſh act of parliament; as by Poyning's law, in the time of Henry the Seventh, all precedent Engliſh ſtatutes are made to bind in Ireland [z].

Notwithſtanding what hath been ſaid by many Hiſtorians of the total conqueſt and ſubmiſſion of Ireland to Henry the Second, Sir John Davis very properly obſerves, that this ſuppoſed conqueſt did not extend much further than the neighbourhood of Dublin. For with what propriety can that be called a conqueſt, where the conqueror cannot inforce his own laws and regulations?—It was by degrees only (and thoſe very ſlow ones), that they were civilized and brought to a ſtate of ſubmiſſion—*Froiſſart* gives an account of a very ſingular converſation, which he had with *Henry de Baſtide*, who was an equerry to Richard the Second, and attended him in his expedition to Ireland—This Baſtide was, in his youth, a retainer to an earl of Ormond, and, by a fall from his horſe on an attack of the wild Iriſh, was taken priſoner by them, continued ſeven years in captivity, and married a daughter of one of their chieftains—By this means he ſpoke the Iriſh (he ſays) as fluently as he did Engliſh, and was pitched upon, by Richard the Second, to attend four Iriſh kings, who came to do homage to him whilſt he was in Dublin—The whole account of their reception and entertainment very much reſembles that which we have ſhewn lately to Cherokees and Mohawks—"Et eſtoyent les quatre roys tres richement

[z] Subſequent ſtatutes only bind if Ireland is mentioned—As for Wales, all ſtatutes are now made to extend to it, whether mentioned or not, by a clauſe inſerted in the middle of 20 Geo. II. ch. xlii. the title of which is to explain and amend *the Window Tax Act* of the ſame year—Mr. Cay, in his very accurate Index, hath very fortunately taken notice of this law under the title of *Wales*, otherwiſe the principality might poſſibly ſtill continue in ignorance of ſuch a law.

"veſtus"

" veſtus" (at the expence of the Engliſh) " et s'aſſirent ce jour à la table " du roy Richard" (before this he mentions, that every thing was common between themſelves and their ſervants), " et devez ſcavoir quils " furent mults regardez des ſeigneurs, et de ceux qui la eſtoyent, " et à bonne cauſe, car ils eſtoyent moults eſtranges et hors de con- " tenance des ceux d'Angleterre, et d'autres nations, et nature s'en- " cline volontiers à veoir choſes nouvelles, et pour lors certainement " (Meſſire Jehan [*a*]) c'etoit grande nouvauté à veoir ces quatres rois " d'Ireland—Meſſire Henry (reſpondy Je lors &c.)"—Froiſſart, livr. iv. p. 204, & ſeq. printed at Lyons by Jean de Tournes without date.—The ſame author afterwards ſays, that the cauſe of theſe four kings [*b*] being willing to do homage to Richard chiefly aroſe from his bearing the arms of Edward the Confeſſor, which are (" une croix potencée " d'or et de gueules, à quatre colombs blancs au champ de leſcu et de " banniere"), inſtead of the arms of England, which were then *Leopards*, and not *Lions*.

Much later than this, in the year 1446, a parliament was held at *Trim*, in which they were directed not to ſuffer their beards to grow on their upper lip [*c*]—And ſtill later, *Spenſer*, in his Dialogue upon the State of Ireland, ſays, that, in the time of Queen Elizabeth, they let their hair hang ſo far over their faces, that it was difficult to diſtinguiſh one from another; and this difficulty greatly favoured their theſts and rapines on the Engliſh—There was indeed a ſtatute made at Kilkenny, in the fortieth year of Edward the Third (whilſt the duke of Clarence was Lord-Deputy) to aboliſh the *Brehone*, and introduce the Engliſh law [*d*]; but this law was certainly never carried into execution beyond the Engliſh pale, any more than another made in the tenth of Henry the Seventh, by which the uſe of the Iriſh language was forbid under penalties—The firſt ſtatute, which thoroughly eſtabliſhed the dependence of the Iriſh, was the famous law of Sir Edward Poynings, who was Lord-Deputy of Ireland in the reign of Henry the Seventh.

[*a*] Jehan Froiſſart, to whom Baſtide ſpeaks.

[*b*] Their names may be ſeen in Froiſſart.

[*c*] Notwithſtanding an Iriſh ſtatute of Charles the Firſt, that *opprobrium* of the Iriſh of ploughing by the horſes tails, ſtill continues in the North Weſtern parts, as it does in the N. W. Highlands of Scotland--It ariſes, I ſhould imagine, from not being able to purchaſe collars and other more convenient harneſs—As for the barbarity; the cuſtom which prevails in *Somerſetſhire*, and the North of England, to pluck the feathers from live geeſe ſeems to equal it.

[*d*] There is, in Riley's Pl. Parl. a writ to the Juſtice of Ireland, in the fifth of Edward the Third, to the ſame purpoſe, p. 586. as alſo another, p. 569.

If

If what hath been here contended for wanted any additional proof, the preſent ſtatute ſupplies it—It conſiſts of eight different chapters, and not one of them aboliſhes any of the Iriſh cuſtoms, or Brehon law: the regulations have nothing very particular in them, and are calculated only for the Engliſh pale.

I ſhall therefore make no obſervation, except on the 5th chapter, which directs, that the fee of the marſhal, or gaoler, from the priſoner, when he is ſet at liberty, ſhall not exceed 4 *d.*—This ſeems moſt clearly to prove the right which the gaoler hath to a fee by the common law—As the criminal is almoſt always in neceſſitous circumſtances, the payment of this fee is often diſputed, and always moſt juſtly complained of: the remedy however ſeems to be by ſettling a proper ſalary on the gaoler, as otherwiſe he is moſt clearly entitled to it—Many who exclaim againſt the gaoler's fees as unreaſonable, may not perhaps know that a ſecretary of ſtate, or his officers, claims a fee of two guineas for an anſwer to the judges repreſentation, that a criminal is a proper object of the king's mercy, upon condition of tranſportation.

As in the Comment upon Magna Charta, I have mentioned the ceremonies through which a Scots act of parliament paſſed, before it became a law: I ſhall here take notice of the ceremonies and checks requiſite with regard to an Iriſh ſtatute.

The order of proceedings and ſummons in parliament is firſt, that the Lieutenant and Council do certify, under the great ſeal of Ireland, the cauſes and conſiderations of all ſuch acts as ſeem good to them to be paſſed in parliament—They are then to be affirmed, altered, and returned under the great ſeal of England—I have taken theſe particulars from Lord Coke's 12th Rep. p. 109.—The modern practice in the Iriſh parliament is to move for heads of a bill, which muſt undergo the conſideration of the Iriſh Privy Council, before they are tranſmitted to England—This however was not probably ſo underſtood in the time of Lord Coke, as otherwiſe he would have mentioned this previous ſtep.

The *Juſtice* of Ireland mentioned in this ſtatute, anſwers to the Lord Lieutenant, and was rather a military than civil officer; the Lord Juſtices of Ireland at preſent have *Aid de Camps*, though they generally have conſiſted of an Archbiſhop, Chancellor, and Speaker of the Houſe of Commons.

There have been great and learned controverſies between Molyneux and others with regard to an Engliſh act of parliament binding in Ireland; and Molyneux, who contends it ſhould not bind, hath argued ſtrongly from

from an Engliſh ſtatute's not being ſuppoſed to extend to Ireland, before Poyning's act in the reign of Henry the Seventh.—There is a note on the roll of the twenty-firſt of Edward the Firſt (entitled, *De malefactoribus in Parcis)* in theſe words: "Et memorandum quòd iſtud ſtatutum de verbo "ad verbum miſſum fuit in Hiberniam teſte rege apud Kenynton, 14 die "Auguſti, anno regni ſui viceſimo ſeptimo: Et mandatum fuit Johanni "Wogan, juſticiario Hiberniæ, quòd predictum ſtatutum per Hiberniam, "in locis quibus expedire viderit legi et publicè proclamari ac firmiter "teneri faciat."—This note moſt fully proves, that the king, by his ſole authority, could introduce any Engliſh law; and will that authority be leſſened by the concurrence of the two houſes of parliament?

THE STAT. OF WESTMINSTER THE THIRD:

Viz. QUIA EMPTORES TERRARUM.

Anno 18 Edw. I. A. D. 1290.

IT ſhould ſeem, that before this ſtatute no one, who held land under a ſuperior Lord by any ſervices, could alien without his licence—As the Lord probably inſiſted upon large fines on ſuch a licence, the freeholder holding under him, and who now began to be rather more independent, uſed to make ſecret feoffments, by which the Lords loſt their eſcheats, wardſhips, &c. *quod durum magnatibus videbatur*, ſays the ſtatute—They thought it therefore, on the whole, convenient to permit ſuch alienation, provided the alienee held by the ſame ſervices under the ſuperior Lord, by which the enfeffor held before ſuch alienation, and by this means the change of tenants became a matter of indifference—This therefore may not be improperly ſtyled the firſt great Statute of *Alienation*.

It conſiſts of three ſhort chapters, and nothing occurs further, which it is material to obſerve upon, except that this ſtatute is likewiſe to be found in Riley's Placita Parliamentaria, which begin with the eighteenth year of Edward the Firſt; and that the ſtyle of this king is, for the firſt time, Edward *the Son of Henry* [e], which I ſhould conceive he had aſſumed to diſtinguiſh him from the two Edwards kings of England before the conqueſt—Thus likewiſe Edward the Third, for a conſiderable time, ſtyled himſelf *Edwardus, filius Edwardi, Edwardi filii*, but afterwards changed it to *Edwardus poſt Conqueſtum tertius*.—Sir Edward Coke hath, in his *Firſt Inſtitute* [f], given an account of the different ſtyles aſſumed by the kings of England, in order to detect ſpurious records, or deeds which may have been forged—He hath however omitted the change of ſtyle above-mentioned, both by Edward the Firſt and Edward the Third.

[e] This ſtyle is not in the original, but only in the tranſlation.
[f] P. 7. B.

STATU-

STATUTUM DE MONETA.

20 Edw. I. A. D. 1292.

I SHALL conſider this ſtatute with two other laws which paſſed the ſame year (entitled, *Statutum de Monetâ parvum et articuli de Monetâ*), as forming but one ſtatute, though they are printed in all editions as diſtinct ones.—In the twenty-ſeventh year of this king's reign is likewiſe another ſtatute to the ſame purport, entitled, *Statutum de falſâ Monetâ.*

Theſe are the firſt regulations with regard to the coin, at leaſt regulations by authority of parliament: Before this, one of the Chronicles informs us, that in the reign of King Stephen, *omnes potentes, tam Epiſcopi, quam Comites et Barones, faciebant monetam*; but Henry the Second, on his acceſſion to the throne, *novam fecit monetam, quæ ſola recepta erat et accepta in regno* [*f*].—This wiſe alteration made by Henry the Second [*g*], in bringing all the money of the kingdom to be coined at the Royal Mint, ſeems to have been acquieſced in; but though it in ſome meaſure provided againſt the debaſing of coin at home, it could not prevent its being imported. It is very remarkable, that there does not ſeem to be the leaſt idea of debaſing the coin in this country, and that all the regulations of theſe early ſtatutes are calculated to prevent its being introduced from abroad, particularly from *Avymin*, which I take to be the ſame with *Avignon*. Above a century before this, there had been very ſevere examples againſt perſons convicted of offences in impairing the coin.—The Chronicle of the Abbot of St. Peter de Burgo [*b*] ſays, that, in the year 1125, "Juſtitia de monetariis fit per "Angliam quibuſdam ſuſpenſis, quibuſdam dextris manibus amputatis, "et aliis teſticulatis, et mutilatis [*i*];" and Thomas Wykes [*k*], in his

[*f*] Sir Thomas Rowe, in a very able ſpeech made in parliament on the ſubject of coinage, cites this paſſage from the *Mirroire des Juſtices*, "Le roy ne veut ſa money impare ne amender "ſans l'aſſent des touts les counties." Ruſhw. Coll. vol. ii. p. 1218.

[*g*] Philipe le Bel was the firſt king of France who claimed the ſole prerogative of coining money, Boulainv. vol. ii. Before this (as in England) the Great Lords coined within their own Seigneuries.

[*b*] Publiſhed by Sparke in 1724.

[*i*] It is very remarkable, after this inſtance of capital puniſhments, that the preſent ſtatute is ſo far from making the offence felony or treaſon, that it is contented with merely *forbidding* the crime.

[*k*] Gale's Collection, vol. iii. p. 107. where the bad conſequences attending this offence are very ſenſibly ſet forth.

Chronicle, mentions, that, in the year 1278 (which was but twelve years before the preſent ſtatute), many Jews were executed in England for the ſame offence—It hath already been obſerved that, upon a regulation's taking place in England, the ſame regulation is ſoon adopted in France, or *vice verſâ*; and therefore, in the year 1306, there are French ordinances ſimilar to the preſent, and which were occaſioned by the coin in that kingdom being ſo debaſed, that there was a general inſurrection of the lower artiſans at Paris. (Chronique de France, par Maiſtre Nicholle Giles, Paris 1556).

No mention is made of gold coin in this ſtatute, which is generally agreed not to have been introduced till the reign of Edward the Third, which the ſilence of the Records in *Rymer*, till the ſeventeenth year of that reign, ſeems to confirm—*Maitland* [*l*] however proves, that gold was coined earlier, which I ſhould rather ſuppoſe to be medals upon coronations or ſome other great ſolemnity, than that it was commonly circulated as money.

Though the offence of debaſing the coin is ſimply forbid by theſe ſtatutes of the twentieth year of Edward the Firſt, yet in ſeven years afterwards, by the 27 Edw. I. St. iii. it is made capital, and afterwards, by the twenty-fifth of Edward the Third, it is made high treaſon; and even unlawfully making or having coining tools or inſtruments, is made likewiſe high treaſon by the eighth or ninth of William the Third—I do not mean to condemn theſe laws as ſevere, but there ſeems to be an impropriety in making a crime the ſame, or claſſing it with treaſon, which hath no immediate relation to it, eſpecially as there ſeems to be no material difference to the criminal, when convicted, whether he ſuffers as a felon or as a traytor; and the blanching copper, in order to counterfeit ſilver, is only made felony by the ſixth ſection of the ſame ſtatute.

[*l*] Hiſt. of Scotland, vol. ii. p. 218.

STATUT.

STATUT. DE IIS QUI PONENDI SUNT IN ASSISIS.

21 Edw. I. A. D. 1293.

THE preamble to this ſtatute confirms what I have before obſerved, that the great reaſon for the common laws encouraging the local trial of actions, does not ariſe from neighbours beſt knowing what relates to their neighbours, but to prevent the expence and inconvenience of a jury's attending at a great diſtance—"Dominus rex per publicam et fre-" quentem populi ſui querimoniam attendens, et quod ſæpius intolerabi-" liter fatigantur," &c.—The ſtatute indeed goes further than directing that they ſhall not be ſummoned out of their own counties, and orders that the jurors ſhall have forty ſhillings a year; which, from the value of money at that time, not only ſecured a ſubſtantial jury, but prevented the expence of attendance to thoſe who could leſs afford it.

The chief reaſon however of my making any obſervation upon this ſtatute is, to rectify a miſtake both in the original and the tranſlation, which are abſolutely unintelligible: "Quòd nullus vicecomes, ſubvice-" comes [*m*], vel eorum ballivi, ſeneſcalli, ſive ballivi libertatum de cetero " ponant in aliquibus recognitionibus aliquem, de *ballivis ſuis* extra comi-" tatum *faciendis*, niſi habeat terras," &c.—This is tranſlated, "That no " ſheriff, under-ſheriff, or their bailiffs, ſtewards, or bailiffs of liberties, " ſhall from henceforth put in recogniſance that ſhall paſs out of their " proper counties *any of their bailiffs*, except he have lands," &c.

The word *ballivis*, is a word of equivocal ſignification, it is either the dative or ablative of *ballivus* (the officer called a Bailiff), or it is the dative or ablative caſe of *balliva*, which ſignifies a bailiwick, or diſtrict of a county where the lord's bailiff, and not the ſheriff's officers, execute proceſs—If the word *faciendis* is then ſtruck out, the original becomes intelligible, by tranſlating *balivis bailiwicks*, and not *bailiffs*, it will then run thus: "No ſheriff, under-ſheriff, or their bailiffs, ſtewards of liberties, or their " bailiffs, ſhall put any one in recogniſance that ſhall paſs out of their " proper counties, or *bailiwicks*, unleſs he have lands," &c.

[*m*] This is the firſt inſtance of mentioning the office of under-ſheriff.

A CON-

A CONFIRMATION OF THE CHARTERS.

Made in the 25 Edw. I. A. D. 1297.

THE occaſion of this confirmation of Magna Charta, and the Charter of the Foreſts, hath already been mentioned in the Obſervations upon Magna Charta.

Though it is only entitled, *A Confirmation of the Charters*, it ſeems to contain additional matter, which is perhaps of infinitely more conſtitutional importance, than all the proviſions of the two Great Charters.

The firſt is, that no grant given by the free will of the people ſhall, by force of precedents, become a cauſe of *Bondage* [*n*]; and the ſecond, that neither from archbiſhops, biſhops, abbots, priors, counts, barons, or the *communalty of the land on no pretence*, ſhall any aid or tax be taken or levied, but by the *common aſſent* of the realm and for the *common profit* thereof — From this time, the commons neceſſarily became an important branch of the legiſlature.

"Scilicet et rerum facta eſt pulcherrima Roma."

Can it be imagined, that this parliament would have permitted the king to levy ſhip-money?

This ſtatute conſiſts of ſeven chapters, in the third the *Charters* are ordered to be read [*o*] in every cathedral church twice a year; they muſt therefore be in the archives of every antient cathedral, if not miſlaid or deſtroyed.

The 7th and laſt chapters mention the oppreſſion *de la maletoute des leynes*, which is tranſlated *maletent of wools* — It ſhould be however *maletolt*, which was a name given by the French to an antient and oppreſſive tax on ſale; as appears by all their old Chronicles — Boulainvilliers mentions a pun of Edward the Third, with regard to this tax, who called Philipe le Bel, continuing to levy it with oppreſſion, *Auteur de la loi Salique*.

After this confirmation of the Great Charters, follows the famous ſentence of excommunication by the archbiſhop of Canterbury, ſaid to be taken from a very antient manuſcript — By the eccleſiaſtical law, three admonitions are neceſſary before this dreadful ſentence can be paſſed; the archbiſhop, however, probably animated with particular zeal, by Edward's

[*n*] See the Remarks on Magna Charta.

[*o*] The moſt dignified clergy, and probably the moſt learned belonged to the cathedrals; it is much doubted whether the parochial clergy could read at this time.

having

having rifled all the monaſteries to carry on his wars [p], admoniſhes them *once*, *twice*, and *thrice* by the ſame inſtrument, "Pur ceo que le brefté du "temps plus long delai ne ſuffre;" and then whoever ſhall contravene, or in any way aſſent to the contravening, any of theſe articles, "Eſcom- "mengeons del corps notre Seigneur Jeſus Chriſt, et de tote la compagnie "de ciel, et deſtous les ſacrements de ſeintz. eſgliſe deſeverums — Fiat. "Fiat. Amen."

[p] V. Comment on Magna Charta. This diſtreſs of Edward's probably occaſioned likewiſe the Statute *De libertatibus perquirendis*, made in the twenty-ſeventh year of his reign.

STATU-

STATUTUM DE FINIBUS LEVATIS.

Anno 27 Edw. I. A. D. 1299.

THE preamble to this ſtatute, made but two years after the Confirmation of the Charters, recites the great grants and ſupplies which Edward had received from his ſubjects, and which he mentions as *the ſole reaſon for having made this confirmation*, "de noſtrâ propriâ volun-"tate;" which ſeems fully to prove (what I have before obſerved) that it was by no means eſtabliſhed law at this time, that an act of parliament bound the ſucceſſor, but only the king on the throne—The ſtatute then recites Edward's great diſtraction on account of his wars, and likewiſe his expectation of a *Nuncio* from the pope, "ad negocia expedienda, quæ ita "ſunt ardua, ut non ſolum nos, et regnum noſtrum, ſed totam Chriſtiani-"tatem contingunt, et ad ea ſaniùs pertractanda totum conſilium noſtrum "habere plenariè indigemus."—This important buſineſs to be ſettled with the pope, was probably the claim which he had made to a ſupremacy in Scotland; and though ſuch a claim deſerved rather reſentment than a ſolemn diſcuſſion, yet Edward at this time *(reclament licet Hiſtorici)* was upon ſo bad terms both with people and clergy, that he did not chooſe an open rupture with the pope.

The ſtatute conſiſts of four chapters—The firſt ſtates the great perjury which prevailed amongſt jurors at this time—Perjury in witneſſes was not now puniſhable by any act of parliament: It may be perhaps thought a reflexion on the common law to ſay, that this offence was totally diſpuniſhable; and yet we do not hear of any ſuch proſecution, except the attaint of a jury is conſidered as ſuch—The conviction in an attaint became however every day more difficult, and jurors ſeeing witneſſes take liberties with their oath (and with impunity), were encouraged to take the ſame liberties themſelves—The form of the oath at this time was [q], *So help me God and his Saints*, and I do not find that the witneſs was ſworn upon the *Evangeliſts*, which perhaps might contribute to irreverence in the obſervation of it. I have not been able to diſcover the preciſe year or reign, when the oath was altered in the concluſion of it to *So help you God*; but, from the omiſſion *of Saints*, this alteration probably took place ſoon after the Reformation—I ſhould rather think, that no court hath power, by

[q] Si Dieu m'aide et les Seints. Stat. Exon. 14 Edw. I.

the common law, to make such an alteration in an oath, and that it was worthy of, and required the intervention of the legislature [r].

The second chapter relates to regulations in the Exchequer, which *Dalton* (in his *Office of Sheriff*) particularly recommends to be attended to by this officer—One of the regulations is, "Quod unus *Baronum*, et "unus clericus de Scaccario mittatur per singulos comitatus Angliæ, ad "imbreviandum nomina omnium, qui anno illo debita per viridem ceram "ab eis exacta solverunt."—This, with other statutes, proves what I have before observed, that the Barons of the Exchequer were not considered formerly as merely judicial officers.

The 3d chapter directs, that justices of assise shall be justices of goal delivery, and that, *after the civil business* is finished, they are then to proceed to deliver the gaol [s]—It then makes a distinction between the justices, when *laymen* and when *ecclesiastics*—If both the justices are *laymen*, they are to continue in the county, and deliver the gaol; if one of them is an ecclesiastic, then the lay judge is to associate to himself one of the most discreet knights of the county.

From these regulations it appears, that for the trial of criminals it was necessary that two judges should preside, for the greater solemnity; and that, in the trial of civil actions, or *assises*, the judge was frequently an ecclesiastic—The clergy however would not interfere in the trial of criminals, this being contrary to their *canons*, which will not permit them to determine in *cases of blood* (as they are called)—The meaning of which canon is, that the office of a criminal judge antiently was considered as partaking of the nature of an executioner, and therefore deemed an office of blood, which was supposed rather to detract from that reverence and good will which the canons of the church endeavoured to procure and establish in the body of clergy.

[r] I would not be understood by this to condemn the alteration, but only the method of making it.

[s] On the contrary, a proclamation of Queen Elizabeth is mentioned by Fabian Phillips (on Purveyance, p. 427.) which directs the judges to begin with the gaol-delivery, and proceed in it as far as can be conveniently done before they proceed to their civil business.

STATUTUM DE WARDIS ET RELEVIIS.

Anno 28 Edw. I. A. D. 1300.

WHOEVER reads this ſuppoſed ſtatute (and which is very ſhort) muſt at once ſee, that it is only a remark made by ſome lawyer with regard to Wards and Reliefs—The ſtyle is not unlike that of Lyttelton, "Vous devez Scavoir," &c.—"Ore-viez la nature de Garde," &c.

It is well known, that wardſhips are now aboliſhed by the twelfth of Charles the Second, re-enacting an Ordinance of the Commonwealth—It appears however by a letter written by Sir Robert Cecil to James the Firſt (then conſidered as certain ſucceſſor to the crown of England), that it was the advice of himſelf and others, even at that time to aboliſh them—"They are (ſays he) the ruin of all the noble and antient families of the "kingdom, by baſe matches and evil education of children, and by which "no revenue of the crown will be *defrayed*:" Appendix to Robinſon's Hiſt. of Scot. p. 1117.

There is an antient law of William the Conqueror with regard to Reliefs (the other object of this ſuppoſed ſtatute), which it may be perhaps matter of curioſity here to inſert.

"De relief al Cunte que al rei affert 8 chevals ſelez et enfrenez—Les "quaters halberts, e quaters eſcus, e quaters lances, e quaters eſpés: les "altres quaters chaceurs, e palfreis afrenis, e acheveſtres." Inter Leg. Gul. Conqueſt. Wilkins, p. 233.

A STA-

A STATUTE FOR PERSONS APPEALED.

Anno 18 Edw. I. A. D. 1300.

THE appeals which this law relates to, are appeals by *Approvers*.—The proſecution of criminal offences by this ſort of informer, is now totally diſuſed, though I am not aware of any ſtatute which hath expreſly aboliſhed it. It ſeems to be agreed by the writers on the Crown law, and particularly by *Staunforde* (who wrote his Treatiſe before the entire diſuſe of this method of proſecution), that an approver muſt have been an accomplice actually indicted for the offence with which he charged his aſſociates; and that, upon his offering to become a witneſs, it was the duty of the coroner to take his examination: we find by this ſtatute, that he was then to be detained in priſon till the trial of his accomplices, after which (in caſe they were convicted) he might claim his pardon.—It muſt occur to every one, that evidence thus procured was of the moſt ſuſpicious nature; and 5 Hen. IV. ch. 2. recites, that "diverſe notorious rogues, "for ſafeguard of their lives, had become *provers*, to the intent in the mean "time, by brocage and great gifts, to purſue and have their pardons, and "then, after their deliverance, had become more notorious felons than be-"fore."—It is then enacted, that he who ſolicits the pardon of ſuch an approver, ſhall indorſe the charter with an acknowledgement that it was procured at his inſtance; and if the approver is afterwards guilty of a felony, the perſon ſo indorſing the pardon is to forfeit 100 *l.*—It was this regulation which probably occaſioned the diſuſe of proſecuting by approvers, though the writers on the Crown law are ſilent on this head.—They were generally men of an abandoned character, and therefore it was not eaſy to procure a perſon who would be ſurety in ſuch a ſum; whereas before this ſtatute the pardon was granted almoſt of courſe.—Every material alteration of this ſort in the law deſerves to be traced to its original ſource; and that is generally to be found in the preamble, or other part of the antient ſtatutes, if they are peruſed with attention.—To the proſecution by approver hath ſucceeded the more modern practice of allowing the evidence of an accomplice, with either an actual promiſe of pardon

from the king, or an expected one by the interceſſion of the proſecutor — This is preferable to the proſecuting by approver in this circumſtance, that the accomplice cannot claim the pardon *as of right*; beſides, that no execution was ever permitted on the evidence of an accomplice only, if not corroborated by other circumſtances; a merciful precaution, which we do not hear of when approvers were the witneſſes — The Civil law ſays, *Non relatione criminum, ſed innocentiâ, reus purgetur.*

ARTICULI

ARTICULI SUPER CHARTAS.

Anno 28 Edw. I. A. D. 1300.

IT hath before been obſerved on the ſtatute made in the twenty-fifth of Edward the Firſt (entitled, *Confirmatio Chartarum*), that there ſeems to have been a doubt, whether the king on the throne was bound by the laws of his predeceſſor—The preſent preamble furniſhes an inſtance of another as extraordinary a doubt, viz. whether when a ſtatute forbids any thing (and ſubjoins no penalty), it can be inforced—The puniſhment therefore, which is declared by the firſt chapter, againſt thoſe who may break through any of the articles of the charters is fine and impriſonment, according to the circumſtances of the caſe; and this puniſhment the ſuperior criminal court had moſt undoubtedly a right to inflict, before this ſtatute was in force—This, amongſt many other inſtances of the ſame ſort, ſhould make us cautious of taking it at once for granted, that what is now moſt clearly eſtabliſhed and ſettled law, might have been ſo underſtood in this country ſome centuries ago—Another ſtriking inſtance of this is the king's power of diſpenſing with ſtatutes by a *non obſtante*; a power which he ſeems moſt undoubtedly to have had, and repeatedly exerciſed, but which at preſent ſeems to ſhock almoſt common ſenſe upon the mention of it, and which we may flatter ourſelves therefore can never be revived.—The ſame obſervation may be made with regard to the prerogative of creating *boroughs*, with the franchiſe of ſending members to parliament.

The 2d chapter of this law is levelled againſt the extortions of purveyors—Theſe officers were eſtabliſhed formerly in England and in every part of Europe, and from the ſame cauſe (the want of regular and well-ſupplied markets); their oppreſſions and exactions have in every part of Europe [*t*] either aboliſhed the office, or laid them under ſevere reſtraints and penalties, if they abuſe it—*Eadmerus* informs us, that, in the time of Henry the Firſt, the peaſants and farmers, when they heard of the king's approach, deſerted their houſes.

[*t*] Lady *Mary Wortley* takes notice, that in Turkey, when the purveyor hath rifled every thing from the houſe, they then make the owner pay a ſecond tax for the detriment which the purveyors teeth may have been ſuppoſed to ſuffer, by the eating of what they have before injuriouſly extorted; and this is called *Tooth Money*.

Fabian

Fabian Phillips is the only advocate that theſe officers have ever had, and in his time the rigour of exacting purveyance was much abated, as the kings of England were either reſident at Weſtminſter, or did not move far from it; beſides, that moſt of the counties payed a regular, and not very conſiderable tax to be excuſed the payment [*u*]. It was in the royal progreſſes that this odious right was moſt ſeverely felt; and it appears from Rymer's Collection of Records, that there are hardly two, following each other, which bear date from the ſame place—Machiavel (in his State of the Kingdom of France) ſays, that the antient eſtabliſhment, during a royal journey or progreſs, was a *ſous* per day for a bed, and 2 *ſous* for linen and vinegar—I do not find that any ſuch regulation, or fixed allowance, was eſtabliſhed in England; but the preſent and other ſtatutes direct, that the purveyors ſhall allow a fair price—If it is ſaid, ſuch a price being payed, there is no great inconvenience or oppreſſion; yet it muſt be allowed, that there is a mortification in obliging any one to part with what perhaps he ſets a falſe and only imaginary value upon.

As this ſtatute is a *Capitularium*, conſiſting of twenty articles, and which relate to things of a very different nature [*w*], it is not therefore poſſible to reduce the obſervations to be made upon it to any order or connexion, but each chapter muſt be conſidered as a diſtinct law.

By the 8th chapter, the king grants the election of ſheriff [*x*] (where it is not an office in fee) to each particular county, *if they liſt*, as the ſtatute ſays—Many ſtatutes, previous to the preſent, take notice of the great oppreſſion of ſheriffs—One reaſon of this was, that this officer formerly farmed the king's revenue, and therefore, like other farmers of taxes, was not only to ſupply the king's, but his own wants—He ſometimes only collected the revenue, and ſometimes had the charge of ſtocking and taking care of the crown lands, inſtances of all which may be found in Madox's Hiſtory of the Exchequer—The abuſe which was moſt exclaimed againſt at this time [*y*] was the haraſſing jurors unneceſſarily, by ſummoning

[*u*] The proportion which each county payed may be ſeen in Phillips's Treatiſe, as well as many other curious particulars—The receiving of purveyance in *kind* occaſioned the magnificent kitchen eſtabliſhment of the antient kings of England.

[*w*] The 8th and the 13th chapters happen to relate to the election of ſheriffs, and yet four chapters intervene between them—The ſame want of connexion or order is to be found in all the *Capitularia*, which word I make uſe of, becauſe we have no Engliſh term to ſignify ſuch a collection of laws.

[*x*] It appears from the Parl. Hiſt. vol. i. p. 118. that, in the reign of Edward the Firſt, it was attempted not only to eſtabliſh the election of the ſheriff in the people, but likewiſe the Treaſurer, Chancellor, and Chief Juſtice.

[*y*] Ch. ix.—The 13th chapter likewiſe mentions their lodging with great trains at houſes.

them from a great diſtance, and likewiſe returning thoſe who would not give a fair verdict between the parties: an abuſe never thoroughly removed till the late act for balloting.

The 11th chapter forbids maintenance and champerty [z], which is frequently provided againſt by ſubſequent ſtatutes, and which therefore muſt have been as frequently practiſed, though we never hear of ſuch a proſecution at preſent—The reaſon of this ſeems to have been, that when a man of power formerly ſupported a law-ſuit, the judges were influenced in their determinations, as they are now in every part of Europe, except in this happy and free country—Inſtances of the great corruption in judges at this time may be found in the Parliamentary Hiſtory, vol. i. which cites Hollinſhed for an account of every judge in the ſuperior courts (except *John de Mekingham* and *Elias de Bekingham)* being moſt ſeverely fined to the amount of 100,000 marks.

The laws againſt champerty and maintenance are not confined to England; it is made criminal in Scotland by many of thoſe antient ſtatutes, which are collected under the title of *Black Acts*, from their being printed in the *Old Black Letter*.

The 16th chapter directs, that the regulations of the ſecond ſtatute of Weſtminſter, with regard to falſe returns made by bailiffs, ſhall be put in execution, and enforced by the ſame penalties, without adding any thing further; which ſhews, that even recent ſtatutes were diſobeyed, and wanted perpetually a new promulgation—The 17th chapter therefore orders the Statute of Winton to be read four times every year in each county; and the Charters, inſtead of being read in every cathedral as by the former act of the twenty-fifth of Edward the Firſt, are now to be read four times a year by the ſheriff.

There are ſome miſtakes in the tranſlation of this ſtatute: in the 5th chapter, which in reality is a continuation of the 4th, and governed in its conſtruction by it, *d'autre part, le roi veut que ſa chancelerie*, ſhould be rendered, *on the other hand*, and not on *the other party*.

In the 7th chapter, *le coneſtable du chatel de Dovere* [a] *ne plede deſormes à la porte du chaſtel*, ſhould be tranſlated, *at* the caſtle-gate, and not *within* the caſtle-gate—The gates of towns have in many countries been made

[z] By the 31 Edw. I. Stat. iii. the puniſhment for champerty is no leſs than three years impriſonment. It was therefore a growing evil.

[a] The Charters of the Cinque Ports were publiſhed by Jeake in 1727; and it appears by records there cited, that the Cinque Ports (about this time) had many diſputes with regard to their juriſdiction, and particularly with the port of Yarmouth—Their conſequence probably aroſe from their ſituation, calculated either to invade or reſiſt an invaſion.

uſe

uſe of for the purpoſe of adminiſtring juſtice—Thus in the Pſalms, *Thou ſhalt not be afraid to ſpeak with thy enemy at the gate*; meaning you need not fear the proſecution of your enemy—Lord Bacon hath (ſomewhere) from this obſerved, that the courts of juſtice amongſt the Jews were open.

In the 10th chapter, *En droit des conſpirateurs, faus enfourmours, e mauveiz procureurs des duzeines, enqueſts, aſſiſes, e jurees*, is tranſlated, *In right of conſpirators, falſe informers, and evil procurers of* dozens, *inqueſts, aſſiſes, and juries.*

The word *dozens* I cannot comprehend the meaning of, nor indeed of the original *duzeines*, unleſs it be an old French word for *deſign*, and taken in a bad ſenſe: it will then run, *falſe informers*, and *evil procurers of deſigns*—I can however only ſubmit this as a conjecture.

In the 18th chapter, the words *vivers* is tranſlated (and properly) a *warren*, and not a *pond*, as I have before contended in the Comment on the Charter of the Foreſts—The beſt expoſitor of the meaning of an author, is another part of his works, and the ſucceſſive legiſlatures muſt be conſidered as conſtituting one author.

4.

ORDINA-

ORDINATIO FORESTÆ.

Anno 34 Edw. I. A. D. 1306.

EDWARD was now ſixty-eight years of age, and conſequently from infirmities no longer able to follow his favourite amuſement of hunting, which Thomas de Walſingham informs us he was immoderately fond of—The offences of deſtroying the game, which formerly excited his warmeſt reſentment, appeared now but venial faults, and therefore he very willingly acquieſced in the mitigation of the Foreſt laws, and the puniſhment of thoſe officers who had been guilty of unneceſſary rigour and extortions—The preamble to this ſtatute ſeems to have been drawn by his *Confeſſor*, attending him in a fit of illneſs—"Dum imbecillitatis "humanæ conſpicimus in imperfectum [*b*], ac onera longè latéque dif- "fuſa humeris noſtris incumbentia attentâ conſideratione penſamus, intus "nimirum diverſis puncturis cordis extorquemur, diverſorum cogitatuum "fluctibus agitati, et vexamur frequentes noctes ducendo inſomnes, quid "agendum, quid tenendum, quidve exequendum exiſtat, inter præcordia "hæſitantes. In eo tamen qui ſupra cuncta tenens in excelſis imperium, "qui dat eſſe rebus, et diſpenſat prout vult gratiarum munera (cum ſa- "pientiæ ſuæ magnitudinem non capiunt humani intellectus) virtutes "reſumimus, ſperantes quod in ſerviciis ſuis perficiat actus noſtros, et "ſuæ bonitatis clementiâ noſtram miſericordiam videat, et ſuppleat im- "perfectum, ut ipſius fulti præſidio per viam mandatorum Domini diri- "gamur."—The whole indeed of the preamble is infinitely more florid, than any other to be found in the Statute-book, and, if I may be indulged in the conjecture of its being drawn by Edward's confeſſor, I ſhould further ſuppoſe that this confeſſor was an Italian [*c*].

The regulations of this ſtatute contain nothing that requires either illuſtration or obſervation.

[*b*] This ſhould be *imperfectionem*. The word *imperfectum* is however afterwards repeated.

[*c*] Many of the early records in Rymer are in a florid ſtyle: moſt of them however are letters from the pope—I muſt except letters from Eleanor, mother of Richard the Firſt, during his captivity in Germany.

STATUTUM DE APPORTIS RELIGIOSORUM.

35 Edw. I. A. D. 1307.

THOUGH the title of this ſtatute is *De apportis* [*d*] *religioſorum* in general, yet from every regulation it ſeems to have been chiefly levelled at aliens poſſeſſed of priories and abbeys, who reſided in other countries —The pope at this time had the power of conferring many of the abbeys and priories, which he generally gave to Italians—The religious houſes however, under no kind of control from their ſuperior, who lived in another country, not only ſlighted his viſitatorial injunctions, with regard to their own reformation and diſcipline, but likewiſe withheld the ſuperior's rights and dues, eſpecially as moſt rents were at this time payed in kine, which were of no advantage to an abſentee, who could not conſume them—The ſuperiors therefore (backed by the papal authority) had changed their ſhare of the rents payed in kine to a compoſition or rent in money, which the religious houſes did not chooſe to pay, and had the very good pretence (with the legiſlature of England) to ſay, that this backwardneſs aroſe from their being unwilling to ſend any money out of the kingdom—The ſtatute therefore directs, that they ſhall not for the future ſend any thing whatſoever to their ſuperiors beyond ſea, under whatever name it might be claimed—And as the ſuperiors had likewiſe made exchanges to the prejudice of the religious houſes, in conſideration of money payed to themſelves, the ſtatute very properly directs, that every religious houſe ſhould have a common ſeal, which ſhould be in the cuſtody of not only the abbot (as before), but joins four others *de dignioribus et diſcretioribus*, and every grant or exchange, to which this common ſeal ſhould not be affixed, was for the future to be null and void—It then concludes by declaring, that it is not intended to take away any part of the ſuperior's viſitatorial power, provided he will come into England in order to exerciſe it, and that he ſhall likewiſe be allowed his reaſonable expences for the journey.

The laſt ſtatute of this reign, entitled, *Ne Rector arbores in Cæmeterio proſternat*, is a very ſhort one, but deſerves to be taken notice of from the preamble's ſtating, that trees in a church-yard were originally planted to ſkreen the church from the wind—Low as churches were built at this

[*d*] Du Cange, in his Gloſſary, explains the word *apportum* (which is ſometimes written *aſportatum*) to ſignify *quicquid apportatur ad ſuſtentationem illius, qui eccleſiæ curam habet.*

time,

time, the thick foliage of the ewe anſwered this purpoſe better than any other tree.

Edward the Firſt reigned thirty-four years, during which he ſummoned nine parliaments — He hath been ſtyled, by Lord Coke, the *Engliſh Juſtinian*; and as he came to the throne at the age of thirty-four, and had no rebellion of conſequence, but, on the contrary, added Wales and Scotland to the Engliſh dominions, he had leiſure, during this tranquillity, to reform the law — The Statutes of *Weſtminſter* the firſt and *Weſtminſter* the ſecond, together with the Statute of *Wynton*, are proofs of his attention to this moſt important branch of the duties of a king; and he particularly aſſumes (with reaſon) to himſelf the merit of preventing unneceſſary delays by the preamble to the Statute *De conjunctim feoffatis* [*e*], "*Non eſt novum*, "quod nos inter cæteras legum editiones, quas temporibus noſtris adin- "venimus, *celerius* apponi decrevimus remedium."—The Statute of *Quo Warranto*, on the other hand, muſt not here paſs unnoted, and will for ever detract from and affect his character as a legiſlator.

[*e*] Made in the thirty-fourth year of his reign.

STATUTUM DE MILITIBUS.

1 Edw. II. A. D. 1307.

THERE are but two ſtatutes of this firſt year of the reign of Edward the Second, the latter of which declares, that it ſhall not be felony to break priſon, unleſs the crime for which the criminal is committed was a capital offence, which is recited by the ſtatute to have been *otherwiſe by the common law*, and was therefore a very proper alteration of its ſeverity—As Edward is ſaid, by all Hiſtorians and Chroniclers, to have been entirely guided by his favourite *Piers Gaveſton*, I ſhould imagine that this general regulation was covertly [*f*] meant for his protection—In the early part of this very year, Edward the Firſt had ordered him to quit the realm, previous to which he had probably been committed and eſcaped from his confinement—No capital offence had however been laid to his charge, and therefore if the favourite, whom Edward was now determined to recall, had been proſecuted for breach of priſon, this ſtatute became a complete defence upon ſuch a proſecution—Even in the abſence of this minion, it ſhould ſeem that he was chiefly ſurrounded by foreigners; for the proclamation which iſſued upon his father's death is in the French language, and, being very ſhort, I ſhall here inſert it from Rymer.

"Come le tres noble Prince Sire Edward qui eſtoit n'adgueres Roy "D'Engleterre ſoit a Dieu commandé, e notre Seigneur Sire Edward ſon "fitz et ſon heire ſoit ja Roy D'Engleterre par deſcent d'heritage; nous "vous mandoms et comandons depar notre dit Seigneur le Roi (qui ore "eſt, qui Dieu gard) que ſa Pez ſoit tenue et gardée par ſon roialme et tot "ſon poer."—The next record in Rymer, after this proclamation, is a moſt profuſe grant to Piers Gaveſton of the dutchy of Cornwall, with many other lands and honours, which is dated at Dumfries in Scotland, on the 6th of Auguſt, being ſcarcely a month after the death of Edward the Firſt—Theſe extravagant grants occaſioned the only other ſtatute of the preſent year, which is entitled, *De Militibus*, and which directs, that every one who was of the age of twenty-one, and who had 40 *l.* a year in land, ſhould be compelled to take upon himſelf the order of knight-

[*f*] In the next year there is an expreſs ſtatute, *Ne quis occaſionetur pro reditu Petri de Gaveſton.* The hatred and perſecution of kings favourites was not confined to England at this time; for, in the year 1310, Enguerrand de Marigny, favourite of Phillipe le Bel, was hanged at Paris—Chronique de France, par Maiſtre Gilles.

hood—This inſtitution (which was now converted into a tax) muſt have originally been eſtabliſhed, that the king might know thoſe of his ſubjects who had conſiderable eſtates (for ſuch 40 *l.* a year at this time was), and that, upon their becoming knights, he might receive their fealty—It was neceſſary however, that the perſon who was required to become a knight, ſhould, from his age and bodily ſtrength, be able to ſerve the king in his wars; and therefore it appears by this ſtatute, that old age, incurable diſtempers, and other excuſes were allowed—The law however directs thoſe who had ſuch excuſes, to repair without delay to *Robert de Tiptot* and *Antony de Beke* [g], who, upon their paying *a proper compoſition*, were to give them a diſcharge—Theſe compoſitions probably produced as great complaint as thoſe which were made in the time of Henry the Seventh by Empſon and Dudley; and though this hath eſcaped the Hiſtorians, might have contributed to the troubles and diſtreſſes of Edward, which afterwards enſued.

[g] There is a record in Rymer, dated the 4th of September at Carliſle, which is entitled, *Pro Antonio Beke de libertate Eccleſiæ Dunelmenſi reſtituta*, from which it appears, that this *Antony de Beke* was biſhop of Durham, and that his temporalties were ſeized by Edward the Firſt.

DE

DE DIVERSIS LIBERTATIBUS CLERO CONCESSIS.

9 Edw. II. A. D. 1315.

WE have no ſtatutes from the ſecond year of Edward the Second, till the preſent *Capitularium*, though, if we may credit Thomas de Walſingham [*b*], many parliamentary regulations were made the preceding year with regard to the price of meat—His words are theſe: "Anno Domini 1315, velut Deo diſpliceret *Statuta præcedentis Parlia-*" *menti* (ſc. de Carne &c.) omnia ſolito cariora fuerunt:" and therefore he informs us, that the preſent parliament (though this ſtatute is likewiſe loſt, or at leaſt is not printed) applied the only wiſe remedy to ſuch an increaſe of price, by enacting, that every one, *victualia ſua meliori, pro quo poſſet, venderet ad libitum.*—The preſent ſtatute conſiſts of ſixteen chapters, all of which (agreeable to the title) relate to privileges and immunities claimed by the clergy, which Edward, in his preſent ſituation, could not refuſe; though in the earlier part of his reign he was upon ſo bad terms with this body of men, that the archbiſhop of Canterbury had excommunicated [*i*] all thoſe who might contribute to the return of Piers Gaveſton—The different parts of this ſtatute ſeem to contain nothing very particularly deſerving notice, I ſhall therefore only mention, that Prynne, in the third volume of his Records, p. 336, & ſeq. ſeems to have irrefragably proved, in oppoſition to Sir Edward Coke, that this is no act of parliament; and amongſt other authorities, by a caſe in the Year Book of Edward the Third, where one of the judges expreſly denies its being a ſtatute.

[*b*] Thomas de Walſingham, p. 107. In further proof of this, there are ſummonſes to parliament in Dugdale for every intermediate year.

[*i*] Parl. Hiſt. vol. i.

THE

THE STATUTE OF SHERIFFS.

9 Edw. II. A. D. 1315.

THE grievance before the preſent ſtatute is ſtated by the preamble, which was, that inſufficient perſons not having ſuch eſtates as made them anſwerable to the king and his ſubjects, had been appointed to execute this office; it therefore directs, that for the future they ſhould be appointed by the Chancellor, Treaſurer, and Barons of the Exchequer—I ſhould conceive that the Chancellor mentioned in this law, is the Chancellor of the Exchequer, and not the Chancellor of England, as it is the natural and grammatical conſtruction of the words. The ſheriff at this time frequently farming the king's revenue, it was required that he ſhould be a reſponſible man, and certain great officers of the revenue, viz. the Chancellor of the Exchequer, the Treaſurer, and Barons are named as the proper perſons, who are to take care that the ſheriff ſhall anſwer the king's demands and charges upon him, and it muſt be remembered that the king's revenue antiently conſiſted almoſt entirely of his receipts from the crown lands.—There is a very proper injunction at the concluſion of this ſtatute, that the ſheriff ſhall not farm to another the profits of his office, which had (like other farms of the ſame kind) been productive of great extortion and oppreſſion; and it is likewiſe enjoined, that all writs ſhall be executed by bailiffs, who are *known and ſworn* to execute their office faithfully, which part of the ſtatute ſeems to have eſcaped the judges aſſembled in the Exchequer-chamber in Mackallie's Caſe, which is reported in 9th Cok. 65. and where it ſeems to have been very material upon the point then before the court.

THE

THE STATUTE OF GAVELET.

10 Edw. II. A. D. 1316.

THERE are ſome terms made uſe of in this ſtatute which require an explanation—The word *Gavelet*, or *Gaveletum*, is not to be found in Du Cange; it however bears a great affinity to the word *Gabellum*, the ſignification of which is well known—It is generally tranſlated *a tax*, and the Italian word *Gabella* is formed from it.

Spelman gives this account of the ſignification of this word in the preſent law—"Gaveletum juris etiam proceſſus eſt huic dicatus tenuræ [*k*], "caſu quo tenens reditus et ſervitia ultra modum ſubducit, quod et *Lon-* "*donienſibus* ceditur Stat. Anno 10 Edw. II. de Gaveleto."—If I may preſume however to differ from ſo great an authority, I ſhould conceive that *Gavelet* means no more than *rent*, for the more eaſy recovery of which within the city of London this ſtatute was made: and this is not very different from the Latin word *Gabellum*, or *Gavelettum*, which generally ſignifies *a tax*, but may likewiſe ſignify any other kind of payment.

There are likewiſe two other very uncommon words made uſe of in this law, viz. *Sokereuns* and *forſeelet*—The firſt of theſe is rendered *freemen*, of the propriety of which I have ſome doubt: the word is plainly of a Saxon origin, but yet I cannot find any explanation of the latter part of it in Somner's Saxon Vocabulary, or in any of the Gloſſaries—As for the ſecond, viz. *Forſeelet*, the tranſlation is, by another Saxon word, *forſchoke*, which Blount, in his Law Dictionary, ſays, is the ſame with *forſaken*, or *derelict*; if therefore *forſeelet* is ſynonymous with *forſchoken*, it will agree very well with the ſenſe that may be affixed to this word in the preſent ſtatute, from what precedes and follows.

It hath been obſerved by ſome learned writer on the law, that the meaning of the words *inde producit ſectam*, is the plantiff's *producing his witneſſes*, which is confirmed by the ſenſe that the word *ſecta* is uſed in by the preſent ſtatute—"Si autem ſervitia denegaverint, petentes nominabunt ſtatim "*ſuam ſectam (ſcilicet duos teſtes).*"

There is one very ſingular proviſion in this ſtatute, which is, that if the defendant makes default, and does not appear upon the Huſtings at London, he ſhall *loſe his land for a year and a day*; after which, on an appearance and payment of coſts, he is entitled to an equity of redemption, if the appearance is entered before the year and day expires, otherwiſe the lands are completely forfeited.

[*k*] Sc. Gavelkind.

THE

THE STATUTE OF YORK.

12 Edw. II. A. D. 1318.

DUGDALE furniſhes us with the ſummons to this parliament, which informs us likewiſe at what time of the year it was held.

" Rex venerabili in Chriſto Patri eâdem gratiâ Archiepiſcopo Cantua-
" rienſi ſalut.—Quia ſuper diverſis et arduis negotiis nos et regnum
" noſtrum tangentibus parliamentum noſtrum apud Eboracum a die S.
" Michaelis in tres Septimanas tenere &c. Teſte rege apud Nottyngham
" 25 die Auguſti."

The five firſt chapters relate to the amendment of the law, and the preamble recites, that many of the antient ſtatutes wanted *explanation*; and the 3d chapter mentions particularly a ſtatute of the twenty-ſeventh of Edward the Firſt, which was *not ſufficiently clear* — I take notice of this to ſhew, that the complaint of obſcurity in the ſtatute law, is by no means to be confined (as it generally is from the common prejudice in favour of antiquity) to modern acts of parliament — It may, on the other hand, with juſtice be aſſerted, that modern ſtatutes are infinitely more perſpicuous and intelligible than the antient ones, of which there cannot be a ſtronger proof than that there is not perhaps a ſingle ſtatute ſince the ſtatute of Frauds and Perjuries, and the ſtatute of Diſtributions in the reign of Charles the Second, which hath required much explanation [*l*]. It was indeed prophecied by many, that the bill for the alteration of the ſtyle would occaſion an infinite number of law-ſuits; but no queſtion ariſing upon the conſtruction of this law hath ever been argued in any of the ſuperior courts.—The true objection to modern ſtatutes is rather their prolixity, than their want of perſpicuity; which prolixity hath in a great meaſure aroſe from the uſe of printing—When manuſcript copies are to be diſperſed, the trouble of copying an unneceſſary word is conſidered, but a page or two additional in print neither adds much to trouble or expence—I would not from hence be miſunderſtood to be an advocate for prolixity: the Engliſh law hath this fault perhaps in common with other laws. The oldeſt conveyance we have any account of, viz. that of the cave of *Machpelah*, from the ſons of *Heth* to *Abraham*, hath

[*l*] There is a common notion in Weſtminſter-Hall, that the ſtatute of Frauds hath not been explained at a leſs expence than 100,000 *l*.—It is great injuſtice to the memory of Lord Chief Juſtice Hale, to ſay he was the perſon who drew it.

many unneceſſary and redundant words.—*And the field of* Ephron, *which was in* Machpelah, *which was before* Mamre, *the field and the cave which was therein, and all the trees that were in the field, that were in all the borders round about, were made ſure unto* Abraham, *&c.* Geneſis xxiii.—The parcels, in a modern conveyance of 1765, cannot be well more minutely particularized.

There are but two things in the five firſt chapters which ſeem to require any particular notice; the firſt is, that, though we have before heard of *attornies*, a *bailiff* was to all intents and purpoſes conſidered as an *attorney*, and might appear for his principal—The ſecond is, that the witneſſes to a deed were antiently a neceſſary part of the jury, which was to try the validity of ſuch an inſtrument—The party who inclined againſt the proof, uſed probably to procure the abſence of theſe witneſſes; the ſtatute therefore directs, that, if they do not appear, upon proof of their having been properly ſummoned, the jury may proceed without them [*m*].

There is at the end of theſe regulations, for the amendment of the law, a chapter of a very heterogeneous nature, to prevent any officer of a city or borough (who from his office is to regulate the aſſiſe of victuals or wine) from dealing, either in groſs or retail, in either of theſe (whilſt he continues in office) under penalties to be recovered by information, and a third part of which is given to the informer. This ſeems to be a very proper regulation to prevent what is now called a *job*; but from the ſtatute's being ſo antient, and the regulation being inſerted in a law (the greateſt part of which relates to matter entirely different), I ſhould much ſuſpect that moſt officers in corporations are ignorant of the penalties which they ſubject themſelves to by the infringement of this ſtatute.

[*m*] The neceſſity of theſe witneſſes being formerly part of the jury hath probably occaſioned a very troubleſome ceremony in the atteſtation of deeds by *two witneſſes*—This is often attended with great inconvenience.

THE

THE STATUTE OF ESSOYNS.

12 Edw. II. A. D. 1318.

THIS ſtatute declares by negatives (and that in many different inſtances) what Eſſoyns *ſhall not be allowed*—The Eſſoyn is almoſt always uſed for the purpoſe of delay, and the improper uſe of it is therefore reſtrained by many acts of parliament, and the more modern ones generally take it entirely away.—Amongſt other negative inſtances it is declared, that it ſhall not be allowed "de fœminâ in ſervitio domini regis, "niſi quia nutrix, aut obſtetrix, aut mittatur per breve ad ventrem inſpi- "ciendum," which words of the ſtatute have been the occaſion of a moſt extraordinary miſtake of Sir Edward Coke, in his Firſt Inſtitute [*n*]—He is there treating of Protections, which are generally uſed for the ſame purpoſe as Eſſoyns, merely for delay, and conſequently are generally treated of together, and are equally diſcountenanced by the ſtatute-law [*o*]—Having entered in his common place this part of the ſtatute (Eſſoyns and Protections, making one title or head), he ſays, that "Protections may be al- "lowed not only to men of age, but likewiſe within age, and to women, "*quia nutrix aut obſtetrix*, as neceſſary attendants upon a camp;" and this moſt extraordinary poſition is ſupported by a marginal reference, in which a record is cited no further explained than by theſe words, viz. *For the Counteſs of Warwick.* Now a *nutrix*, or *obſtetrix*, might be wanted for the Counteſs of *Warwick*; though how they could be wanted as *neceſſary attendants upon an army*, is not eaſily to be conceived, except it was for an army of *Amazons*; and even *Amazons*, during the ſeaſon for a campaign, contrived (according to tradition at leaſt) not to require the aſſiſtance of a midwife—I think it is not difficult to ſuggeſt the occaſion of a protection, which might be indorſed *pro Comitiſſâ Warwic*—A Counteſs of Warwick was wife of an Earl of Warwick, who went on ſome embaſſy [*p*]—She was near the time of her delivery, and like all other women in that very

[*n*] Firſt Inſtitute, p. 130. A.

[*o*] The common clauſe in all modern acts of parliament is, "No *Eſſoyn*, *Protection*, or Wager "of law ſhall be allowed."

[*p*] It appears by Dugdale's account of Warwickſhire, that an Earl of Warwick, with his Counteſs, went on an embaſſy to France in the ſeventh year of Henry the Fifth.

 critical

critical ſituation, choſe rather to have her own *nutrix* and *obſtetrix* about her, than to truſt to ſtrangers in a foreign country — She therefore ſolicited a protection *quia profectura*, and included in her ſuite the *nutrix* and *obſtetrix*: the protection was therefore properly indorſed *pro Comitiſſâ Warwic.* — It may perhaps be thought that I have dwelt too long upon this miſtake of Sir Edward Coke; but the miſtakes of ſo great a man require moſt particular notice, as they otherwiſe paſs as law under the ſanction of ſuch an authority.

STATU-

STATUTUM DE PREROGATIVA REGIS.

17 Edw. II. A. D. 1323.

THE branches of the king's prerogative, which are declared by this ſtatute, almoſt entirely relate to Wardſhips and Feudal Tenures—As no part, except the 12th chapter, requires any particular explanation or comment [q], I ſhall firſt mention, as the title of the ſtatute leads to it, the following fundamental maxims of the French law, upon which the king's prerogative is founded, which may not only be matter of ſome curioſity to an Engliſhman, but by compariſon may make him thankful for the noble conſtitution to which he is happily born—A *Cappadocian* may indeed refuſe, from cuſtom and long uſage, to exchange a deſpotic for a more free government; but I can never be perſuaded but that there is a neceſſary connexion between ſlavery and miſery, and between freedom and happineſs.—I do not mean however to condemn all the prerogatives given to the king by the French law, as ſome of them are equally veſted in the crown by the law of England, and that for the moſt ſalutary purpoſes to the ſubject.

" Si veut le roy, ſi veut la loi.

" Toutes les perſonnes de ſon royaume lui ſont ſujettes.

" Au roy ſeul appartient de lever les tributs, de faire la guerre et la " paix.

" Le roy eſt le principe et le terme des toutes les juſtices.

" Le roy ſeul peut accorder graces et remiſſions."

Duck likewiſe, in his excellent treatiſe *De authoritate juris civilis*, gives us this account of how far the intervention of the French parliaments is neceſſary in giving its full authority to the king's *arrets* or edicts.

" Rex Galliæ edictis ſuis ſemper ſubjungit *(tel eſt notre plaiſir)*; ſola verò " in iis approbatio et conſenſus requiritur parliamentorum, ne quid contra " utilitatem regni ſit, aut jus tertii lædat."

I have before ſaid that the 12th chapter requires a comment; it is thus worded: " Item habet rex eſcætas de terris Normannorum, de cujuſcun- " que feodo fuerunt, ſalvo ſervitio quod pertinet ad capitales Dominos " Feodi illius, et hoc ſimiliter intelligendum eſt ſi aliqua hæreditas de-

[q] It is hardly neceſſary to mention, that Staunford, the author of the treatiſe on the Pleas of the Crown, hath written a Comment on this ſtatute.

" ſcendat

" ſcendat alicui nato in partibus tranſmarinis, cujus anteceſſores fuerint ad " fidem regis Francie ut tempore regis Johannis, et non ad fidem regis " Angliæ," &c.—Prynne cites a paſſage from Matthew Paris, which throws great light upon this chapter of the law, which I ſhall here tranſcribe from him, together with his obſervation upon it [*r*].

The 13th chapter declares the king's prerogative in claiming wreck of the ſea, and alſo whales [*s*] and ſturgeons as royal fiſh.—Antient records however diſtribute theſe royal fiſh in a more particular manner, by giving the head to the king, and the tail to the queen [*t*]. The Statute-book is

[*r*] ' Matthew Paris gives us this account of the king's ſeiſing the lands of Normans in ' England.'

" Circa dierum illorum curricula, rex Francorum Pariſiis convocatos omnes ultramarinos, qui " terras habuerunt in Anglia, ſic eſt affatus. Quicunque in regno meo converſatur habens terras " in Anglia, cum nequeat quis competenter duobus Dominis ſervire, vel penitus mihi, vel regi " Angliæ inſeparabiliter adhæreat. Unde aliqui terras et redditus habentes in Anglia, eas relin- " quentes, poſſeſſionibus, quas habebant in Francia, adhæſerunt; aliqui e converſo. Super quo " certificatus rex Angliæ, omnes de regno Franciæ, præcipue Normannos, juſſit terris ſuis, quas " in Anglia, habuerunt, diſſeiſiri. Unde regi Francorum videbatur, quod rex Anglorum, quia " non in adoptionem eorum ſtatuit conditionem terris hinc vel inde ſuis privandorum, ut ad " alterutrum regnum tranſmigrarent libere, ſicut et ipſe rex Francorum fecerat, treugas initas inter " eos confregiſſet. Sed quia nimis corpore debilitatus poſt reditum ſuum de Pictavia fuerat, no- " luit certamina ſuſcitare, imo potius diſſimulando pertranſire, et impetuoſas Normannorum " querelas, et inſurgendi in regem Anglorum proterviam et avidam voluntatem, reprimere " ſatagebat."

' This record and paſſage of Matthew Paris will very well explain the Statute *De Prærogativa* ' *Regis*, Ann. 12 Edw. II. c. xii. and Stamford's Gloſſe thereon, *Placita Coronæ*, lib. iii. c. 36. ' compared with Bracton, lib. ii. c. 35. ſect. 12. 15. and lib. v. *De Exceptionibus*, c. 24. ' ſect. 1. fol. 427.' " Eſt etiam et alia exceptio quæ tenenti competit ex perſona petentis prop- " ter defectum nationis, quæ dilatoria eſt et non perimit actionem, ut ſi quis Alienigena qui " fuerit ad fidem regis Angliæ, tali non reſpondeatur, ſaltem donec terræ fuerint communes, nec " etiam ſive rex ei conceſſerit placitare, quia ſicut Anglicus non auditur in placitando aliquem de " terris et tenementis in Franciâ, ita nec debet Francigena et Alienigena qui fuerit ad fidem regis " Franciæ, audiri placitando in Angliæ; ſed tamen ſunt aliqui Francigenæ in Francia, qui ſunt " ad fidem utriuſque, et ſemper fuerunt ante Normanniam deperditam et poſt, et qui placitant " hic et ibi, ea ratione quia ſunt ad fidem utriuſque, ſicut fuit W. Comes Marr. et manens in " Anglia, et M. de Feynes manens in Francia, et alii plures. Et ita tamen ſi contingat guer- " ram moveri inter reges, remaneat perſonaliter quilibet eorum cum eo cui fecerit ligeantiam, et " faciat ſervitium debitum ei cum quo non ſteterit in perſona. And c. 25. ſect. 3. Item re- " ſpondere poterit, quia particeps de quo dicitur nihil capere poteſt, quia eſt ad fidem regis " Franciæ, et nihil capere poterit antequam fiat fides regi Angliæ, et cum terræ ſint communes et " concordes." Prynne, vol. ii. p. 631.

[*s*] There is a record in Rymer of the firſt year of Edward the Third, in which he claims this ſame right in the Province of Gaſcony—Amber, and *(Pierres de chaux)* thrown up by the Baltick, are enumerated as *Jura Regalia*, by the king of Pruſſia, in his *Code Frederique*.

[*t*] *Honor de Richmond*, p. 91.—The 17 Edw. III. ch. vi. barely mentions *le oor la Reine*, or as it more commonly called *Aurum Reginæ*—Prynne hath wrote an expreſs treatiſe in Quarto on

entirely ſilent with regard to the rights of a queen of England; on the contrary, ſhe is moſt particularly and anxiouſly provided for by the laws of Hoel Dda, and one of the higheſt penalties in the whole code, is for killing her cat.—There is a very antient tax in France for providing the queen with pins; from whence the term of *Pin-money* hath been undoubtedly applied by us to that proviſion for married women, with which the huſband is not to interfere.

this tax—It is not extraordinary that it ſhould produce nothing, as it was the tenth part of what was *voluntarily* payed into the Exchequer.

MODUS

MODUS FACIENDI HOMAGIUM ET FIDELITATEM.

17 Edw. II. A. D. 1324.

THIS is moſt clearly no ſtatute, but only an entry made in the *common place* of ſome lawyer of the different methods of a freeman's paying homage and fealty to his lord, and that of a villein—The form of rendering homage agrees word for word with the form in *Lyttelton's* Tenures, in his chapter of Homage—The difference between the *freeman*, and the *villeins*, oath conſiſts in this, that the freeman ſwears, "qu'il devindra votre homme de ceo jour en avant de vie, et de membre, "et de terren honor."

The villein ſwears, "que jeo vous ſerray foial, et loial, et que jeo vous "ſerray juſticiable du corps et de chateux"—Both the ceremonies agree in this, that the perſon ſwearing fealty is to hold his hands joined together [*u*], between the hands of his lord; the reaſon of which ſeems to have been, that ſome lord had been aſſaſſinated under pretence of paying homage; but while the tenant's hands continued in this attitude, it was impoſſible for him to make ſuch an attempt—I take the ſame reaſon to have occaſioned the ceremony ſtill adhered to by the ſervitors in Queen's College at Oxford, who wait upon the fellows placing their two thumbs upon the table: and I have heard that the ſame ceremony is uſed in ſome parts of Germany, whilſt the ſuperior drinks the health of the inferior—The inferior, during this, places his two thumbs on the table, and therefore is incapacitated from making any attempt upon the life of the perſon who is drinking—The ſuſpicion that men formerly had of ſuch attempts upon their lives whilſt they were drinking, is well known from the common account with regard to the origin of pledging.

[*u*] Many old tomb-ſtones repreſent the hands of the dead perſon joined in this manner together; the conceit of which probably was, that they *were paying homage* to God.

THE

THE STATUTE FOR VIEW OF FRANK-PLEDGE.

17 Edw. II. A. D. 1325.

THIS ſuppoſed ſtatute likewiſe ſeems to have been taken, as well as the preceding one, from the notes or common place of ſome lawyer, who had occaſion to hold a court of Frank-pledge — This is manifeſtly ſo from the firſt period, " Primes vous *nous* direz per le ſerement " que vous *nous* avez fait, ſi touts les ſuitours qui deuvent ſuite à ceſt " court, ſoient venuz come venir deuvent et queux ne ſont mie."

There are two or three things in this ſtatute however which deſerve notice — The firſt is the tranſlation of the third ſection, which runs thus: " And if *all the dozeins* be in the aſſiſe of our Lord the king;" which, I believe, is ſcarcely intelligible to the reader — The original French however explains it to mean all thoſe who were twelve years of age, and who were obliged to appear at the leet before the ſtatute, which diſpenſed with that attendance — By the 21ſt ſection, mention is made of an inquiry with regard to rapes before the coroner, which I do not recollect to have read or met with elſewhere — By the 31ſt ſection, one of the articles of inquiry is, " s'il ny eit null femme putaine *per quoi le ſeigneur purra perdre*" — This part of the 31ſt ſection is not tranſlated, and I muſt own I do not conceive what the particular loſs to the lord muſt have been from the harbouring ſuch a woman within his juriſdiction — The 33d ſection makes mention of the puniſhing thoſe who take pigeons in the winter, which proves that they never could have been conſidered (as ſome lawyers have contended) as a nuſance, and that the keeping them was indictable in the leet; the contrary of which is moſt expreſly declared — The ſuppoſed nuſance from pigeons is their eating up the ſeed-corn after it is ſown; it hath of late been diſcovered however, that, like moſt other animals who are perſecuted for ſuppoſed miſchief, they are of ſingular uſe in eating the ſeed of noxious weeds, as alſo the eggs of noxious inſects, and the inſects themſelves — I could wiſh that a proper fable was added to the common collection, to impreſs an early ſenſe of tenderneſs in children to animals of all kinds; their barbarity is often excuſed under pretence of deſtroying what is noxious.

I have now made ſome obſervations upon almoſt every ſtatute of this reign — That Edward was a weak prince [*w*] is unanimouſly agreed by all

[*w*] He was a ſcholar, if the verſes printed in Fabian's Chronicle are really of his compoſition, and which Fabian ſuppoſes to have been written during his confinement: I do not from

writers and hiſtorians; yet the clamour againſt his government ſeems chiefly to have aroſe from his having put too unlimited a confidence in favourites, and thoſe favourites foreigners.—The barons who depoſed this unhappy king were certainly guilty of greater breaches of the law than thoſe whom they oppoſed; witneſs their murder of *Piers Gaveſton*, which they were obliged to procure an indemnification for by the ſtatute of *Ne quis occaſionetur pro morte Petri de Gaveſton*—Upon the whole (to conſider Edward the Second as a legiſlator), though it cannot be ſaid that any law paſſed during his reign of great importance to the ſubject, yet he ſeems to have had the negative merit of never having attempted to introduce any ſtatute, which in any meaſure tended to derogate from their juſt rights and liberties.

After the eighteenth of Edward the Second, follow ſome ſtatutes *incerti temporis*; no editor having been able to ſay with preciſion, whether they belong to the reigns of Henry the Third, Edward the Firſt, or Edward the Second [x]—And I ſhould apprehend, that the number of theſe *Uncertain Statutes* (if I may ſo call them) ſhould be much larger—The firſt of them is entitled, *An Ordinance for Bakers, Brewers, and other Victuallers, and for Ells, Buſhels, and Foreſtallers.*—The baker and the miller (as before obſerved on the Statute of Pillory) are the firſt objects of the parliamentary regulations, and, in caſe of deceits, they are to be puniſhed by the pillory, which it ſhould ſeem in thoſe times was not conſtructed as a pillory is at preſent; the words of the ſtatute are: "Quod "*pilloria* ſive *colliſtrigium* habeatur *debite fortitudinis, ita quod* contra delin-"quentes exequi poſſint judicium, *ſine corporum periculo.*"—From which it may be inferred, that the criminal was ſuſpended in the air by the *colliſtrigium*, or ſtretch-neck, in the ſame manner that children are ſometimes put into ſwings, and ſuſpended in order to ſtretch their necks and make them grow.—The ridicule attending the delinquent in this ſuſpended ſituation, muſt have been infinitely greater than when he ſtands upon a floor; and ſeems to agree with the antient form of pronouncing this judgement, viz. "that he ſhould be ſet *in* and *upon* the pillory."—I have

vid. Errata.

this pretend to ſay that he had a poetical genius.

"Damnum mihi contulit tempore brumali
"Fortuna ſatis aſpera, vehementis mali.
"Nullus eſt tam ſapiens, mitis, aut formoſus,
"Tam prudens virtutibus, cæteriſque famoſus,
"Quin ſtultus reputabitur, et ſatis deſpectus,
"Si fortuna proſperos avertat effectus."

[x] It ſeems to be a neceſſary conſequence, that no indictment can be maintained on theſe ſtatutes, till after the laſt year of Edward the Second.

already

already ventured to inveigh againſt the impropriety of this kind [y] of puniſhment; and it may be perhaps thought too refined to deduce the cuſtom of pelting the delinquent from the antient Germans, "Infames "cœno ac palude injecto," &c.

The direction with regard to a miller's toll ſeems to be very vague and uncertain, as it is to be regulated, "ſecundum fortitudinem curſûs aquæ," which would puzzle a *Smeaton* of the preſent times to eſtimate with accuracy; and I am afraid was infinitely beyond the natural philoſophers and civil engineers of thoſe reigns.—Leſs is to be found with regard to mills in the law of England, than perhaps the law of any other country in Europe: it makes, on the other hand, one of the principal heads of the law of Scotland; as likewiſe of the Northern countries of Europe.—The reaſon of this ſeems to be, that the inhabitants within a certain diſtrict are obliged, by the laws of other countries, to grind at the lord's mill, and at no other, of which there are ſome traces in our antient law; but this ſervice was by no means general, and hath at laſt been almoſt univerſally dropt, from the great difficulty there is to inforce ſuch a right.

The butcher and the cook are next made ſubject to penalties—The butcher, if he ſells "carnes porcinas *ſuperſennatas*, vel carnes mortuas de "morinâ"—The word *ſuperſennatas* is tranſlated *meazled pork*, or, as it is more generally termed, *meaſly pork*; the etymology of which expreſſion, I apprehend to be from the French word *(meſlè)*, or *(mingled)*, as the fleſh of a ſwine, when ſaid to be *meaſly*, or *meazled*, is interſperſed with white ſtreaks or ſpots—I ſhould doubt much however of the propriety of this tranſlation in the common editions of the ſtatutes—I cannot in any of the Gloſſaries find the word *ſuperſennatus*; the meaning of it however ſeems to be very obvious, and to ſignify *unſound meat*; but there ſeems to be no foundation for confining it to that particular diſtemper in a hog, which makes the fleſh appear meazled—It may be perhaps thought unneceſſary to have dwelt ſo long upon the meaning of this word; but if a butcher was to be proſecuted upon this branch of the ſtatute, the meaning of the word muſt be ſettled with preciſion, otherwiſe it would be impoſſible to convict.

The butcher and cook, for the firſt offence, is to be heavily amerced; for the ſecond, he is to be ſet in the pillory; for the third, he is to be impriſoned; and for the fourth, he is to leave and abjure the village or town

[y] There are ſome very ſenſible obſervations to the ſame purport in the Preface to the State Trials—The author of that Preface ſigns only the initial letters of his name, *M. N.* it is much to be wiſhed however, that the public was informed to whom they owe thoſe reflexions, and many others contained in that Preface.

in which the offence is committed; and which I the rather take notice of, as it ſeems to be the only inſtance in our law of puniſhing by a *local baniſhment* [z].

This ſtatute concludes with moſt terrible denunciations againſt foreſtallers, which as they are more florid and rhetorical than moſt part of the ſtatute law (except perhaps the preamble to a ſtatute of the laſt year of Edward the Firſt, which I have already taken notice of) it may not be improper here to inſert as a ſpecimen of the legiſlative rhetoric of this country. "Præcipuè ex parte Domini Regis præcipitur, quod nullus "*foreſtallarius* patiatur in villâ commorari, qui pauperum depreſſor eſt ma- "nifeſtè, et totius communitatis, et *patrie publicus inimicus*; qui bladum, "piſces, allec, vel res quaſcunque venales per terram vel per aquam, ve- "nientes obviando præ ceteris feſtinant, *lucrum ſitientes victioſum, pauperes* "*opprimentes*, et divitiores decipientes," &c — I have already had occaſion to expreſs my ſentiments with regard to the laws againſt foreſtallers and regraters, and ſhould almoſt wiſh that they were expunged from the Statute-book, as the conſequence of putting them in force muſt for ever be to raiſe the price of proviſions.

[z] As for the common abjuring by criminals, that is a baniſhment from the iſland.

STATU-

STATUTUM QUOD VOCATUR DE RAGMAN.

INCERTI TEMPORIS.

I HAVE ſomewhere met with an interpretation of the word *Ragman*, uſed in the title of this ſtatute, but cannot recollect in what author — Du Cange cites the old Chronicles to prove, that it ſignifies the ſame with the word *Charta*, or *Litteræ patentes*; I cannot however ſee in what this is applicable to the ſubject matter of the ſtatute, which relates to no particular grievance or proviſion with regard to *Charters*, or *Letters patent*; and I ſhall always think it right in this comment not to paſs unnoted a difficulty which I am not able to explain, but which may perhaps receive an explanation from others.

The following paſſage in this ſhort ſtatute is certainly miſprinted: "Que nul enquerelant, ne reſpoignent, ne ſoit empris par hokettes ne per "barettes;" which it is the more neceſſary to correct, as we have no tranſlation of this law—The word *hokettes* is ſaid, by Du Cange, to be ſynonymous with the following word *barettes*.—The word *empris* being changed to *ſurpris*, and the words *ne reſpoignent* to *reſpondant*, it will run thus: "Que nul enquerelant, ne reſpondant, ſoit ſurpris par "*hokettez* ne per *barettes*"—And the meaning will be, that no plaintiff or defendant ſhall be ſurprized in his cauſe by the tricks of a barretor.—In theſe alterations I have not deviated much from the original text, and the ſenſe and context moſt clearly require ſuch an alteration—It muſt be remembered, that the preſent ſtatute hath not been tranſlated, and therefore ſeldom, if ever, inforced—Miſtake follows miſtake conſequently in the repeated editions of ſuch laws; no one ſcarce ever peruſes them with attention, not even the editor, as he is not checked by a marginal tranſlation—I have had thoughts of tranſlating theſe ſtatutes from the old and barbarous French, in which they are enacted, but have been deterred by the old Greek adage of μέγα βιβλίον, μέγα κακόν.—I may poſſibly however reſerve ſuch a tranſlation for the Appendix, if theſe remarks ſhould not ſwell too much under my hands—And the having read with attention all the antient ſtatutes in the original, would enable me to form the beſt Gloſſary for ſuch a work.

CON-

CONSUETUDINES ET ASSISA FORESTÆ.

INCERTI TEMPORIS.

THERE are two or three things, rather relative to the words made uſe of in this ſtatute than the ſubject matter or proviſions of it, which may poſſible deſerve ſome notice—The learned Mr. Cay, in his Preface to the Abridgement of the Statutes, hath obſerved a moſt palpable miſtake in the following clauſe: "Ut memorialiter habeatur quid ſit "viride, ſciendum eſt quod omnes arbores fructum portantes, et etiam "hæ quæ tenent viridem per totum annum, et fraxinus ſi antiquitus uſus "fuerit intra foreſtam, et *arabilis* quà Dominus Rex eſt in ſeſinâ."—The whole of this explanation, of what ſhall be deemed *vert* in the foreſt, moſt clearly relates to *trees*, and therefore it ſhould be read *erabilis* (viz. a *maple-tree*), and not *arabilis*, ſignifying *arable land*; and this is the more clear from the other tree which precedes it, viz. *fraxinus*, or an *aſh*, and neither of them are to be conſidered as *vert*, niſi *antiquitùs uſus fuerit*.

This clauſe is followed by the words *hedgeboot* and *hayboot*, which are very commonly uſed in leaſes, without the diſtinct ſignification of theſe words being properly attended to—I do not by any means conſider them to be ſynonymous, the one ſignifying an allowance for keeping a *live* or *quick hedge* in repair, and the other an allowance for a *dead hedge*.

The word *bercator* is uſed in the next chapter, which is not very commonly to be found in our antient laws or records—It is generally uſed by thoſe who have tranſlated the antient laws of Norway, Sweden, and Denmark, into Latin, as ſynonymous with paſtor or ſhepherd, and is a contraction of the word *vervicator* [*a*], becoming from thence *berbicator* and *bercator*, by the known rule in etymologies of "literæ ejuſdem organi "ſæpiſſime mutantur."

By the 4th chapter, if any of the deer of the foreſt are found dead, or wounded, it is humanely directed, that they ſhall be ſent to the next houſe

[*a*] From *vervex*, an *ewe*.

of

of *Lepers*—We hear little of the leproſy in our ancient Hiſtories or Chronicles, and this is perhaps the only inſtance of its being mentioned in any law [*a*]; though there are ſeveral of the ancient Scots ſtatutes which relate to it.—*Hentzner* indeed, who was in *England* during the reign of *Q. Elizabeth* (and perhaps the firſt *travelling tutor* to a young nobleman in the tour of Europe) ſays that the Engliſh were at that time much ſubject to the leproſy. I ſhould doubt much whether this ſuppoſed leproſy was more than the ſcurvy, and if we ever had this horrible diſtemper amongſt us, it is not impoſſible that greater cleanlineſs by change of linen, as alſo the uſe of tea, having aboliſhed the more ſolid and ſubſtantial breakfaſt of meat, may have much abated its rigour.—After all, perhaps, the leproſy here alluded to by the ſtatute, may not be the *elephantiaſis*, but only a kind of *itch*, which the inhabitants of poor and monntainous countries are ſubject to from a poverty of blood, occaſioned by poverty of diet. I ſubmit this however, with great diffidence, as I am ſenſible of the impropriety, *in alienas ſegetes falcem inſerere.*

[*a*] There is a Writ however, in the *Regiſter*, de leproſo amovendo—*Ulloa* mentions (in his voyage to South America) that this terrible diſeaſe hath within theſe thirty years made its appearance at *Carthagena*; and Peyſonel (in the Philoſophical Tranſactions) takes notice that it hath extended its infection to *Guadalupe*, and ſuppoſes it originally was brought from the coaſt of *Africa*, by the Negroes.

STATUTUM ARMORUM AD TORNIAMENTA.

INCERTI TEMPORIS.

THIS ſtatute may very well merit the attention of the herald, or the reader of ancient Romances [*b*], as there are a great many terms uſed in it which relate to chivalry and armour—The chief intent in the legiſlature by this law ſeems to have been to reſtrain the great numbers, by which the Knights were attended at theſe expenſive and ſtrange feſtivals—From the inconvenience and riots occaſioned by them, we find many proclamations in Rymer to forbid the uſe of them in particular places, and the lands of thoſe who juſted, or *bordearunt* [*c*], according to the Latin term, were ſeized into the king's hands, for acting contrary to theſe proclamations [*d*]—A judicious collection of the Royal Proclamations from Rymer and others, in a regular ſeries of time, would not be without its uſe, and would throw light upon many points of the ancient law.

[*b*] There is a very fine collection of ancient French Romances in the Muſeum; and the manuſcripts are very fair, and finely illuminated.

[*c*] This word ſeems to be derived from *borda*, a *club*.

[*d*] Henry the IId. of France being killed by accident in juſting at one of theſe *Turnaments*, was probably the occaſion of their being after this totally diſuſed.

STATU-

STATUTUM DE JUDAISMO.

INCERTI TEMPORIS.

PRYNNE, in the third volume of his Collection of Records [*d*], fixes the time of this ſtatute to the fourth year of Edward the Firſt, contrary to the opinion of Sir Edward Coke, who ſuppoſes it to be a law of the eighteenth year of that king's reign — It contains ſome curious particulars with regard to the terms upon which the Jews were then tolerated in this country — By the ſecond ſection, the *good Chriſtians* are not to take *above half* their ſubſtance — By the fourth ſection, a Jew, when above ſeven years of age, is to wear a particular mark *(of two cables joined)* upon his upper garment; and the ſame ſection ſays, "quils ſont les *ſerfs* du roy" — And by the eighth, no Chriſtian is to be permitted to lye in their houſes.

Notwithſtanding theſe ſeverities, a Jew is permitted, by the laſt chapter of the law, to purchaſe an houſe and curtilage (or cloſe adjoining), which an enlightened parliament of the eighteenth century would not permit ſome few years ago — *D'Bloſſiers Tovey* publiſhed a Treatiſe in Quarto, in 1738, upon the antiquities which relate to the Jews in England, in which there are ſome extracts from the Chronicles which deſerve notice; it is by no means however ſo complete, as a collection of this kind might have been made — When this perſecuted people were moſt favoured, their condition was intolerable; and all that can be ſaid by way of juſtification for our anceſtors is, that they were rather more indulged in privileges in this country, than in moſt other countries of Europe — The firſt laws which relate to this unhappy people, are thoſe of the reign of Henry the Second, to be found at the end of Wilkins's Anglo-Saxon Laws, p. 347. — They were much oppreſſed likewiſe in the reign of Henry the Third, as appears in the Appendix to the ſecond volume of Prynne's Records. — *Howel*, in his *Londinopolis*, tells us this ſtory of what happened to a Jew in the reign of Henry the Third — [*e*] He had by accident fallen into a privy on *his* Sab-

[*d*] P. 153.

[*e*] A rich Jew not ranſoming himſelf, King John ordered, for ſeven days ſucceſſively, one of his great teeth to be pulled out; upon which he at laſt ſubmitted to pay the king 10,000 marks of ſilver. Stow's Chronicle, p. 168.

bath, being a *Saturday*, and would not ſuffer any one to take him out, though *rather a neceſſary work*—Common humanity ſhould not have permitted this obſtinate adherence to a religious ceremony; however, the earl of Glouceſter not only ſuffered him to continue in this filthy condition his own Sabbath (being Saturday), but would not permit any one to take him out on the *Sunday*, being *the Sabbath of Chriſtians*—The Jew, by this cruel joke, was ſuffocated; nor do the Chroniclers of the time reflect upon the barbarity of it—We cannot however be much ſurprized at this, as ſome centuries afterwards, when more humanity might be expected, Sir Edward Coke mentions a great number of Jews, who were perſuaded by the maſter of a ſhip to take a walk upon the ſands whilſt the tide was coming in (which he repreſented to ebb), and, by this moſt horrid deceit, were ſurrounded by the ſea and drowned—The reflexion which Sir Edward Coke makes upon this is only "Thus periſhed theſe *infidel* "Jews"—And the compiler of the *Annales Waverleienſes* ſpeaks much in the ſame manner of a general maſſacre of this people, "Judæos occiden- "tes, et bona eorum diripientes, et per omnia *benedictus ſit Deus qui tradidit* "*impios* [*f*]."

It muſt be ſaid however to the honour of *Thomas Wykes*, who is perhaps the beſt writer amongſt the old Chroniclers, that he expreſſes himſelf with *proper humanity*, after having mentioned a perſecution of the Jews by Edward the Firſt, "Anno 1263, Londonenſes, non zelo legis, *ſed cupiditate* "*lucri* allecti, Judæos *crudeliſſime* trucidabant, nec ſexui nec ætati parcentes, "et licet non ſint Chriſtiani, *inhumanum et impium videtur* eos trucidare ſine "cauſâ [*g*]."

Notwithſtanding this moſt ſhocking barbarity, and a continued ſeries of maſſacres of this defenceleſs people, the kings of England occaſionally ſhewed them protection; but this was like the protection ſometimes ſhewn by the kings of Denmark to the city of Hamburgh, the occaſion of which hath been to let the ſpunge fill for a time, that they may afterwards ſqueeze the more out of it—*Voltaire* ſuppoſes theſe perſecutions to have been cauſed by the great decreaſe of money in Europe by the Cruſades, which was falſely attributed to the Jews engroſſing it.—Poſſibly this might contribute amongſt other reaſons; but the prejudices againſt this moſt extraordinary and ſingular ſect of religion, was ſufficient in times of ignorance to have occaſioned the miſeries which they endured, and which they ſtill, in ſome meaſure, ſuffer in different parts of Europe—Theſe pre-

[*f*] Gale's Coll. vol. iii. p. 163.
[*g*] Gale, vol. iii. p. 59. Thomas de Wykes was a canon of St. Oſney.

judices

judices being ſo ſtrong, it is certainly humane in the Engliſh law to allow them a trial *per medietatem linguæ* [*b*]; which Selden informs us, they had a right to claim by the antient law—This indeed is not the modern practice, and it is to be hoped, that religious prejudices and heats will never make it neceſſary.

Thoſe who may have a deſire to ſee more particulars with regard to the Jews, in the twelfth and thirteenth century, may conſult Annal. Monaſt. Burt. in the firſt volume of Gale's Coll. p. 338—Script. poſt Bedam, p. 744.—And the 7th chapter of Madox's Hiſtory of the Exchequer.

[*b*] Our anceſtors, it is true, could perſecute the Jews; but they would not perſecute them by the mockery of a trial, conſiſting of judges who were prejudiced.

ARTICULI ET SACRAMENTA MINISTRORUM REGIS IN ITINERE JUSTICIARIORUM.

INCERTI TEMPORIS.

THIS ſtatute conſiſts chiefly of the oaths to be taken by thoſe officers who are obliged to attend the king's juſtices in Eyre, particularly the ſheriff, under-ſheriff, and bailiffs—As the county towns are neceſſarily crouded upon theſe occaſions, it directs, that no fairs ſhall be held during the aſſiſes [*i*], "ſed quod comitatus teneatur ſolummodò ad "*profros* faciendos"—The word *profrus* is a very uncommon one, but ſignifies the ſame with the plaintiff's ſuit: this is the ſenſe of the French word *profre* in Britton, which anſwers to the *producit ſe*—"Jehan de Hages "ſe *profre* verſe Thomas de Bruce," Britt. p. 41.—The next regulation is, that no one ſhall take up or hire an inn during the Eyre, "ſed venienti- "bus *gratis* concedatur:" which regulation, if it was to take place in theſe days, towns would not be ſo ſolicitous to have the aſſiſes.

[*i*] By a preceding ſtatute *(incerti temporis)* it appears, that there were at this time only four circuits; they were thus divided, York, Northumberland, Weſtmoreland, Lancaſter, Nottingham, and Derby—Lincolnſhire, Warwickſhire, Leiceſterſhire, Staffordſhire, Northamptonſhire, Rutlandſhire, Glouceſterſhire, Herefordſhire, Worceſterſhire—Cornwall, Devonſhire, Somerſetſhire, Dorſetſhire, Wiltſhire, Southamptonſhire, Oxon, Berkſhire, Suſſex, and Surrey—Kent, Eſſex, Hertford, Norfolk, Suffolk, Cambridgeſhire, Huntingdon, Bedford, and Bucks. And it appears by Ames's Hiſtory of Printing, that before the ſtatute of Henry the Eighth, which annexes Cheſhire to the Welſh circuit for the counties of Denbigh, Flint, and Montgomery, that Cheſhire was frequently added to the Northern circuit.

DE

DE MAGNIS ASSISIS ET DUELLIS.

INCERTI TEMPORIS.

THIS ſtatute regulates the different actions in which the trial by battle, or by the grand aſſiſe, is to take place—The ſtatute is very ſhort, and contains nothing very particular, except that there ſhould be ſuch minute and anxious regulations about ſo abſurd and impious a method of deciſion—The laſt trial by battle in England was in the time of Charles the Firſt, and that did not end in the actual combat—It is amazing, that it ſhould have continued ſo long in ſo many different parts of Europe; and the reaſon for the tolerating of it ſeems to have been, that the lord in moſt diſtricts had the appointment of the judge, who either himſelf or his lord was intereſted in favour of one of the parties litigant—What could the other party, who ſuſpected this prejudice againſt him, do better than to appeal to this chance by combat? There is a ſtory in *Grafton's* Chronicle [*k*], which muſt have likewiſe made this trial infinitely ridiculous. A citizen of London (in the time of Henry the Sixth) was of a ſtrong make, but of a faint heart—he happened to be obliged by this kind of trial to enter the liſts againſt an antagoniſt, who was both weak and puny—The friends of the citizen, to give him better ſpirits, doſed him with wine and *aqua vitæ*, ſo that he was very drunk when he began to engage, and fell an eaſy prey to his adverſary—Monteſquieu, in his *Eſprit des Loix*, hath deduced the affront given by the lye from this trial, as when the defendant denied the plaintiff's allegation, the conſequence was the trial by duel—Is it neceſſary however to have recourſe to reaſons derived from antient cuſtoms and practices to ſhew, that the lye given muſt raiſe the warmeſt reſentment and anger in a perſon of liberal education and diſpoſition [*l*]?

[*k*] P. 150.

[*l*] See more with regard to this trial by battle, and the diſuſe of it, hereafter.

STATUTES

STATUTES MADE AT NORTHAMPTON.

2 Edw. III. A. D. 1328.

THESE ſtatutes made at *Northampton* conſiſt of ſeventeen different chapters—They are preceded by other *Capitularia* of the firſt year of the reign of Edward the Third; and, taken together, ſhew the very great confuſion in which the kingdom was involved during the reign of Edward the Second—As the ſtatutes however become more modern, they become more clear and intelligible, and likewiſe generally relate to what hath before been obſerved upon—I have therefore left them to ſpeak for themſelves, and ſhall never obtrude any remark which does not ſeem to be neceſſary for the illuſtration of the law under conſideration, and which likewiſe bears an immediate relation to it.

The 2d chapter regulates in what caſes pardons ſhall be granted, and confines them to thoſe inſtances only where the king is enabled to pardon *by his oath*, "ceſt a ſcavoir, ou home tue autre ſoi defendant, ou en cas "fortuit"—On ſuch an accident (for I cannot call it a crime, which always neceſſarily implies a bad intention in the perpetrator) the king was obliged, ſays the ſtatute, to grant a pardon by his oath, meaning undoubtedly his coronation oath, in which he ſwears to *adminiſter juſtice in mercy*.—I have already obſerved, that this power of pardoning was abuſed by the kings of England and other countries [*l*].

I ſhould imagine however from theſe repeated complaints with regard to pardons, that it was not only the abuſe by the crown which occaſioned the clamour againſt them, but the conſequences in point of intereſt to the barons—Moſt of them had very extenſive juriſdictions and grants of forfeitures, of which they were deprived by the king's pardoning offences, *et hinc illæ lachrymæ*.

[*l*] There is a very ſingular law of the antient *Goths*, whilſt in *Spain*, againſt any one's ſoliciting the king for a pardon, "ma ſi el principe quiſier aver merced per ſu voluntat, o per Dios, fagolo." Fuero Juſgo, lib. vi. p. 320.—This law is the more extraordinary, as the king is frequently injoined by thoſe laws to *exerciſe juſtice with mercy*; and without a ſolicitation he cannot very well hear of the circumſtances which ſhould incline him to ſhew ſuch mercy—*By the Fuero Real de Eſpanna* there is a law, that a traytor or murderer ſhall not be pardoned either by the king on the throne, or his ſucceſſor—It appears likewiſe in Briſſonius's moſt learned treatiſe, *De regio Perſarum principatu*, that the kings of Perſia (deſpotic as they were) could not pardon any capital crime—And this poſſibly may be chiefly alluded to by the paſſages in Scripture, which mention the law of the *Medes and Perſians as altering not*—In Holland there is no power to pardon, if there is not a Statholder. Law of Forf. p. 100.

STATUTES MADE AT WESTMINSTER.

4 Edw. III. A. D. 1330.

THESE ſtatutes likewiſe conſiſt of many different chapters, and the firſt which contains any thing remarkable is the eighth, which by ſome accident is the only chapter of the collection that happens not to have been tranſlated—As it is not of any conſiderable length, I ſhall here give it in Engliſh—"As formerly a man with his horſe uſed to pay only "two ſhillings for his paſſage from Dover [*m*], and a man on foot only "ſix-pence; and of late the keepers of pacquet-boats [*n*] have extorted "greater ſums: it is enacted, that, in the abovementioned port of Dover, "and alſo in all paſſages and ferries on the ſalt, as on freſh water (as well "as in arms of the ſea), the paſſengers ſhall pay no more than was uſual, "nor ſhall the ferryman take more—And let the keeper of Dover-caſtle "have notice of this, and let him put the law in execution at his peril— "And if he finds any one who infringes the law, let him be puniſhed at "the ſuit of any one who will make complaint; and alſo let the bailiffs "of ſuch diſtricts, where there are paſſages or ferries, do the ſame; and "let the juſtices of aſſiſe have power alſo to inquire whether any one in- "fringes the law, and they are likewiſe to puniſh as well upon the ſuit of "the king as the ſuit of the party."

I have the rather tranſlated this chapter, becauſe it is the only law in the Statute-book which relates to ferries; and is likewiſe a law which deſerves much to be put in execution, though it hath eſcaped moſt lawyers, I believe, both from its antiquity and from its not being tranſlated—I ſhould particularly doubt, whether the keeper of Dover-caſtle knows any thing of ſuch a regulation, though the obſervance is ſo ſtrongly enjoined to him, and that by an act of parliament which continues unrepealed—I have before obſerved, that we have no other law which relates to ferries—There are however ſeveral laws of this kind amongſt the Scots ſtatutes, and one particularly, which makes this extortion in a ferryman amount to a felony.

[*m*] The ſtatute does not ſay to what place, which ſhews the perpetual intercourſe between France and England at this time.

[*n*] In the original, *Gardeurs de paſſage et paſſagers.*

STATUTES

STATUTES MADE AT YORK.

9 Edw. III. A. D. 1335.

IT appears by the preamble to theſe ſtatutes [*o*], that the Engliſh would not permit aliens to trade in this country, at leaſt not without frequent riots and diſturbances, which I am afraid they are too much inclined to raiſe in the preſent times, and from the ſame prejudices—The law therefore enacts, that all *merchants*, *aliens*, and *denizens*, and all others, may buy and ſell, "blez, vins (avoir de pois) chares, peſſons, et tous autres vivies, "et vitailles, laines, draps, et autre merchandiſe."—The words in this clauſe of *avoir de pois*, is rendered in the common tranſlation (which, when there is any real difficulty, generally leaves it as it ſtands) by the ſame words of *avoir de pois*, which is abſolutely unintelligible—I was firſt inclined to riſque a bold *Bentleian* conjecture, that it ſhould be read *avoin et foin*, or *oats and hay*, which would agree very well with the context, and are not words very different from *avoir de pois*—I have however found, upon looking into a manuſcript collection of the ſtatutes, from the firſt year of Edward the Third to the twenty-eighth of Henry the Sixth, that the words *avoir de pois* are entirely omitted, at the ſame time that the words which precede and follow tally exactly; ſo that I have little doubt, but theſe unintelligible words (as they ſtand) were firſt inſerted by a miſtake of a copier, and that this miſtake hath been repeated from edition to edition.

The legiſlature having given theſe privileges to the alien merchant, afterwards puts one very ſingular reſtraint upon him, viz. "that he ſhall "carry *no wine out of* the realm;" which I dare ſay will at firſt be thought to favour the prevailing notion, that England formerly produced great quantities of wine—One ſhould think that the Northern latitude, in which this iſland is ſituated, ſufficiently contradicts what is ſo generally believed at preſent; and all experience ſhews, that the Northern parts of Europe grow warmer, in proportion to their cultivation: from which it is very clear, that England is more proper for vineyards in the eighteenth century, than it could have been in the thirteenth or fourteenth [*p*]. This

[*o*] It is very remarkable, that by 5 Edw. III. ch. xiv. it is directed, that a parliament ſhall *at leaſt* be held once in a year, and yet we have no ſtatute from the fifth, till the ninth year of his reign.

[*p*] France produced no wine in the time of the Romans—There were inſtances likewiſe of the *Tyber* and *Pontus Euxinus* being frozen, which never happen at preſent.—Vid. Juvenal, and moſt of Ovid's Letters *de Ponto*.—The upper part of the Adriatic was froze in the eighth century, ſo that it might be croſſed on foot. *Mem. de l'Acad. des Sciences.*

notion

notion ſeems to have been chiefly taken up from ſome old family deeds, which make mention of *vineæ*; but which Sir Robert Atkyns (in his account of Glouceſterſhire) hath proved to ſignify only orchards, and that cyder and perry were called *vina*, or *wines* [*q*].

As I therefore cannot agree to what would be called perhaps the moſt obvious interpretation of this part of the law, it may perhaps be expected that I ſhould explain it in a manner that may be more ſatisfactory.

Though we generally ſuppoſe at preſent, that the taſte for the French wines in this country hath been occaſioned by the additional duty (as dearneſs often conſtitutes the chief merit of what is called a delicacy); yet it appears by all the old ſtatutes, that the French wines, and particularly thoſe of Gaſcony, were almoſt the only wines imported. The provinces which produced them at this time belonged to the Engliſh crown, and therefore, in point of patriotiſm, there was the ſame reaſon for promoting the conſumption [*r*], that there would be for the conſuming wines, which were of the growth of our colonies [*s*].

It was a matter of policy therefore to the common ſovereign of the two countries, that the Engliſh ſhould be ſupplied with wine from the French provinces at a reaſonable rate, and conſequently that there ſhould be a

[*q*] Miller's Dictionary, always conſulted upon theſe occaſions, hath likewiſe contributed to this error—I am far from detracting from the merit of that work (as to what falls within the author's knowledge as a gardiner), but ſhall take the liberty of diſputing his authority, when he becomes the antiquary — In his article of the Spaniſh, or ſweet cheſnut, he cites ſome of the old Chronicles to prove, that there were great foreſts of this tree to the North of London, *which make no mention of this particular tree, but only that there were large woods to the North of London*—This tree ſhoots from the ſtoul, and therefore, if indigenous, muſt be found in copices after the timber hath been felled; and, I believe, no ſuch tree was ever found in an Engliſh copice—[As for firs we might have had them formerly, as they do not ſhoot from the ſtoul]—The old houſes in London are likewiſe ſuppoſed to be built of this wood; I happened once to be preſent, when a wager determined this ſuppoſed cheſnut to be nothing but common oak.

[*r*] It ſhould ſeem that the balance of trade was greatly in favour of England whilſt we were in poſſeſſion of the French provinces, from the old French ſaying, "J'ay payé touts mes An-"glois"—And the word *Anglois* is often uſed as ſynonymous to *creancier*, or *creditor*; ſee the Preface to Cotgrave's Dictionary.

[*s*] Beſides the proof ariſing from the old Statutes, Biſhop *Hall*, in his Imitation of the Satire in Juvenal,

"Ipſe capillato diffuſam Conſule potat,
"Calcatamque tenet bellis ſocialibus uvam;"

where he deſcribes the Great Man reſerving the coſtly wine for himſelf, and circulating only cheap wine amongſt his dependants, ſays, that he kept the wine of *Bourdeaux* to himſelf—This early uſe of claret in England from our own provinces likewiſe in ſome meaſure may account for the French not being fond of this ſort of wine—We have been uſed to it, and they have been uſed to the wines of other provinces—We ſhall never reliſh frogs, nor the French perhaps puddings.

high duty on theſe wines if exported elſewhere, or even ſent to the adjoining provinces of France—The conſequence of this was the employing alien merchants, who purchaſed the wines in England without paying this high duty, and afterwards re-exported them—It was therefore a wiſe and prudent regulation to prevent ſo illicit an evaſion [t] of an indulgence granted for the benefit of Engliſh ſubjects; but which, by this contrivance, was the means of ſupplying foreigners with the wines of the French provinces (then belonging to the crown of England), without paying the foreign duties.

[t] There is an Ordinance of King John of France, which, if adopted in England, would greatly affect the vintners of this country—"Que les taverniers ne pouront donner nom à vin "d'aucun pays, que celuy dont il ſera creu, ſeur peine de perdre le vin et de l'amende." Ord. Royales, p. 6.

THE

THE STATUTE OF PURVEYORS.

10 Edw. III. A. D. 1306.

THIS act of parliament conſiſts of three chapters, followed by five articles; and there is an expreſs memorandum on the Roll, "Quòd "in parliamento predicto concordatum fuerit, quòd *articuli predicti* non "tenerentur *pro ſtatuto*"—After this memorandum follows a writ, "T. Rege apud Eltham [*u*] primo die Aprilis," in which the king directs the ſheriff to proclaim certain ſtatutes *made by the aſſent of the Lords and Commons*, and likewiſe *quendam articulum per nos et concilium noſtrum ſuper provideatiis pro ſervitio noſtro, et ſervitiis conſortis noſtræ, ac liberarum*.—This ſeems to be the firſt ſtrongly marked, and probably conteſted, diſtinction between a proclamation by the king and his privy council, and a law which had received the aſſent of the lords and commons—The conſtitution began now to be underſtood—Edward, during his minority, could not aſſert any ſuppoſed prerogatives of his crown; and he was now on the point of declaring war againſt France, and conſequently, wanting the aſſiſtance of parliament for ſupplies, was ready to make conceſſions—Theſe continental wars (even if they had ſucceeded according to the moſt ſanguine expectation) would poſſibly have made England a province of France; but we perhaps owe part of our liberties to the diſtreſſes in which they involved the crown [*w*]: nor will the conſtitution of this country ever be ſo much endangered as by a king whoſe coffers are full—Henry the Seventh and Henry the Eighth, by this means, eſtabliſhed every thing but abſolute monarchy; and Queen Elizabeth, by the œconomy of her treaſurer (*ſo much commended by Hiſtorians* [*x*]), was enabled to continue the ſame deſpotic government.

This proclamation (for ſo it muſt with propriety be called) contains five different articles; and (what is very ſingular) none of theſe articles are tranſlated, except what may be ſtyled the preamble or introduction to them.

I have before obſerved, that Edward was now on the point of declaring war againſt France.—The 2d chapter of this ſtatute ſhews, that he was

[*u*] The great hall in which this council was held is ſtill to be ſeen—It is a very noble building, and is at preſent uſed for a barn.

[*w*] Henry the Fifth, in the midſt of his conqueſts, was obliged to pawn the crown-jewels.

[*x*] I do not by this mean to condemn œconomy in a Lord Treaſurer, but only to intimate that a king may be too rich; though it does not follow from this, that he ſhould be neceſſitous.

raiſing cavalry for this purpoſe, and that the purveyance for the great horſe [y] *(les grands chevals)* was a grievance ſeverely felt by the ſubject; and therefore particular commiſſioners are appointed to hear and determine complaints of this oppreſſion.

After this follows the proclamation, which is divided into five chapters, and which relates to very miſcellaneous matter—The ſecond directs, that hundreds, wapentakes, and bailiwicks, which had been let to farm, and had been antiently annexed to the counties, ſhould now, after a ſeparation, be re-annexed, which I take notice of, as the diſſevering for the convenience of the farmers of the crown lands, might have been the occaſion of ſome of thoſe odd ſlips of counties, which are ſurrounded by other counties.

The 4th article directs, that no writ of *Nief* [z] ſhall iſſue out of Chancery, but at the ſuit of thoſe in whoſe names the writs ſhall be purchaſed, or unleſs the chancellor or his clerks are apprized that the ſaid writs are ſued with the knowledge and will of thoſe who purchaſe them.—This regulation ſeems to want explanation, and I apprehend the occaſion of it to have been this—No one was entitled to a writ of *Nief*, but he on whoſe lands ſhe was born, and ſo became a vaſſal—Some perſon probably about this time had attempted to get poſſeſſion of a *Nief* which did not belong to him, and that by abuſing the proceſs of law: the proclamation therefore directs, that the perſon ſuing the writ ſhould be known at leaſt to have a ſpecious title to the *Nief* which he claimed, as otherwiſe a very ſhort and tortious poſſeſſion might have much altered the condition of the female vaſſal.

The 5th article deſerves to be written in letters of gold over the door of every treaſury in Europe, as it recites more money to have been raiſed for the war againſt Scotland, than had been expended; and therefore orders that the ſurplus ſhall be equally divided amongſt thoſe who contributed to the tax.—*Veſtigia* pauca *retrorsùm*.

[y] The great horſe (in Latin, called *cataphracti)* were thoſe which carried men, who were covered with a complete ſuit of armour, and who were abſolutely invulnerable (before the uſe of fire-arms) if they did not fall from their horſes, which were likewiſe covered with armour—This prodigious weight required the ſtrongeſt and largeſt horſes—The light cavalry, afterwards mentioned in this proclamation, were called *hobelarii*, from their being mounted on *hobbies*, or ſmall horſes—Purveyance for the king's *dogs* is complained of in 14 Edw. III. ch. i.—Theſe were probably the dogs neceſſary to ſpring the game for hawking, as well as his hounds.

[z] A *Nief* was a woman born in vaſſalage; in Latin, ſhe is called *Nativa*.

STATU-

STATUTUM DE CIBARIIS UTENDIS.

10 Edw. III. A. D. 1336.

THIS ſtatute is a ſumptuary law to reſtrain the expence of entertainments, though we do not ſuppoſe that luxury had made very great ſtrides in the fourteenth century: luxury however is only comparative, and a houſe-keeper of the preſent times means very differently in his *petition* for *his daily bread*, from what that petition was meant to entreat at the time of the Conqueſt.

The ſtatute recites great inconvenience to the more opulent by exceſs in eating, to which "les gentz du [*a*] royalme ſont uſez plus que nul "part ailleurs;" and likewiſe the ruin to thoſe of leſs affluent fortunes, from an abſurd endeavour to imitate this extravagance—It therefore ordains, that no one ſhould be allowed, either for his dinner or ſupper [*b*], above three diſhes in each courſe, and not above two courſes—And it is likewiſe expreſly declared, that *ſouſed meat* is to count as one of theſe diſhes—Certain feaſts are however excepted, in which three courſes may be allowed—This law, in all probability (like moſt other ſumptuary laws), was never executed with any ſtrictneſs; it ſerves however to ſhew our anceſtors way of living, and perhaps we ſhall not ſuffer, in compariſon, ſo much as is generally apprehended—We need not look further than into the bill of fare for a great feaſt or entertainment in theſe days, to ſee that the expence and gluttony was immoderate.

[*a*] Stephanides, in his deſcription of London in the time of Henry the Second, hath the following paſſage: "Præterea eſt in Londoniâ ſupra ripam fluminis inter vina in navibus et cellis "vinariis venalia, publica coquina.—Ibi quotidie pro tempore eſt invenire cibaria, fercula, aſſa, "piſta, frixa, elixa, piſces, carnes groſſiores pauperibus, delicatiores divitibus, venationum, avium, "avicularum—Quantalibet militum vel peragrinorum infinitas intrârît urbem quâlîbet diei "vel noctis horâ, ne vel hi nimiùm jejunent, vel alii impranſi exeant—Qui ſe curare volunt mol-"liter, accipenſerem, vel Afram avem, vel attagenem Ionicum non quærant, appoſitis quæ ibi in-"veniuntur deliciis."

[*b*] Froiſſart mentions waiting upon the duke of Lancaſter at five o'clock in the afternoon, when *he had ſupped*.

STATUTES MADE AT WESTMINSTER.

11 Edw. III. A. D. 1337.

THE Statute *De cibariis utendis* is followed by other laws made to reſtrain expence in dreſs, and likewiſe to promote the conſumption of our own manufactures—Trade at this time began to be more underſtood, and likewiſe to be conſiderably extended, as Hakluyt [*c*] mentions privileges, in the year 1330, to the town of *Blackney* in Norfolk, on account of their commerce with *Iceland*—The great towns in *Flanders* had long been enriched with the ſtaple of our wools: the ſtatute therefore directs, that if a merchant ſhall export any wool, he ſhall be guilty of felony—At this time every ſeſſions of parliament did not teem with new felonies, and therefore the legiſlature muſt have been highly ſenſible of the great national detriment by the foreign ſtaples, to have made the offence, in the firſt inſtance, amount to a capital crime [*d*]—The next chapter forbids any one to wear cloath manufactured out of the realm, except the king, queen, and their children, and likewiſe permits the manufacturer to make them as long or as ſhort as he chooſes.

The 3d chapter orders, that no foreign cloth ſhall be brought into the kingdom under the penalty of forfeiting the cloth, and the importer likewiſe is to be puniſhed by indictment.

The 4th chapter directs, that neither man nor *woman* [*e*], who cannot afford to ſpend 100 *l.* a year, ſhould wear furs, under penalty of forfeiting the furs [*f*], and they are likewiſe made liable to an indictment.

The 5th and laſt chapter grants privileges and immunities to the foreign manufacturer who will ſettle in this country; ſo that theſe ſtatutes, which taken all together do not exceed forty lines, ſeem to contain a code of wiſe regulations, which have perhaps never ſince been rendered more perfect by any ſubſequent and explanatory ſtatute.

[*c*] Hakl. vol. i. p. 244.

[*d*] Clergy is not indeed taken away by the ſtatute.

[*e*] This is perhaps the firſt inſtance in the Statute-book of an apprehenſion, that a *woman* is not included under the word *man*—By the laws of *Verona* it is laid down as a general rule, that the mention of the male in a law ſhall include the female, "Quoniam ſub authoritate juris civilis "pernicioſè quandoque erratur, ſtatuimus quod in omnibus ſtatutis communitatis civitatis Ve- "ronæ maſculinum genus comprehendat etiam fœmininum, ſi illud de quo tractatur communiter "ſe habeat ad utrumque."—Leges Municip. Veron. 1507, p. 63.

[*f*] We ſee by antient portraits, that, before the manufactures of gold and ſilver lace, furs conſtituted the greateſt finery in dreſs.

STATUTES MADE AT WESTMINSTER.

14 Edw. III. A. D. 1340.

THE ſtatutes now begin to appear in a new, and more regular form—The titles [g] henceforward are almoſt always Engliſh, and the ſeſſions of parliament is generally held at Weſtminſter [h], whilſt the preamble always makes expreſs mention of the *concurrence of Commons* [i].

The preſent *Capitularium* conſiſts of twenty-one chapters, the greater part of which relate to the amendment of the law—The 5th chapter recites great delays and inconvenience to ſuitors, from the judges of Weſtminſter-Hall differing from each other in opinion; and that therefore in every parliament a prelate, two earls, and two barons ſhould be choſen, who ſhould have power to ſend for the judges, and to give redreſs—This ſeems to be a very extraordinary regulation in the preſent times, as ſuch prelates, earls, and barons would probably be very incapable of deciding the point on which they were to ſit as judges of appeal [k]. Perhaps however the legiſlature might think them the more proper for not having had a legal education, as it appears, by other parts of this ſtatute, that the deciſions in Weſtminſter-Hall began now rather to turn on ſubtleties, than doing ſubſtantial juſtice to the parties.

The 6th and 18th chapter affords inſtances of this kind, "Item eſt aſ-" ſentu que par miſpriſion de Clerc, en quecunque place que ce ſoit, ne " ſoit proces aneantiz ne diſcontinue par meſprendre, en eſcrivant *un lettre*, " *ou un ſillable trop, ou trop poi*, mes ſi tot que la choſe ſoit aparceu, " par challenge du partie, ou par autre manere, ſoit *haſtivement* amende en " dite forme ſans donner avantage au partie."

This difficulty with regard to altering a record is entirely peculiar to the law of England; and carried to the abſurd exceſs and ſtrictneſs [l] to

[g] The body of the ſtatute continues however to be in the French language.

[h] As the commons now always conſtituted part of the legiſlature, accommodation was not eaſily procured in other towns.

[i] The preſent preamble ſpeaks of the attention neceſſary to the welfare *des* petits *auſſi bien que des grands*.

[k] The ſtatute indeed permits them to conſult with the chancellor, treaſurer, and others of the privy council.

[l] What greatly contributed to this ſtrictneſs was the inſtance of a judge being heavily fined for the altering of a record; but this alteration was a very material one in its conſequences—What I allude to is the known ſtory of a clock being ſet up in Weſtminſter-Hall, which was payed for which

which there was formerly a moſt blind adherence, hath occaſioned the many ſtatutes of *amendments and jeofails*—I do not mean by this to inſinuate that records ſhould be wantonly altered, but only where the alteration does not materially affect the point in diſpute—As for the miſtake of a letter merely, it is very extraordinary that this ſhould have been fatal, as at this time no one (not even the greateſt clerks) could ſpell with any accuracy; nay the ſame word, in the ſame period, is often ſpelt in a different manner throughout the body of antient ſtatutes—It is indeed abſolutely impoſſible, that, before the uſe of printing, accuracy in ſpelling (which depends ſo much upon memory and extenſive reading) could have been brought to any regular conſiſtency or perfection. This nicety in the ſetting forth legal proceedings is in many caſes taken away by the ſtatutes of jeofails, which do not extend to criminal proceedings; by means of which many criminals have eſcaped the puniſhment due to their crimes, to the great encouragement of other offenders, and to the diſgrace of the law—Some judges have thought, from a *falſe compaſſion*, that it is their duty to find out ſuch miſtakes, by which the criminal may be acquitted—I have ventured to call this a falſe and weak compaſſion, and am juſtified in thinking it ſo by that great judge Lord Chief Juſtice Hale, who was not only a moſt conſummate lawyer, but is known to have been of a moſt remarkably humane diſpoſition [*m*]—No man was more ſenſible of the duty incumbent upon every judge to be of council for the criminal; but what calls for ſuch a duty, when the priſoner hath no compaſſionate or favourable circumſtance, ariſing either from the proof of the proſecutor or from his own defence?—Is it not, on the other hand, the duty of the magiſtrate, *ne maleficia maneant impunita?*

The 18th chapter of this law likewiſe takes away another inconvenience ariſing from too great nicety in pleading; it recites, that demandants in pleas of land had been often delayed, for that the tenants have vouched to warranty a dead man, againſt which voucher the demandants before this time might not be received to aver that the voucher is dead, to their great delay and miſchief: remedy is therefore provided, &c.

I do not pretend to underſtand the antient forms of pleading in real actions, ſufficiently to explain why this averment could not be received at common law; the ſtatute however recites, that the law was ſo underſtood, which is not extraordinary, as it is a well-known ſtory in Weſtminſter-

out of this fine—It was therefore (without meaning to pun) a very ſtriking memento to the judges.

[*m*] See his Hiſtory of the Pleas of the Crown, in which he ſays, theſe niceties are the diſgrace of the law.

Hall,

Hall, that a party in perfect health, who was hearing his cauſe, being killed by a pleader in a plea, the judges could not take notice that he was alive.

There are two other particulars in the 16th chapter of this ſtatute, which I ſhall juſt take notice of. It relates to thoſe perſons before whom *niſi prius* may be granted, and ſays (amongſt others) that it may be granted before the Lord Chief Baron, *if he is a man of the law*.—This proves that even ſo late as the reign of Edward the Third, the Barons of the Exchequer were not conſidered ſo much in the light of judges, as officers of the revenue [*n*].—The ſecond is, that it may be granted before the juſtices of either the King's Bench, Common Pleas, or *ſworn ſerjeant of the king* — I cannot help ſubmitting a doubt, whether the practice of putting ſerjeants into the commiſſion (who are not *King's Serjeants* [*o*]) is purſuing the direction of this part of the law.

[*n*] See Obſervations on Magna Charta.

[*o*] Every ſerjeant at law indeed becomes ſo, in conſequence of the king's writ directing him to take upon himſelf the dignity of a ſerjeant: but the words *ſworn ſerjeant of the king* ſeem to ſignify thoſe ſerjeants only, who are properly ſtiled *King's Serjeants*—Other ſerjeants are ſtyled ſimply *Serjeants*. The word *ſerjeant* formerly ſignified a military rank (as indeed it does at preſent) which ſeems to have either preceded, or was only immediately inferior to the rank of Knighthood—In the *aſſiſes de Jeruſalem*, it is regulated how many of each ſhall be furniſhed by that diſtrict of country in Aſia, which had been conquered by the Chriſtians in their cruſades, and in the preface to *Beaumanoir*, mention is made of the chevaliers es *armes*, et en *loix*, which ſeems to anſwer to our ſerjeant at law. The *coif* which a ſerjeant at law continues to wear, was originally an iron plate or ſcull-cap, worn by Knights under their Helmet—The word *Coife* is thus explained in a very learned Gloſſary, printed at the end of a new edition of the Hiſtory of *St. Louis* at Paris in 1761, from a manuſcript lately diſcovered in the *French King's* Library, and where this authority from the old romance of *Gerard de Nevers* is cited—"*Gerard* tira "l'eſpee hors du fourel; ſi aſſenne a celui ſur *la coeffe d'acier*, un cop ſi grant, &c." The etymology of the word *ſerjeant*, however, ſeems to import ſomething low, or baſe, as I ſhould conceive it to be compounded of the two words *Serf* and *Gents*.

The Realm and People of England ſhall not be ſubject to the King or Kingdom of France.

14 Edw. III. Stat. v. A. D. 1340.

THE conqueſts of Edward had not only thrown the kingdom of France into a general conſternation, but had given a moſt prudent and politic alarm to the Engliſh, leſt they ſhould become dependent by an union with the conquered country—This ſuppoſed ſtatute is in reality only a ſtrong declaration from the king, that this apprehended conſequence ſhall not enſue from his victories. It begins, "Le roi à touts ceux as queux "ceſtes preſentes lettres vendront ſaluts," and concludes by "en teſmoignance de quel choſe nous avons mis noſtre ſeal."—This declaration is dated in the fourteenth year of his reign (in England) and the firſt of his reign in France [*p*].

I have before ſaid that this was a prudent and wiſe apprehenſion in the Engliſh, but it does not *neceſſarily* follow, that a leſſer kingdom, by conquering a greater extent of territory, ſhould in time become a province to the new-acquired territory, or that the ſeat of the empire ſhould be fixed there, on account of its being more the centre of dominion; eſpecially if the conquering country be an iſland, which will ever be a more ſecure place of reſidence for the king, than the ſtrongeſt fortifications on the continent—For this reaſon, the king of Denmark reſides at Copenhagen, becauſe it is ſituated in the iſland of Zeeland, which hath not many other inducements to fix the royal reſidence—It was ſome centuries before the emperors of Rome changed that capital for Conſtantinople, and that rather from a whim or diſguſt of Conſtantine, than *becauſe Conſtantinople was more central.* Theſe inſtances are mentioned to prove, that the conſequence does not *follow of neceſſity:* it was moſt certainly wiſe in our anceſtors, however, to make the earlieſt proteſtations and proviſions, againſt ſo alarming, and probable an event [*q*].

It is inſiſted at the end of this declaration, that no argument or conſtruction ſhall be drawn from the king's having altered the ſeal or arms

[*p*] The old French Hiſtorians and Chroniclers allow, that Edward the Third's title to the kingdom of France was a good one, nor do they ſeem to feel much from the change of kings.

[*q*] Inſtances indeed do not very frequently occur in hiſtory of the leſſer territory, or kingdom conquering the greater.—It muſt be admitted that *Alexander* does not ſeem to have had any thoughts of returning to Macedonia, and his directions to his ſucceſſors on his death bed ſeem chiefly to have related to the ſecuring his new conqueſt of Perſia.—It muſt likewiſe be admitted, that the Tartars (though conquerors) have eſtabliſhed the ſeat of their empire, in the capital of China.

of

of England—This was occaſioned by Edward's having very imprudently put the *Flower de luces* [p] (or the French arms) in the firſt quarter (as the blazoners term it), which is taken notice of by one of the antient Chroniclers as having deſervedly given great offence.

[p] It ſeems to be generally agreed by the French antiquaries, that theſe *Flower de luces* were originally meant to repreſent the heads of ſpears.—Such a change is not unuſual in antient blazonry, from the painter's imperfect repreſentation of the thing intended.—The lions in the arms of England were originally leopards.

A Confirmation of the Great Charter and other Statutes.

14 Edw. III. A. D. 1341.

THIS confirmation of the Charters contains ſome very particular and extraordinary additions, beſides the general confirmation, of which there have been two or three other preceding inſtances; and as this ſtatute hath never been tranſlated, it hath not been ſufficiently attended to.

I have before obſerved, in the Comment on Magna Charta, that, in the early part of the Engliſh hiſtory (though long after Magna Charta was in force), the peers were often condemned and executed without the form of a trial by their peers, or indeed any trial whatſoever—The 2d chapter of this ſtatute recites this, and expreſly enacts, that, for the future, they ſhall be tried only by their peers [*q*]; and that, if a peer choſe to ſubmit to any other method of trial, it ſhould not prejudice the rights of the peerage—The 3d chapter recites, that the commonalty of the realm had been proſecuted and impriſoned without *indictment*, contrary to Magna Charta; and therefore directs, that the chancellor, treaſurer, barons, and chancellor of the Exchequer, judges of both benches, ſteward and chamberlain of the houſhold, keeper of the privy ſeal, treaſurer of the wardrobe [*r*], comptroller of the houſhold, and the preceptor [*s*] and chief officers of the duke of Cornwall, ſhall take an oath, upon entering into their office, to obſerve the Great Charters in every article—This oath (though it is moſt ſtrictly injoined by this ſtatute to be taken by theſe great officers) makes no part of the oath, which is printed in a collection of the old forms of oaths, in 1649; and that the law continues unrepealed, I ſhall have occaſion to obſerve in my remarks upon the ſtatute which follows.

The 5th chapter enacts, that the king ſhould remove [*t*] the great

[*q*] There is an exception, if a peer is proſecuted as the *king's farmer*; which exception ſeems to imply that it was at this time underſtood, that a lord of parliament had a right to be tried by his peers for a miſdemeanor.

[*r*] The treaſurer of the wardrobe I conceive to be the ſame officer which is now ſtyled the maſter of the wardrobe, at whoſe office ſome payments ſtill continue to be made—It appears by *Fleta* and others, that treaties and acts of ſtate were frequently depoſited in the *Wardrobe*, which then contained a large diſtrict, in which the king's artiſans lived; and there is a pariſh in the city ſtill called *St. Anne's Wardrobe* from this circumſtance—This range of buildings was burnt in the fire of London, and it hath ſince been found better œconomy to purchaſe what is wanted from common tradeſmen—It is probable, that many valuable records were deſtroyed in this office by the fire of London.

[*s*] Ceux que ſont chiefs deputez a demorer prez du fils le roy, duc de Cornouaille.

[*t*] There is an exception of the Judges and Barons of the Exchequer.

officers

officers (beforementioned) five or ſix days before every ſeſſions of parliament, in order that thoſe who had complaints to make might not be deterred by dread of their power and influence; and that the king might with conſent *(des grantz)*, which ſhould be moſt near to him, ſubſtitute others in their places—This was indeed a moſt extraordinary regulation, and, I ſhould think, was the chief pretence for the proclamation which enſues.—This moſt conſtitutional ſtatute (at leaſt the four firſt chapters of it) had ſcarcely paſſed when Edward, by the advice of his privy council, iſſued a proclamation, which contains the following moſt hypocritical and illegal reaſons for not allowing it to be a binding and obligatory law—

"Et quia editioni predicti ſtatuti *pretenſi* nunquam conſenſimus, ſed "premiſſis proteſtationibus de revocando dictum ſtatutum ſi de facto pro- "cederet *ad evitandum pericula quæ ex ipſius denegatione tunc timebantur* pro- "venire, cum dictum parliamentum aliàs fuiſſet diſſolutum, cum magnâ "negotiorum noſtrorum ruinâ: *diſſimulavimus (ſicut oportuit)* et dictum "pretenſum ſtatutum ſigillari permiſimus hac vice: videbatur dicto con- "cilio noſtro, quod ex quo dictum ſtatutum ex voluntate gratuitâ noſtrâ "non proceſſit, et quod nomen et vim ſtatuti habere non deberet— "Ideo &c.

I ſhould imagine that no one can read theſe paſſages of the proclamation without feeling indignation; and thinking that its being publiſhed in the Statute-book as an act of parliament is a conſtitutional and national diſgrace—Under pretence of the ſame *prudent diſſimulation* [u], the moſt important and ſacred acts of parliament might for ever be evaded—I have before, in the character of Henry the Third, had occaſion to obſerve, that ſome of our kings, moſt celebrated for their conqueſts, had attempted to make the greateſt infringements upon the conſtitution—The preſent proclamation furniſhes a moſt ſtriking proof of this, and it is dated in the firſt year in which Edward the Third aſſumed the title of King of France.

[u] This proclamation is in Latin, and all the ſtatutes which precede and follow are in Engliſh—I have before obſerved, that moſt of the ſtatutes which are in the Latin language relates to the intereſts of the clergy; and it is not impoſſible, that this jeſuitical caſuiſtry and *prudent diſſimulation* might have been the advice of a prelate.

18 Edw. III. Stat. ii. A. D. 1344.

THIS ſtatute conſiſts of ſeven chapters; and the preamble and firſt chapter hath never been tranſlated, though the ſix other chapters are—There is a moſt ſingular recital in this French preamble, viz. that the French king, "s'afforce tant come il poet à deſtruir notre dit ſeigneur le "roi, *ſes alliez* [x], *et ſubgitz, terres et liens*, et [y] la langue d'Angle-"terre."—The complaining that the king of France intends to deſtroy the Engliſh language, in the preamble to an *Engliſh act of parliament ſpeaking in the French language*, ſeems to be one of the moſt extraordinary allegations which were ever thrown into the preamble [z] of a ſtatute—The law then expreſſes the intention to ſupport the king in the ſtrongeſt manner in his war againſt France, as they clearly *foreſee* [a] the deſtruction of England, if Edward does not immediately paſs the ſea; and they exhort him ſteadily to purſue, and never to drop, this great and important purpoſe, neither for *letters*, *words*, nor *fair promiſſes*, from which it ſhould ſeem that the Engliſh already began to diſtruſt themſelves as *negotiators* [b]—The parliament not only gives this exhortation, but likewiſe grants taxes, in which it is obſervable, that the lords and prelates *join* with the commons; though afterwards mention is made of two fifteenths granted by the *commonalty* of the realm, and two tenths by the *cities and boroughs*—From this particular it ſhould ſeem, that the knights of ſhires, and the repreſentatives of cities and boroughs, were conſidered in a diſtinct light; and that the commonalty was only bound by the aſſent of the knights of the ſhires, and the inhabitants of cities and boroughs by their own repreſentatives—The clergy and lay-peers might poſſibly at this time likewiſe make two diſtinct independent bodies in the houſe of lords—And the preamble of a

[x] This is the firſt mention of the word *ally*, which unfortunately we hear too much of in the more modern part of the Engliſh Hiſtory.

[y] In my manuſcript (beforementioned) it runs, *terres et lieus* de *la langue d'Angleterre*, which is perfectly intelligible, and the ſenſe reconcileable to the context.

[z] The ſtatute of Elizabeth, for tranſlating the Bible and Service of Common-prayer into Welſh, recites, that it is with intention to make the Welſh learn Engliſh the more readily; which is likewiſe a very ſingular recital, and would not eſcape notice in an *Iriſh* ſtatute.

[a] The word *yvant* ſhould be read *vyant*; a word vitiouſly ſpelt for *voiant*, or ſeeing.

[b] It is admitted, that we do not hear of any complaint of the inſufficiency of Engliſh negotiators, till the pamphlets which ſwarmed after the peace of Utrecht, and during Sir Robert Walpole's adminiſtration, when his brother, Mr. Horace Walpole, was embaſſador in France—One need ſay no more of theſe than that they were party pamphlets—The Abbé *Mongon* hath done juſtice to the memory of Lord Walpole, and ſays, that Cardinal Fleury was throughout his dupe, which is highly probable, as he was above fourſcore years old.

modern

modern act of parliament always ſtates the aſſent of the lords *Spiritual* and *Temporal*, though the lower houſe are comprehended in the general name of *Commons* in parliament aſſembled.

The 2d chapter of this ſtatute directs, that two or three *(des mieultz* vavetz *des countees)* ſhall be appointed conſervators of the peace, and that they ſhall have the king's commiſſion to hear and determine treſpaſſes and felonies—As for the word *vavetz*, which is tranſlated "men of the beſt "reputation in the county," it is to be found in no Gloſſary; nor does any word occur which bears any great affinity to it—Upon conſulting my manuſcript of the ſtatutes, I find the word uſed inſtead of it, is *vaillantz*, which agrees with the tranſlation—It is true, we generally uſe the word *valiant* as ſynonymous with the word *courageous*—In the old French writers, however, *valiant* (from *valere)*, ſignifies only a man of worth; and *courageux* ſignifies *angry*—It is very extraordinary, that juſtices of the peace ſhould have ſo much declined the trying of felonies; when it appears by this ſtatute (to which they owe their inſtitution), that it was the chief purpoſe for which they were appointed.

The 4th chapter repeals all commiſſions to aſſay weights and meaſures; which I ſhould not have taken notice of, did it not recite the abuſes of theſe commiſſions—Abuſes, which have prevented the different ſtatutes (from Magna Charta downwards, which relate to weights and meaſures) from being carried into execution.

THE

THE OATH OF THE JUSTICES.

18 Edw. III. Stat. iv. A. D. 1344.

WHETHER it aroſe from the king's having been frequently abſent during his wars with France, or whether it aroſe from increaſe of trade and riches [*e*], the law itſelf, the people of the country, and the judges who were to diſpenſe the law to the ſubject, each wanted at this time much reformation—We find this from the recitals to many ſtatutes of this reign, and likewiſe from that Year Book, which is entitled, *The Book of Aſſiſes*, where, by the articles to be inquired into by the judges of the King's Bench, it will appear, that there were abuſes in the adminiſtration of juſtice (though, according to modern ideas, a high conception of it hath been formed), which are now happily not even heard of, much leſs are they neceſſary to be reſtrained and puniſhed [*d*].

[*c*] The 6th chapter of the ſtatute laſt obſerved upon makes mention, for the firſt time, of the circulation of *gold coin*.

[*d*] " Ceux ſont les articles que ſont enquirés per enqueſt d'off. en *Bank le Roy*, fait à enquirer " de homicides, larcens, arſours de meaſ. raviſours des femes, et de touts manner de felons et de " felonies, et lour receptors, procurors, et maintainors, auxi bien de temps le roy le pere, come " de temps le roy que ore eſt, eſchapes de larons, &c.

" Item de ceux que l'owent misfeſors de batre les gentes de *court*, jurors d'enqueſts, ou aſcuns " auters homes, queux ſont les bators, et ceux que les l'owent, &c.

" Item des endictors que font garner les enditées *, et diſcoverent le counſeil le roy, et des juſtices, " et de lour compaynons.

" Item de ceux que veignent forciblement en *court* le roy counter *aſſiſes* en affreiant de la peas, " que les jurors n'oſent dire veritie.

" Item de gardeins des priſons, qui, pur dred de penance, font les priſones deven' provours, " et appeller' lays gents pur covetiſe de gaine.

" Item de ceux que teignent gents à lour robes ou fées pur veritie extinct, et pur mainteiner " lour mauvaiſes empriſes, &c.

" Item de conſpirators, et confederators que ſoy ent'raliont par ſerement, covenant, ou par auter " aliance, que cheſcun eidera et ſuſtendr' autre empriſe, ſoit il faux ou veritie; et que fauxe- " ment fait endict et acquit' gents, ou fauxement move ou maintein plées, de manner de aliance, " entri queux, &c.

" Item de coroners, des chiefes conſtables des hundreds, que elizent gents de petit value, et " eſpargnent lez bons pur lour don'; et daſcun hundred qu'on aſſeſſe pur tiels articles a trouver a " c s, ou a x marks, ou ils levent x li, a grand oppreſſion de people.

" Item des garde de priſons que appernent laies perſones que ſont en lour garde l'ettur' " per ca'e de ſalvat' d'lour vie en deſturbament de la *com' ley*, que la juſtic' ne ſe peut faire ſur " eux come ſur laies gents en deceit d'el roy.

" Item des taxors, et quillors de xv d' que per eux et lour miniſtres parnent certeins fées a lour " clerks, huſhers, et autres lour miniſtres, et pur faire acquit'.

* This explains the meaning of that part of a Grand-juror's oath by which he promiſes not to *diſcloſe the king's counſel*.

Theſe articles of inquiry, which the Year Book fixes to the twenty-fifth year of this king's reign, ſhew the prevailing crimes at this time; and the oath of the judges, now regulated by parliament, ſhews what was objected to them in their diſpenſing of juſtice—The firſt material part of the oath is, that they ſhall not take fee or preſent from any one, if it is not meat or drink, and that of a very ſmall value—They then ſwear, that they will not take robes from any one, except the king, nor give counſel or advice to any one where the king is party—And the ſtatute having ſo far conſidered them as officers payed by the crown [*e*], it then provides for the equal diſtribution of juſtice to the ſubject, by making it part of the oath, that they ſhall not regard any letter or meſſage from the king, with relation to any point depending before them, which is likewiſe a proviſion of one of the moſt antient of the Scots ſtatutes.

The neceſſity of a judge's taking this oath having been thus injoined by the legiſlature, it was one of the articles of complaint againſt Richard the Second in the ſucceeding reign, that he had made the judges and other great officers take oaths of a new form, when they entered upon their office; and that theſe new oaths were adminiſtered *in ſecret*.—Notwithſtanding this, the oath continues to be adminiſtered in private; the occaſion of which I ſhould imagine to ariſe from the judge being ſworn on his knees before the chancellor—If this is improper, it ſhould be baniſhed from the private room, as well as the open court.

" Item de touts ſervants, officers, et miniſtres le roy; Archeveſques, Eveſques, Dukes, Contes, " Barons, et touts autres quecunque, de lour trahiſons, extorc' et greivances faits al' people le roy, " et de lour doneſons et grandſums priſes et levies de people, le roy pur grandiſment de lour " ſeigniorages, ou en autre maner."

[*e*] It appears by 20 Edw. III. ch. i. that the king at this time had increaſed the ſalaries of the judges.

THE STATUTE OF LABOURERS.

23 Edw. III. A. D. 1349.

THIS *ſuppoſed* [*f*] ſtatute recites the great increaſe of wages occaſioned by a plague, ſome labourers now taking advantage of the ſcarcity of hands to inſiſt upon extravagant wages, and others chooſing rather to beg and live in idleneſs, than to earn their bread by labour—Beſides the other calamitous circumſtances which attend a peſtilence, it is remarked by all hiſtorians [*g*], who have given an account of occurrences during this melancholy ſcene of deſolation and diſtreſs, that the manners of the people (from deſpair [*h*]) become diſſolute and abandoned beyond conception: nor is diſſoluteneſs at once removed by the ceaſing of the peſtilence—The ſtatute therefore ſpeaks the language, and introduces regulations, of ſeverity.

By the firſt chapter, every perſon able in body, and under the age of ſixty, not having means of maintaining himſelf, is bound to ſerve him who ſhall be willing to employ him, at the wages which were uſually given the ſix years preceding the plague—And if he refuſes, and it is proved by two witneſſes before the ſheriff, bailiff, *lord* [*i*], or conſtable of the village where the refuſal is given, he is to be committed to gaol, and continue there till he finds ſureties for entering into ſervice upon theſe terms.

By the 7th chapter, no one is to give alms to a beggar, who is able to labour, under penalty of impriſonment, "Nemo ſub colore pietatis, aut "eleemoſynæ, quicquam donet, ſeu eos in deſidiâ fovere præſumat, ut ſic "compellantur pro vitæ neceſſariis laborare [*k*]."

By the laſt chapter, ſome penalties, impoſed by a preceding part of the law, are diſpoſed of in a very unuſual manner: they are not given to the

[*f*] No mention is made of the intervention of the commons, which muſt henceforward be looked upon as abſolutely eſſential, whatever it might have been before.

[*g*] Particularly Boccace, in his account of the plague at Florence, which gave occaſion to his Decameron, and which ſeems infinitely to exceed the celebrated deſcription of the plague of Athens by Thucydides.

[*h*] Thoſe religious ſects who ſuppoſe their ſtate of ſalvation to be deſperate are, for the ſame reaſon, moſt remarkably wicked and abandoned.

[*i*] The words of the ſtatute are, *vicecomiti, ballivo*, domino, *aut conſtabulario ville*, which word *dominus*, I ſhould conceive to mean lord of the manor.

[*k*] There is an ordinance of King John of France (Edward's contemporary), that the clergy ſhall preach againſt this falſe charity of giving alms to thoſe who are able to work. Ord.

informer [*l*] (as in more modern times) to inforce the execution of a ſtatute, but in aid of *diſmes* and *quinzimes* granted to the king by the commons.

Whether the neglect of this ſtatute aroſe from this improper diſtribution of the penalty, or more probably from the ſeverity of the law, the parliament, two years afterwards, in the twenty-fifth of Edward the Third, attempted to carry it into more rigorous and effectual execution; and likewiſe added ſome new regulations, fixing the price of not only the wages of the *labourer*, but almoſt every kind of *artiſan*. Some of the particulars are curious, and are a good ſtandard to ſettle the comparative value of money, which often throws great light upon the more antient ſtatutes.

The common labourer, in the hay harveſt, is only to have one penny a day, except a mower, who, if he mows by the acre, is to have 5 *d. per* acre, or otherwiſe 5 *d.* a day. A reaper [*m*] is to have, in time of corn harveſt, 2 *d.* the firſt week in Auguſt, and 3 *d.* till the end of the month [*n*]; and they are likewiſe neither to aſk meat, nor any other perquiſite or indulgence. The law likewiſe requires, that they ſhall repair to the next town or village, carrying their ſcythe or ſickle *openly* in their hands, and ſhall there be hired in ſome public place—This regulation of the ſtatute (though in other reſpects diſregarded) ſeems to have been the occaſion of what is now ſeen in country towns, when labourers want employment.

The 2d chapter directs, that no man in harveſt (before ſettled to be in the month of Auguſt) ſhall leave the village in which he lived during the winter, except the inhabitants of Staffordſhire, Derbyſhire, Lancaſhire, Craven, and the Marches of Wales and Scotland—The occaſion of which is, that there are large tracts of mountain or moorland in all theſe counties and diſtricts, where nothing can be raiſed but oats, which are not uſually ripe till October, and, conſequently, if they were not employed in more early harveſt, they would be without employment during the months of Auguſt and September—For the ſame reaſon, the inhabitants of the

Royales, p. 5.—Since the introduction of the Poors Laws, it is become ſtill a more weak and falſe charity to an Engliſhman; a foreigner or negro, however, may ſtill want our alms in this country.

[*l*] The proportion of a penalty, which ſhall be given to an informer, ſeems to be now ſettled, viz. half.—At firſt, however, it was commonly a fourth, and afterwards, by later ſtatutes, a third, till the half, at which it is now fixed—Even this large proportion ſeldom hath its effect.

[*m*] *Sciours des blees*—The mower is termed *fancheour des preez*—This ſtatute hath never been tranſlated.

[*n*] No one conceives more highly of parliamentary powers; but this regulation (depending upon the ſeaſon) ſeems to exceed even the omnipotence of the legiſlature.

Pyrenees come for ſix weeks into the Southern provinces of France, and return in proper time for the getting in of their own harveſt.

As I have mentioned, that the wages allowed to labourers by this law ſhew the comparative value of money: I ſhall likewiſe refer the reader to the Appendix of the third volume of Dr. Brady's Hiſtory, where there is a very particular account of the pay of Edward the Third's army, in the twentieth year of his reign—The pay of the Black Prince was 20*s.* *per diem*—The ſum total, is 12,720*l.* 2*s.* and 9*d.* for which an army and fleet of 31,294 men was to be payed and ſubſiſted for ſixteen months, which poſſibly may rather aſtoniſh a modern financier, or contractor for Germany—There is likewiſe, in Sir Richard Cox's Hiſtory of Ireland, an account of the ſalaries of moſt of the principal officers of the crown at this time, from which the ſame comparative value may be drawn.

OF

OF THOSE THAT BE BORN BEYOND THE SEA.

25 Edw. III. Stat. ii.

THIS ſtatute recites a doubt [o], whether children born of parents out of the king's allegiance ſhould inherit lands in England; which queſtion, it ſeems, had been before the parliament in the eighteenth year of this king's reign, but nothing had been decided.—The ſtatute firſt declares, that it is the law of the crown of England [p], and hath always been ſo, that the children of the king, born in any part of the world, have a right to inherit; and this, according to the obſervation made in the note below, is a ſtrong argument to prove, that, in the caſe of a common ſubject, the law was apprehended to be otherwiſe — I ſhould imagine, that this parliament (or the judges of the time), if they had been conſulted whether Philippa of Hainault, queen of Edward the Third, *had been naturalized by her marriage*, would not have long heſitated about the anſwer.

After this declaration, the ſtatute gives a very extraordinary power to the king (after having naturalized John de Beaumont, Elizabeth, daughter of Guy de Bryan, and Giles, the ſon of Ralf Daubenye), viz. that *as many others* as the king ſhould pleaſe to name, ſhould be to all intents and purpoſes naturalized; and likewiſe enacts, that for the future all children born of parents (ſubjects of the king) ſhould inherit, except the children of mothers who ſhall paſs the ſea, without *leave of their* huſbands.

[o] The French expreſſion, in the original, is *en avere*, and not *en aweroufl*; which is always uſed by Lyttelton, in his Tenures, to ſignify *a doubt*.

[p] This is always conſidered as part of the common law, and differs, almoſt in every rule relating to it, from what is law between ſubject and ſubject.

THE

THE STATUTE OF TREASONS.

25 Edw. III. Stat. v. A. D. 1350.

I SHALL take a very extraordinary liberty with regard to the title of this ſtatute, which I have altered from that of the *Statute of Purveyors* to that of the *Statute of Treaſons*—It is true, that the firſt [*q*] chapter of this law (as well as the 13th) relates to purveyance; but the 2d great conſtitutional chapter, which hath defined what ſhall be deemed treaſon, hath certainly a right to give a title to this *Capitularium*; which chapter (after many new treaſons enacted during the reign of Henry the Eighth) is fixed upon, by the firſt of Philip and Mary, as the ſtatute declaratory of the common law, and which therefore ſhould continue in its full force without alteration, whilſt the other laws of tyranny are entirely repealed.

As the declarations made by this ſtatute of what ſhall be deemed treaſon are generally known by not only lawyers, but even every one who hath read an Engliſh hiſtorian with any degree of attention, I ſhould not have ſtated any of the particulars, did it not give occaſion to ſome obſervations.

It begins by declaring, that it ſhall be treaſon to *compaſs* [*r*] or *imagine* the death of the king—There have been many comments upon theſe words *compaſs* and *imagine*; and I ſhould with great deference think, that, notwithſtanding the general excellence of this moſt wiſe and important ſtatute, the word *imagine* is not ſufficiently explicite, and is likewiſe too figurative to be made uſe of in deſcribing this moſt capital of all criminal offences—The *Lombards*, indeed, by their old laws, make uſe of ſtill more looſe and figurative expreſſions, "Si quis *contra animam* regis [*s*] cogita-"verit" [*t*]—The *Fuero Juſgo*, in deſcribing the offence of treaſon, makes uſe of the expreſſion *que* trattaren *del morte del principe*; which is likewiſe a moſt looſe expreſſion, though the Spaniards were at that time a more free people than perhaps in any other part of Europe.

[*q*] It conſiſts of twenty-three chapters.

[*r*] Fait compaſſer, ou imaginer la mort notre-ſeigneur *le Roi*—Is it not extraordinary, that the life of an Engliſhman, proſecuted by the crown, ſhould continue to depend upon the critical conſtruction of two obſolete French words? The word *imagine* is uſed in the Pſalms, ii. 1. in the ſame ſenſe with *plot: Why do the heathen ſo furiouſly rage together? and why do the people* IMAGINE *a vain thing?*

[*s*] Nath. Bacon ſays, that, in the time of the Saxons, an indictment for high treaſon againſt the king, run *felonicè*; if againſt the country, *proditoriè*: he would have obliged antiquaries much by printing theſe indictments at length, as well as writers on the conſtitutional law of England.

[*t*] Some of the antient Engliſh grants are very figurative: "Omnes libertates et aquas circa "*Hull*, quas cor cogitare poterit, aut oculus videre." Rymer, vol. ii. part ii. p. 183.

The

The compaſſing or imagining the death of the queen (deſcribed by the word *Madame ſa compaigne)*, is likewiſe declared to be high treaſon.—Upon this expreſſion there have alſo been doubts, whether a queen-dowager is included—I do not mean by this to ſay, that ſuch doubts have not received a very ſatisfactory ſolution, but only that it might have been worded in this part with greater preciſion—The deſignation of the queen [*u*], by the words *Madame ſa compaigne*, ſeems to be ſingular; we find however the ſame expreſſion in other laws of Europe, "Los hijos y *companna* del rey "han de ſer bien tratados, y que najie les haga furca, ni danno algun." Fuer. Juſg. lib. i. p. 52.—It is next declared, that the counterfeiting of the king's great, or privy ſeal, ſhall likewiſe be conſidered as high treaſon; which I ſhould not have taken notice of (as this part of the law cannot be more clearly expreſſed), did not a writ, printed in the original French, at the end of ſome other ſtatutes [*w*] of the ſame year, give us the intimation of a very great neglect in this part of the act, and which, in ſome meaſure, ſeems to countenance an obſervation made by *Carte*, that no lawyer ſat in this parliament, when this moſt conſtitutional ſtatute became a law [*x*]. This writ mentions a claim made by the clergy, that a clerk, who was convicted of counterfeiting the great, or privy ſeal, or the king's coin, ſhould have his privilege of clergy, to which the king anſwers; "that "he is too much preſſed by buſineſs of the greateſt importance to decide "this point, but that, if any clerk ſhould be convicted of this offence before "the next ſeſſions of parliament (in which he hopes it will be fully diſcuſſed), "he ſhall not be executed, but delivered to the ordinary"—We find accordingly, that this point muſt have been before the legiſlature, and yet nothing is ſaid with regard to the privilege of clergy—It might be impolitic indeed (from circumſtances), that this point ſhould have undergone a diſcuſſion in parliament; but as the clergy had, in effect, eſtabliſhed this privilege, the opportunity of taking it expreſly away by ſtatute ſhould not have been omitted—The counterfeiting or debaſing of the current coin hath been made treaſon in every country where a coinage hath been eſtabliſhed: it is made ſo by the antient Athenian laws, ἐάν τις τὸ νόμισμα διαφθείρῃ, τὸν θάνατον τὴν ζημίαν εἶναι. Petit's Leg. Att. p. 40.—As it is therefore univerſally a capital offence to counterfeit the coin, it is much to be lamented, that thoſe kings who have debaſed the money of the ſtate, and have ordered the

[*u*] Aſſuerus, in his Life of Arthur, mentions, that the Saxons never deſcribed the queen by the word *regina*, ſed *tantum regis conjugem* appellabant.

[*w*] Cay's Stat.

[*x*] Carte mentions this obſervation *ad* invidiam.

money

money thus debaſed to paſs at the ſterling price, are not ſubject to a proſecution for this offence on their part.

As treaſon is in all ſtates conſidered as the greateſt crime of which the ſubject can be guilty, I have looked into the laws of moſt countries in Europe on this head, which in general are much more looſely worded than the preſent ſtatute, at the ſame time that the puniſhment is ſometimes more ſevere by its tortures, than can ever anſwer the great end for which executions become neceſſary — If the criminal in his agonies excites the pity of the ſpectator, the crime for which he ſuffers is forgot, and the law and its miniſters are conſidered as cruel and vindictive — There ſeems to be one particular in which all the laws (where the government is in the hands of a king) agree, viz. that it ſhall be high treaſon *to kill his counſellors* [y]; which ariſes from this, that the pretence, in the conſpirator, is generally to remove the miniſter, whilſt the king himſelf is ſuppoſed to be blameleſs.

[y] Sir Francis Holburne hath printed a reading on this ſtatute, in the year 1681.

A STA-

A STATUTE OF PROVISORS.

25 Edw. III. Stat. i. A. D. 1350.

SIR HENRY SPELMAN gives this account of the meaning of the word *Proviſors, as uſed in this Statute*; the general ſignification of the word being ſynonymous with a *purveyor.*—"Proviſores etiam dicuntur, qui vel "epiſcopatum, vel dignitatem aliam eccleſiaſticam in Romana curiâ ſibi "ambiebant de *futuro*, quod ex gratiâ *expectativâ* nuncuparunt, quia uſque "dum vacaret expectandum eſſet [z]."—As this ſtatute is to be conſidered as a ſort of manifeſto againſt the court of Rome, the preamble is more full and laboured than that of any other law which hath yet occurred—The reſiſtance and oppoſition to the Papal encroachments was not confined to England at this time; for we find, in *Boulainvilliers* [a], a petition *(du tiers etat)* to King John of France, that he would inſiſt upon the privileges and immunities of his kingdom againſt Pope Boniface—Fortunately for this country, the victories of Edward had made the Engliſh nation ſo reſpected and feared throughout Europe, that theſe proviſions were thoroughly carried into execution; whereas the humiliating adverſities of the French made them leſs capable of aſſerting their national dignity and privileges againſt the Papal impoſitions—England likewiſe, by its advantage of inſular ſituation, was leſs ſubject to the Papal power, which could only be inforced by the pope's employing the army of a catholic country againſt the ſtate which lay under his anathemas; whereas an invaſion of England was impracticable from any other country but France, then much depreſſed—The other method which the pope hath of inforcing his aſſumed powers is, by fomenting a rebellion againſt the excommunicated king in his own country—This likewiſe could as little be effected, Edward being at the height of popularity from the eclat of his victories; and, beſides this, the parliament joined with him in reſiſting the Papal encroachments from the ſtrongeſt motives of intereſt, as by this means they ſecured their own preſentations to eccleſiaſtical benefices, when they happened to be in lay hands.

Though the encroachments of the church of Rome are mentioned throughout this law in their proper light, yet the pope himſelf is treated

[z] The word *Proviſor* might therefore be not improperly rendered *a looker out.*

[a] Vol. iii. p. 72.

with great reſpect, being ſtyled *Le ſaint pere*, or Holy Father [*b*] — One of the titles therefore of this ſtatute, viz, "the king and lords ſhall pre- "ſent unto benefices of their own, and not *the biſhop of Rome*," hath moſt evidently not been taken from the parliament roll, but hath been added by a tranſlator or editor ſince the Reformation.

What moſt deſerves notice in this ſtatute, is the explanation of the *congé d'eſlire*, upon the vacancy of an archbiſhoprick or biſhoprick — The ſtatute ſuppoſes, that the *free* election in the chapters had been originally granted by the king's progenitors, upon condition that they ſhould have firſt aſked leave of the king to chooſe, and after the election alſo requeſted his aſſent; which conditions (ſays the ſtatute) having been neglected, it is reaſonable that the thing ſhould *return to its firſt nature* — Now, in the firſt place, this previous and ſubſequent aſſent of the king does not ſeem to be very reconcileable to what is ſtated to have been *a free election*, and in which the chapters ſtill continue to have the mockery of invoking the Holy Ghoſt to aſſiſt them in their choice: nor is there to be found in Rymer any inſtance of the kings of England interfering in ſuch an election — The king and parliament were however determined to exclude the pope from nominating, and aſſumed the right of ſuppoſing what they pleaſed to ſubſtantiate their own claims, and the ſalutary and beneficial conſequences attending the fiction have given a proper ſanction to it. — This ſtatute not having deterred ſufficiently ſome of theſe proviſors, who ſtill ſolicited at the court of Rome for benefices, and appealed againſt the deciſions of the king's courts, occaſioned, two years afterward, the firſt ſtatute of *Premunire*, which is ſo called not from that word being uſed in the law, which is in *French*, and directs a *garniſſement*, or warning of two months before ſuch proviſor or appellant can be puniſhed [*c*] — The writ to the ſheriff, founded upon this ſtatute, therefore being in Latin, gives notice of this warning by the word *premunire* (a barbarous word uſed for *præmonere*) from whence theſe laws have ſince been ſo ſtyled — The puniſhment for not appearing after ſuch warning is impriſonment, to be put out of the king's protection (which I apprehend to ſignify the protection of the king's courts of juſtice), and a forfeiture of lands and goods.

This firſt ſtatute of *Premunire*, in the twenty-ſeventh year of Edward the Third, contains eight chapters, the four laſt of which relate to Gaſcony

[*b*] The beginning of all the letters, from the kings of England to the pope, in the twelfth, thirteenth, and fourteenth, is, *Papæ Rex devota pedum oſcula beatorum* — The meaning of this is very obvious; but there ſeems to be a difficulty in filling up this elliptical compliment.

[*c*] He is on *this warning* to ſurrender himſelf.

wines, and, having never been tranſlated, ſeem to have been little attended to by lawyers—The 5th chapter enacts, that it ſhall *be felony*, if any Engliſh merchant ſhall engroſs or foreſtall wines in Gaſcony; nor may he at any rate purchaſe them of a *Gaſcon* by money to be payed in England, if the price exceeds what wine is uſually ſold for in *Gaſcony*—When parliaments enact laws in order to lower the price of proviſions [*d*], they generally make the regulations upon the *ſpur of the occaſion*, as Lord Bacon expreſſes it, and with too eager and warm a ſpirit of reformation—This ſometimes is productive of ſtatutes of moſt extraordinary ſeverity (as the preſent moſt undoubtedly is), and this new and extraordinary felony muſt likewiſe have been committed in *Gaſcony*; and therefore it ſeems to have eſcaped the legiſlature, that the offence, being local, could not have been tried by the jury of any Engliſh county [*e*].

The next chapter enacts, that no Engliſh merchant, or perſon employed by him, ſhould be permitted to go into Gaſcony, but juſt before the vintage [*f*]; and that no Engliſhman ſhall even at that time purchaſe any wines, but in the towns of *Bayonne*, or *Bourdeaux*, under the ſame penalties; which are, forfeiture of the wine, and likewiſe the other forfeitures conſequential to a felony; and if any one infringes theſe regulations, he is to be apprehended by the *ſeneſchal* of *Gaſcony*, or the *conſtable* of *Bourdeaux*, and ſent *in vinculis* to the Tower of London—It need not be obſerved, that theſe proviſions of the ſtatute are of a very extraordinary nature and ſeverity, and therefore by 37 Edw. III. ch. xvi. this law is repealed as far as relates to the puniſhing of the offence as a felony—In all other reſpects this ſtatute is again confirmed, with this addition, "that the "ſeneſchal and conſtable of Bourdeaux ſhall yearly tranſmit to England "certificates againſt thoſe who have broke the law, together with the bo-"dies of the offenders, who, if they contradict the certificate, it is to be "tried by a jury of merchants who trade to thoſe parts."—If the offender is not ſent together with the complaint, the certificate is to be returned into the King's Bench, from whence proceſs of outlawry is to iſſue—Theſe ſtatutes continued in force till the forty-third of Edward the Third [*g*], which in the preamble ſets forth, that theſe laws of ſeverity were *pur aſſay*

[*d*] Wines muſt be conſidered in the ſame light with proviſions.

[*e*] This ſeems to be another confirmation of Carte's aſſertion, that there were no lawyers in this parliament.

[*f*] Perſons reſiding in Gaſcony to buy up the wine are, by 37 Edw. III. ch. xvi. called *cocheurs engleys*, viz. *liers in wait*.

[*g*] This ſtatute likewiſe hath never been tranſlated.

profitable; but notwithſtanding this, upon the repreſentation of the prince of Wales (whom Edward ſtyles his Dearly-beloved Son), that the duties which he uſed to receive from the dutchy of *Acquitaine* were conſiderably diminiſhed, the parliament enacts, that the two preceding ſtatutes ſhall remain in ſuſpence [*b*], till the effects of this repeal are known.

I have ſtated theſe heads of the different laws of this reign with regard to French wines, that any admirer of the legiſlation, or notions of liberty in theſe times, may aſk himſelf the queſtion, whether a member of either houſe of parliament could poſſibly have propoſed ſuch regulations ſince the Revolution?—We find, however, that theſe laws not only paſſed, but continued in force for many years; and even when they are repealed, it is to increaſe the revenue of the *Black Prince*, without the leaſt complaint or notice taken of the oppreſſion to the ſubject.

[*b*] This is ſuppoſed to be perhaps the only inſtance of a *temporary ſuſpenſion* of a law.

STATU-

STATUTUM DE STAPULIS.

27 Edw. III. Stat. ii. A. D. 1353.

THIS ſtatute is a moſt complete code of laws for the regulation of the merchants who attend the ſtaples of wool, now transferred from *Flanders* to *England*, and to give the moſt ſummary and expeditious juſtice upon all contracts, entered into during the continuance of this great mart—The compilers of the Parliamentary Hiſtory ſuppoſe, that the chief occaſion of Edward's removing the ſtaple from the Great Towns of *Flanders* to *Newcaſtle under Lyne*, *York*, *Briſtol*, &c. aroſe from his being diſpleaſed with the *Flemmings*, for diſappointing him in an intended alliance between his daughter and their young *Earl*, *Lewis*—Slight circumſtances of this kind perhaps often occaſion the greateſt events in hiſtory, though they are generally accounted for from more deep and important cauſes; and it hath been ſaid, that we owe the famous navigation act (the great foundation and ſupport of our commerce) to a perſonal diſpute between *St. John*, embaſſador to *Oliver Cromwell*, and the *States*: *St. John*, from this pique, determined to propoſe to the Engliſh parliament regulations, which ſhould prevent the Dutch from being the common carriers of Europe.

The different chapters of this law ſpeak ſufficiently for themſelves, without needing any comment or obſervations—It may be remarked, however, that the preamble to this ſtatute firſt ſtyles the parliament the *King's Great Council*; and it ſhould ſeem, that for moſt counties there was but one repreſentative at this time, inſtead of the two which they ſend at preſent—The words are theſe: "En bone deliberation ove prelates, "ducs, counts, barons, chivalers des countées (ceſt à ſcavoir *un pour toute* "*la countée)*, et des communes des citées et burghs de notre realme."

THE

THE STATUTE OF HERRINGS.

31 Edw. III. Stat. ii. A. D. 1357.

IT appears by Dugdale [*i*], that a parliament intervened between the twenty-ſeventh and thirty-firſt year of this king's reign; we have however no laws of this intermediate ſeſſions in the Statute-book—The preceding law having made a complete body of regulations with regard to the wool ſtaples, the legiſlature now take under their conſideration the ſtate of the herring fiſhery on the Eaſtern coaſt near Yarmouth, which at that time was one great branch of trade, not only becauſe the country was now of the Roman-catholic perſuaſion, but becauſe ſalted meat and fiſh were the winter's ſtore for every one's houſe, the markets not being ſupplied with freſh meat as at preſent—The parliament undoubtedly intended to promote and encourage this fiſhery by regulations, which were ſuppoſed to be of a wiſe and beneficial nature; whoever reads them with attention, however, will wiſh that this ſtatute was repealed, as indeed ſhould moſt of the other antient ſtatutes with relation to trade, as the principles of it were at this time but little underſtood—By way of proving what I have here ventured to ſuggeſt, I will only mention two of the new proviſions—The firſt is, that no one ſhall buy nets, hooks, nor other inſtruments neceſſary for fiſhing, which are uſed in the county of Norfolk, except the lords [*k*], maſters, and mariners who uſe the craft of fiſhing, under pain of *impriſonment*, and being fined at the king's will—The other proviſion is, that the chancellor, treaſurer, and the king's privy council, may make what regulations they ſhall pleaſe with regard to the price of ſalted fiſh—The thirty-third of Edward the Third, which likewiſe relates to herrings, recites, "that they were ſold at a moſt unreaſonable price, occaſioned (as "the ſtatute ſays) by many merchants [*l*], as well labourers as ſervants, "coming to the fairs, and every one by *malice* and *envy* encreaſing the price "upon his competitor, ſo that if one *bids four-pence*, another *offers ten-pence* "*more, and ſo every one ſurmounteth the other in bargaining.*"

It is ſcarcely to be conceived, that a ſtatute, which proceeds upon ſuch recitals, ſhould have continued ſo many centuries unrepealed.

[*i*] Summ. Parl.

[*k*] In the original, *ſeigneurs, maiſtres, et mariners des nief*; the tranſlation ſhould be *owner*, inſtead of *lord*. There are likewiſe ſeveral other miſtakes.

[*l*] The word *merchant* in the original is tranſlated by the ſame word in Engliſh: it now bears a much more confined ſenſe than it did at the time of making this ſtatute.

STATUTES

STATUTES MADE AT WESTMINSTER.

34 Edw. III. A. D. 1360.

THESE ſtatutes are a *Capitularium*, conſiſting of twenty-two chapters; and I ſhould not have made any obſervations upon them, was it not for the opportunity of fixing the ſignification of two words uſed in the firſt and laſt chapter of the law.

The ſtatute directs, that in every county in England there ſhall be appointed, for keeping the peace, "*un ſeigneur*, et oveſque lui troits ou quatre "de meult *vavetz* [*n*] du countée enſemblement ove aſcuns ſages de la "ley."—This is tranſlated "there ſhall be *one lord*," &c.—Now the word *ſeigneur* by no means ſignifies a *lord* who is a *peer of parliament*, as the word is generally underſtood; of this we had an inſtance in the preceding law, where the maſter or owner of a fiſhing veſſel is ſtyled *ſeigneur* [*o*].—And in the preſent ſtatute it is impoſſible it ſhould ſo ſignify, as there were not at this time a ſufficient number of peers to furniſh a juſtice of peace for each county—The common ſenſe however in which this word is underſtood, ſeems to have led Sir Edward Coke into a miſtake, when he aſſerts, in his 4th Inſtitute, p. 58. that the *High Steward*, at the trial of a peer, muſt *neceſſarily* be a lord of parliament—I have looked into the authorities from the Year Books, cited in proof of this poſition, which by no means warrant what he aſſerts, at leaſt in the extent he hath advanced it—As for the caſe, in 1 Hen. IV. p. 1. there is not a word in it which proves the neceſſity of this great officer's being a lord of parliament: As for the ſecond authority, viz. (13 Hen. VIII. fol. 11.) the words uſed in the Year Book are theſe: "Nota quand un *ſeigneur de parlement* ſerra arrain "de treaſon, ou felony, le roy per ſes lettres patentes fera un grand et ſage "ſeigneur [*p*] d'eſtre le grand ſeneſchal d'Angleterre;" which certainly imports nothing further than that he ſhall be a man of conſequence [*q*], any more than the word *ſeigneur* does in the preſent ſtatute: and we find, that when a peer is mentioned in the above-cited paſſage from the Year Book, he is ſtyled *Seigneur de parlement*.

[*n*] *Vavetz* ſhould be read *valuetz*, as I have before obſerved on another ſtatute; and my manuſcript of the ſtatutes again confirms this alteration.

[*o*] So by 37 Edw. III. ch. xix. which puniſhes the concealing of a hawk with two months impriſonment, the owner is ſtyled *ſeigneur*.

[*p*] The addition of *de parlement* is not here repeated.

[*q*] The word *ſeigneur* is derived from *ſenior*, age formerly giving the only rank and precedence.

"Credebant hoc grande nefas, et morte piandum,
"Si juvenis vetulo non aſſurrexerit." JUVENAL.

The

The laſt chapter relates to the reclaiming of a ſtray hawk, and directs, that it ſhall be carried to the ſheriff of the county, and, if no one claims the hawk within four months, that it ſhall become the property of the ſheriff, upon condition that he pays a proper ſatisfaction to the perſon who brought the hawk, *ſil ſoit ſimple-homme* — But if a gentleman *(gentil-homme)* reclaims it after the four months are expired, the ſheriff is ſtill to reſtore the hawk, upon being payed the charges of keeping it — This diſtinction uſed between the *ſimple-homme*, and the *gentil-homme*, ſeems to explain the meaning of the word *gentil-homme*, which is uſed in ſo very vague a ſenſe at preſent [*r*] — I ſhould apprehend, that the *ſimple-homme*, is *John* or *Thomas*, who hath no ſurname [*s*]; and in contradiſtinction he who hath a *ſurname*, or family *name*, from the word *gens* [*t*], is ſtyled *gentil-homme*.

[*r*] In an action brought on this ſtatute, the meaning of the word muſt be ſettled; as that of the word *Eſquire* muſt likewiſe be, on ſome of the ſame laws.

[*s*] Surnames are of no great antiquity in this country, nor have many of the common people in Wales to this day any ſurnames.

[*t*] The word *gens* ſometimes ſignifies *family*.

STATUTES

STATUTES MADE AT WESTMINSTER.

36 Edw. III. A. D. 1362.

THIS *Capitularium* conſiſts of fifteen chapters, which have little connexion with each other—We have often heard before of the grievance of purveyance; and it is almoſt from year to year the ſubject of parliamentary regulations, whilſt, notwithſtanding the repeated interpoſition of the legiſlature, it is ſtill matter of complaint—The device of making it more palatable to the ſubject, by the 2d chapter of this law, is a moſt extraordinary one, viz. " que le *beignous* nome de *purveyor*, ſoit " change, en nom *d'acbetour*," which, as it hath not been tranſlated, I ſhall render, " that the *hateful* name of *purveyor* ſhall be changed to that of " *acatour* [*u*]."—This conceit of remedying an oppreſſion, merely by giving it another name, ſeems rather unworthy of a legiſlature—Yet the change of a name may perhaps ſometimes have its effect; as if the taxes which are at preſent called the *king's*, were ſtyled thoſe of the *public* (for whoſe benefit they are in reality collected) they might poſſibly be more chearfully payed: or at leaſt juries might be more willing to convict in offences againſt the laws of the cuſtoms and exciſe, which are ſeldom at preſent truſted to a common jury.

The laſt chapter of this law recites, that great miſchiefs have ariſen, " becauſe the laws, cuſtoms, and *Statutes* of this realm are not commonly " known, and becauſe they are *pleaded, declared* upon, and *decided* [*w*], in " the French language, which is *much unknown* in this kingdom, ſo that " the parties to ſuits do not know what is ſaid either for them or againſt " them by their ſerjeants and pleaders."—And likewiſe becauſe the king, the nobles, and others, who have *travelled in diverſe regions and countries*, have obſerved that foreign countries are *better governed by the laws being in their own tongue*; the ſtatute therefore enacts, that all pleas ſhall be in Engliſh, and that they ſhall be entered on record in Latin.

Selden ſays, that this law took its riſe from an inconvenience rather ſuppoſed than felt; for though ſome kind of knowledge of law-terms may be

[*u*] This word is derived from *acheter*, to *buy*; and there is an office of *acatery* ſtill ſubſiſting in the king's kitchen.

[*w*] In the original, *pledez, monſtrez, et juggez*, which words are omitted in the common tranſlation.

increaſed thereby, yet, unleſs the law is profeſſedly ſtudied, it will breed nothing but notions and overweening conceits, which often engage men in law-ſuits to their great loſs—He adds, however, "that thus in part the "reproach of Normandy rolled away, like that of the Iſraelites at Mount "Gilgal"—*Sed, pace tanti viri*, few ſuch law-ſuits have ever been occaſioned by what he apprehends; and it is not only a wiſe law from the reaſons mentioned in the preamble, but we find that the legiſlature have carried this alteration ſtill further, by directing that the pleadings ſhall be enrolled in Engliſh; and there is an ordinance of Oliver Cromwell's, that all the law-books ſhall be tranſlated from the old French into the Engliſh language [*x*].

This law does not want the approbation of many others who had occaſion to conſider it, and particularly of Raſtell, who, in his Preface to the Abridgement of the Statutes, ſpeaks highly in commendation of it [*y*].—Voltaire, in his additions to the Hiſtoire Univerſelle, ſpeaks thus of this law, and others to the ſame purport: "Rodolphe de Hapſburgh "avoit ordonné dans l'Allemagne, qu'on plaidat, et qu'on rendit les arrets "dans la langue du pays. Alphonſe le ſage en Caſtille établit le meme "uſage. Edouard le 3me en fit le meme en Angleterre. Enfin François "Premier ordonna qu'en France ceux qui avoient le malheur de plaider, "puiſſent lire *leur ruine dans leur propre langue.*"—I ſhall make no apology for this citation from Voltaire, though many think that he writes only to amuſe, without any authority for what he advances—The letters of Fabricius (who was ſecretary to Charles the Twelfth of Sweden at Bender), which have lately been publiſhed, ſhew, that what was looked upon as an entertaining romance, is the moſt authentic hiſtory—I have often heard the ſame objection to Mr. Hume's Hiſtory of England; and, as it ſhould ſeem, with as little foundation—Both theſe maſterly writers not only inſtruct, but entertain the reader, and (from what cauſe I know not) we are always diffident of what pleaſes—On the contrary, we give implicite credit to a dull writer, who makes a perpetual parade of authorities which he

[*x*] James the Firſt, in his Speech from the throne to parliament in 1609, recommends, that the books of the common law be written in the mother tongue; that the people might know what to obey; and that the lawyers in law, like popiſh prieſts in the Goſpel, might not keep the people in ignorance. Wilſon's Life of James the Firſt, p. 47.—I ſhould imagine, that this recommendation aroſe from the king's inclination to fit as judge in the King's Bench, which Sir Edward Coke objected to, and probably amongſt other reaſons, becauſe his majeſty would not underſtand the law French of the reporters.

[*y*] This Abridgement of the Statutes, printed in 1517, is now very ſcarce; the whole Preface may however be ſeen in Ames's Hiſtory of Printing, p. 142, et ſeq.

does

does not underſtand, and from which he is incapable of drawing the proper inference.

There were four other parliaments held during this reign, in each of which there are ſome few ſtatutes, but none of them either need illuſtration, or throw any light upon either the law, the hiſtory, or antiquities of this country—In the year 1376, an act of indemnity and general pardon [z] paſſed, the reaſon for which (as ſet forth in the preamble) is, that the king had now reigned for half a century, and that there was to be a general *Jubilee* [a] *throughout the land*—May there be occaſion for ſuch an act in the next century!

Edward died full of years and glory; though the aſcendancy which Alice Pierce [b] gained over him (whilſt in his ſecond infancy) ſomewhat clouded the latter part of a life, which ſhould have ended, as that of Auguſtus did, with a *plaudite*.—I ſhall not however conſider either his virtues or his failings any further than they affect his character as a legiſlator—I have already, in ſome of the ſtatutes of his reign, obſerved, that they were oppreſſive; and the frequent confirmations of the *charters*, and particularly in the four laſt parliaments, ſhew that he had a conſtant inclination and intention to break through them, whenever a proper opportunity offered [c].—He will, notwithſtanding this, for ever deſerve to be venerated by poſterity for the ſtatute of *Proviſors*, by which the ſeeds were ſown of that freedom and independency in the church of England, which prepared the minds of men for the Reformation—Whatever may have firſt contributed to this, may juſtly claim our warmeſt gratitude; though the dread of the Papal anathemas is now happily ſo far removed, that we can ſcarce credit any free people could have ſubmitted to ſuch encroachments and national indignities.

[z] The only perſon excepted is the famous William de Wickham.

[a] I have been informed, that, when a man and his wife have been married in Germany fifty years, there is a ſort of ſecond marriage celebrated with the greateſt feſtivity.

[b] Daniel aſſerts, that the aſcendancy of Alice Pierce was ſo great, that ſhe uſed to ſit on the bench with the judges in Weſtminſter-Hall, when ſhe happened to intereſt herſelf in a cauſe. Dan. p. 72.—And it appears, by a record in Rymer, entitled, *De Nave* vocatâ *la* Alice, that the ſame flattering attentions were ſhewn to her, as to the more modern *Pompadour*. Vol. iii. part iii. p. 47, 50 Edw. III.

[c] His not allowing the ſtatute of the fourteenth year of his reign to be obligatory (already obſerved upon), ſhould not likewiſe be here forgot.

STATUTES MADE AT WESTMINSTER.

1 Rich. II. A. D. 1377.

RICHARD was but eleven years old when he became king of England on the death of his grand-father—The ſummons and preamble to theſe ſtatutes [*d*] make mention, in the common form, of its being the firſt year of his reign, except that he does not aſſume the title of King of France, as Edward the Third had always done from the tenth year of his reign—I ſhould imagine this however muſt have proceeded from the brigue, hurry, and confuſion, which muſt always attend the firſt parliament of a minor king: a confuſion which we are now happily delivered from, by an eſtabliſhed regency, and that by the ſanction of parliament [*e*].—It ſhould ſeem, that a king of England hath conſtitutionally a power of appointing ſuch a regent by his will; though the ſucceſſor, when a minor of but ſix months old, is ſaid to have no imbecillity *in the eye of the law*, and is as complete a king, and his acts as valid, as when of the moſt mature age—From this an artificial argument may be drawn, that he cannot want or receive a guardian; and yet, if ſuch a guardian is appointed, the parent hath a natural right to nominate, and the perſon named, by having the poſſeſſion of the infant king's perſon, muſt in effect be regent or protector; and by this there is a known reſponſible perſon to the public, who may anſwer for the acts of the royal minor.—Henry the Fifth, whilſt in France, and on his death-bed, called in ſome of his principal officers, and in their preſence made a haſty verbal appointment of the duke of Glouceſter to be regent of England, and the duke of Bedford regent of France—This was however immediately ſet aſide by the parliament, on the acceſſion of Henry the Sixth; and the duke of Bedford was nominated protector of England, as being the king's elder uncle—Afterwards, in the [*f*] eighth year of Richard the Second, we find an appointment of the duke of Glouceſter to be protector of England, by writ of privy ſeal, merely without the intervention of parliament.

[*d*] This parliament was called the *Good Parliament*. Stow's Chron. p. 280.

[*e*] We find in Rymer an appointment of twelve counſellors to aſſiſt the treaſurer and chancellor the day after he came to the throne—This amounts to no more however than the appointment of a new privy council, which is uſual upon every king's acceſſion.

[*f*] Rymer.

ment.

ment.—The next proviſion for a minority in the crown was by 25 Hen. VIII. ch. xxi. by which it is enacted, "that, if the crown "ſhall deſcend to a minor king under eighteen years, or a minor queen "under *ſixteen* [*g*], their mother ſhall be the guardian, together with ſuch "counſellors as the king ſhall nominate by his will."—I am aware that an argument may be drawn from this, that a king of England hath not the power of appointing a guardian without the intervention of parliament; but the occaſion of Henry the Eighth having recourſe to their ſanction, probably aroſe from the parliaments having ſet aſide the haſty death-bed appointment of Henry the Fifth, and which likewiſe broke in upon the natural rights of the duke of Bedford, as being the elder uncle to Henry the Sixth—The difficulty of ſettling this important point of conſtitutional law ariſes from the precedents being few in number [*b*]; the laſt precedent hath certainly the intervention of parliament, and the appointment by Henry the Fifth was ſet aſide: we do not find, however, any complaint of the power aſſumed by nominating a regent; and, if the king hath not ſuch a power, he is deprived of the natural right which every ſubject hath of entruſting the education of his child to thoſe in whom he can repoſe the greateſt confidence—Sir Edward Coke hath a particular, but ſhort chapter on the *Protector of England*, in his *Fourth Inſtitute*, in which, after referring the reader to ſome records which explain the power and nature of his office, he concludes by ſaying, *the ſureſt way* is to have the authority of parliament.

Having been led to this digreſſion, by the preſent parliament being aſſembled in the firſt year of a minor king [*i*], I ſhall now proceed to conſider the ſubject matter of the ſtatute.

The 6th chapter is the only part of this law which hath not been tranſlated, and is at the ſame time the only one which requires any comment—It recites, "that the *villeyns* [*k*] had aſſembled riotouſly in conſiderable "bodies, and had, by the advice of certain evil counſellors and abettors, "endeavoured to withdraw their ſervices from their *lord*, not only thoſe

[*g*] It may be perhaps difficult to aſſign why a king of England was not to be a major till *eighteen*, whilſt a queen became ſo at the age of *ſixteen*.

[*b*] Whoever conſults the caſe referred to the judges by George the Firſt (in Mr. Juſtice Forteſcue's Reports) upon the queſtion, whether the grand-father being king, or the father being only heir apparent, hath a right to take care of the education of the royal children, will find that the material precedents are likewiſe too few in number to ſettle that very important point.

[*i*] Sir Peter de la Mare, knight of the ſhire for the county of Hereford, was the ſpeaker in this parliament, and the firſt ſpeaker mentioned in any Record. V. Cotton's Abridg. p. 155.

[*k*] I ſhall take the liberty of ſpelling this word out of the common method, to avoid the equivocal ſenſe which it hath obtained at preſent.

"ſervices

"ſervices which they owed to the lord by tenure of their lands, but like-"wiſe the ſervices of their body [*l*]."—That they chiefly attempted to evade theſe ſervices under colour of certain exemplifications from *Domeſday-book* [*m*], with relation to the manors and villages in which they lived; and that, by falſe and bad interpretation of theſe exemplifications, they claimed to be entirely diſcharged and free—The ſtatute therefore enacts, that commiſſions ſhall iſſue under the great ſeal, upon application of any *lord (ſeigneur)* to inquire into the offences and riots of theſe rebellious *villeyns*; and that they ſhall be immediately committed to priſon without bail or mainprize, if they cannot procure the aſſent of their lord [*n*]—And likewiſe with regard to theſe exemplifications (which had been ordered to be layed before parliament) it is declared, that the producing them in any court of juſtice, ſhall not be of any advantage to him who ſhall ſo produce them.

Nothing could be more oppreſſive than this law in every part of it; and we find by different Records in Rymer, that this oppreſſion was, in reality, the occaſion of the famous inſurrection, under *Wat Tyler* and *Jack Straw*, as well as the great oppoſition to John of Gaunt, duke of Lancaſter.

The minor king had been adviſed, by one part of his council, to increaſe the power of the lower people [*o*], and to leſſen that of the barons; and in conſequence of this a proclamation iſſued [*p*], which, amongſt other things, directed, "quòd nulla acra terræ quæ in *bondagio* vel *ſervagio* "tenetur, altiùs quàm ad quatuor denarios haberetur; et ſi qua ad minùs

[*l*] This is the diſtinction of ſervices, which Lyttelton divides into villenage in *groſs*, and villenage *appendant*.

[*m*] This is the only mention made of Domeſday in the ſtatutes.—The common etymology of the word *Domeſday*, in which all the Gloſſaries agree (viz. the compariſon of it to the day of judgement), never appeared to me ſatisfactory—If this whimſical account of the name was the real one, the Latin for it would be *Dies Judicii*; whereas, in all the old Chroniclers, it is ſtyled either *Liber Judicialis*, or *Cenſualis*—*Bullet*, in his Celtic Dictionary, hath the word *Dom*, which he renders *Seur*, *Seigneur* (and hence the Spaniſh word *Don*), as alſo the words *Deya* and *Deia*, which he renders *Proclamation*, *Avertiſſement*: Domeſday therefore ſignifies the Lord's, or King's, proclamation or advertiſement to the tenants who hold under him, and agrees well with great part of the contents of this famous ſurvey.

[*n*] By 15 Rich. II. ch. xii. we find that, amongſt other oppreſſions to the lower people, the lords inſtituted a kind of *quo warranto*, and obliged them to lay their title to their lands before their council, or auditors; at leaſt, I underſtand the ſtatute to convey this meaning.

[*o*] In the fifteenth year of this king, the barons petitioned the king, that no villeyn ſhould ſend his ſon to ſchool; to which the king gave the proper anſwer of *Saviſera*. Brady, vol. iii. p. 393. By a Scots Statute of James the Fifth, every *freeholder* is injoined to ſend his ſon to a grammar ſchool.

[*p*] Rymer.

"antea

"antea tenta fuiſſet, in poſterum non exaltaretur."—John of Gaunt put himſelf at the head of the barons faction, and procured a proclamation, repealing the former, in the year following [q]—The record, under cited, from Rymer, is attended with many others, "pro rege Caſtellæ ſuper "fictiones et diffamationes inſurgentium—Pro rege Caſtellæ de ſecuritate "contra inſurgentes," which ſecurity is allowing him to be attended by a guard—And laſtly, he is appointed *Juſticiary* to try them.

But to return to the tenure of villenage, which we hear nothing of at preſent; and therefore, like many other things which moſt commonly occur, no one conſiders from whence this kind of tenure hath been entirely dropt in this country, without its being aboliſhed by any ſtatute [r]; and which is the more extraordinary, as it ſeems to be generally agreed by hiſtorians, that more than half the lands of England were antiently held by this tenure, and the greater part of the inhabitants were conſequently in a ſtate of vaſſalage.

This kind of baſe tenure was not only in the early centuries known throughout Europe [s], but continues perhaps in every other country [t], but that of England to this day—Though there ſeems to have been ſcarce any difference in this ſervitude wherever introduced, yet the names have not any kind of affinity—The Saxon appellation was *Theorl* [u], or *Agen-hine*; and Johannes O Stiernhok, in his treatiſe *De jure Sueonum et Gothorum vetuſto*, ſays, "emptionem et venditionem ſervorum ut pecudum, "per mediatores et teſtes fieri ſolitum ut apud Anglo-Saxones."—By the laws of Hoel Dda, the villeyns are called *Taeagua* [w], and they are in other places ſtyled *Filenjaid*—Theſe expreſſions, or any thing relative to the villeyns, does not indeed frequently occur, as the tenures in Wales were almoſt entirely allodial; and there is not at preſent any ſuch thing as a copyhold in the counties of Angleſey, Carnarvon, and Merioneth [x]—Nor are there in Ireland any ſuch tenures.

[q] Rymer, vol. iii. part iii. p. 124.

[r] The ſtatute of Charles the Second (or rather of Cromwell) aboliſhes thoſe tenures only, which were attended with wardſhips, &c.—Beſides this, we hear nothing of it after Queen Elizabeth; and little in her reign.

[s] Olaus Magnus indeed ſays, "nulla ſervitus apud Gothos, ut apud Danos," p. 707.

[t] Many of the labourers, in the ſalt works and collieries of Scotland, ſtill continue *glebæ aſcriptitii*, and cannot be hired without the proprietor's conſent. Diction. Deciſ. vol. i. p. 312.—Anderſon therefore is miſtaken when he aſſerts, that all vaſſalage ceaſed in Scotland after the Protectorate. Hiſt. Comm. p. 106.

[u] It may perhaps be thought to go too far back in obſerving, that the Spartan helots ſeem to have much reſembled the villeyns.

[w] From hence *Teague* is probably a term of reproach amongſt the Iriſh.

[x] This is a ſtrong proof, that baſe tenures were chiefly introduced into England by the Normans.

In

In Ireland they were termed *Betaghii* and *Betaghes*—In Italy they were antiently called *Lazzi* [*y*] and *Liti*; and a particular claſs of them *Aldi*, who ſeem to have had rather more freedom than the other claſſes [*z*]—They were alſo called *Vaſri* and *Accolæ*. Baluz. vol. ii. p. 746.

In Germany, and Pruſſia particularly, they ſtill make a very conſiderable head of the law—In the king of Pruſſia's Code Frederique, they are called *Eigenbehorige* and *Unterthanen*; and they are deſcribed to be ſuch as are, "Attaches à certaines terres de leurs ſeigneurs, quils ne peuvent "abandonner ſans leur conſentement, et les filles ne peuvent marier hors "des terres."

With regard to the word *Villeyn* itſelf, ſo well known to our ancient lawyers, though ſo little heard of in more modern times, Voltaire gives us this etymology, "Villain vient de ville, parcequ'autrefois il n'y avoit "de nobles, que les poſſedeurs des chateaux [*a*];" Froiſſart however, in the time of Edward the Third, underſtood this word [*b*] in a different ſenſe, and applied it to *the mob of London*, "Vous devez ſcavoir que *les* "*vilains de Londres* etoient grandement corroucés; et diſoyent, Haa gentil "Chevalier Comte de Derby [*c*], les grans envies quon a ſur vous."

I ſhall now endeavour to ſhew in what light theſe villeyns were conſidered in different periods of the Engliſh hiſtory, and how the tenure was at laſt (and almoſt inſenſibly) forgotten and aboliſhed.

To begin with the authority of Cæſar, "Cum ære alieno, aut magni-"tudine tributorum, aut injuriâ potentiorum premuntur, ſeſe in ſervitutem "dicunt nobilibus; in hos omnino eadem ſunt jura, quæ domino in ſervos."

Bracton is our moſt antient writer on the law; and he gives this account of the ſtate of villenage in his time: "*Glebæ aſcriptitii* liberi ſunt, licet "faciant opera ſervilia; cum non faciant *eadem ratione perſonarum*, ſed "*ratione tenementorum* [*d*]; et a glebâ removeri non poſſunt, quamdiu "penſiones debitas perſolvere poſſunt."—And in another part, "*purum* "*villenagium* eſt, qui ſcire non poteſt veſpere, quale ſervitium fieri debet "manè."

[*y*] Hence poſſibly the French word *lache* or *baſe*.

[*z*] Lindenbrog. paſſim.

[*a*] Add. Hiſt. Univer. p. 151. it ſhould ſeem that, for the ſame reaſon, the name of burgeſs derogates from nobility.

[*b*] It is very ſingular that the words *villain* and *knave*, which formerly ſignified nothing more than a ſervant or perſon holding by baſe tenure, ſhould now be uſed to ſignify that the perſon ſo called is of a ſuſpicious or infamous character.

[*c*] Afterwards Henry the Fourth—Froiſſart, part iv. p. 316.

[*d*] This is clearly confined to what Lyttelton calls *villenage appendant*.

The next authority, with regard to the condition and ſituation of this rank of people which I have happened to meet with, is that of Froiſſart, who informs us, that "un uſage eſt en Angleterre (et auſſi eſt il en plu-"ſieurs pais), que les nobles ont grants franchiſes ſur leurs hommes, et "les tentent en ſervage [*e*]."

In the year 1514, Henry the Eighth manumitted two of his villeins in the following form: "Whereas God created all men free, but afterwards "the laws and cuſtoms of nations ſubjected ſome under the yoke of "ſervitude, we think it *pious* and *meritorious with God* to manumit *Henry* "*Knight*, a taylor, and *John Herle*, a huſbandman, *our natives* [*f*], as be-"ing born within the manor of Stoke Clymmyſland, in our county of "Cornwal, together with all their iſſue born, or to be born, and all their "goods, lands, and chattels acquired, or to be acquired, ſo as the ſaid "perſons, and their iſſue, ſhall from henceforth by us be free, and of free "condition."

This form of manumiſſion (which I cannot recollect from whence I tranſcribed it, though I ſhould believe from Rymer) explains the *general condition* of theſe people — If born within a certain diſtrict, they and their iſſue [*g*] were the bondmen of the lord; and whatever perſonal property they acquired in rigour and the eye of the law, they laboured for the advantage of their lord, and not of themſelves — Beſides this, they could not leave the manor, on which they were from their birth in a ſtate of ſervitude, without the leave of the lord; and therefore, according to Domeſday, "liber eſt qui poteſt ire quò vult;" and hence the writ in the regiſter, "Præcipimus tibi quòd juſtè et ſine dilatione facias habere A. de C. B. "*nativum* et *fugitivum*, cum omnibus catallis ſuis, et totâ ſequelâ ſuâ."

[*e*] I will make no apology for citing Froiſſart, though born in Flanders — He had lived many years in England, and had an office under Philippa of Hainault, queen of Edward the Third.

[*f*] *Nativi* was ſynonymous to the word *villeyns*, becauſe born in ſervitude within ſuch a manor or diſtrict — As for the *bordarii*, *cotterelli*, and *cottarii*, theſe were cottagers, whom the lord had permitted to build on his waſte. So Ferretier, in his Dictionary, informs us, "qu'on "appelle *cottier* tout homme qui demeure dans ſon heritage cottier, et vilain;" and he likewiſe gives us this account of the word *cotterie*, of which ſo much hath been ſaid of late — "Cotterie ſe "dit des compagnies et ſocietés de villageois demeurant enſemble pour tenir du ſeigneur quelques "heritages qu'on appelle tenus en cotterie."

[*g*] This explains what frequently occurs in antient grants of villeins cum *tota ſequelâ ſuâ*; which, according to Sir James Ware, in his account of the *Betaghii* (who were the Iriſh villeyns) included not only children, but nephews, p. 149. ſee alſo Madox's Form. Angl. p. 416. — If the mother of the children was a *nief*, and the father was *free*, the children became free, contrary to the rule of the civil law: *Partus ventrem ſequitur*, and contrary to the rule of the old French law: *La verge annobliſt, et le ventre affranchiſt.*

They were alſo, by the cuſtoms prevailing in particular diſtricts, ſubject to ſervices not only of the moſt ſervile, but the moſt ludicrous nature, "Utpote die nativitatis Domini coram eo ſaltare, buccas cum ſonitu inflare, "et ventris crepitum edere [*h*]."—In ſome manors the lord had "jus "luxandæ coxæ ſponſarum vaſſallorum;" and yet, if the vaſſal retaliated upon the lord's wife, he loſt his feud per *feloniam* [*i*]—And again Struvius informs us, "In dominum peccat vaſſallus, ſi dominum cucurbituverit, "ſive cum ejus uxore concubiverit, vel etiam *conatus fuerit* turpiter con- "trectando, vel oſculando—Hoc tamen non procedit *ſi cum viduâ domini*, "niſi intra annum luctûs."—Sir Richard Cox, in his Hiſtory of Ireland, likewiſe mentions ſome very ſervile and ridiculous tenures, which continued in the year 1565; and Blount hath wrote an expreſs treatiſe upon what he ſtyles *jocular tenures*.

Fitzherbert, who made his reading upon the fourth of Edward the Firſt, entitled, *Extenta Manerii*, not long after the manumiſſion above-cited, gives us this account of the ſtate of villenage in the reign of Henry the Eighth, and that this kind of tenure began then to decreaſe in all parts of England—"And in mine opinion villenage began ſoon after the "Conqueſt, when the conqueror rewarded all thoſe who came with him in "his voyage royal according to their deſerts—And to honorable men he "gave lordſhippes, maners, landes, and tenements, with all the inha- "bitants, men, women, and children dwelling in the ſame to do with them "*at pleaſure*—And thoſe *honorable men* thought they muſt needs have "ſervants and tenauntes, wherefore they pardoned their inhabitants *of* "*their lives*, and cauſed them to do all manner of ſervice, were it never ſo "vile, and took likewiſe all their goods and cattel at their pleaſure, and "called them their bondmen—And ſince that time many of *their noble diſ-* "*poſition* have made to diverſe of the ſaid bondmen their manumiſſions— "Howbeit in ſome places the bondmen *continue yet*."—Fitz-herbert after this gives it as his opinion (agreeable to the recital of the manumiſſion by Henry the Eighth), *that no man ſhould be bound but unto God, and ſays it is contrary to the principles of Chriſtianity*.

After this I find in Rymer a commiſſion of Queen Elizabeth, in the year 1574, directed to Lord *Burghley* and Sir *Walter Mildmay*, for inquiring into the lands, tenements, and other goods of all her bondmen and bondwomen in the counties of Cornwall, Devonſhire, Somerſet, and

[*h*] Struvii Juriſpr. Feud. p. 541.

[*i*] The word *felony* in moſt parts of Europe is only uſed as ſynonymous to perfidy—"Felonie "eſt pris pour perfidie, *et le ſeigneur peut le commettre contre ſon vaſſal*." Cuſtumier de Piccardie, p. 102.

Glouceſter,

Glouceſter, ſuch as were by blood in a ſlaviſh condition, by being born in any of her manors, and *to compound with all or any ſuch bondmen or bondwomen for their manumiſſion and freedom*, which is perhaps the laſt mention of this tenure to be found in any book which relates to the law, except arguments are drawn from old caſes in the Year Books; and this commiſſion indeed, taken together with other circumſtances, fully explains why we hear nothing more of this kind of ſervitude—The profits of the crown, or the lord of the villein, became now very inconſiderable, as the ſervices could only be inſiſted upon in the ſpot where the villein was born—Thoſe who have ſeen day labourers employed in the repair of the highways, for which they are are to receive no wages [*k*], may gueſs in what a manner theſe extorted ſervices were performed—At the ſame time the villeyn was willing to pay a conſiderable fine to get rid of this badge of ſlavery; and the lord was enabled, by manumiſſions, to raiſe a large ſum upon any extraordinary emergency—It is therefore not to be wondered at, as the conſenting to drop theſe ſervile tenures anſwered the mutual convenience and advantage of both parties, that they ſoon entirely ceaſed [*l*].

This certainly was the principal reaſon; but other cauſes concurred—The *Lord* and *Man of property* began now occaſionally to leave his caſtle or ſeat in the country, and wanted not only the ſervices of his villeyn in the demeſne lands, but the expence of attending parliament; the court, or his own amuſements, required rents payed in money: in lieu of theſe ſervices the lord was therefore not only willing to commute for money, but likewiſe to grant long leaſes, that he and his deſcendants might have a certain income, whilſt the tenant, now having a more fixed and permanent intereſt

[*k*] It is moſt hard and unjuſt, that the labourer ſhould not be payed, as he receives no benefit from the improvement of the roads.

[*l*] Having had occaſion to mention that this ſervitude prevailed, and continues to prevail, in moſt parts of Europe, I ſhall juſt cite ſome paſſages from Lindenbrogue's Collection of Antient Laws, which will ſhew in what light the villeins were conſidered—In the firſt place they could not be witneſſes *.

"Si ſervus ſervum ictu uno, vel duobus, vel tribus percuſſerit, *nihil eſt.*" Inter Leges Ripuariorum.

"Qui percuſſerit ſervum ſuum, et mortuus erit in manibus, jus erit—Sin ſupervixerit duo vel "tres dies, ſubjacebit pœnæ, *quia pecunia eſt ejus.*" Inter Capit. Kar. Magni.

"Conſtat me vendidiſſe ſervum juris mei, non furem, non fugitivum, ſed ſanum corpore bo-"niſque moribus inſtructum." Baluz. vol. i. p. 473. *in formulis Sirmondicis.*

* Contemnere fulmina pauper
Creditur atque Deos, Diis ignoſcentibus ipſis,

Homer indeed gives a better reaſon for rejecting ſuch witneſſes.

Ἥμισυ γάρ τ' ἀρετῆς ἀποαίνυται εὐρύοπα Ζεὺς
Ἀνέρος, εὖτ' ἂν μιν κατὰ δοῦλιον ἦμαρ ἕλησιν. Odyſſ.

in his farm, was both able and willing to improve it—Beſides this, we find by the recital of the manumiſſion by Henry the Eighth, and likewiſe by the concluſion of what Fitz-herbert ſays, with relation to theſe tenures in the ſame reign, that a notion, originally inculcated by Wycliff and his followers, began to prevail, *that it was contrary to the principles of the Chriſtian religion that any one ſhould be a ſlave*; and from hence in more modern times it hath been ſuppoſed to be contrary to the common law, which is ſaid to be founded upon Chriſtianity.

Be the law as it may, the perſuaſion contributed greatly to the aboliſhing villenage; and the principle, whether a principle of the common law and Chriſtianity, or otherwiſe, cannot be too much commended or inſiſted upon: I cannot however but think, that neither the Chriſtian religion nor the common law ever inculcated or eſtabliſhed ſuch a tenet [*m*].

In the early ages of Chriſtianity, every houſe was filled with ſlaves: it was therefore highly incumbent upon thoſe who profeſſed this religion, and were willing to become martyrs in ſupport of it, to have frequently inſiſted upon what now appears to be the common rights and privileges of humanity—On the contrary, St. *Paul* writes the Epiſtle to *Philemon*, expreſly to excuſe *Oneſimus* (*Philemon's* ſlave), for having run away from his maſter; and if the whole context is properly conſidered, no ſuch doctrine is inſiſted upon; and it was particularly proper to have laid it down with authority and preciſion upon ſuch an occaſion.

With regard to the law of England on this head, it appears by *Hakluyt* [*n*], that, in the year 1553, four and twenty *Blacks* were brought into this iſland from the coaſt of Africa, and immediately to an Engliſh port, as at that time we had no American or ſugar trade—Theſe Negroes muſt therefore have been ſold in this country; and, if it had been contrary to law, they muſt have been ſet at liberty, or the point at leaſt diſcuſſed, of which we do not find the leaſt traces; and the queſtion being a great and liberal one, it certainly could never have eſcaped the notice of Lord Bacon, who would undoubtedly have mentioned it in ſome of his treatiſes—Since the eſtabliſhment of our ſugar colonies, modern opinions of great lawyers and (it is believed) deciſions of courts of juſtice, have contradicted this common and prevailing notion, *that a Negro, when* RAPTIZED, *becomes immediately free* [*o*].

[*m*] It appears by Boulainvilliers, that this queſtion was formerly much agitated in the French courts of juſtice; but there never was any deciſion.

[*n*] Vol. i. part ii. p. 97. and by 1 Edw. VI. ch. iii. a vagabond and idle ſervant is to become a *ſlave* to his maſter; and the expreſſion is frequently repeated in the ſtatute.

[*o*] It is laid down in Salkeld's Reports, that *Trover* will lye for a Negro; as alſo in 2d Lev. 201.—I find but one caſe to contradict this, which is in Ruſhw. Coll. vol. i. p. 312.—In the

I have been led to this length of obſervation on the antient ſtate of villenage, and from what cauſes this tenure hath now ceaſed, by the oppreſſive chapter [p] of the ſtatute againſt this claſs of men, and cannot think that a parliament, which could paſs ſo unjuſt and tyrannical a law, deſerved in any reſpect the appellation of the *Good Parliament*, which Stow informs us it had obtained.

reign of Queen Elizabeth, a ſlave from Ruſſia was brought into England; and his maſter inſiſting upon the power of ſcourging him, it was held that England was too pure an air for *a ſlave to breathe in*—This is advanced by the famous John Lilburn, who was moſt illegally puniſhed; but it does not from thence follow, that all his doctrines were *law:* A ſlave may continue in a ſtate of ſervitude, *though he breathes the air of this* land of liberty; the law of which will protect him from the ſcourges of his maſter, though it may not entirely emancipate him.

[p] It ſhould ſeem that this chapter is repealed by 2 Rich. Stat. ii. ch. ii. but the beginning of it is miſ-recited, which is not very unuſual in antient recitals.

STATUTES

STATUTES MADE AT GLOUCESTER.

2 Rich. II. Stat. ii. A. D. 1378.

THE four firſt chapters of this law relate to trade; and the ſtatute recites, that many of the great towns (being probably poſſeſſed of abſurd privileges by their charters) would not permit any alien merchant to traffic; and therefore enacts, that whoever ſhall bring by land or ſea wines, *Avoir-de-pois*, ſuſtenance, victuals, or other things, ſhall not be moleſted, &c.—The words *Avoir-de pois* are clearly unintelligible, and are likewiſe unfortunately ſo in the original French, as well as the Engliſh tranſlation, which obliges me to riſque a very bold conjecture, in ſuppoſing that it ſhould be read *avoin* et *foin*, or *oats* and *hay*, which is not very different from *Avoir-de-pois*, and which likewiſe perfectly agrees with the context.

The latter part of the chapter makes mention of cloth of *gold* and *ſilver*, which ſhews that luxury and trade had now greatly increaſed; and I ſhould ſuppoſe, that the importation of gold and ſilver cloth was occaſioned by the year of *Jubilee* in 1376, and fiftieth year of the reign of Edward the Third.

The 5th chapter of the ſtatute is what is generally known by the title *De ſcandalis Magnatum* [*q*].—It was certainly occaſioned by the defamation of John of Gaunt, by thoſe who ſupported the lower people and villeyns againſt the barons; and I have in the obſervations upon the laſt law cited a writ from Rymer, which is entitled, *Pro Rege Caſtellæ* [*r*] *contra defamationes inſurgentium*.—The ſtatute likewiſe recites, that theſe defamations may be the occaſion of *diſputes* between the lords and *commons*.

It ſhould therefore ſeem that the law does not extend to the ſlander of a peer, from which no ſuch terrible conſequence can probably ariſe; eſpecially as the puniſhment is impriſonment, till the firſt author of the defamation can be found.

There is a Scots ſtatute of Robert the Firſt very ſimilar to this. "It is forbidden that no man be an inventor of narrations or ru-

[*q*] It is ſaid by Sir Robert Atkins, 2 Mod. 161. and Freem. p. 222. that this ſtatute operated only as a promulgation of the common law; and Sir Francis Pemberton, 2 Mod. 164. ſays, that no action was brought upon it for 100 years or more after it was firſt enacted.

[*r*] It is well known, that John of Gaunt had aſſumed the title of King of Caſtile.

"mours,

"mours, by the which diſcord may ariſe between the king and his "people."

There are likewiſe ſome very ſingular laws of the antient Burgundians, with regard to abuſive words.

"Si quis alterum *concagatum* [*s*] clamaverit, 120 denariis mulctetur.

"Si quis *vulpeculam* alterum clamaverit, vel *leporem*, eodem modo "mulctetur."

Theſe appear plainly to be the laws of a warlike nation, in which the calling another by a name, which implied cunning or flight, rather than courage and reſiſtance, was thought a very heinous injury.

One of Alfred's laws is ſtill more ſevere, "qui falſi rumoris in vulgus "ſparſi author eſt, linguâ præciditor."

By the laws of the antient Goths (whilſt in Spain), it is made penal to ſay of a great man that he is *poderigo*, or gouty; or to omit the proper *corteſia*, or addreſs in a petition or letter. Fuer. Real de Eſp. 209.

By the 6th chapter (which hath never been tranſlated) it is recited, that great miſdemeanors and riots had been committed in the marches [*t*] of Wales; and particularly, "quils raviſſent *dames* et *damoiſelles*, et les en-"meſnent en eſtraunge pais, ou leur pleſt."—It appears from this, that a Knight errant might in ſome parts of the world be of uſe, as a peace officer—Theſe outrages were generally committed upon the confines [*u*] of two countries, where no regular courts of juſtice were eſtabliſhed for redreſs of injuries; and we find that the marches or county between France and Spain was likewiſe the principal ſcene of Knight Errantry.

The earl of Monmouth [*w*] gives us, in his Memoirs, a very particular account of the ſtate of the marches between Scotland and England in the time of Queen Elizabeth; and mentions that one *Giordie Bourne* (a famous moſs-trooper) confeſſed that he had murdered ſeven Engliſhmen, and raviſhed above forty women [*x*]—Lord Herbert of Cherbury, likewiſe, in his Memoirs [*y*], takes notice of the great ſtate of diſorder in the Welſh marches in the time of Henry the Eighth—And we find that the Gubbins,

[*s*] I chooſe that the Gloſſary to *Lindenbrogue* ſhould explain the meaning of this word.

[*t*] *Marche* is an old Engliſh word for a *boundary*; and hence the German title of *mar-grave*, ſignifying the "governor of a diſtrict," which borders on another territory, or what in the old Engliſh writers is ſometimes called *bateable* ground, i. e. *debatable*.

[*u*] "Latrocinari *extra fines cujuſcunque civitatis* nulla eſt infamia." Cæſar, De Bello Gallico.

[*w*] Carey, Lord Hunſdon; ſee his Memoirs, lately publiſhed.

[*x*] This famous free-booter was hanged at laſt for what is called *march treaſon*.

[*y*] Which *ſhould* be publiſhed.

or people who inhabited *Dartmore* (ſeparating Devonſhire from Cornwall), were *to a proverb* pilferers and lawleſs [z].

That learned antiquary Biſhop Nicholſon hath publiſhed a collection of the laws, which prevailed in the marches between England and Scotland—As for the marches of Wales, they were, from the time of Edward the Fourth, chiefly governed by the preſident and council of the marches, which generally was held at Ludlow, till aboliſhed by the act of King William.

[z] Carew's Cornwall—Nath. Bacon informs us, that anciently there were twelve Lords Marchers, ſix Britons, and ſix Saxons; but does not cite his authority.

STATUTES

STATUTES MADE AT WESTMINSTER.

5 Rich. II. Stat. i. A. D. 1381.

THE ſtatutes throughout this reign continue (in moſt inſtances) to be *Capitularia*; yet ſome of the undigeſted matter which they contain deſerves obſervation.

The 2d chapter of this law is calculated to prevent the carrying gold, ſilver, or jewels, out of the realm; and the method which it takes to effectuate this, is of a very extraordinary nature, by enacting, that no one ſhall leave the kingdom [*a*], under penalty of forfeiting all their chattels, except *lords*, and other *great perſons*, *real* merchants, and the king's ſoldiers; and not only the perſon leaving the kingdom is puniſhed by the abovementioned forfeiture, but the maſter of the veſſel is likewiſe to forfeit his ſhip.

The law permits indeed not only the king's ſoldiers to paſs without a particular licence, but that money may be exported to pay the wages of the troops at *Calais* [*b*], and other garriſons in the French provinces—There are earlier ſtatutes than the preſent to prevent the carrying money out of the kingdom (and we find indeed this ſame idle apprehenſion in the laws of other countries); but the earlier ſtatutes make no exception with regard to the wages of theſe garriſons—From hence I conclude, that theſe fortreſſes began to be much more conſiderable than they uſed to be; as Edward the Third meant ſomething more than an expedition of parade to France, and intended to make a permanent conqueſt and eſtabliſhment—We hear indeed often of ſubſidies for carrying on the war in that country, but this is the firſt inſtance of providing a maintenance for a garriſon in the French provinces, as before this they were repaired and manned at the expence of the diſtrict in the neighbourhood; for the levying of which there are many records in Rymer—The 3d chapter may be ſtyled the firſt *Navigation Act*, and therefore deſerves at leaſt to have been tranſlated—It directs, that, to

[*a*] Licences may indeed be procured from certain ports, which are not ranged very geographically; as the ſtatute, after mentioning *Yarmouth*, *Kingſton upon Hull*, and *Newcaſtle upon Tyne* (all of which are on the Eaſtern coaſt) ſays, and other ports towards Ireland.

[*b*] Froiſſart, who wrote part of his Hiſtory during this reign, ſpeaks thus of Calais, "c'eſt "la ville du monde que la communauté d'Angleterre aime le mieux: car tant comme ils ſeront "ſeigneurs de Calaix, ils diſent qu'ils portent les clefs du royaume de France, à leur ceinture." Froiſſart, part iv. p. 136.

increaſe the navy of England (then greatly diminiſhed [c]), no goods or merchandize ſhall be either exported or imported, but only in ſhips belonging to the king's ſubjects.

This excellent law is in part repealed by the fifth of Elizabeth [d], ch. v. which is entitled, *An Act containing politic conſtitutions for the maintenance of the Navy* —The *great policy* of which is to oblige every *one to eat fiſh*, not for *any ſuperſtition with regard to meats*, but for the increaſe of mariners — It need not be obſerved which of the ſtatutes is founded upon the beſt policy, notwithſtanding the pompous title of the latter — In the year 1440, the commons petitioned the king, that no Italian merchant, beyond the ſtreights of Morocco, ſhould bring any merchandize into this realm, except the produce of their own countries, which the king refuſed his aſſent to [e]. — The Genoeſe and Venetians were at this time the *common carriers* of Europe; and we therefore find, that the parliament, thus early in our hiſtory, endeavoured to check the maritime power of the Italian ſtates, and to encreaſe our own navy by the ſame methods which conſtitute the chief regulations of the famous *Navigation Act* of Charles the Second [f], which was calculated to prevent the Dutch from being the common carriers of Europe — The laſt chapters of this ſtatute relate to the inſurrections under Wat Tyler and Jack Cade — It is recited, that many of the rioters had been executed without due proceſs or trial [g]; but as the intention of thoſe who had been guilty of this infringement of the law was only to put a ſtop to theſe dangerous inſurrections, the king grants a general

[c] I ſhould ſuppoſe this decreaſe (if any) was not very alarming, as it hath already appeared that luxury increaſed in this country, and that gold and ſilver ſtuffs had been imported — The parliament, in the forty-ſixth year of Edward the Third, make complaint of the decreaſe of the navy in theſe remarkable words: "Item prie la commune que comme les merchantes et mariners "d'Angleterre, que 20 anns paſſes et toutdis à devant, la navie de dit roialme en touts portz et "bonnes villes ſur mier et ſur ryvers etoit ſi noble que touts les pays appelloient notre avandit "ſeigneur *le roi de la mer*, et touts dotoient ſon pays le plus par mer et par tesre *per cauſe de la* "*dite navie*."

[d] A ſtatute of the following year rendered this law entirely ineffectual, by diſpenſing with foreign ſhips, if Engliſh veſſels (proper for the trade) could not be procured.

[e] Cotton's Records.

[f] It is an ordinance of Cromwell's re-enacted.

[g] This was chiefly intended for a protection to the Chief Juſtice Treſilian, who had made a ſort of *Jefferies campaign* to try the rioters (according to the chronicle of Henry de Knighton), "Nam quicunque accuſatus erat coram eo, in cauſa ſupradicta, ſive juſtè ſive ex odio, ſtatim "ipſum mortis ſententia plectebat — Et alios quidem decapitari præcepit, alios autem ſuſpendi, "alios verò trahi per civitates, alios autem eviſcerari, et viſcera concremari coram ipſis viven-"tibus." Decem Script. p. 2644. — It ſhould ſeem, however, that this account of Knighton is ſomewhat aggravated, for he plainly ſuppoſes that the puniſhments aroſe from the cruelty of the Chief Juſtice, which were only the common ſentence in caſes of high treaſon, for which theſe rioters were probably indicted.

neral

neral pardon to be pleaded againſt any proſecutions to be commenced, which ſeems to be a law of as alarming a nature to the liberty of the ſubject, as can be found in the whole code of ſtatutes; but, having never been tranſlated, it hath eſcaped the notice of hiſtorians and writers on the law.

The next chapter enacts, that all manumiſſions made during the late riots to villeyns ſhall be void, as being extorted by violence; and the 9th chapter provides for the deeds which were loſt or deſtroyed during the riots and inſurrections—The occaſion of which proviſion aroſe from their having ſet fire to the inns of court—As for the laſt proviſion it was neceſſary, and therefore juſt; but the making void a manumiſſion, under pretence of its being extorted, ſeems to favour of the ſame tyranny which appears ſo ſtrongly in the preceding chapter, exempting thoſe from proſecutions, who had executed criminals without a trial, and who were therefore themſelves the more capital traytors.

STATUTES MADE AT WESTMINSTER.

8 Rich. II. A. D. 1384.

THE adminiſtration of juſtice was very corrupt during the infant king's minority — Beſides the proceedings of *Treſilian*, with regard to the trials of the rioters obſerved upon already, it was one of the articles of impeachment againſt the archbiſhop of *York*, *Robert de Vere*, and *Michael de la Pole*, that they had taken from diverſe parties large gifts and preſents, in order to procure deciſions in the courts of law by their influence over the judges; it is therefore enacted by the 2d chapter of this ſtatute, that no one ſhall be judge of aſſiſe or gaol delivery in his own county [*b*].— The 3d chapter directs, that they ſhall not take any reward or preſent from any one, except victuals or drink, and that of *a very ſmall value*, which permiſſion was neceſſary, from the markets in country towns not being ſupplied as they are at preſent—The 4th chapter puniſhes the judge or clerk who ſhall make a falſe entry, or eraſe any part of a record, with fine and impriſonment, and he is moreover to make ſatisfaction to the party injured by the alteration or raſure — It is remarkable, however, that this ſatisfaction is only for ſuch a raſure as might be attended with the *diſheriſon* of the parties, from which it may be inferred that perſonal eſtate was little conſidered, as an injury or fraud affecting this ſpecies of property ſeems equally deſerving of puniſhment and reparation.

The 5th and laſt chapter explains and limits what actions ſhall be tried before the conſtable and marſhal, and recites their incroachments upon the common law to be a grievance to the ſubject [*i*] — Many cauſes concurred in making this juriſdiction odious and oppreſſive — In the firſt place the proceedings were upon written teſtimony, always more dilatory, more expenſive, and more unſatisfactory, than when the deciſion depends upon

[*b*] Du Halde informs us, that no *mandarine* in *China* can decide any law-ſuit in the province in which he was born — Some have thought that this ſtatute ſhould be repealed, as ſuppoſing a partiality and biaſs in the judges — It however relieves them often from a diſagreeable ſituation. — By the 20 Rich. II. ch. iii. no perſon of the county, whether *grand* or *petit*, is permitted to ſit on the bench with the juſtices of aſſiſe, and probably from the ſame jealouſy — And by the antient rules of the parliament of Paris, no member of that body may frequent the houſes of princes, or go to the Louvre — It is not uſual with us at preſent for the puiſne judges to go to court.

[*i*] The puniſhments inflicted by the court of the Earl Marſhal were often very ſevere — For example, Hollinſhed ſays, that ſtrumpets were frequently ordered to be dragged at the tail of a boat from one ſide of the Thames to the other. Vol. i. p. 185.

vivâ voce evidence, as it does in a trial by the common law—Beſides this, I cannot find that the conſtable or marſhal had a deputy, or judge of his court to aſſiſt him, who was verſed in the civil law by which the proceedings were to be regulated [*k*]—The parties therefore were always applying for prohibitions to the courts of common law, and the ſuit became doubly expenſive by being afterwards drawn *ad aliud examen*—This court hath ſcarcely a cauſe at preſent, the buſineſs having been infinitely diminiſhed by the loſs of the French provinces, as the juriſdiction of the court chiefly took place in contracts entered into out of the king's Engliſh dominions; and as for the trial by duel, the laſt inſtance is that of Lord Rea and Mr. David Ramſden, when the court was held by the earl of Lindſey then Conſtable of England, and the earl of Arundel as Earl Marſhal of England [*l*].

[*k*] The laſt court held by the Conſtable for a trial by *duel* was in 7 Charles I, between Lord Rea and Mr. David Ramſey: in the commiſſion there is but one civilian (Sir Henry Martin) who is ſtyled *Judge of the Admiralty*. Ruſhw. Collect. vol. ii. p. 113.—The truly learned Dr. Duck was council on this appeal.—In his treatiſe *De authoritate juris civilis*, he ſpeaks thus of the court of the conſtable and marſhal: "Cognoſcunt coneſtabilis et mareſcallus "in curia militari de criminibus perpetratis extra regnum Angliæ, de contractibus factis apud "exteros, et de rebus quæ ad bellum et arma ſpectant, ſive in regno Angliæ ſive apud exteros.

"Si Anglus Anglum accuſet de crimine læſæ majeſtatis commiſſo extra Angliam, agit coram "coneſtabili et mareſcallo, et probatio fit per teſtes, vel ex antiquo hujus curiæ more per duel-"lum. Si ſubditus regis noſtri occidat alium regis ſubditum in Scotiâ, vel alibi apud exteros, "de hoc non poteſt agi in curiis juris Anglicani, ſed coram coneſtabili et mareſcallo, nec de iis "etiam in parlamento agi poteſt. Ideo cum Franciſcus Dracus, in re navali apud nos celeberri-"mus, capite multaſſet Douriſhium in America anno xxv D. Elizabethæ, ejuſque cædis vin-"dictam Douriſhii frater et hæres à reginâ peteret, judices regii de hac re conſulti reſponderunt, "de hoc crimine poſſe agi ſolum coram coneſtabili et mareſcallo, et, reginâ ex gravibus cauſis "coneſtabilem conſtituere recuſante, accuſatio evanuit. Et cum nuper Willielmus Holmeſius "Anglus gladio occidiſſet Willielmum Wiſeum Anglum in inſula Terræ novæ in America ann. "MDCXXXII: annoque ſequenti vidua Willielmi Wiſei a ſereniſſimo rege Carolo ad accuſationem "de mariti cæde admitti peteret, nobiliſſimus Comes Lynſeius pro eâ causâ ſolâ coneſtabilis "Angliæ conſtitutus, et Comes Arundeliæ, Comes Mareſcallus Angliæ, condemnarunt ſententiâ, "in curia militari publice latâ Holmeſium, menſe Aprilis anno MDCXXXIII, ad pœnam capi-"talem, quam ſubiiſſet, ſi rex eidem criminis abolitionem ex gratiâ non indulſiſſet. Si Anglus "in Gallia lethale vulnus inferat Anglo, ex quo in Angliam rediens, moriatur; contra eum non "ex jure Anglicano, ſed tantum in curia militari agi poteſt. Et licet aliqua ſtatuta recentiora "cognitionem criminum læſæ majeſtatis in aliquibus cauſis tribuant judicibus banci regis, aut "commiſſariis regiis, per ea tamen juriſdictio coneſtabilis et mareſcalli tolli non intelligitur."

[*l*] The title of this chapter of the ſtatute is, *What ſuit ſhall be diſcuſſed before the Conſtable and Marſhal of England*; and hence one of the great arguments in Dr. Oldys's caſe (reported in Show, P. C.) is, that the court cannot be held but before *both* of theſe great officers—It *being a parliamentary deciſion*, it is impoſſible to know what weight this argument had in the houſe of lords.

Ruſhworth

Ruſhworth informs us, that the Lord Marſhal, on opening the court, ſpake in defence of the court of chivalry, and the manner of proceeding therein according to the cuſtom of arms—"That in theſe latter ages the "trial by duel had indeed been not frequently uſed, but that this was to be "attributed to the good government of the kings of England; and added, "that it was an error to apprehend that, as ſoon as an appeal is brought, it "was preſently to be decided by duel; whereas duelling *was the ultimate* "*trial of all others*—And even then it was in the arbitrement of the court, "whether it ſhould be granted or not."—After this follow all the proceedings in this appeal; and it is remarkable, that the defendant Ramſden, in his anſwer, alledges that the bill and appeal [*m*] *was and is falſe*, and that the appellant Lord Rea *did lye falſely*—Which accounts perhaps for the *lye direct* being always followed by a duel even to this day.

I have had occaſion on the ſtatute *(incerti temporis) de magnis aſſiſis et duellis*, to mention a reaſon which might have reconciled this extraordinary kind of trial in ſome meaſure to ideas of juſtice, and, at the ſame time, took notice of an inſtance (from Grafton's Chronicle) which muſt have made it infinitely ridiculous—There are not wanting circumſtances of ridicule in the very minute account, which Ruſhworth gives us of this intended duel between Lord Rea and Mr. Ramſden—The court, upon the petition of Lord Rea, permits him to have (whilſt in the liſts) *counſel*, and a chirurgeon with his ointments—They likewiſe permit him to have a *ſeat*, or *pavilion*, to reſt himſelf, and *wine to refreſh* himſelf [*n*]—He is allowed beſides, *iron nails*, *hammer*, *file*, *ſciſſars*, *bodkin*, *and needle and thread*—After two or three adjournments, the king ſuperſeded his commiſſion to the conſtable and marſhal, and ſo ended the laſt of theſe abſurd trials on an appeal of treaſon—After this we find, in the ſame volume of Ruſhworth, an account of a duel in a writ of right, which was ordered before Judge Berkely, in the county of Durham, between Ralph Claxton demandant, and Richard Lilburn tenant, on the 6th of Auguſt, 1638—As there had been no inſtance of ſuch a duel for many years before, the king, by an order of council, refers it to the judges of the Northern circuit to conſider how this duel might be avoided, but with an intimation that he would not deny this method of trial, if it could not be legally prevented—Both parties, however, on the day appointed brought their champions into court with their *batoons* and *ſand-bags*; but the court, upon reading the record, found an

[*m*] The appeal is brought againſt Ramſden for having had treaſonable intentions.

[*n*] It was this indulgence of wine that occaſioned the death of the poor citizen, as the ſtory is told by Grafton, he having made too free an uſe of this kind of refreſhment.

error

error in it, committed by a miſtake of the clerk [ſome ſaid wilfully done (*o*)], on which the court would not let the champions join battle. Ruſhworth likewiſe gives us the opinion of the judges previous to this — "The tenant waged battle, which was accepted, and at the day to be performed — Berkely juſtice then examined the champions of both parties, whether they were not hired for money? And they confeſſed they were; which confeſſion he cauſed to be recorded, and gave farther day *to be adviſed*: and, by the king's directions, all the judges were required to deliver their opinions, whether this was cauſe to de-arraign the battel by the champions: and the judges held, that this exception, coming after battel gaged, and champions allowed, and ſureties given to perform it, ought not to be received."

As this laſt inſtance of a duel between champions on a writ of right ſeems to have given ſo much trouble to the king, judges, and parties, and was at laſt prevented by a wilful miſtake in the record, it ſeems extraordinary that this abſurd method of trial ſhould not have been aboliſhed by act of parliament; but, if there is any ſuch ſtatute, it hath eſcaped me, nor can I find a reference to ſuch in any of the common Indexes.

[*o*] If it really was wilful, this does not ſeem *impeachable* either in the judge or clerk.

A STA-

A STATUTE

Made 10 Rich. II. A. D. 1386.

THIS ſtatute, after a ſhort writ to the ſheriff with directions to proclaim it as an act of parliament [*p*], conſiſts merely of a very long commiſſion to the dukes of *Glouceſter* and *York*, the chancellor, and others, to examine into the ſtate of the king's courts, revenues, grants, and officer's fees, with this moſt extraordinary and illegal power, *to determine and regulate as they ſhall think proper where no remedy is given by the common law.*

Dr. Brady, in the third volume of his Hiſtory, informs us, that, at the cloſe of the parliament roll of this year it is entered, that "the king made "open proteſtation with his mouth, that nothing which had paſſed "during that ſeſſions ſhould prejudice either himſelf or his prerogative:" which curious particular is confirmed by the recital of 21 Rich. II. ch. ii. which repeals the abovementioned moſt unconſtitutional commiſſion, and which recites, that it was *extorted* from the king by the duke of *Glouceſter* and the earl of *Arundel*, who ſent a great perſonage [*q*], to deliver this meſſage to him, "that, if he would not give his aſſent to the *com-* "*miſſion*, he would be in *peril of his life.*"—Carte, in his Hiſtory, hath endeavoured to eſtabliſh the courage and martial ſpirit of this weak king; an attempt very ſimilar to Dr. Myddelton's endeavour to make a general of Cicero—The permitting of this recital, in an act of parliament, ſeems to be a very complete refutation of Carte, if ſuch was requiſite.

[*p*] This parliament is, by ſome of the old hiſtorians, ſtyled the *parliament which wrought wonders*, and by others, the *mercileſs parliament*, which laſt appellation they ſeem by this law to have beſt deſerved.

[*q*] "Une grant perſon, pier de la terre," in the original French—This ſtatute hath never been tranſlated.—I ſhould imagine that this expreſſion of *Pier de la terre*, or, as we ſometimes ſay at preſent, *Peer of the land*, was originally uſed to diſtinguiſh a Peer of England, from the *Pairs* or *Peers* of the French provinces, who were frequently employed by the kings of this country, before we had *fortunately loſt* theſe very inconvenient and dangerous appendages.

STATUTES MADE AT WESTMINSTER.

13 Rich II. A. D. 1386.

THE 5th chapter of this ſtatute regulates in what things the *admiral and his deputy ſhall meddle* [r]—The encroachments of the admiral's [s] juriſdiction ſeem to be a natural conſequence of thoſe of the conſtable and marſhal complained of before—One great office is very apt to follow the example of another which claims extraordinary privileges, eſpecially if they have been aſſerted for ſome time with impunity, and derogate from the common law—*Argue not the uſe* (as *Lear* ſays), it is ſufficient that it is called *a privilege*, and that it makes a diſtinction between any perſon in office and the other members of the community in which he lives; and if it is not only uſeleſs, but highly inconvenient and expenſive, it ſeems rather to add to the obſtinacy and warmth with which it is claimed and inſiſted upon.

Judge Howton (in Brownlow's Reports) ſays, that the intent of this ſtatute was not to prevent the admiral's court from holding plea of any thing beyond ſea, but only of things happening within the realm contrary to the common law—And it is very remarkable, that in all the diſputes between the court of admiralty and thoſe of the common law (ſome of which produced ſolemn and elaborate arguments before the king in council [t]), nothing is ever even dropt with regard to the admiral's warrants in preſſing [u], which is well known to be the moſt oppreſſive hardſhip which an Engliſhman is ſtill obliged to ſubmit to, in this otherwiſe free country, and a hardſhip which neceſſity alone can juſtify [w]—I do not mean by this to intimate that the preſſing mariners is not ſupported by uſage and precedents, as far back in our hiſtory as records can be found, many of which are referred to in the caſe of Alexander Broad-

[r] By deputy is meant the judge of the admiralty—There is a very able argument of Sir Leoline Jenkins before the houſe of lords in anſwer to Lord Chief Juſtice Vaughan on this ſtatute, and the admiral's juriſdiction—Wynne's Life of Sir L. Jenkins, vol. i. p. 78—There is likewiſe a manuſcript treatiſe of Lord Chief Juſtice Hale, *De jure Maris et Brachiorum.*

[s] Popliniers, in his *Admiral de la France*, ſays, that the word *admiral* is by no means confined to ſignify a ſea officer; and he cites Monſtreilets's Chronicle for making uſe of the term *amiral des arbaleſtriers.*

[t] V. 4th Inſt. and Prynne thereon.

[u] P. 154, et ſeq. Is it not ſingular, that thoſe to whom we owe our national independence and power, ſhould be the claſs of men who are the leaſt free?

[w] This word was antiently ſpelt *impreſſing*, and conſequently being derived from the

foot, who was indicted for murder at the gaol delivery for the city of Briſtol in 1743, and whoſe defence was, that he acted under the authority of a preſſing warrant from the admiralty [x] — Mr. Juſtice Foſter, who at that time was recorder of Briſtol, hath publiſhed a very able and elaborate argument in his Reports on this head, and hath ſupported the opinion which he then gave, by authorities chiefly from Rymer's moſt valuable collection — As the law in theſe great conſtitutional points ariſes from ſuch precedents, it ſeems to be an omiſſion, if the whole record (provided the length be not very great) is not printed together with ſuch argument, or treatiſe, as an abridgement often miſ-ſtates or miſ-leads — and few will take the trouble to examine the original.

In the firſt record which is cited, the *moſt material part*, to prove the power of preſſing, is not ſtated — The commiſſion is in the twenty-ninth year of Edward the Third, and it is thus abridged: "William Barret, "commander of the ſhip Julian, had a commiſſion to make choice, and "take up in the counties of Kent, Eſſex, Surry, and Suſſex, thirty-ſix "mariners, and put them on board his ſhip, in order to proceed with the "prince of Wales, on an expedition to Gaſcony" — Upon examining the original in Rymer, after this follows: "Et ad omnes quos in hac parte "*contrarios invenerit, ſeu rebelles, capiendum*, et *priſonis noſtris mancipandum*, "et in eiſdem moraturos, quouſque de eiſdem aliter duxerimus deman-"dandum." — I muſt likewiſe take the liberty to ſay, that ſome authorities relative to the power of preſſing have eſcaped the learned judge, which I have happened to meet with, though not after making ſearches with regard to this particular queſtion.

And firſt with regard to the power of preſſing for the land ſervice, of which there were formerly precedents [y], and even ſo late as the reign of

French word *empreſtre*, ſeems to imply a contract on the part of the ſeaman, and that he cannot be compelled to ſerve — Sir Edward Coke hath ſomewhere obſerved upon the law maxim, "*that the king is entitled to every man's ſervice*;" to which he adds this reſtriction, that the ſubject muſt be employed within the four ſeas — It is very extraordinary, that the caſe of the ſeaman, being perhaps ſent to the antipodes, ſhould have then eſcaped him — The reaſon of this ſeems to be, that there was no occaſion formerly to ſend them (in the ſervice of the government) on diſtant voyages.

[x] Broadfoot had not the proper officer with him, according to the directions of the warrant; he was therefore found guilty of man-ſlaughter.

[y] There is, in Rymer, a writ of Henry the Sixth, to impower certain perſons to preſs *minſtrels in ſolatium regis* — Thoſe who were the objects of this very ſingular preſs warrant (if I may ſo term it) did not probably diſpute it — It remains however an inſtance of the extraordinary powers aſſumed, though by a weak king. — "De miniſtrallis propter ſolatium regis providendis.

Queen

Queen Elizabeth—Stowe mentions, that, in the year 1596, a thouſand men were preſſed for the land ſervice—They were afterwards indeed diſcharged, inſtead of being ſent to France as intended; and the chronicler, who ſtates the fact (and which happened in his own time), does not even hint at a doubt about the legality of this meaſure [z]—It is likewiſe layed down in Ruſhworth's Collections [a], that the power *to preſs ſoldiers* is not to be diſputed—There is likewiſe an ordinance of the commonwealth (in Scobell's Collection), which throws light upon this point, and ſhews the apprehenſion of what was ſuppoſed to be law at that time—The ordinance is of the year 1648, and is entitled, *An Ordinance to encourage Mariners and impreſs Seamen.*"—The laſt clauſe of which is as follows: "And, laſtly, for the better encouragement of ſeamen and water-"men to apply themſelves the more willingly to this ſervice, it is further "enacted and ordained, that all mariners, ſailors, and watermen, who have "ſerved an apprenticeſhip of ſeven years, ſhall hereby be exempted and "freed from *being preſſed to ſerve as ſoldiers in any land ſervice.*"

With regard to the power of *preſſing mariners*, Ruſhworth gives us this account of the temporary act of Charles the Firſt [b] for this purpoſe—Reſolved by the houſe of commons, that there ſhould be a bill to *impower preſſing for the ſea ſervice for a certain time, the houſe being very tender of bringing the way of preſſing into example*—Nath. Bacon, on the other hand, in his chapter on the Admiral's Court [c], ſays, that the lord admiral hath power

"Rex dilectis ſibi Waltero Haliday, Roberto Marſhall, Gulielmo Wykes, et Johanni Clyff, ſal.
"Sciatis quòd nos conſiderantes qualiter quidam miniſtralli noſtri, jam tarde viam univerſæ "carnis ſint ingreſſi, aliiſque loco ipſorum propter ſolatium noſtrum de neceſſe indigentes, aſ-"ſignavimus vos ad quoſdam pueros *membris naturalibus elegantes*, in arte miniſtrallatûs in-"ſtructos, ubicunque inveniri poterunt tam infra libertates quam extra *capiendum*, et in ſervitio "noſtro ponendum." Rymer, 34th of Hen. VI.

It is very difficult to ſay, what was the buſineſs or ſcience which theſe minſtrels profeſſed—By the expreſſion of *membris elegantes* one ſhould conceive they were dancers; by another writ in Rymer however, of the ninth of Edward the Fourth, Haliday, Cliff, and Marſhalle, together with others, are erected into a gild, or fraternity; and certain women are likewiſe aſſociated in this new corporation—By part of this writ it is recited to be their duty to ſing in the king's chapel, and particularly for the departed ſouls of the king and queen when they ſhall dye—See afterwards Obſervations on the 4th of Hen. IV.

[z] Stowe, p. 769. This extraordinary and illegal power was aſſumed by Queen Elizabeth at the latter end of her reign, when from year to year ſhe ſeemed more determined to convince her ſubjects, *that ſhe was the daughter of Henry the Eighth.*

[a] Ruſhw. vol. iii. p. 77. in App. the paſſage is taken from an argument of Mr. Maſon of Lincoln's Inn, 4 Charles I.—It need not be here obſerved, that there is no ſuch power to impreſs ſoldiers at preſent.

[b] 16 and 17 Charles I. ch. v. 23 and 26.—Ruſhworth, vol. v. p. 261.

[c] Part II. p. 26.

not only over the ſeamen ſerving in the ſhips of the ſtate, but *over all other ſeamen, to arreſt* them for the ſervice of the ſtate; and, by 13 and 2 ch. xvii. it is enacted, that no perſon may be preſſed under the age of eighteen, or above the age of fifty-five, which ſeems by implication to authorize the preſſing of thoſe who are between thoſe ages.

I have thought it not improper to ſtate theſe authorities with regard to the great conſtitutional queſtion of preſſing, as the argument of Mr. Juſtice Foſter is the only treatiſe to be found in the law-books on this ſubject, and which is, by many, conceived to have exhauſted all the learning and authorities on this head — Should this point be ever agitated in a court of juſtice, he who makes a diligent and judicious ſearch, need not deſpair of finding many freſh materials.—And the ſilence of the common lawyers (when they have diſputed the admiral's juriſdiction) with regard to theſe admiralty warrants, ſeems to be one of the ſtrongeſt proofs in ſupport of their legality, as well as the ſilence of the preambles to the ſtatutes, which recite the encroachments of the admiral's juriſdiction.

STATUTES

STATUTES MADE AT WESTMINSTER.

[d] 20 Rich. II. Stat. i. A. D. 1396.

I HAVE before obſerved, that the ſtatutes throughout this reign continue to be *Capitularia*—The three firſt chapters afford likewiſe an additional proof of the turbulent ſtate of the times, and the great abuſes in the adminiſtration of juſtice—We find in Rymer, as a prelude to the meeting of this parliament, an order from the king to his uncle the duke of Lancaſter (who was unpopular not only for his oppreſſions to the villeyns, but for his oppoſition to *Wyclif* and the new Reformers) to raiſe 300 armed men, and ſixty archers, for his protection during this ſeſſions.

The firſt chapter enacts, that no one ſhall ride armed with a *lancegage*, which therefore muſt have been a weapon of which a very improper uſe might be made in a country now diſturbed with every kind of riot and diſorder—I cannot find the ſignification of this word in any Dictionary or Gloſſary; it is however moſt clearly a lance, and from the termination *gage*, which ſignifies in old French a *jate*, or *caſt* [e], it muſt have probably been a light lance eaſily thrown, and what we now generally underſtand by the word *javelin*—The ſtatute afterwards directs, that no one ſhall carry *palet*, *ne chapelle de fer*; and that the ſtatute of *Chaperons*, made in the firſt year of this king's reign, ſhall he put in execution—The word *palet* is tranſlated *ſallett*, which conveys no idea whatſoever—The French Dictionaries render the word *palet*, by that ſort of inſtrument which the ſurgeons uſe in making plaiſters; this weapon therefore muſt have reſembled the make of that chirurgical inſtrument—As for the word *chaperons*,

[d] Grafton, in his Chronicle, ſays, that Richard the Second granted the effects of the depoſed archbiſhop of Canterbury to his ſucceſſor, on condition that he complied with the ſtatutes made in the twenty and twenty-firſt year of his reign *at Shrewſbury and Coventry*—We muſt however ſuppoſe the parliamentary roll to be more accurate, which ſtates this parliament to be held at *Weſtminſter*, now become almoſt the only place which had proper accommodations for the reception of ſo numerous an aſſembly—Grafton, p. 8.

[e] *Cotgrave* renders the word thus in his Dictionary.

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it is moſt improperly rendered *hats*, as they were not known or uſed at this time; and the ſtatute alluded to is the 7th chapter of the firſt of Richard the Second, by which no one is permitted to wear the livery [*f*] of another by the name of *chaperon*, which ſignifies a *hood*.

It may perhaps appear too minute to dwell upon the meaning of ſuch words in an antient law: if they are printed however in our code of ſtatutes, it is certainly proper that they ſhould be underſtood—Ignorance of terms uſed in records and books of antiquity hath occaſioned the term of eſcuage or ſcutage (in every one's mouth who looks into the early parts of our hiſtory) to be entirely miſapprehended—This is always ſuppoſed to be derived from the Latin word *ſcutum* (or a *ſhield*); and therefore the meaning affixed to this term is a tax payed in commutation for providing a ſoldier with this kind of defenſive armour—The greater part of the antient armies by no means conſiſted of ſoldiers thus armed [*g*]; they had neither the practice nor habit which the Roman ſoldier was enured to, of marching under ſuch a weight, nor could carriages be provided to relieve them from this incumbrance on their march—In *Wachter's* Gloſſarium Germanicum [*h*], the word *ſchutz* or *ſchiitz* is rendered *ſagittator*, in the Anglo-Saxon it is *ſcytta*, in the Belgic *ſchutten*, and in Engliſh *ſhooter*—The *ſcutarii* therefore, and the tax of the *ſcutagium*, ſignified only *archers*, and the tax payed for providing an archer, whoſe arms were light, and could be eaſily carried by the ſoldiers on a march—It is well known that the Engliſh were famous for their ſkill in archery [*i*]; and hence we hear ſo much in the very early part of our hiſtory of the *ſcutarii* and *ſcutagium*.

[*f*] There are laws againſt the wearing of liveries in moſt of the countries of Europe, in order to prevent dangerous combination—By the laws of Macbeth it is even made capital. Hollinſh. Tranſl. of Hector Boëthius, p. 171.—If the officers of the new-eſtabliſhed militia ſhould look upon themſelves as a diſtinct body from the other inhabitants of the country, there are few points which might not be carried by ſuch an aſſociation of men living often together, and wearing the ſame uniform, which unaccountably cements the union.

[*g*] The *officers* might be armed in this manner, and perhaps ſome other ſelect corps—If theſe ſhields had been commonly uſed, we ſhould find them buried in every field, and great numbers in every old caſtle—A man of conſequence indeed hath ſuch a ſhield often on his tombſtone in times of antiquity—But the common ſoldier had not the means of procuring ſo burthenſome and expenſive a defence.

[*h*] Printed at Leipſick in 1757.

[*i*] *Roger Aſcham* (in his *Toxophilus*) ſays, that archery was firſt introduced by the Saxons in the time of *Vortigern*, which is an additional proof that we muſt have recourſe to the German language for the meaning of this word.

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The 2d chapter forbids the yeomanry's [*k*] wearing the livery of any great man's band [*l*], " s'il ne ſoit menial, et familier, ou officer continuel." And the 3d forbids any one ſitting on the bench with the judge of aſſiſe, which following the chapter with regard to liveries, ſhews the influence that was ſuppoſed to be uſed with the judges of thoſe times.

Theſe judges, viz. *Treſilian*, *Belknap*, *Holte*, and *Bourghes*, are names long ſince branded and infamous in our annals—The three laſt of theſe are permitted, by the 5th chapter of this law, to return from their baniſhment in Ireland, notwithſtanding the ſtatute of the eleventh of Richard the Second [*m*]—We find likewiſe that the next year the legiſlature reverſed the ſentence againſt Michael de la Pole (earl of Suffolk), who had acted in conſequence of Treſilian and Belknap's opinion, which is declared to have been a good and legal one—I cannot therefore but think that much injuſtice hath been done to the memory of theſe two judges, by the chroniclers writing with a ſtrong biaſs of party, which is but too common with Engliſh hiſtorians—We have indeed the queſtions themſelves, with the opinion of theſe judges [*n*], amongſt the ſtatutes of the next year; and Henry de Knighton [*o*], who hath inſerted the ſame queſtions [*p*] and an-

[*k*] This chapter of the ſtatute hath not been tranſlated: the expreſſion in the original is *vadletz ou yomen*. I take the etymology of the word *vadletz*, or *valet*, to be a villeyn, who was payed wages for his ſervices—I have already obſerved, that the villeyns were ſometimes ſtyled *liti*, and the ſignification of the word *vadium* for wages is well known—This agrees exactly with the common ſignification of the word *yeoman* (which I take to be a corruption of *year* man, or ſervant hired for that time); and in the king's houſhold, where the old names are retained, we ſtill hear of the yeoman of the pantry, &c.—The name of *year man* may likewiſe have been uſed to diſtinguiſh him who held his land by a leaſe for a year, or time, in contradiſtinction to him who held at the will of the lord.

[*l*] In the original, " liverie de compagnie d'aſcun ſeigneur"—I have already obſerved upon the ſignification of the word *ſeigneur*.

[*m*] I have looked into this ſtatute, which is a very long one, but can find no name but that of Treſilian.—This recital is therefore either inaccurate, or the eleventh of Richard the Second is not completely printed.

[*n*] Given at Nottingham in the eleventh year of Richard the Second.

[*o*] Knighton was ſtrongly biaſſed in favour of the duke of Glouceſter, againſt the earl of Suffolk and the judges.

[*p*] Hayward, in his Life of Henry the Fourth, ſays, theſe quæries were drawn up by a barriſter, whoſe name was Blake—Skelton is another barriſter, mentioned in the 12th chapter of the twenty-firſt of Richard the Second, and is deſcribed as *apris de la leie*, or " learned and verſed in the laws," which makes it poſſible, that the word *apprentice* of the law may have been an erroneous manner of filling up the contraction *ap. de la ley*, which meant, perhaps, *appris*, and not *apprentice de la ley*—It is not probable likewiſe that the law, which was ſo liberally profeſſed in England, and which had ſuch noble eſtabliſhments, according to Forteſcue's account, ſhould have borrowed, for one of their degrees in *ſcience*, a term of *mechanics and trade*.

ſwers in his Chronicle, gives us at the ſame time the following introduction to them [q].

The parliament of the twenty-firſt [r] of Richard the Second was the laſt held during his unfortunate reign; and as he was a weak prince, and entirely governed by the factious miniſters to whom he abandoned implicitely the care of all public affairs, it is impoſſible to form any idea of his merits or demerits as a legiſlator, and he hath permitted the preamble of one of the ſtatutes of his reign [s] to inform poſterity, that a meſſage brought by a ſingle peer (attended with menaces) was ſufficient to deter him from his moſt ſettled purpoſes — He ſuffered in the public opinion not only from his own weakneſſes, but from the comparative luſtre of the characters of his father and grand-father — This prejudice went ſo far, that it was inſinuated that he was not the real ſon of the *Black Prince*; and, if the picture which hangs near the pulpit in Weſtminſter-Abbey is really an original (as ſuppoſed by ſome) he certainly had not the complexion of his father, as I am perſuaded he had the appellation of the *Black Prince* [t]

[q] "Poſt hæc rex venit per *Notyngham* rediens de partibus borealibus, et tenuit apud "*Notyngham* concilium in craſtino ſancti *Bartholomæi*. In quo affuerunt quinque nephandi "ſeductores regis, ſcilicet *Alexander* Archiepiſcopus *Eboracenſis*, dominus *Robertus Ver* Dux "*Hiberniæ*, *Michael de Pole* Comes de *Suthfolk*, *Robertus Treſylyen* juſticiarius, *Robertus Brembylle*, juſticiarii quoque omnes regni juſſi ſunt ibidem accurrere, dominus *Willielmus Skipwith* "non erat cum eis, infirmitate detentus. Tunc juſſi ſunt juſticiarii ſigilla ſua apponere ad in"fraſcriptas quæſtiones, ut exinde ſeductores ſæpedicti caperent occaſionem occidendi ducem "*Gloverniæ* et omnes reliquos qui in ultimo parliamento conſtituti ſunt ad gubernationem regis "et regni, et omnes in parliamento eis conſentientes in hac parte. Quidam de juſticiariis renu"erunt ſigilla ſua apponere, ſet hoc facere artati ſunt. Dominus *Johannes Belknappe* juſticiarius "cum multa inſtancia renuit. Set Dux *Hiberniæ* et Comes de *Suthfolc* compellebant eum ad hoc "faciendum, nam ſi non feciſſet minabantur ei mortem, et manus eorum (ut ſibi videbatur) non "evaſiſſet. Cumque ſigillum ſuum appoſuiſſet, ait, Jam, inquit, michi non deeſt niſi ratis, equus "et funis, ut dignam mortem ſuſtineam: ſi vero hoc non egiſſem, mortem manus veſtræ ſuſtinu"iſſem. Et quia voluntatem regis et veſtri jam adimplevi, mortem proditionis erga magnates "regni merui; unde in proximo parliamento ſequenti cum ſociis morti adjudicatus eſt, ut patebit." — Many other curious anecdotes with regard to Treſilian and Belknap may be found in the Decem Scriptores, p. 2693, & ſeq.

[r] Sir Robert Cotton (in his *Poſthuma*) mentions a ſtatute which paſſed this year, "*that* "*whatever eſcheats to the king ſhall not be diſpoſed of, and that the procurer of any ſuch grant ſhall* "*be puniſhed by fine and impriſonment.*" Cotton, p. 170.—We find no ſuch law however in the Statute book—All the proceedings in parliament of the twenty-firſt of Richard the Second are repealed by the firſt of Henry the Fourth, and the eleventh of Richard the Second re-enacted.

[s] 21 Rich. II. ch. ii. already obſerved upon.

[t] I have ſomewhere read a paſſage in one of the old Chroniclers, where he is ſtyled the *Black Prince*, before he had diſtinguiſhed himſelf in arms — Beſides this, all princes and generals wore the ſame armour for the greater part of their campaigns, and yet we never hear of a *Blue* or a *Red* Prince.

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from his dark hair, and not from the colour of his armour.—The reſemblance in point of feature and complexion is more to be relied upon, in proof of legitimacy, than any hereditary qualities of the mind, notwithſtanding we are told, that

Fortes creantur fortibus, et bonis,

which we find contradicted by the inſtance of Edward the Second, as well as that of Henry the Sixth.—I had almoſt ſaid, that it is providential for the liberties of a free country, that there ſhould not be a long ſucceſſion of great and able kings.—If this conſequence ſhould not be apprehended by many, it muſt however be admitted, that it is providential for the general liberties of Europe, and mankind, as it would be impoſſible for any alliance or confederacy to reſiſt ſuch an increaſe of power in a particular ſtate.

STATUTES MADE AT WESTMINSTER.

1 Hen. IV. A. D. 1399.

THE new king's reign opens with a ſtatute which conſiſts of twenty chapters—Two of theſe, viz. the 6th and 13th, relate to the improvement and care both of the landed revenue of the crown, as well as the cuſtoms.—The firſt, which directs, that, upon application for any crown lands [*s*], the petitioner muſt ſet forth the real value, or otherwiſe the grant to be void, was probably occaſioned by ſome very improvident grants of Richard the Second, either during his minority, or when, by his diſtreſſes afterwards, he was not in a ſituation to reſiſt the application of thoſe to whom he was in reality a priſoner [*t*]—Henry might indeed have revoked ſuch grants, but his title to the crown was far from being a good one, and his ſituation in every reſpect very critical; it would therefore have been highly impolitic to have raiſed new enemies, and diſturbed the grantee's poſſeſſion, though obtained by improper ſuggeſtions—The regulation to prevent ſuch impoſition for the future ſeems to be a very wiſe one; and as I do not find that the act hath been repealed [*u*], it ſeems well to deſerve the attention of the treaſury at this day, though ſubſequent ſtatutes have made conſiderable alterations with regard to the grants of crown lands.

The 13th chapter, which relates to the cuſtoms, ſeems likewiſe well to deſerve the attention of the ſame board, as this ſtatute likewiſe continues unrepealed, and enacts, that the comptrollers and ſearchers of the cuſtoms ſhall be reſident in perſon at the port, without making any *Deputy* (or *lieutenant*) to execute their office [*w*]—This abuſe of turning the cuſtom-houſe offices into *ſine-cures*, had begun to prevail in the reign of Edward the Third; for, by the grant of the office of comptroller of the port of London to the Poet Chaucer [*x*] (and no one hath ſo good a claim to eaſe and *ſine-cures* as poets), there is an expreſs condition, that he ſhall not only reſide, but make all the entries with his own hand—I believe it will not

[*s*] This is followed by a very ſingular ſtatute of the next year, declaring that the king will make no grants of lands but to thoſe who ſhall deſerve them; and if any one applies not having deſerts, he may be puniſhed at the king's pleaſure—This law, if in force, would greatly leſſen the number of applications.

[*t*] Henry himſelf muſt likewiſe have been much ſolicited for grants of forfeitures by thoſe who had ſupported his cauſe.

[*u*] It is much weakened by an explanatory ſtatute of the following year.

[*w*] The officer's being able to pay a deputy out of his fees ſeems to prove a conſiderable increaſe of trade.

[*x*] Rymer's Fœd.

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be eaſy to find ſuch a condition in a modern patent, as treaſuries either know nothing of this law, or otherwiſe chooſe to be ignorant of it.

The 20th and laſt chapter contains a general pardon, which, amongſt ſome other exceptions, does not extend to a perſon *pris ove meynovere* [x], which is what antiently was ſaid by the crown lawyers, "to be caught in "the *mainer*."—As there was formerly a diſtinction between a murder openly perpetrated [y], or in a more concealed manner (the word *murdrum* ſignifying only the latter, or the fine impoſed on the townſhip when the concealed murder was not diſcovered); ſo there was a diſtinction made between a robbery or larceny, where the thing ſtolen was found in the criminal's hand, and where the proof depended upon other circumſtances not quite ſo irrefragable—The former properly was termed *pris ove meynovere*, as in the preſent ſtatute, and not *ove mainer*, or *mainour*, as it is generally written—The ſignification is *holding in his hand* [z], or detected with the thing ſtolen in his hand.—This ſeems likewiſe to be the meaning of the words *infangthef* and *utfangthef*, in grants of juriſdictions—The *Regiam Majeſtatem* ſpeaks thus of ſuch courts—"Quædam placita criminalia per- "tinent ad quoſdam barones—Maximè qui habent et tenent curias ſuas "cum ſocco et ſaccâ, furcâ et foſsâ, *infangthef* et *utfangthef*."—Now I ſhould apprehend (though the Gloſſaries do not ſupport the conjecture) that *infangthef* means exactly the ſame with the word *meynovere*, and ſignifies the *furtum manifeſtum* of Bracton, or the thief apprehended with the goods ſtolen in his hand, as *fang* is a Saxon word for the *fiſt* or *hand* [a].—Some of the writers upon the old French law (if my memory does not fail me) ſtyle this detection of the thief *pris en poigne*.—The reaſon for the inferior juriſdictions having conuſance of this crime, aroſe from the proof of guilt being irrefragable and beyond a doubt; but where the proof depended upon a long ſeries and chain of circumſtances, the criminal could only be tried before ſuperior judges and in ſuperior courts.

The 14th chapter aboliſhes all appeals to parliament, which were antiently not uncommon; and though the law does not explain what kind of appeal is ſo aboliſhed, yet Sir Edward Coke, by a letter to King James (printed in the learned Dr. Birch's Collection of Lord Bacon's Letters, &c. p. 107.) expounds it to relate to appeals in criminal offences, though, to ſupport this conſtruction, he ſuppoſes not only words, but a whole period which is not to be found in the law.

[x] This chapter hath not been tranſlated.

[y] By the old Scots law, a murderer thus detected is ſaid to be apprehended with the *reid hand*.

[z] It is called, by Bracton, *hondhabend*, which amounts to the ſame—*or having in the hand*.—Cotgrave ſays, that *mainouvrer* is an old Norman word for *holding*.

[a] *Infangthef* and *utfangthef* will therefore ſignify a juriſdiction of trying every kind of larceny, whether the thief be detected with the thing ſtolen either *in* or *out* of his hand.

STATUTES MADE AT WESTMINSTER.

2 Hen. IV. A. D. 1400.

THE 15th chapter of this collection of ſtatutes is the firſt law that makes the offence of *hereſy* capital, which was either before this unknown, or the puniſhment left to the cenſures of the eccleſiaſtical courts [*a*]—Hollinſhed [*b*] informs us, that Henry himſelf was rather inclined to favour Wycliff, and the new Reformers; and Grafton [*c*] mentions his having ſaid, whilſt he was earl of Derby, that *princes had too little*, and *religious houſes too much*; which unguarded expreſſion is ſaid to have occaſioned one of the rebellions during his reign—The king had been, in the early part of his life, a prince or ſoldier of fortune, and ſeems to have had what the clergy term libertine principles; he was now however advanced in years, and, having a very queſtionable title to the throne, was by no means in a ſituation wantonly to make ſo powerful a body his enemies [*d*]—This 15th chapter is the only one in the ſtatute which is in the Latin language, and all the reſt in French, which confirms an obſervation I have before ventured to make, that the ſtatutes which are in the Latin language generally relate to the intereſts of the clergy—There was a particular convenience in this, as ſuch ſtatutes were tranſmitted to the court of Rome; and in all probability the pope's nuncio, or legate, muſt have been much conſulted on the ſpot, previous to the introduction of this law, which directs "all heretical books [*e*] to be brought to the Ordinary—"That no one ſhall preſume to preach without his licence—That, upon "ſuſpicion of hereſy, he may impriſon and interrogate the heretic—And, "upon conviction and refuſing to abjure his hereſy, that he ſhall be deli-"vered over to the ſecular arm, which is to inflict the puniſhment of "burning, *coràm populo in eminente loco* [*f*]."

[*a*] By 5 Rich. II. ch. v. the ſheriff is impowered to apprehend *public* preachers of hereſy, but no puniſhment is ſpecified.

[*b*] P. 511.

[*c*] P. 11.

[*d*] Biſhop Burnet, in his Hiſtory of the Reformation, ſays, that Henry the Fourth, in gratitude to the clergy who had raiſed him to the throne, granted them this law to *their heart's content*, vol. i. p. 24.

[*e*] This muſt probably have been aimed at the books of *Wycliff*, the principal of which we find by *Rymer*, was entitled *Trialogus*—Thoſe who may have curioſity to examine further into his doctrines, may find them fully ſtated in the Decem Scriptores, p. 2648.

[*f*] Biſhop Burnet informs us, that, notwithſtanding this injunction to the ſheriff to proceed immediately to the execution of the heretic, the king was adviſed by his learned council to iſſue

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It is a well-known rule in the conſtruction of ſtatutes, that the beſt key to the underſtanding of them is to inquire what was the eſtabliſhed common law before the new parliamentary regulations take place—There is, in the Appendix to the ſixth volume of the State Trials, a ſhort treatiſe concerning the antient method of proceeding againſt Heretics in this country, whom the ingenious author ſuppoſes to have been puniſhed capitally—I muſt beg leave to queſtion this opinion however, as well as the manner of his conſidering the fifteenth of Richard the Second, which is the firſt ſtatute that relates to Hereſy—I have, in the note below cited, mentioned the firſt record in Rymer concerning the puniſhment of this crime, and the expreſſions uſed in the writ are too figurative and uncertain to argue from; and beſides this, it is a writ directed to the ſeneſchal of Gaſcony, and not to any ſheriff, or civil officer, in England—I do not find any further mention of hereſy in Rymer, till the year 1370, and fortieth of Edward the Third, in which a writ iſſues to the biſhop of London to *permit him to impriſon* a perſon convicted of hereſy, *till he ſhould abjure*, and which does not even allude to burning, or any other capital puniſhment [*g*]—As for the ſtatute of the fifteenth of Richard the Second, I have read it with great attention, and cannot poſſibly draw the ſame inference from it which the writer in the State Trials doth—He ſuppoſes that, in order to puniſh a heretic under that ſtatute, it was neceſſary to ſummon a convocation, which, being often highly inconvenient, the preſent ſtatute impowered the ordinary to try this offence—Now it is clear, by the writ above-cited of the year 1370, that the biſhop alone could convict, but wanted the aſſiſtance of the king, or ſecular judge, to puniſh; and as for 5 Rich. II. ch. v. it recites, "that the terrible conſequences "of hereſy had been conſidered by the archbiſhop of Canterbury and the "convocation," but by no means confines the conviction to a convocation aſſembled, but, on the contrary, leaves it as before [*b*].

But the ſtrongeſt argument againſt this opinion ariſes from the preſent law, which directs the criminal to *be publicly burnt*, and which, if it had been a known puniſhment by the common law, would have been ſo recited; and then indeed the whole law would have been in a great meaſure

the writ *De Hæretico comburendo*—We find, in Rymer, a writ in the year 1214, and ſixteenth of King John, *De Hereticis in Vaſconiâ extirpandis*—Strong expreſſions are uſed in this writ, as *penitùs extirpare et nequitiam deteſtabilem funditùs confundere*—but it may be doubtful, whether this empowered the officer (*who is the ſeneſchal of Gaſcony*) to inflict a capital puniſhment—Nor can it be inferred (but by preſumption), that ſuch a writ ever iſſued from this king in England.

[*g*] There is a Scots ſtatute againſt hereſy in the reign of James the Firſt of Scotland, A. D. 1424—Which directs that the biſhop ſhall inquire into the offence, and be aſſiſted by the ſecular arm.

[*b*] This ſtatute hath not been tranſlated.

nugatory

nugatory—The clergy, armed with this new power, did not long ſuffer the ſtatute to continue a dead letter, for *Thorpe* was tried within five years of it's paſſing, and the archbiſhop of Canterbury, and the chaplains and clergy which attended him, conceived that they had now not only authority to *burn*, but to *drown* [*i*]; and this mode of puniſhment was abſolutely adviſed by the archbiſhop. State Trials, vol. i. p. 36.

In confirmation of what I have here advanced, the writ which iſſued for the burning *William Sawtree*, who was the firſt that ſuffered for hereſy, makes no mention of its being agreeable to the antient law [*k*]; whereas, in the time of James the Firſt, this is added to the writ, and this poſſibly may have contributed to the opinion that ſuch a puniſhment had been ſo long known in this country.

How happy is the ſituation of an Engliſhman at preſent, that he can conſider this terrible proceſs as a matter of ſpeculation, and calmly amuſe himſelf with it as a common point of learning, or antiquity!—The thunder-cloud is now removed to a ſafe diſtance, and becomes a matter of diſquiſition and curioſity mixed with a pleaſing terror.

[*i*] In the Appendix to the State Trials, there is the form of an indictment for this offence in Southwark, which makes it moſt infinitely ridiculous.

[*k*] There is a writ in Rymer of the year 1410, and the eleventh of Henry the Fourth, which recites the puniſhment of burning a heretic to be agreeable to the *antient canon law:* but this could not become the law of England till the preſent ſtatute had adopted it.

STATUTES

STATUTES MADE AT WESTMINSTER.

4 Hen. IV. A. D. 1402.

THESE ſtatutes, which amount to the number of thirty-five chapters, relate to very miſcellaneous matters—The 2d chapter, after reciting *les entiers coers et les grandes natureſſes*, which the clergy of England had born to the king, confirms all their rights and privileges; but at the ſame time directs, that the words *inſidiatores viarum et depopulatores agrorum* (inſerted in the petition of the clergy preferred to the king in this parliament) ſhould not henceforward be uſed in any indictment—And particularly, that if any clerk is ſo indicted, he ſhall be immediately entitled to the benefit of clergy—This part of the ſtatute would be abſolutely unintelligible, was it not for the explanation which Sir Edward Coke hath given us in the 2d Inſt. p. 41. *inſidiatores viarum* were heretics, who paſted up their notions and doctrines in the highways; and *Depopulatores agrorum* were thoſe who ſuffered the parſonage glebe to continue unimproved, and the parſonage houſes to go to ruin and decay, this being ſuppoſed to tend to *the depopulation of the country*.

I ſhould, from this explanation of the words by Sir Edward Coke, ſuppoſe, that the new reformers, being perſecuted by the regular clergy, had not reſted merely on the defenſive, but had proſecuted, in their turns, their perſecutors by indictments at common law—The clergy attacked the reformers as *inſidiatores viarum*, and the reformers carried on counter-indictments againſt the clergy as *depopulatores agrorum*, who ſuffered their parſonage houſes to decay—This, at leaſt, is the only light that I can pretend to throw upon this very obſcure law.

The 11th chapter recites the great decreaſe of fiſh in the Thames (and other rivers) by feeding hogs with the fry caught at the wears; which ſeems to be a very ſingular recital: but there is an Iriſh ſtatute of Charles the Firſt, which does not permit any hogs to be kept near the ſea coaſt, *becauſe they are ſaid to deſtroy the ſpawn*; which is much more probable than that they ſhould be capable of getting at the fiſh themſelves—Be this as it may, the fry of the Thames is deſtroyed at preſent to make artificial pearls with the ſcales; and perhaps it is better that the fiſh ſhould decreaſe than that we ſhould loſe ſo valuable a manufacture—It is indeed very doubtful whether

ther any regulation for preſerving fiſh, or any of the game laws, tend in reality to the increaſe of either fiſh or fowl—And it is remarkable, that in Cornwall, where the game laws are not put in execution, they have more partridges than perhaps any other county of England—The lateſt ſtatute, however, with relation to the game, ſhould be moſt ſtrictly obſerved, as it preſerves the farmer's grain from treſpaſſes till the harveſt is over.

This collection of ſtatutes cloſes with ſome very ſevere laws againſt the Welſh [*l*], which were occaſioned firſt by Richard the Second's being well received in Wales on his laſt return from Ireland [*m*], and now by the rebellion of Owen Glendower.

From the noble and moſt truly poetical ode, which was occaſioned by the maſſacre of the Bards under Edward the Firſt, it hath been generally conceived, that theſe laws of rigour were preceded by others ſtill more rigorous during that king's reign—I have already had occaſion to make ſome remarks on the ſtatute of Roteland (or more properly *Rutland*) in the eleventh year of Edward the Firſt, which was immediately after the conqueſt of Wales, and by which nothing more ſeems intended, than to make a thorough union both of laws and of people—I do not mean by this to aſſert, that no ſeverity was uſed by the conqueror of Wales—Lewellin, their laſt prince, complains of the Engliſh oppreſſion in the moſt feeling manner—"Nam nos adeò ſpoliati eramus, immò in ſervi-"tutem redacti per juſticiarios, & ballivos regis, amplius quam ſi Sara-"ceni eſſemus, vel Judæi—Denunciavimus domino regi, ſed ſemper mit-"tebantur juſticiarii & ballivi ferociores, et crudeliores, et quando illi "ſaturati erant per injuſtas exactiones, alii de novo mittebantur ad po-"pulum excoriandum, in tantum quod *Wallenſis malebat mori, quam* "*vivere* [*n*]."—Beſides this proof of oppreſſion, a manuſcript hiſtory, written by Sir John Wynne of Gwydir [*o*], authoriſes the ſuppoſed tradition of a maſſacre of the Bards; nor could the writer of that moſt admirable ode have made his bard ſo warmly expreſs, or his reader feel, the tyranny of Edward, if he had not probably raiſed an indignation and fire in his own breaſt by reading of other materials, which I have not happened to

[*l*] The Engliſh at this time held the Welſh in great contempt—The biſhop of St. Aſaph had in this parliament adviſed the lords not to irritate them too much; who made anſwer, *Se de illis ſcurris nudipedibus non curare*. Lel. Collect. vol. ii. p. 31.

[*m*] See a collection of *antient pieces touching Ireland*, printed at Dublin in 1757; and amongſt theſe, *the ſtory of Richard the Second being laſt in Ireland*, written by a French gentleman, who accompanied him in that voyage, and tranſlated by Sir Geo. Carew.

[*n*] Appendix to Wynne's hiſtory of Wales.

[*o*] Evans's ſpecimens of Welſh poetry, 1764—There is an account of a voyage to Spain, by this Sir John Wynne, printed after one of Hearne's *Collectanea*—He was to attend on Charles the Firſt whilſt in Spain, and ſailed from Plymouth to the Groyne.

meet with—I would only ſay, that we have no proof of oppreſſion to the Welſh in our ſtatute [*p*] books till the preſent laws.

The 27th chapter directs, that there ſhall be no *weſtours, rymours, miniſtral, ou autre vagabonde, par faire kymortha, ou coilage*—which, as it hath not been tranſlated, I ſhall render *waſter, rhymer, minſtrel*, or other *vagabond*, to make aſſemblies or collections—As for the word *kymortha*, it is plainly a Welſh word, but improperly ſpelt, as there is no ſuch letter as *k* in the Welſh language—The common gloſſaries take no notice of this word, and I have therefore looked into Dr. Davis's dictionary, who gives as the neareſt word to it *cymmod*, which he renders *cohabitatio*; and, as I apprehend the word *cymmod* is pronounced *cummoth*, it comes pretty near to the word *kymorthas*; and which being Welſh, it is not to be ſuppoſed that it ſhould have been either pronounced or ſpelt with any accuracy, as there were at this time no repreſentatives for Wales in the Engliſh parliament.

It appears by the laws of *Hoel Dda*, that there were good political reaſons for aboliſhing the Welſh bards and harpies, as they were the Tyrtæus's upon every expedition againſt the Engliſh: "Quandocunque muſicus "aulicus iverit ad prædam cum domeſticis, ſi illis *præcinuerit*; habebit "juvencum de prædâ optimum; & ſi acies ſit inſtructa ad prælium, præ-"cinat illis canticum vocatum *unbenjaeth Ptydain* (ſive Monarchia Bri-"tannica) [*s*]."

And again—"Quando cantica requiruntur, muſicus, cui jus cathedræ "competit; Dei laudes primo decantabit, & deinde regis in cujus palatio "fuerit."

[*p*] There are ſome ſtatutes of the ſecond year of this king with regard to the Welſh, but they cannot be conſidered as laws of extraordinary rigour.

[*q*] For the ſignification of the word *minſtrel*, ſee the introduction to the collection of old ſongs, publiſhed by the ingenious Mr. Percy, 1765—See alſo a note on the 13th of Rich. II.

[*r*] I take this regulation to explain an antient law in Lindenbrogue: Qui harpatorem (qui *cum circulo* harpare poteſt) in manum percuſſerit, componat illum quarta parte majori compoſitione, quàm alteri ejuſdem conditionis homini, inter leges Anglorum & Werinorum—The harper "qui cum circulo harpare poteſt," I ſhould imagine to ſignify in this barbarous Latin, he who can play to a number of people ſtanding round the harp in a circle, as the Welſh often do to this day, making extemporary ſtanzas to the tune which is played.

[*s*] The notes to Hoel Ddha's laws give us no light with regard to this antient Britiſh ſong—nor have the modern Welſh harpers any tradition of a tune ſo entitled—The moſt antient and beſt tune, which they have ſtill retained, is called *Morfa Rhuydland* or *Rhydland*, where the Welſh received a great defeat—The melody is plaintive and good—The kings of England had formerly both harpers and bagpipers in their band of muſic, and with a ſalary of 18 *l.* per ann. in the firſt year of queen Mary. The two harpers, muſicians to queen Mary, were neither of them (as far as can be collected for their names) Welſhmen, nor was the bagpiper a Scotſman.

The army being preceded at its onſet by a bard, or ſinger of a particular ſong, is not peculiar to the Welſh—Voltaire gives us the following account of a battle by the Normans:

" Les anciennes chroniques nous apprennent, qu'en premier rang de " l'armée Normande, un ecuyer nommé *Taillefer* monté ſur un cheval " armé, chanta la chanſon *de Roland*, qui fut ſi long tems dans les bouches " des François, ſans qu'il en ſoit reſté le moindre fragment—Le *Taille-* " *fer* [*t*] apres avoir entonné la chanſon que les ſoldats repetoient ſe jetta " le premier parmi les Anglois, & fut tué." Voltaire's Add. Hiſt. Univerſ. p. 69.—We likewiſe find, that amongſt the northern nations, the Scaldi or Bards were to advance before any other part of the army—Perhaps the ſong of *Britons, ſtrike Home* might have its effect in animating a modern army, if the noiſe of artillery and fire-arms would not ſoon drown all inferior ſhouts.

Biſhop Nicholſon, in the appendix to his Hiſtorical library, hath given us ſome curious particulars with regard to the Iriſh bards, whom he repreſents to have obtained great part of their lord's lands, and who were likewiſe, upon all occaſions, very tumultuous and diſorderly—Baron *Finglaſs*, who wrote in the time of Henry the Eighth a *Breviate of Ireland* [*u*], propoſes not only ſevere regulations againſt rhymers and minſtrels, but alſo againſt the *ſhamnabs*, who, it ſeems, were the Iriſh genealogiſts—Hollinſhed, in his Chronicle, likewiſe informs us, that the Iriſh bard (if he was not well paid for his panegyric) turned libeller immediately; and if his audience were not attentive to his muſic and poetry, that he commanded ſilence in the moſt imperious manner.

Notwithſtanding theſe ſtatutes of Henry the Fourth [*w*], the bards and muſicians continued in Wales, and had regular degrees and rank in their ſcience or profeſſion, as we find by a very curious commiſſion of queen Elizabeth, which is prefixed to a collection of Welſh poems, publiſhed by the Rev. Mr. Evan Evans in 1764 [*x*].—This commiſſion directs thoſe, who are not *real bards* and muſicians, to be treated as vagabonds—And

[*t*] This ſame Taillefer we have an account of likewiſe in the Romaunt of the Roſe.

" Taillefer qui moult bien chantoit,
" Sus un cheval qui toſt alloit,
" Devant eus alloit chantant,
" De l'Allemagne, et de Rollant,
" D'Oliver et des vaſſaux,
" Qui morurent en Rainſchevaux."

[*u*] Amongſt the pieces touching Ireland, publiſhed at Dublin, 1757.

[*w*] By the laws of Macbeth, a minſtrel is to draw the plough inſtead of the ox.

[*x*] Printed for Dodſley, 4to.

by

by an ordnance of Cromwell, in 1656, any minſtrel, or *fidler* [*y*], who ſhall be making muſic in any inn, or tavern, or *ſhall aſk any one to hear his muſic*, is to be puniſhed as a ſturdy beggar.

The other chapters, which relate to Wales, enact, that no Welſhman ſhall have any office in Wales, except a biſhoprick—That they ſhall not have any caſtle, fortreſs, or houſe of defence [*z*]—And by the laſt chapter, the marrying even a Welſhwoman incapacitates an Engliſhman from holding any office.

Theſe muſt be allowed to be laws of rigour; other cauſes however, beſides the rebellion of Owen Glendower [*a*], might poſſibly have contributed to thoſe odious and diſagreeable diſtinctions between the king's Engliſh, and Welſh ſubjects.

Notwithſtanding the conqueſt of Wales by Edward the Firſt, and his having introduced, in ſome meaſure, the Engliſh laws and cuſtoms by the ſtatute of Rhydland; yet perpetual incurſions and depredations were made by the Welſh upon the adjacent Engliſh counties, and which did not perhaps ariſe ſo much from hatred to the conquerors, as from its being cuſtomary, in all mountainous countries (till they are more thoroughly civilized), to invade their richer neighbours (*ſuadet enim veſana fames*), and who inhabit a more fertile country—When the cattle are driven into the mountains, the purſuit to recover them is attended with danger; and if the pilferer is overtaken, it requires no ſmall number of purſuers to bring the cattle back with ſafety to the owner—We find this to prevail more or leſs in all parts: the mountain Arabs pilfer from the inhabitants of the more level countries—The Tartars made the ſame depredations upon the Chineſe till the famous wall was built—And the Highlanders of Scotland [*b*] (if not yet thoroughly civilized by the wiſe laws, which both

[*y*] Fidler does not ſignify what we now underſtand by the word *player on the violin*—This inſtrument was not known in England till the time of Charles the Second—It ſeems to have been borrowed from the old Welſh inſtrument, called a *crowd*—It is not however tuned in the ſame manner with a violin, nor are there above two or three perſons now in Wales who can play upon it.

[*z*] This part of the law was probably carried into execution, and accounts for there being no conſiderable antient, and at the ſame time fortified, houſes belonging at preſent to the gentry of Wales—As for Chirk Caſtle, it is a modern building.

[*a*] Glendower's real name was Vaughan, and he was originally a barriſter of the Middle Temple.

[*b*] There is amongſt the *black acts* a law which does great honour to theſe Highlanders, which makes it a capital offence to rob their priſoner—And Leſly, the Scots hiſtorian, ſays, that "juſtice (*amongſt* themſelves) was ſo well eſtabliſhed, that the *very ruſhes* might have guarded "the cattle."

England and Scotland owe to the late Earl of Hardwicke) ſtill continue the ſame incurſions upon the Lowlanders [c].

I would not by this be underſtood to inſinuate, that the mountaineer is born with a worſe diſpoſition than the inhabitant of the more level country—We call ſuch depredations at preſent by the name of *pilfering*, as we term the captures by the Algerines *acts of piracy*—We muſt recollect, however, that the mountaineers at this time (as well as the Algerines) were a free independent people, who never made any treaties [d] of peace with their neighbours, by which they ſtipulated not to make ſhort expeditions into an enemy's country; and for the ſame reaſon that the Algerines have never made any ſuch treaty with the Italian ſtates.

The Mediterranean ſea hath in moſt ages been infeſted with this kind of free-booter; for Neſtor aſks Telemachus in the Odyſſey [e] (when he means to receive him with the greateſt civility and hoſpitality) *whether he is a pirate*; and Plato obſerves, "καὶ γὰρ Ὅμηρος [f] τὸν Ὀδυσσέα πρὸς μητρὸς πάππον Αὐτόλυκον ἀγαπᾷ τε καὶ φησὶν αὐτὸν ὑπὲρ πάντας ἀνθρώπους κλεπτοσύνῃ—Even the *civilized Athenians* were by their laws obliged to take an

[c] Mountaineers likewiſe have not ſo early a regular ſyſtem of laws—Thus the Cyclops, in the mountains of Sicily, are deſcribed by Homer:

Τοῖσιν δ' οὔτ' ἀγοραὶ βουληφόροι, οὐδὲ θεμιστές·
Ἀλλ' οἵγ' ὑψηλῶν ὀρέων ναίουσι κάρηνα
Ἐν σπήεσι γλαφυροῖσι, θεμιστεύει δὲ ἑκάστος
Παίδων ἠδ' ἀλόχων· οὐδ' ἀλλήλων ἀλέγουσι. Odyſſ.

[d] The Algerines obſerve the treaties which they enter into, perhaps as well *as ſome European powers*.

[e] In the marches between two countries, violence from the one quarter naturally produces a return of the ſame diſorder, and rapine; and therefore we find, during the reign of Henry the Fifth, three different ſtatutes for introducing better *police* into the county of Hereford; which being bounded not only to the weſt by Radnorſhire and Brecknockſhire, but likewiſe to the ſouth by Monmouthſhire (then part of Wales) ſeems to have wanted as many regulations as the adjacent Welſh counties of which they complain.

[f] If the illuſtration of a law, by a citation from a poet, is objected to, my beſt anſwer will be (not to dwell on the authorities of Grotius, Puffendorf, and other great writers) that it appears by the oration of *Æſchynes* againſt *Timarchus*, that the poems of Homer were on the tables of the courts of juſtice, together with the Athenian laws; and that the clerk is frequently applied to by the orator to read both the one and the other—It is likewiſe ſomewhere mentioned (though I do not recollect by what author) that a diſpute between the Athenians, and the inhabitants of Salamis, was determined merely upon theſe Lines from Homer's catalogue of the Grecian fleet:

Αἴας δ' ἐκ Σαλαμῖνος ἄγεν δυοκαίδεκα νῆας,
Στῆσε δ' ἄγαν, ἵν' Ἀθηναίων ἵσταντο φάλαγγες.

oath

oath to make incurſions twice every year upon the Megareans, δὶς ἀνὰ πᾶν ἔτος εἰς τὴν Μεγαρικὴν ἐμβάλλειν. Petit. Leg. Att. p. 21.

From which the inferiority of the inhabitants of Salamis at that time was inferred—It ſhould ſeem that the authority of the Greek tragedians was alſo ſometimes appealed to in the Athenian courts of juſtice, as there is a law (in Petit's collection) τὰς τραγῳδίας τῶν ποιητῶν Αἰσχύλου, Σοφοκλέους, Εὐριπίδου, τὸν γραμματέα τῆς πόλεως παραγινώσκειν.

STATUTES

STATUTES MADE AT WESTMINSTER.

5 Henry IV. A. D. 1403.

THE 3d chapter of this ſtatute directs, that watch ſhould be made on the ſea coaſt, at the places, and in the manner it uſed to be made; which I ſhould not have taken notice of, was it not to introduce a record, which is cited by Prynne in his animadverſions on Sir Edward Coke's 4th Inſt. and which ſhews in what places this watch uſed to be made, and upon what eminencies beacons were erected, to give notice of the invading enemy—Poſſibly ſuch beacons might be of uſe when an invaſion is apprehended; and this book of Prynne's will not probably make part of a captain general, or lord admiral's library [g].

The 5th chapter makes it felony to cut out the tongue, or pull out the eyes of the king's liege people, which it recites to have been very frequently practiſed; and which ſhews what animoſity had been already occaſioned by the diſputes between the houſes of York and Lancaſter—The Coventry

[g] It is, perhaps, as improbable indeed, that theſe obſervations will ever make part of ſuch a library.

" Ordinance pur ſauvacion des pais de Kent & Deſſex, & nomement pur les villes eſteantz " ſur la Ryvere de Thamyſe, pur periles qe ſodeinement leur purroit avenir pur noz " enemys come dieux defende, & auxi pur la ſauvacion de la Navye eſteant es portz " du dit River.

" Primes, ſoit ordeine al Iſle de Shepeye un Beken, & a Shoubery en Eſſex un autre Beken. " Item, a Hoo en Kent un Beken, & a Fobbyng en Eſſex un autre Beken. Item, a Cleve en " Kent un Beken, & a Tilbery en Eſſex un autre Beken. Item, a Graveſend en Kent un Beken, " & a Farnedon en Eſſex un autre Beken.

" Item, qe par eſpecial maundement de per noſtre treſredoute Seigneur le Roy ſoient chargez " as viſcountz, conſtables, & autres miniſtres, et avantdites parties de Kent & Deſſex, que tous les " dites Beknes ſoient haſtivement et covenablement as lieus avantnomez apparaillez & parfaitz, " pur ſauvation des pays avandies, & pur la dite navye.

" Item, qe tantoſt qe les dites Beknes ſoient faites, qils ſoient bien & covenablement veillez, " ſibien de jour come de nuyt ſanz faut.

" Item, qe les veilleurs qe pur le temps ſerront as dites Bekenes, & nomement as Bekenes de " Shepeye, & Shoubery, ſoient de temps en temps garniz & chargez, qe auſitoſt qils purront " eſpier aucunes veſſels d'enemys venantz ove ſeil ou ores devers la dite ryvere, ſitoſt les ditz " leur Bekenes de Shepey & Shoubery ſoient mys a fire, enfeſantz oveſque ce toute la noiſe de " corn et de cri qils purrent faire, pur garnir la paiis environ pur venir ove lour force au dite " ryvere, cheſcun en ſocours dauters pur conteſteer lour enemys.

" Item, que les paiis avandites ſoient garniz & amoneſtez ſur grevouſe peine que tantoſt qils " veient les dites Bekenes, ou les unes de eur mys a fum, ou qils oient la noiſe de corn ou de " cri, qils viegnent preſtment de lour meillour arraie d'armes tanque au dit ryvere, pur ſauver " les villes eſteantz ſur ycel, come la navye eſteant es portz, ſanz damage de nos enemys."

act

act (as it is called) of Charles the Second paſſed, indeed, at a time when parties run high; but that was a ſingle inſtance of ſuch a maim; nor did the preceding civil wars produce any ſuch proof of horrid barbarity—Amongſt thoſe who had been maimed at this time, Richard Cheddar (who was a ſervant, or officer to Sir Thomas Brook, knight of the ſhire for the county of Somerſet) had been beat and *blemiſhed* [g]; and the 6th chapter directs, that the perſon guilty of the offence ſhall ſurrender himſelf, upon a proclamation iſſuing, to the judges of the King's Bench; and that if any ſuch aſſault is made upon the ſervant of any other member of parliament, the ſame remedy ſhall be given to the party injured.

There are two or three particulars in this ſhort chapter which deſerve notice—The firſt is, that Richard Chedder (the perſon maimed) is ſtiled [b] *Eſcuyer*, and yet was a ſervant to Sir Thomas Brook—The next is, that the aſſailant is ſtiled John Salage *(otherwiſe Savage)*, which is the firſt inſtance that I find of the *alias* being uſed; and it is very remarkable that the ſtatute of *Additions* paſſed the following year—Laſtly, this is the firſt inſtance of privilege of parliament [i] being mentioned in the ſtatute book; and it ſhould ſeem that it was meant only to extend to members or their ſervants, *whilſt the parliament continued to ſit*, as in the preamble it is recited by way of aggravating the offence, *que le dit horrible fait fut faiſt deins le temps du dit parliament* [k].

The 5th and laſt chapter contains a general pardon, and which I ſhould not have obſerved upon, was it not to ſay, that the authors of the Parliamentary hiſtory have, without cauſe, objected, that it does not make mention of the moſt eſſential and neceſſary word, *that of treaſon*.

It ſeems likewiſe to be a miſtake in moſt hiſtorians, who take notice that the parliament, which aſſembled the following year, was the famous *Parliamentum Indoctum* [l]; from which the Lawyers were excluded, as

[g] In the original *emblemiz*.

[b] Parliaments then ſat but for a few days—Thoſe who have a curioſity to ſee how many, may conſult Prynne's Brevia Parliamentaria Rediviva—The parliament of the 7th of this king having ſat nearly a year, it was matter of complaint on account of the payment of the wages.

[i] It appears by the continuation of *Lord Clarendon*, that the houſe of lords, in the time of Charles the Second, were ſo deſirous to preſerve their privileges, that they inſiſted upon a particular proviſion in their favour, in a ſtatute made to *prevent the ſtealing of wood*.

[k] There is, indeed, another particular, which deſerves notice, that this Richard Chedder, upon ſurrendering himſelf, is to make ſatisfaction either by the award of the judges of the King's Bench, or by a jury; and I do not recollect an inſtance of ſuch an alternative.

[l] "Rex brevia direxit vicecomitibus ne quoſdam pro comitatibus eligerent qui in jure "regni docti fuiſſent"—Tho. de Walſingham, p. 371—Stowe ſays it was called the *Laymans* parliament.

there is no ſummons to be found in *Dugdale* for the following year, but on the contrary for the preſent—And this obſervation ſeems to be confirmed by the very unuſual alternative given either to the judges or jury, to aſſeſs damages by the 6th chapter of this ſtatute, which I have before taken notice of—It is very extraordinary that *Forteſcue*, who wrote his treatiſe *De Laudibus Legum Angliæ* ſo ſoon after this ſtatute, ſhould not have taken notice of this excluſion—I ſhould imagine that it aroſe not from contempt of the common law itſelf, but the profeſſors of it, who at this time being *auditors* to, and dependents upon men of property, received an annual ſtipend *pro conſilio impenſo & impendendo*, and were treated as *retainers*. It is probable that the profeſſion of the law, not enobling their deſcendants in other parts of Europe, ariſes from the ſame cauſe—Such deſcendants are not at this day ſo conſidered in *Germany*, nor were they antiently ſo conſidered in *France*, as it required the intervention of the parliament of paris to enoble the ſon of the famous advocate *le Maitre*—*Voltaire* ſpeaks thus of it: *C'eſt une reſte de l'ancienne barbarie, d'attacher de l'aviliſſement, a le plus belle fonction de l'humanité, celle de rendre la juſtice.*

STATUTES

STATUTES MADE AT GLOUCESTER.

9 Hen. IV. A. D. 1407.

THIS is the only parliament of the preſent reign which was held at any other place but Weſtminſter; and the occaſion of holding it at Glouceſter aroſe from a new rebellion, which the arch-rebel, Owen Glendower, had raiſed in South Wales [*m*].

The 1ſt chapter of this law confirms all liberties and franchiſes granted by the king, either to the clergy, or laity, except ſome franchiſes lately granted to the Univerſity of Oxford. And this exception is anxiouſly repeated by the 1ſt chapter of the 13th of this king—I cannot find what might have occaſioned this [*n*], and leave it to thoſe who are better verſed in the antiquities of this great and firſt Univerſity of Europe [*o*]—It is the more remarkable, as Henry the Fifth was educated at Queen's college in Oxford; and the apartments, in which he lived, were commonly ſhewn to the curious ſtranger, till the old gateway (from Edmund's hall) was pulled down within theſe few years, to make room for the new wing of building, which (by Mr. Mitchell's benefaction) hath now compleated the college. The Univerſity might, therefore, have expected ſupport from their illuſtrious academick, inſtead of marks of the royal and parliamentary diſpleaſure; were not the irregular ſallies of his juvenile years, perhaps, attributed to a want of attention to his education, whilſt the prince reſided there—The Univerſity of Oxford is not much indebted to the kings of England [*p*] for their munificence and benefactions, if we except *Alfred*—Nor do I recollect any inſtance of parliamentary favour, if the not allowing the laſt Mortmain act to extend to the two Univerſities may not be allowed to be conſidered as ſuch.

[*m*] Carte informs us, that he died at his daughter *Monnington's* houſe, in Herefordſhire, ſix years after this, viz. anno 1415—There is a family of the name of Monnington eſtabliſhed at Sansfield, in Herefordſhire, at this day, and probably the ſame family.

[*n*] By the 9th of Hen. V. ch. 9, certain ſcholars are baniſhed from the Univerſity of Oxford, on account of riots and diſturbances.

[*o*] *Wycliffe's* doctrines were well received in that Univerſity, which might make them obnoxious to *Thomas Arundel, Archbiſhop of Canterbury.*

[*p*] The king of Denmark, in the year 1622, made a regulation for the encouragement of the Univerſity at Copenhagen, "Nequis exteras adiret Academias, niſi primâ Philoſophiæ "laureâ *Hafniæ* foret redimitus. Meſſenii Chronologia Scandiana, t. v. p. 9."

After all, perhaps, royal favours, and benefactions, may often rather prove detrimental than beneficial, if not in the infancy of ſuch eſtabliſhments, and then moſt wiſely and diſcreetly diſpenſed, which is not often the caſe. If an argument may be drawn from the encouragement of the polite and elegant arts to the promotion of ſcience; it is very remarkable, that the French ſchool hath not produced any very capital painters ſince the expenſive eſtabliſhment by Lewis the Fourteenth of the academies of Rome and Paris — A hot bed, in a garden, may produce more luxuriant plants than the natural ſoil; but the too ſumptuous eſtabliſhment does not ſeem to contribute to the production of the more exalted and ſublime genius, who

——— naſcitur, et non fit ———

I do not meet with any more laws of this king which it is neceſſary to obſerve upon — if it be not the 7th chapter of the 13th year of his reign, which directs, that rioters may be arreſted by the juſtices of the peace, and that, together with the ſheriff (or underſheriff) they muſt tranſmit a certificate of their offence within a month to the king and council, and that theſe certificates ſhall be of *as great force* as a preſentment by a jury — This ſeems to be the firſt inſtance of giving very extraordinary powers to juſtices of the peace, for the puniſhment of offences, without the intervention of a jury; and which was carried ſo much further by *Empſon* and *Dudley* in the reign of Henry the Seventh.

I am now to conſider this king as a legiſlator, and I do not find any unconſtitutional law of his whole reign, except the ſtatute which I have above obſerved upon — His title to the crown was far from being a clear one; and Sir Robert Cotton ſays of him [r], "Now ſucceedeth a man "that firſt ſtudied a popular party to ſupport his title;" and it hath been often ſaid, that the *worſe title* the *better king*, of which Richard the Third is, by ſome, conſidered to be an additional proof. Mr. Cay (in his preface to the Statutes) hath ſtrongly combated this notion: an attention, however, to the points deſired and wiſhed by the people, ſeems to be a neceſſary conſequence in him who wants their ſupport — The misfortune is, that, though conſtitutional points may be willingly ceded by a king, whoſe title is not eſtabliſhed, the civil war (that moſt dreadful of national curſes)

[q] In the 4th chapter of this ſtatute, which relates to felonies in Wales, *lettres de marche* is moſt improperly tranſlated *letters of marque* — It means a letter of *marche*, already expounded to mean the confines of the two countries.

[r] Poſthuma, p. 28.

occaſioned

occaſioned by the throne being diſputed, makes us forget the benefits which aroſe from the feuds and conteſts occaſioned by the uſurpation.

Grafton [s] indeed aſſerts, that Henry raiſed ſupplies without the invention of the commons, and that he likewiſe interfered in the election of members of parliament — I do not find the leaſt traces of this in the laws themſelves; and on the contrary, by the 15th chapter of the 7th of Henry IV. proviſion is made for the more free election of the knights of the ſhire, who were before this, in effect, choſen by the ſheriff, *who was the king's officer*.

To fix the merit of this king as a legiſlator, he had the ſpirit to inſiſt upon and inforce the wiſe ſtatutes of *proviſors* made by Edward the Third, and that by expreſſions, which one could hardly expect to find in the ſtatutes of a country, which ſtill continued to be of the Roman catholick perſuaſion — "Sur la grevouſe complainte faite a noſtre Seigneur le Roi, "par ſa commune (en ſon parlement tenus a le ſixieme jour d'Octobre "l'an de ſon regne ſiſme) del *horrible malveiſe et damnable* cuſtume que eſt "introduce de novel en la cour de *Rome*."

Theſe expreſſions are, perhaps, as ſtrong as can be found in any of the ſtatutes of the reign of Henry the Eighth.

[s] Grafton, p. 22.

STATUTES MADE AT WESTMINSTER.

1. Hen. V. A. D. 1413.

THE firſt chapter of this ſtatute regulates, both who ſhall be choſen repreſentatives in parliament, and who ſhall be the electors — By the words of the law it ſeems to be a neceſſary requiſite, that both the one and the other ſhould be reſident in the county at the time when the writ of ſummons iſſues (whatever may have been the parliamentary expoſition) and that the reſidence intended was a perſonal reſidence — " S' ils ne ſoient " reſeaunt dans les dites countees, ou ils ſerront iſint elus le jour de la date " du brief de ſummons, que les eliſours des chevaliers des countees ſoient " auſſi reſeaunts en meſme le maniere." — The ſame direction is repeated with regard to burgeſſes [t] — Sir Edward Coke, accordingly, in the ſhort notes of his ſpeeches inſerted in the Journals of the Houſe of Commons, expreſsly ſays, that the meaning of this ſtatute is, that the perſon choſen ſhould be well known to the electors.

The 3d chapter is the firſt law which relates to the offence of forgery, which it puniſhes by ſatisfaction to the party injured, and likewiſe a fine to the king — The expreſſions uſed in this branch of the ſtatute are remarkable: " Diverſes malveis perſones, aucunes de leur tete demeſnes, " et aucunes par faux conſpiracie et covyne, ſubtilement imaginent, et " forgent *de novel* diverſes faux faits et muniments, et les fount pro- " nouncer, publier, et lire, pour enveogler et chaunger les cœurs des bons " gents du pays, et pour troubler les poſſeſſions et title des dites lieges." — From which it ſhould ſeem, that fogeries, at this time, were not ſo much intended to gain poſſeſſion, as to give diſquiet and anxiety to their neighbours — The diſſenſions and civil wars occaſioned many extraordinary inſtances of malice — Another proof of which appears by a ſtatute of the 7th year of this king, which recites, that there had been many indictments, laying the fact to be committed in places which were not to be found in the county, and merely to harraſs and give anxiety to thoſe againſt whom ſuch malicious indictments were preferred.

[t] By an Iriſh ſtatute of Henry the Seventh, no one is to have an office in any town where he is not *reſident*. Cox's Hiſtory of Ireland, p. 188.

The

The 5th chapter is the known *Statute of Additions*, from which it ſhould ſeem, that the people of this country had greatly increaſed, ſo as to make diſtinctions neceſſary — *Fuller*, in his Engliſh Worthies, aſſerts, that theſe diſtinctions were not uſed, but in law proceſs, till the latter end of the reign of Henry the Sixth, and that *John Golope* was the firſt perſon who aſſumed the title of Eſquire [*u*]. He likewiſes ſuppoſes, that the rebellion of Jack Straw, and Wat Tyler, made the Engliſh gentry deſirous of diſtinguiſhing themſelves from ſuch contemptible levellers and rabble.

The 6th chapter enacts, that no Welſhman ſhall take revenge againſt thoſe Engliſhmen, who purſued their friends and relations in the late rebellion; and, particularly, that they ſhall not impriſon the Engliſh, till they have proved (by what the ſtatute ſtiles an *Aſſach*) that they were not guilty of killing, or wounding, the relations and friends of a Welſhman — The law is, in itſelf, of a very ſingular nature; and, as for the term *aſſach*, I cannot find it, or any word which bears an affinity to it, either in the Gloſſary to Hoel Dda's laws, or in Dr. Davis's Welſh Dictionary: from which I conclude, that the word is very inaccurately ſpelt — The ſtatute, however, (though it does not furniſh the etymology of the word) fortunately ſupplies the meaning, which is ſaid to be *s'excuſer de la mort par le ſerment de* ccc *hommes*; and it could hardly be expected, that an Engliſhman, in a Welſh priſon, could ever procure ſuch a number of *Compurgators* — The number, indeed, of ſuch Compurgators, in many of the antient laws [*w*], both in *Lindenbrogue* and *Baluzius*, muſt make the defence impoſſible, even to a native of the country, if we do not ſuppoſe that perhaps thirty only ſwore to the innocence of the perſon accuſed, and the other two hundred and ſeventy to ſupport the teſtimony and credit of theſe thirty.

The 6th chapter directs, that the revenues of Calais ſhall be employed in the maintainance of it — I have already had occaſion to obſerve upon the increaſing expence of the fortifications of this place, and by a manuſcript which I have before mentioned (to be an account of the ſalaries of different officers in the firſt year of Queen Mary) the ſalaries of the governor and officers of the garriſon amounted to four thouſand and thirty-ſix pounds ſix ſhillings and four-pence; at the ſame time that the expences of the Queen's houſhold, was only fifteen thouſand ſeven hundred and ſixty-ſeven pounds five ſhillings.

[*u*] We find, however, that by a ſtatute of the preceding reign, one *Cheddar* is ſtiled *Ecuyer*.

[*w*] Vulgus in Suecia valde procinctum eſt ad compurgationis juramentum. Loccenii Legg. Provinc.

STATUTES

STATUTES MADE AT LEICESTER.

2 Hen. V. A. D. 1414.

THE 7th chapter of this law againſt the hereticks, called Lollards, was but too ſufficiently promulged in the ſame year, by the execution of nine and thirty hereticks [w], and amongſt the reſt the famous Sir John Oldcaſtle — The tenets of this ſect were (it is believed) nearly the ſame with thoſe of *Wycliff*; and when one enthuſiaſt is followed by multitudes, ſome of the new converts generally ſet up for themſelves, with, perhaps, ſome very trifling and immaterial deviation from the firſt fanatic, but which, however, immortalizes them in the diſputes of polemical divinity — Sir Henry Spelman gives us the following account of the origin of this word — "Lollardorum nomen exortum eſt in Anglia, ſub exceſſu "Edwardi tertii. Dictos opinatur *commonachus St. Auguſtini Cantuar. a* "*lolio*, quod ſicut lolium (inquit) ſegetes Domini inficerent. In ſententiam "ejus abiit *Lyndewodus*, ſed perperam uterque. *Trithemius* enim in chronico "oſtendit, eos a *Gualthero Lollard Germano* quodam, qui floruit circa annum "Domini 1315, originem duxiſſe."

It is part of the directions of this ſtatute that certain officers, and amongſt the reſt the ſheriff, ſhall ſwear that they will execute the law againſt Lollards; and Sir *Edward Coke*, when he was made ſheriff of Buckinghamſhire, objected to that part of the oath, which obliged him to proſecute *Lollards*, ſaying, *he did not know what the term meant* [x].

Sir John Oldcaſtle, who was proſecuted on this ſtatute, appealed to the king as ſupreme head of the church, which he declined — And Grafton [y], who mentions this circumſtance, at the ſame time informs us, that the preceding year this ſect had increaſed to ſuch a degree, that an act of parliament was intended to ſuppreſs all religious houſes, but that it was dropped on account of the French war — Theſe two fundamental articles of reformation were not, therefore, altogether new ideas, in the reign of Henry the Eighth.

Thoſe who may have curioſity to ſearch for more particulars with regard to the firſt proſecutions on this ſtatute, may conſult Elmham's life of Henry the Fifth, publiſhed by Hearne, and likewiſe Baile's account of Sir John Oldcaſtle, as well as moſt of the Chroniclers of the time; who,

[w] Polychronicon. [x] Fuller's Worthies, p. 141. [y] In his Chronicle, p. 35.

being

being generally monks, are exceſſively laviſh in their praiſes of it—Henry the Fifth, himſelf, might, in his younger days, have been inclined to libertiniſm; but one need only read his will in Rymer, made in the third year of his reign, to ſee that he was now become exceſſively devout, and that he might be inclined to ſupport the clergy in this ſtatute of perſecution.

I do not find any more ſtatutes of this king which require any explanation: his reign was ſo ſhort, and ſo much of it taken up, either in preparations for war, or actual campaigns, that much is not to be expected from him as a legiſlator—The laurels which he acquired are well known; but he hath left us, in a preamble to one of his ſtatutes [z], moſt irrefragrable proof, that they were not obtained but at the deareſt price, *the depopulation of the country*—The king is permitted to appoint ſheriffs for four years by this ſtatute, becauſe it is recited, "*that by wars and peſtilence there are not a* "*ſufficient number remaining, in the different counties, to diſcharge this office from* "*year to year*—I have before taken notice of the ſtatute againſt the *Lollards*; and the number of executions, which he ſeems to have at leaſt permitted, if not promoted, ſhould be remembred by every friend to civil and religious liberty, as long as the battle of *Agincourt*.

[z] 9 Henry V. chap v.

STATUTES

STATUTES MADE AT WESTMINSTER.

1 Hen. VI. A. D. 1422.

THE firſt chapter of the firſt ſtatute of this minor king empowers his council to appoint in what places money ſhall be coined; which I ſhould not have obſerved upon, did it not afford an argument, that, though a minor king is ſaid to be inveſted with the compleat regal authority, yet the interpoſition of the privy council is hereby immediately made neceſſary to the carrying into execution, what is on all hands confeſſed to be, perhaps, the moſt undoubted of royal prerogatives.

The 3d chapter directs, that on account of the murders, rapes, robberies, and other felonies, committed in different counties of England by Iriſhmen, reſorting to the univerſity of Oxford, that all natives of that country ſhall be obliged to leave England within a month, under pain of forfeitures, and impriſonment, except graduates in the univerſity [*a*], beneficed clergymen, and lawyers; and that even theſe graduates in the univerſity (though permitted to continue) ſhould not be capable of being choſen principal or head of any houſe or hall—The ſeverity of this law is not, indeed, equal to the rigour of thoſe againſt the Welſh in the late reign; but the Iriſh had not (as far as I can find by their hiſtorians [*b*]) been guilty of any rebellion or inſurrection in their own country, and ſurely ſome riots in the neighbourhood of Oxford might have been puniſhed in the common courſe of proceeding againſt malefactors, without baniſhing a whole nation, which was now incorporated with England — The ſtatute of the 1ſt of Henry V. which likewiſe directs the Iriſh to repair to their homes, gives a more humane reaſon for the injunction, viz. "*That their own country was depopu-*" *lated by the great reſort of the Iriſh to England.*"

The 5th chapter enacts, that a third part of the booty (taken during the wars) ſhall be allowed at the Exchequer to the late king's officers; and one part of the booty is recited to be the ranſome of priſoners—The remaining two-thirds are to be paid to the crown—War is now carried on upon a ſo much more liberal and humane footing, that ſuch a diſpoſition of the booty, and *ariſing from ſuch articles*, may rather ſurpriſe a reader of theſe times—I remember, however, to have ſeen in *Leland's Collectanea*, two or

[*a*] En les eſcoles, in the Original.

[*b*] They do not even take notice of this ſtatute, or the 1ſt of Hen. V. againſt the Iriſh.

three different accounts of great houſes and caſtles being built out of the price of a priſoner's ranſome; and, if my memory doesnot fail me, Leland mentions *Sudely caſtle* [*c*], in Glouceſterſhire, having been moſt ſumptuouſly compleated out of the ranſome of a French knight: and there is a record in Rymer, by which it appears, that Henry the Fourth paid ten thouſand marks to Owen Glendower, for the ranſome of Lord Grey of Ruthin [*d*] —An old French Chronicle, printed at Paris in 1508, and which gives the moſt compleat account of what is called the fabulous part of the Engliſh hiſtory that I have happened to meet with, ſpeaks thus of the great preſſing of the Engliſh to make king John of France their priſoner at the battle of *Poictiers*, who was conſidered as the 10,000 l. prize in the lottery — . . . " *Car chacun diſoit, je l'ay prins; et certes il y avoit grand preſſe, et a grant* " *peine pouvoit aller.*".

As we find by this ſtatute, that the crown reſerved two-thirds of the booty, and even the ranſome of the priſoners, it may be ſuppoſed that in an Havannah expedition, they would hardly have left the whole in the diſpoſal of the conquerors.

[*c*] The windows of this caſtle are ſaid by Leland, to have been glazed with beryl.

[*d*] Owen Glendower married the daughter of this Lord Grey of Ruthin for his firſt wife, and obliged the father to conſent whilſt he was his priſoner.

STATUTES MADE AT WESTMINSTER.

3 Hen. VI. A. D. 1424.

THE ſecond chapter of this ſtatute hath a very extraordinary preamble, viz. that great numbers of ſheep, with their fleeces on their back, and ready for ſhearing, were carried out of the kingdom into Flanders, and other parts abroad, to the great decreaſe of the cuſtoms, and the impoveriſhment of the kingdom — I can ſcarcely ſuppoſe (notwithſtanding this preamble) that it would anſwer to carry ſheep out of the kingdom merely to ſhear them and ſell the wool; and I ſhould therefore conceive, that this was a practice, which only exiſted in the imagination of the perſon who drew the act, and that no ſuch allegation could poſſibly have been proved, before a committee of parliament — It is frequently ſaid, indeed, that a preamble to a ſtatute is the beſt key to its conſtruction; it often, however, recites, that which was not the real occaſion of the law [*e*], when, perhaps, the propoſer had very different views in contemplation — The moſt common recital for the introduction of any new regulation, is to ſet forth, *that doubts have aroſe at common law*, which doubts, frequently, never exiſted, and the recitals have, therefore, much weakened the force of the common law, in many different inſtances.

The 12th chapter, of the 18th of this king, furniſhes us with a proof of this, as well as many other ſtatutes — By the the 9th of Henry V. it had been enacted, that malicious indictments, ſuppoſing crimes to have been committed in certain places (where no ſuch place was to be found in the county) ſhould be utterly void — This ſtatute, by expreſs words, was only to continue till *the next parliament after the return of that king from France*; and yet, in the 18th year of his ſucceſſor, it is recited to be a doubt whether the ſtatute was then in force: "par opinion de aſcuns *eſt expiré*, par "opinion des aſcuns *nient* expiré"—I would not from this compare the preamble of a ſtatute, to the preamble of a patent of nobility; but only inſinuate, that they ſhould not be implicitely believed — Nor are they always the true occaſion or foundation of the law to which they are prefixed.

[*e*] There is a ſtatute of Edward the Fourth, the preamble of which recites, that bad feathers in beds had been the occaſion of a plague — Feathers are never imported from the infected countries.

Not

Not only the preamble, but the enacting part of this ſtatute, ſeem not to prove any great wiſdom or knowledge in the legiſlature of the times — It is *comparatively*, however, a better law than a ſtatute of Queen Elizabeth [*f*] to the ſame purport, which makes it even felony to carry ſheep out of the kingdom; whereas the penalty, by this law, is only forfeiture of the ſheep—Moſt regulations of this ſort will always be found ineffectual, and it is providential [*g*], that one country ſhould want the product of another.

" Non omnis fert omnia tellus."

and thus the union between country and country is preſerved, by the neceſſity of mutual intercourſe and commerce.

The 5th chapter of this law directs, that commiſſions may be awarded under the great ſeal, to promote the navigation of the river *Lee*, from Ware in Hertfordſhire, till it is loſt in the Thames, and is the firſt inſtance of a parliamentary proviſion for the navigation of an inland river — I ſhould imagine, that there had been very great loſſes by floods, at this time, on the eſtates in the fen countries; as in the 6th year of this king's reign, proviſion is made for general commiſſions of ſewers [*b*], where we likewiſe find the form of the firſt commiſſion of this kind, which, perhaps, ever iſſued — It is directed to the commiſſioners for *Lyndſey hundred* in Lincolnſhire; and, amongſt ſome other curious particulars, impowers them to preſs as many labourers into their ſervice as they ſhould think neceſſary.

There is in Riley's Placita Parlamentaria [*i*] a law of this year, which is not printed in the ſtatute book, as it hath expired, together with the occaſion of making it, unleſs it ſhould it be conſtrued to be a general proviſion againſt the marriage of a queen dowager, without the king's conſent.

" *Petit Parliamenti de anno* vi *regni regis* Henr. *ſexti.*

" Astoward a bille conceyved and miniſtred unto the lordes ſpirituel and temporel in this parlement to be made for a ſtatut, of the whiche the teneur here followeth.

" Item ordene, ſoite ſtablye per auctorite de ceſt preſent parlement pur la ſalvacion de lonur des treſnobles Eſtats des roynes *Dengleterre* pur le temps eſtants, qe nulle homme, de queconque eſtat, degree ou condicion quil ſoit,

[*f*] 8 Eliz. chap. 3.

[*g*] ——— γὰρ ἄλλω
Ἄλλον ἔθηκε Θεὸς τ' ἐπιτηδέα φῶτα. Theoc.

[*b*] This word is not a corruption of *ſhoars*, as ſome have ſuppoſed, but means a ſea-wear or mound to keep off the ſea.

[*i*] P. 672.

ne face contract des eſpouſailles ou matrimoigne ne ſoy marie a quelque *Royne Dengleterre ſanz eſpecial licence* et aſſent du roy meſmes, luy eſteant des ans de diſcrecion; et celuy qui ferra le contrarie, et ent ſoit duement convict, forface pur terme de ſa vie au roy toutz ſes terres et tenements ſibien ceulx qui ſont ou ſerront en ſes mayns propres, come ceulx qe ſont ou ſerront es mayns daultres a ſon oeps, et auſſi tous ſes biens et chateaux en quelconques mains quilz ſoient, conſiderez qe par la deſparagement du royne leſtat et lonur du roy ſerroient treſgrandement emblemiz, et dorra le greindre confort et example as autres Dames deſtat queux ſont del ſang roial pur le plus legierment deſparager, We Herry Archebiſhop of Canterbury, John Archeb. of York, William Biſhop of London, the Biſhop of Ely, John Biſhop of Roucheſter, John Biſhop of Bath, Will. Biſhop of Norwiche, Richard Abbot of Weſtmynſtre, Nicol Abbot of Glaſtingbury, William Abbot of Seynt Maries of York, and Nicol Abbot of Hyde, gife oure aſſent thus and never otherwiſe, that is to ſay, as ſetforthe as the ſaid bille is not ageins the law of God and of his chirche, but ſtandeth therewithe, and enporteth no dedly ſynne. Requiring this to be enacted in the parliament rolle."

Dorſo.

"Soit enacte en maner come tielx proteſtacions et condicions ont eſte "enactez devant ces heures."

It is a very extraordinary declaration, that the queen-mother ſhall not marry without the conſent of the infant king, who was now but four years of age; and if it is contended, that the "*du conſent du roy* (*luy eſtant des ans* "*de diſcrecion*") means, that his conſent was not neceſſary till he was of ſuch age—the anſwer is, that this conſtruction would have made the act entirely nugatory, as it could not take effect till twelve years afterwards, when queen Katharine muſt probably have dropt all thoughts of marriage: and Grafton [*k*] informs us, that *Owen Tudor*, after the queen's death, was committed to the tower upon this ſtatute, from which he made his eſcape, either by the negligence or connivance of the conſtable.

[*k*] Chronic. p. 134.——Jenkins, in his Centuries, likewiſe takes notice of this law.

STATUTES

STATUTES MADE AT WESTMINSTER.

8 Henry VI. A. D. 1429.

IN the introduction to the ſtatutes of this year (which conſiſt of no leſs than eight-and-twenty chapters), Henry the Sixth is for the firſt time ſtiled *Chriſtianiſſimus Dominus Noſter*; which title he had probably aſſumed as king of France.

The 2d chapter is of a very ſingular nature, as it is made to inforce a regulation in trade made by another country—*Chriſtiern*, king of Denmark [*a*] (who was uncle to Henry the Sixth) had iſſued a proclamation, that no foreigner ſhould carry any kind of merchandize to any of his ports on the coaſt of Norway, except the port of *Northbarn* [*b*]; and this ſtatute directs all Engliſhmen to obſerve this regulation under penalty of forfeiting their goods—The trade between England and Denmark, at this time, conſiſted chiefly in the exchange of wool for fiſh, or rather, indeed, in our fiſhing on their coaſts [*c*]; for we find, by a ſtatute made two years after this, that the *Danes* having ſeized the cargoes of ſome ſhips belonging to merchants of York, and Kingſton upon Hull, it is complained, that no *Danes* or *Norwegians* ever come into this iſland upon whom they can make repriſals [*d*]—The remedy given by the legiſlature is, that the complainants ſhall be entitled to letters of privy ſeal, and if ſatisfaction is not made, that the king will then provide one.

There is a proclamation in Rymer's Fœdera, which iſſued in the third year of Henry the Fifth, and which relates to this fiſhery on the coaſt of Norway and Iceland—"Rex vicecomitibus Londoniæ ſalutem—Procla-" mari faciatis, quod nullus ligeus noſter uſque ad finem unius anni

[*a*] It is very remarkable that there hath never been a war between the Engliſh and the Danes ſince their invaſion in the time of the Saxon government—And they are the only power in Europe from whom we have received aſſiſtance at home, except the Dutch and German troops in the war of 1743—The aſſiſtance from the Danes, which I would allude to, was in Ireland under king William.

[*b*] I ſuppoſe *Northbarn* is the ſame with *Bergen*—There is a town called *Bergen* on the iſland of *Rugen*, off the coaſt of *Pomerania*; and therefore *Bergen* (in Norway) ſeems to be properly called *North Bergen*, to diſtinguiſh it from *Bergen* in the Baltick.

[*c*] By an Iriſh ſtatute of the 7th of Edward the Fourth, foreigners are not permitted to fiſh off the coaſt of Ireland.

[*d*] This ſhews, that by the *Law of Nations* (as then underſtood) there was a very ſummary method of receiving juſtice.

" proximè

" proximè jam venturi, ad partes insulares regnorum Daniæ & Norwegiæ, " præsertim ad insulam de *Iceland*, piscandi causâ, seu aliis de causis, in pre- " judicium regis regnorum istorum, accedere presumat aliter quam fieri " antiquitùs solebat"—It may be difficult, at this distance of time, to know what kind of fishery was carried on by the English on these coasts—As for the whale fishery, it is much doubted whether this was known at present, unless it is inferred from the direction of this proclamation not to fish on the coast of Iceland—I should rather suppose indeed, that the whales, so far back as the beginning of the fifteenth century, were not to be taken or found in the extreme northern latitudes, in which they are fished for at present—I have already had occasion to observe, that the northern parts of Europe have gradually become warmer than they were in the time of the Romans; and I should not think it improbable, that the seas in the high northern latitudes were at this time so frozen as to be incapable of navigation—This conjecture is founded upon something more strong than arguments of speculation. We hear eternally, in the old law books, of the king's prerogative in royal fish; which, therefore, must have made a considerable branch of the royal revenue [*e*]; and *Juvenal* speaks of the *Balæna Britannica*, as we would at present of a *Greenland* whale—It is well known, that such fish is scarcely ever seen at present on our coasts; which, therefore, seem to have left our seas (as being too warm) for the more northern sea, where they find a climate more suited to their wants and feelings—The cultivation of North America hath, in the same manner, rendered their climate more mild than it was; and we find that within these few years great numbers of the spermaceti whales are caught in the Gulph of St. Lawrence, which before that was probably *too cold* for them.

[*e*] I apprehend that the custom of sending a *present (as it is stiled)* to the *king*, of the sturgeon caught in the *Thames*, arises from this antient prerogative of the crown; as sturgeon is one of the *Royal Fish*.

STATUTES MADE AT WESTMINSTER.

15 Henry VI. A. D. 1436.

THE firſt chapter of this law recites, that the court of the ſteward and marſhal of the houſhold (now commonly called the *Marſhalſea Court)* had, by a fiction in the pleadings, ſuppoſed the plaintiff or defendant to belong to the king's houſhold, who in reality had no ſuch office, and by that means had improperly increaſed their juriſdiction—The ſtatute, therefore, directs, that proof may be admitted againſt this allegation in the pleading, and by that means the ſuits are confined to thoſe parties only, who are the proper objects of the juriſdiction of the court—This ſeems to be a very wiſe proviſion of the legiſlature, as all ſuch fictions derogate from the proper weight and dignity in the proceedings of a court of juſtice—Uſe may, in ſome meaſure, have taken away from the ridicule of the fiction of a *quo minus* in the Exchequer, as well as other fictions; but the nature of them cannot be thoroughly altered ſo as to make that proper, which, in its commencement, was a ridiculous and falſe ſurmiſe.

The 2d chapter deſerves only to be taken notice of, as it is the firſt permiſſion to export corn to be found in the ſtatute book [*a*]—Agriculture muſt now have been greatly improved, as appears by Forteſcue's deſcription of England (in his treatiſe De Laudibus Angliæ) which he ſays is a well-peopled (I had almoſt ſaid Paradiſe of a country) whilſt he repreſents France to be an uncultivated deſart—He might have, indeed, ſome national prejudices; but he had certainly great opportunities of comparing the two countries, as he was ſo long abroad with the ſon of Henry the Sixth.

The 4th chapter directs, that no one ſhall ſue a ſubpœna out of the Court of Chancery, without finding proper ſecurity, as this practice is recited to be "en ſubverſion et impediment del common ley"—The civil wars, during the reign of Henry the Fourth, muſt have greatly increaſed feoffments to ſecret uſes and truſts [*b*], which the courts of common law either could not

[*a*] The words of the ſtatute are, "Item pur ceo que null homme poet carier blees hors du "royaume ſans licence del roy, per cauſe de quel fermours ne poent vendre leurs blees ſinon a "baes priſe, a *grand damage* de tout le royaume"—The good policy of this ſtatute, with the addition of the bounty upon exportation, hath made England the granary of the world.

[*b*] There is an Iriſh ſtatute againſt theſe ſecret enfeofments, ſo early as the 3d of Edward the Second, commonly ſtiled the *Statutes of Kilkenny*.

reach,

reach, or were unwilling to extend their juriſdiction to: this muſt have greatly encreaſed the buſineſs of the Court of Equity, whoſe wings it was therefore neceſſary to clip—The inconvenience to the ſubject aroſe not only from the proceedings being more expenſive and dilatory than by the common law, but likewiſe from the inexperience and ignorance of the judge of the court, whoſe office was rather the office of a ſecretary of ſtate, than the preſident of a court of juſtice—The firſt perſon inveſted with this high office, who was properly qualified by a legal education, was Sir Thomas More [c].

Notwithſtanding this firſt precedent, we find that queen Elizabeth appointed her vice-chamberlain, Sir Chriſtopher Hatton, without any notice being taken, by the hiſtorians of the time, of the impropriety of this appointment—In the reign of James the Firſt, archbiſhop Williams was appointed lord keeper; and Hacket, who wrote his life, ſays, that he diſpatched many more cauſes than his predeceſſors [d] had done in the ſame time; and that the court had really a great deal of buſineſs (whilſt he was lord keeper), appears by this moſt irrefragable proof, that fourteen or fifteen ſerjeants, or barriſters of great eminence, attended the Chancery, whilſt he preſided [e]—Notwithſtanding this proof of the great increaſe of buſineſs in the Court of Equity, there is ſcarce a report (if any) of a deciſion by lord Bacon—Some few indeed (and thoſe important ones) by lord Nottingham—We have hardly a determination of conſequence by the great lord Somers; and though he was ſucceeded by lawyers of ability and eminence, yet it may be ſaid, that we owe the preſent beneficial and rational ſyſtem of equity to the peculiar national felicity of the greateſt lawyer and ſtateſman of this (or perhaps any other) country, having preſided in this court near twenty years without a ſingle decree having been reverſed, either in the whole, or in any part of it—An infallibility which in no other inſtance was ever the lot of humanity.

[c] Roper, in his life of Sir Thomas, informs us, that he read every bill preferred to him, and often ſtopped any further proceedings.

[d] Sir Nicholas Bacon and lord Elleſmere.

[e] Hackett's Life of archbiſhop Williams.

STATUTES

STATUTES MADE AT WESTMINSTER.

20 Hen. VI. A. D. 1442.

THE 9th chapter of this law is the only inſtance of an explanation of any part of Magna Charta, though it hath been ſo repeatedly confirmed in almoſt every reign ſince that of Henry the Third—It recites a doubt, whether a peereſs was to be conſidered as within the words of the known 29th chapter, "Nullus liber homo capiatur, &c. niſi "per legale judicium parium ſuorum, aut per legem terræ [*a*]"—There had now elapſed two hundred and ſeven years ſince Magna Charta was firſt enacted; and it ſeems at firſt rather extraordinary that no peereſs had been tried for a capital offence, which muſt have before ſettled this doubt—The firſt reaſon for this ſeems to be, that the number of peers did not amount to a fourth of the number which they conſiſt of at preſent; and the ſecond is, that though perhaps peereſſes might have joined with their huſbands in the frequent treaſons (in the early part of the Engliſh hiſtory) yet to the honour of theſe more early ages, it was thought inhuman to proſecute a woman, as ſhe was ſuppoſed to act under the coercion of her huſband, and could not, from the imbecillity of her ſex, contribute much to carrying the treaſon into execution, except by her good wiſhes for every enterprize in which her lord was embarked—It was reſerved for the reign of James the Second to proſecute lady *Liſle* for the harbouring of a traitor.

It ſeems rather extraordinary that the peerage (who, like other bodies of men, are generally very tenacious of their privileges) ſhould not have at this time inſiſted upon being tried for a miſdemeanor by their peers, and not by a common jury, as the prejudices of ſuch a jury are more likely to operate in a miſdemeanor than in a capital offence—Surely the words "Nullus liber homo *capiatur*, aut impriſonetur, aut *aliquo alio modo* "deſtruatur, niſi per legale judicium parium ſuorum," ſeem to have been anxiouſly inſerted to include every kind of criminal proſecution. It is indeed not only a proviſion in favour of the ſubject, by one of the chapters *of magna charta*, but ſeems to have been likewiſe the law of every part of *Europe*, where the feudal policy had been introduced—

[*a*] This ſtatute was occaſioned by the dutcheſs of Glouceſter's being firſt proſecuted for treaſon, and afterwards for necromancy—Proſecutions for this laſt offence were now very common, as appears by the many writs in Rymer de *Sortilegis Capiendis*.

Thus *Thaumaſieres* in his Commentary on *les aſſiſes de Jeruſalem*, ſays, "Les nobles eſtoient jugés *par leur Paires*, et les *Bourgeois* par autres "*Bourgeois*, et prudhommes"—He likewiſe cites *Beaumanoir* for this, "Se li jugemens fut fait par Bourgeois, je ne tins pas che pour jugemens, "car il eſt fait par chaux qui ne puent, ne ne doivent juger"—I have already, indeed, taken notice, that the ſame law prevailed in France, in the obſervations on *magna charta*; but ſince that ſheet was printed off, I have procured *Beaumanoir's Conſtumes de Beauvoiſis*, & *les aſſiſes de Jeruſalem*, printed at Bourges in 1690, which afford this confirmation of what I have before advanced, and of which very curious and valuable works I ſhall have occaſion to ſpeak more fully, in the obſervations upon the ſtatute of the 27th of Henry VIII.

By the enumeration of the ranks of peerage in this ſtatute, viz. *Ducheſſes, Conteſſes, et Baroneſſes*, we may correct a miſtake of the heralds, who inform us, that John lord Beaumont was created a viſcount in the eighteenth year of this king; but it is impoſſible that the legiſlature, two years after this creation of a new rank of nobility, ſhould have omitted to enumerate it in the preſent ſtatute, between the rank of counteſs, and baroneſs—This new rank of nobility was, however, inſtituted before the thirtieth year of this king, as the 30th Hen. VI. ch. ii. makes mention of it amongſt the other degrees of nobility.

STATUTES

STATUTES MADE AT WESTMINSTER.

33 Hen. VI. A. D. 1455.

I HAVE before had occaſion to obſerve, that the common law hath been weakened by the legiſlature's making declarations againſt offences, which were criminal by the common law, when properly underſtood—The 1ſt chapter, of the preſent ſtatute, furniſhes an inſtance of this, by providing a remedy againſt the ſervants of a deceaſed perſon, who, upon the death of their maſter, have riotouſly taken poſſeſſion of his goods, and made diſtribution of them amongſt themſelves—There can be no doubt but that this was puniſhable by the common law, either as a riot or a larceny, according to the circumſtances attending the caſe.

By the 9th chapter of the ſtatute of the preceding year it is in the ſame manner declared, "that a bond, extorted from a woman whilſt under "confinement, ſhall be void;" and there can be as little doubt, but that a bond, ſo obtained, was clearly void by the common law—In like manner, the 24th chapter, of the 28th of this king, makes it felony for any Welſh, or Lancaſhire man, to take the goods of another, *under pretence of a diſtreſs*, which being *in fraudem legis*, was moſt undoubtedly a felony by the common law—Theſe three inſtances occurring within two or three years, ſeem to make it probable, that the drawing of acts of parliament was now in the hands of the clerks of the two houſes, who probably had not a legal education; and this obſervation receives a confirmation, from the figurative ſtile, and number of epithets, which are uſed in the 31ſt of this king, with relation to *Cade*, the Kentiſh rebel — "le plus *abominable*, *tyrenne*, "*horrible*, et *errant faulx* traitour John Cade"—which number of epithets by no means agrees with the ſimplicity of the common law—The attorney-general, in opening the circumſtances of guilt, which are to be proved againſt a traytor, may uſe oratory if he pleaſes (though perhaps better omitted); but the common law in the indictments ſpeaks but one and the ſame language in every offence; and though many may think, that ſome parts of an old form might be dropt, yet it is much more prudent to adhere to it, as will ſtrike any one, who reads an indictment, or charge, either in the French, or Scots law-proceedings, which are drawn out to a preposterous length, and in which the advocate attempts to prejudice the judge, by rhetorical, and figurative deſcriptions.

The 4th chapter of this ſtatute directs, that no perſon, in the county of Kent, ſhall make above one hundred quarters of malt into beer or ale, for his own uſe, which is a very ſingular regulation, and for which I cannot even gueſs the occaſion, if, perhaps, it had not been found in *Cade's* late rebellion (which aroſe in Kent) that it had been much fomented and increaſed, by the help of great quantities of this animating liquor (to an Engliſhman) in the cellars of the gentry of this country, and which the rioters, probably, made a very free uſe of.

The 5th chapter relates to the myſtery of *ſilk-women*, which therefore ſhould rather have been in *French* [*b*] or *Engliſh*, than in Latin—"Per gra-"vem querimoniam ſericatricum & filatricum (myſteria, et occupatione "operis ſerici infra civitatem London) oſtenſum fuit qualiter diverſi *Lum-"bardi* & alii alienigemæ dictam myſteriam, & omnes alias *virtuoſas* "occupationes mulierum prædictarum deſtruere, ſeipſos ditare, &c." —The law then directs, that any ſuch *Lombard*, or alien, ſhall forfeit twenty pounds, half to the informer, and the other half to be applied in defraying the expences of the king's houſhold; which clauſe may not, therefore, improperly be ſtiled the firſt *appropriation* act.

There are two or three things in this ſhort ſtatute, which, perhaps, deſerve notice—The firſt is, that the cry, at this time, was againſt Italians, and Italian manufactures, and not againſt the French — The next is, that ſilk began to be uſed in dreſs, and that a great number of hands were employed, either in the manufacture, or in making habits from it [*c*]—The laſt more minute particular is, that it ſhould ſeem this clauſe was drawn by ſome Lombard (who had quarreled with his countrymen eſtabliſhed in England) by the expreſſion of the *virtuoſas occupationes mulierum* [*e*], which ſeems to be a tranſlation of the Italian word *virtuoſo*, in the ſenſe it is commonly uſed; and regulations of this kind are ſeldom made, without the aſſiſtance of ſuch impeachers, and falſe brethren.

The 7th chapter reduces the number of attornies, who are allowed to practice in the county of Norfolk, to ſix, on account of their being the occaſion of unneceſſary law-ſuits, which, from their *ignorance likewiſe*, they were not able to manage, for the true intereſts of their clients — It may, however, be ſaid, that the ignorance of this parliament far exceeded the

[*b*] I find accordingly, that this is printed as a ſtatute of the 3d of Edw. IV. in French—This ſhews how little thoſe French ſtatutes (which are not tranſlated) have been attended to by the Editors of the ſtatutes.

[*c*] I cannot imagine that ſilk was woven ſo early in England. Ribbands are, however, mentioned in the ſtatute.

[*e*] Agreeable to this expreſſion uſed by the legiſlature, of *virtuoſas occupationes mulierum*, a lady's needle-work is ſtill in Scotland called *her virtue*.

ignorance of the attornies complained of—If there was not a proper number of perſons educated to the profeſſion of the law, the ſubject in this country would be under the ſame dependence, that the Romans were to thoſe who undertook their cauſes, indeed, *without fee*, but thereby kept up a vaſſalage and dependence, improper, between citizen and citizen, in a free country.

This is the laſt chapter of the laſt ſtatute of this reign, and I ſhall not attempt to conſider Henry the Sixth as a legiſlator—His long minority, and weakneſs of underſtanding [*d*] when he arrived at more mature years, make him incapable of any character, whatſoever, in any relation of life—Such a king could, poſſibly, be of no other uſe than that of the Roman conſuls, in the fall of the empire, *to mark the year*—The want of ſpirit, or capacity, was ſo notorious in him, as to have prolonged his life even after his being depoſed; and by this he furniſhes an inſtance in hiſtory, which contradicts the general obſervation, that the day of the confinement of a king, and his death are ſeldom far diſtant.

[*d*] Some hiſtorians have attributed this to a ſevere fit of illneſs—It appears by ſome records in Rymer, that he ſtudied Alchemy.

STATUTES

STATUTES MADE AT WESTMINSTER.

3 Edw. IV. A. D. 1463.

IT does great honour to Edward the Fourth, that in the 3d year of his reign (when his title to the throne was by no means a clear one, and the real king was alive) that out of fifteen chapters, of which the preſent, and following law conſiſts, thirteen ſhould have been expreſsly made to promote the trade, and manufactures of this kingdom—The firſt chapter relates to our ſtaple commodity of wool, ſpeaks of the *honour* of it, as well as profit, and of the crimes and miſchiefs which are the reſult of idleneſs—That this valuable manufacture may continue to maintain its credit, and juſt value in the foreign market, proviſions are made againſt moſt extraordinary frauds, which are recited to have been made in the packing of wool, by putting into it earth, ſtones, ſand, ordure, or *(pele)* [*e*], with intention to increaſe its weight—We often hear of cheats and abuſes in manufactures at preſent; but I do not recollect any inſtance equal to what is recited by this ſtatute—The modern world is certainly more knowing; but notwithſtanding the general cry againſt the wickedneſs of the times, I doubt much whether the antient ſaying is true, that *creſcit in orbe dolus.*

The 4th chapter is thus entitled, *certain merchandiſes not lawful to be brought ready wrought* [*f*] *into the kingdom*—It enumerates almoſt every kind of goods which can be imported, and may be now looked upon as a fundamental law of the cuſtoms, founded upon the beſt principles of trade and commerce, which does not ſeem to have been ſo well underſtood in ſome of the following reigns, and particularly that of Henry the Eighth.

[*e*] I give the word as in the original, the ſtatute not having been tranſlated—I ſhould have ſuppoſed it to ſignify *hair*, but that would not have anſwered the purpoſe of increaſing the weight.

[*f*] As there are frequent proſecutions upon this ſtatute, it is to be wiſhed, that ſome of the enumerated commodities were more accurately tranſlated.

STATUTES

STATUTES MADE AT WESTMINSTER.

17 Edw. IV. A. D. 1477.

THE monk who writes the hiſtory of Croyland abbey [g] informs us, that there were ſo many diſorders and riots this year committed by the ſoldiers, on their return from the expedition to France, that Edward went in perſon, together with the judges, to try the criminals in different parts of England — "Nemini etiamſi domeſtico ſuo parcens "quo minus laqueo penderet, ſi in furto vel latrocinio *deprehenſus* "fuerit [b]."

It is not extraordinary, that ſoldiers returned from a campaign ſhould be inclined to continue the maroding and pilfering to which they had been (from want of diſcipline at this time) too much addicted in the enemy's country. We apprehend conſequences from the breaking a few regiments when peace is concluded; but as there was now no regular pay or eſtabliſhment for the army, except the ſhort time which the expedition laſted, every one (the campaign ended) was immediately diſmiſſed, without any kind of precautions taken [i] to prevent the diſorders which were naturally to be expected.

The diſcharged ſoldiers were not only guilty of pilfering on their return; they had likewiſe introduced the camp vice of gaming—The 3d chapter, therefore, forbids playing at *Cloiſh*, *ragle*, *half-bowle*, *handyn and handoute*, *quekeborde*; and if any perſon permits even others to play at ſuch games in his houſe or yard, he is to be impriſoned for three years; as

[g] Gale, vol. i. p. 559.

[b] Modern writers and ſtatutes always ſpeak of the criminal's ſuffering upon *conviction*; but antient laws and chronicles generally ſpeak of the *apprehenſion*, by which is meant detection, in what is called the *mainer*, or *furtum manifeſtum*—The old French word for *apprehended* is commonly ſpelt *priſt* or *prit*, and not *pris*—Hence an obvious etymology, with regard to the word *culprit*, offers itſelf, which hath occaſioned many far fetched conjectures. The common queſtion aſked the criminal is, *Culprit*, how wilt thou be tried? which is, in other words, *Criminal, now apprehended*, how wilt thou be tried?

[i] The manner of raiſing and paying the armies appears by the 18th and 19th chapters of the 20th of Henry VI. — The captains agreed by indenture with the king, to raiſe and pay ſuch a number of men, and for a certain time.

alſo

alſo he who plays at any ſuch game, is to forfeit [k] ten pounds to the king, and be impriſoned for two years.

This is, pethaps, the moſt ſevere law which was ever made in any country againſt gaming, and ſome of theſe forbidden games ſeem to have been manly exerciſes [l], particularly the *handing* and *handoute*, which I ſhould ſuppoſe to be a kind of cricket, as the term of *bands* is ſtill retained in that game—There is a very remarkable preamble to a law of *Provence* in Du Moulin, which prohibits the playing at improper games—"Item "car jugadours als das, ou a las cartas, commeton de grans mals et de- "ſtruction des beins, et auſſi que communement en tout jeu, ſi tan de "grans renegaments, et blaſphements, de Dieu, et de la vierge Marie, "et dels ſaints, et ſantas de paradis, per las cals cauſas Dieu aucu- "nement eſt ci corrouſat, et nous punit par mortalitas, ou autras "afflictions [m]."

The next chapter is calculated to prevent the encroachments of the courts of Pipowders, which, like moſt other courts, wanted to extend it's juriſdiction, i. e. the profits ariſing from it—As theſe loweſt of courts of juſtice were under the direction of the ſteward or auditor of him who had the grant of the fair, the ſteward, by way of drawing every litigation to his own court, ſuppoſed, by an *ingenious* fiction [n], that parties, who never made any contract at the fair, and who perhaps lived at a great diſtance, had made the bargain in diſpute within the limits of his juriſdiction, and by this means claimed conuſance of the ſuit—The ſtatute therefore directs, that the plantiff, in the Pipowder court, ſhall ſwear, that his cauſe of action actually aroſe within the precinct of the *fair*, and the law ſeems to have

[k] All the forfeitures and penalties of this reign are applied half to the informer, and half to the expence of the king's houſhold.

[l] In the 18th year of Henry VIII. a proclamation iſſued againſt playing at cards or blows; but *Baker* obſerves, that it was productive of greater miſdemeanors—The ſame obſervation is made in the Roman Catholick countries during Lent, when publick amuſements are forbid.

[m] Du Moulin, vol ii. p. 1244—The vice of gaming had been introduced into England before the time of Edward the Third, as *Chaucer* ſpeaks thus of it:

"As haſard, riot, ſtewes, and tavernes,
"Whereat with lutes, harps, and geternes,
"Thei dauncen, and plaien at *dice*, night and day.

And again:

"*Hazarde* is very mother of leſinges
"And of deceit, and curſed forſwearinges."

[n] I have already had occaſion to obſerve upon theſe fictions.

been

been effectually carried into execution [o], as we hear little of these courts at present—I cannot but here take notice, that the etymology of the word *Pipowder* seems to be mistaken by all the writers upon the law, who derive it from *pes pulvericatus*, or dusty foot — Now *pied puldreaux* in old French, signifies a *Pedlar*, who gets his livelihood by vending his goods where he can, without any certain and fixed residence. In the *burrow laws* of Scotland [p], ch. 134, an alien merchant is called *pied puldreaux*, and likewise *ane fairand man*, or a man who frequents fairs —The court of Pipowder is, therefore, to determine disputes between those who resort to *fairs*, and these kind of pedlars, and low tradesmen, who generally attend them.

[o] The law, perhaps, most effectually executed of any in the statute book, is the statute of Charles the Second, which directs the sheriff to root up all the tobacco growing in the county.

[p] These are generally published together with the Regiam Majestatem.

STATUTES MADE AT WESTMINSTER.

22 Edw. IV. A. D. 1482.

THE firſt chapter of this ſtatute is entitled, An act of apparel (κατ' ἐξοχήν) as it repeals all former laws of the ſame kind—It not only directs of what materials the dreſs of each claſs of men ſhall conſiſt, but likewiſe ſettles the length, and that no one, under the degree of lord, ſhall wear a gown or cloak which is not long enough to cover, *ſes crupes*, ou *nages*—What is, perhaps, more ſingular than this part of the regulation, is twelve perſons [*q*], particularly named, are excepted out of this ſtatute, and indulged to dreſs according to their own fancy and whim.

The fourth chapter regulates the price of ewe bows [*r*], which is not to exceed three ſhillings and fourpence—The words of the preamble reciting the great benefits to this country ariſing from archers are remarkable—" Item " que come en le temps dels nobles progenitours del roy, et auſſi en le " temps del victorieux ſeigneur le roy qu' ore eſt, ſes ſubgetz deins " cheſcun part ceſtuy Royaume ount occupez et uſez ſagitture ove leurs " arkes—This king not only endeavoured to promote archery [*s*] in England, but likewiſe made laws of the ſame tendency in Ireland; for by the 5th of Edward IV. ch. 4. every Engliſhman is obliged to have a bow in his houſe of *his own length*, either of ewe, wych, haſel, aſh, or awburne (alder probably); and by another ſtatute it is directed, that butts ſhall be raiſed in every pariſh for the purpoſe of archery, which regulation is not introduced into England till the time of Henry the Eighth, and which may have

[*q*] Moſt of them are knights, and I ſhould conceive were always candidates for ribbands upon every vacancy—One of them is *Maſter John Gunthorp*, dean of the king's chapel.

[*r*] I ſhould imagine, that the planting ews in church-yards (being fenced from cattle) aroſe from an attention to the material from which the beſt bows are made; nor do we hear of ſuch trees being planted in the church-yards of other parts of Europe—It appears by the 4th of Henry V. ch. 3, that the wood of which the beſt arrows were made was the aſp — It does not ſeem to be thoroughly ſettled by the Dendrologiſts, what makes the eſſential difference, and diſtinction, between the black poplar, and this tree, and therefore it would not be very eaſy to convict upon this ſtatute—It ſeems very ſingular, that all the ſtatutes, for the encouragement of archery, ſhould be after the invention of gunpowder, and fire-arms.

[*s*] That moſt military man, and knight errant, Lord Herbert of Cherbury, who wrote ſo late as the reign of James I. aſſerts, that *good* archers would do more execution, even at that time, than infantry armed with muſquets.—Carew, in his account of Cornwall, ſays, that pricks were the firſt occaſion of the corruption of archery.

been

been the occaſion of ſome of thoſe round hills of earth near towns, which have often amuſed, and puzzled the antiquary [*t*].

The preſent ſtatute, which is the laſt of Edward the Fourth, is likewiſe the laſt in the French language. It continued, however, to be uſed much about the court, even ſo late as the reign of Henry the Eighth [*u*], as moſt of his love letters to Anne Boleyn, publiſhed by Hearne at the end of Aveſbury's Chronicle, are in French—Anne of Boleyn left England early, indeed, for an education in the court of France (ſome writers ſay at nine, and others at the age of fifteen); but, as ſhe not long after this returned to England, it cannot be ſuppoſed that ſhe had entirely forgot her mother tongue—We find, likewiſe, by an epigram of Sir Thomas More's, that the ſpeaking it was much affected in the reign of Henry the Eighth [*w*]; it had not, however, the convenience which attends it at preſent, of being the general and common language of Europe.

This king reigned twenty-two years, during which he ſummoned nine parliaments; in ſome of which we find moſt wiſe regulations with regard to trade, and the promotion of induſtry—If the monk, who writes the hiſtory of Croyland abbey [*x*], is to be credited, he not only underſtood trade, but actually carried it on, after his acceſſion to the throne, to his own private, and very great emolument—"Edwardus, comparatis navibus "onerariis, et ſubtiliſſimis pannis, laniſque conquiſitis, quaſi unus hominum "viventium per mercaturam merces pro mercibus tam apud Italos, quam "apud Græcos commutavit"—The profits which he made by this monopoly to the Mediterranean and Levant, are afterwards mentioned by the ſame author.

He began his reign by a moſt politic ſtatute, the tendency of which was, to aboliſh the fatal diſputes between the houſes of York and Lancaſter, and confirmed all acts of his predeceſſors, though he mentions them as kings *de fait*, et *nient en droit*, which is the firſt inſtance of theſe known

[*t*] They are in Wales called *Tomonds*.

[*u*] We find, notwithſtanding, by *Leland's Collectanea*, that it was part of the duty of thoſe Engliſh clergy, who had livings in the neighbourhood of *Calais*, to teach the Engliſh language, vol. i. p. 46.—Leland himſelf had one of theſe livings.

[*w*] Creſeit tamen, ſibique nimirum placet
Verbis tribus ſi quid loquatur Gallicè,
Aut Gallicis ſi quid nequit vocabulis,
Conatur id licèt verbis non Gallicis
Canore ſaltem perſonare Gallico.

At the battle of Shrewſbury, the word of the day was *Eſperance*—It would not be very politick to give a French parole at preſent.

[*x*] Gale, vol. i. p. 678.

words of a king, *de facto*, and not *de jure*, being introduced in the ſtatute book.

He hath in other reſpects, perhaps, a better title to be conſidered as a legiſlator, than any orher king of England, as he actually preſided in the courts of juſtice, if we may believe Daniel — "Edward the Fourth, in the "ſecond year of his reign, ſat three days together, during Michaelmas "term, in the court of King's Bench, in order to underſtand the "law [*y*];" and I have on the 17th of Edward IV. already had occaſion to obſerve, that he preſided at the trials of many criminals — I do not mean by this to inſinuate, that juſtice may not be more properly adminiſtered by the king's judges; but only that the ſame curioſity which carried him into the courts of Weſtminſter-hall, muſt have likewiſe given him a deſire ſtill more minutely to inſpect, and attend to, all parliamentary proceedings.

[*y*] Truſſel's continuation of Daniel's hiſtory, p. 184.

STATUTES

STATUTES MADE AT WESTMINSTER.

1 Rich. III. A. D. 1483.

THE reign of Richard the Third is a remarkable epocha in the legiſlative annals of this country, not only from the ſtatutes having continued from this time to be in the Engliſh language, but likewiſe from their having been the firſt ſtatutes which were ever printed [*a*]—We accordingly find by the 12th ſection of the 5th chapter of this law, exceptions in favour of ſcriveners, *alluminors* [*b*], *readers* [*c*], and printers of books.

The 1ſt chapter, with regard to ſecret feoffments and truſts, is only abridged in all editions of the ſtatutes (except Raſtall's) from which I ſhall inſert it here at length [*d*], as lord chancellor Nottingham, in a manuſcript

[*a*] *Ames* (in his hiſtory of printing) informs us, that they are to be found in the Inner Temple library, as likewiſe in that of John Browning, Eſq;—The printer's name is Machlynia, or Machlyn — He was partner to John Letton; and they are our moſt antient printers, if we except Caxton—What are called private acts likewiſe begin with this reign.

[*b*] Illuminators, i. e. decoraters of *books*, hence our word *limner*.

The king hath to this day an illuminator of letters to the eaſtern princes—*Dante* ſpeaks of this art,

. . . . e l'honor di quell' arte,
Ch' *alluminare* é chiamata in Parigi.

[*c*] Books (though printed) were now exceſſively dear, which makes me conjecture that the *readers*, mentioned by the ſtatute, were bookſellers, who received money from an audience, who were either incapable themſelves of reading, or otherwiſe could not afford to purchaſe the books—Fitzherbert's Abridgement, in the reign of Henry the Eighth, ſold for forty ſhillings; and the number of readers in the ſame reign was ſo ſmall, that Grafton, in 1540, printed but 500 copies of the Bible.

[*d*] " Firſt becauſe that by ſecret and vnknowne feoffements, great vnſurety, trouble, coſts " and grieuous vexations doe daily grow betwixt the kings ſubjects, in ſo much that no man that " buyeth lands, tenements, rents, ſeruices, or other hereditaments, nor women which haue " joyntures or dowers in any lands, tenements, or other hereditaments, nor the laſt will of men " to be performed, nor leaſes for terme of life or of yeeres, nor annuities granted to any perſon " or perſons for their ſeruices for terme of their liues or otherwiſe, be in perfite ſurety, nor with- " out great trouble and doubt of the ſame, by reaſon of ſuch priuie and vnknowen feoffements: " for the remedy whereof it is ordained, eſtabliſhed and enacted, by the aduiſe of the Lords " Spirituall and Temporall, and the commons in this preſent Parliament aſſembled, and by au- " thoritie of the ſame, that euery eſtate, feoffement, gift, releaſe, graunt, leaſe, and confir- " mations of lands, tenements, rents, ſeruices, or other hereditaments, made or had, or here- " after to be made or had, by any perſon or perſons being of full age, of whole memorie, at " large, or in dures, to any perſon or perſons, and all recoueries and executions had or made, " ſhall be good and effectuall to him to whom it is ſo made, had or given, and to all other to his " uſe, againſt the ſeller, feoffer, donor, or grauntor of the ſame, and againſt the ſellers, feoffors, " donors, or grauntors, and his and their heires, claiming the ſame onely as heire or heires to " the ſame ſellers, feoffors, donors, or grauntors and every of them, and againſt all other having " or claiming any title or intereſt in the ſame, onely to the uſe of the ſame ſeller, feoffor, donor, or

treatiſe

treatiſe upon *truſts and uſes*, is ſaid to have excuſed the evaſion of the 27th of Henry VIII. in the courts of equity, by the ſtatute of Henry the Eighth not being intended to extend to *all truſts* and uſes, *but only to be coextenſive with* this ſtatute of Richard the Third.

The 2d chapter enacts, that the ſubjects of this realm ſhall not be charged with *benevolence*; and the preamble recites, that many families had been abſolutely ruined under theſe pretended preſents to the king, but which were in reality extorted taxes [*e*].

The *Duke of Buckingham*, who was ſo inſtrumental in procuring the crown for *Richard* the Third, ſays, "That the name of *Benevolence* [*f*] (as it "was taken in the reign of Edward the Fourth) ſignified, that every man "ſhould pay, not *what he of his own good will liſt*, but what the king *of his* "*good will liſt to take* [*g*]"—Henry the Seventh, who ſucceeded, is known to have been ſo avaricious, that he ſoon broke through this moſt excellent and conſtitutional ſtatute [*b*]—And in the year 1526, Henry the Eighth having demanded a benevolence from the city of London, one of the common-council objected to the paying it, citing this act of Richard the Third—He moreover added (in the preſence of *Cardinal Wolſey*) that ſome perſons coming before his grace, might, through fear, grant ſo much, as not to be able to pay their own debts, and their families might ever after rue the indiſcretion of ſo laviſh a grant—To this the cardinal did not anſwer, but with regard to the ſtatute of Richard the Third, he ſaid, "*He* "*was an uſurper, and a murderer of his nephews, and that the laws of ſo* "*wicked a man ſhould not be inforced*"—To which the common-council then anſwered, that "*tho' he did evil, yet were many good ſtatutes made, not by him* "*only, but by the conſent of the whole realm in parliament* [*i*]."

The 3d chapter enacts, that every juſtice of peace may let a priſoner to mainpriſe, and that his goods ſhall not be ſeized till he is attainted—This

"grauntor, or ſellers, donors, or grauntors or his or their ſaid heires at the time of the bargaine, "ſale, couenant, gift, or graunt made, ſauing to euery perſon or perſons ſuch right, title, "action, or intereſt, by reaſon of any gift in taile thereof made, as they ought to haue if this "Acte had not beene made."

[*e*] There is a very ſingular law in the *Fueros de Viſcaya*, not indeed againſt benevolences to the king, but againſt preſents being made to women by their neighbours—"Que las mugeres "que viſitaen a las paridas, non leven mocas cargadas de preſentes, p. 21."

[*f*] Is it proper, after this ſtatute hath aboliſhed benevolences, that the clerk, when the king paſſes bills, ſhould ſay, "*Le roy remercie ſes bons ſujects, et accepte leur Benevolence?*"

[*g*] Sir Thomas More's life of Richard the Third; or rather, according to Buck, Dr. Morton's, though publiſhed by Sir Thomas.

[*b*] See 11th Henry VII. ch. 10, which is entitled, *A Remedy, or means to levy a Benevolence before granted to the King.*

[*i*] Stow's Chronicle, p 525.

is a moſt excellent and humane law, which became neceſſary from the juſtices of the peace beginning now to execute their very uſeful and neceſſary office; and though they had a power to commit, yet it ſhould ſeem, that they had not a power of bailing, which muſt have frequently been the occaſion of unneceſſary delays in impriſoning the ſubject, as well as great expence in applying to other juriſdictions.

The power of taking bail in all but the moſt atrocious and dangerous offences to the public, ſeems to be a neceſſary conſequence of the criminal being preſumed innocent, till conviction; and therefore it is only required, that he ſhall be ameſnable to juſtice — It is one of the Athenian laws in Petit's collection [*k*]; and *Chaumeau*, in his hiſtory of *Berry* [*l*], mentions, that the citizens of Bourges cannot be committed, provided, "*quils bail-*" "*lent bonne et ſuffiſante caution, hormis en cas de crime de leſe majeſte*"—Which, as the cuſtoms of the ſeveral provinces do not often materially differ, may be preſumed to be the general law of France.

The 4th chapter is made to reſtrain certain aliens from carrying on any trade, or merchandize in this country; and it is remarkable, that the *Venetians*, *Genoeſe*, *Florentines*, *Apulians*, *Sicilians*, *Lucaynens*, and *Catelorins*, are enumerated, without any notice of the French, or even their provinces to the *Mediterranean*—Biſhop Godwyn, in his life of Henry the Eighth, mentions, that in the year 1517, there were great inſurrections in London on account of foreigners being employed, and on that occaſion, with great force and liberality of reſentment, expatiates againſt the abſurdity of ſuch reſtraints.

Richard the Third did not reign long enough to hold more than this ſeſſion of parliament; and yet he hath obtained, from moſt hiſtorians, the character of a great legiſlator, from this very ſhort and imperfect ſpecimen of what rather he intended to do for this country, than what he had either really done, or had an opportunity of carrying into execution—Baker [*m*], in his Chronicle, commends much the laws of Richard the Third, and ſays, that he took the ways *of being a good king*, if he had come *to be king, by ways that were good*—But he hath a much greater teſtimony in his

[*k*] Οὐδὲ θάνου Ἀθηναίων ὀδίνα ὃς ἂν ἐγγυητὰς τρεῖς καθίστη.—Treaſon againſt the ſtate and burglary are indeed excepted—Thus likewiſe by the Roman law, "In vincula non conjiciendus eſt reus, "qui fidejuſſores idoneos dare poterit, niſi tam grave ſcelus admiſiſſe eum conſtat ut neque fide-"juſſoribus, neque militibus committi debeat." Dig. l. xlviii. t. iii. c. 3.

[*l*] Printed at Paris, 1556.

[*m*] *Baker* is by no means ſo contemptible a Chronicler as he is generally conſidered to be; and the ridicule upon him, perhaps, chiefly ariſes from his being ſaid, in the *Spectator*, to lye in the window of Sir *Roger de Coverley's* hall.

favour

favour, no leſs than lord Bacon, who ſays, that he was a good legiſlator *for the eaſe and ſolace of the common people* [n] — I ſhall not mention in addition to theſe the authority of Buck, who is a profeſſed panegyriſt—There is certainly a ſort of faſhion (if I may be allowed the expreſſion) which prevails at different times, with regard to the characters of kings, and great men—Richard hath generally been repreſented, both as a monſter in perſon, and diſpoſition: if we may believe *Buck*, and the counteſs of Deſmond, he was remarkably genteel, and the beſt of kings and men—It will be probably right to ſteer between theſe extremes, and as far as relates to him as a legiſlator, the 2d and 3d chapters of this his only collection of laws will for ever ſhew, that he meant well (at leaſt upon his acceſſion) to the conſtitution, and liberties of the ſubject.

[n] Life of Henry VII. p. 2—Macbeth, another uſurper, is celebrated by Buchanan for his excellent laws.

STATUTES

The Second Parliament of the Third Year of HENRY VII.

A. D. 1486.

THE preamble to the firſt chapter of this law deſerves notice, not only as it is by ſome ſuppoſed to have firſt eſtabliſhed [o] the court of ſtar-chamber, but likewiſe as it makes mention of the prevailing crimes of this time, which were ſuppoſed to call for the interpoſition of this extraordinary court — "The king our ſovereign lord remembereth, how by our "unlawful maintenances, giving of living ſigns and tokens, retainders by "indenture, promiſes, oaths, writings, and other embraceries of his "ſubjects, untrue demeanings of ſheriffs in making pannels, and untrue "returns by taking money, by juries [p], &c. the policy of this realm "is moſt ſubdued"—Lord Bacon, in his hiſtory of Henry the Seventh, ſpeaks highly of this court, and its powers: I ſhall not cite his words; as he was ſo great an ornament to humanity, that his failings ſhould not be dwelt upon, but only mentioned as a proof, that he was but man.

It is well known, that the power and juriſdiction of this oppreſſive court is now entirely aboliſhed—We find, however, in the appendix of the ſecond volume of *Ruſhworth's Collection*, many caſes there determined, which may deſerve the peruſal of every lawyer, though he is often to diſtruſt the law contained in them: it does not follow, notwithſtanding, that becauſe it is a ſtar-chamber caſe, every part of it may not be conſidered as law even at this day—The number of judges was from twenty-ſix, to forty-two — The lord-chancellor preſided; and if the voices were equal, he gave the caſting vote—In the time of Charles the Firſt, the fines were often ſo ſevere, that the audience aſſembled to procure places at three

[o] This court is not mentioned to be held by the name of *the Star Chamber* till the 19th of Hen. VII. ch. 18.

[p] I have followed the punctuation in the common editions of the ſtatutes; it ſhould, however, be printed, "by taking of money by juries"—It is well known, that in records there is no punctuation, and perhaps the ſtatutes ſhould be ſo printed, as the wrong idea ariſing from the improper punctuation is not eaſily removed.

o'clock in the morning, from the ſame motive that there is the greateſt croud about the table, where the play is deepeſt—Before the ſtatute of the 16th of Charles the Firſt, the court of the marches, and the courts of the dutchies palatine, had nearly the ſame juriſdiction with the ſtar-chamber [q].

[q] Ruſhworth, vol. ii. p. 1383.

STATUTES

STATUTES MADE AT WESTMINSTER.

4 Henry VII. A. D. 1487.

THE tenth chapter of this law enacts, that no French wines, or Tholouſe woad, ſhall be brought into this country, but in Engliſh bottoms—Lord Bacon, in his Life of Henry the Seventh, obſerves, that all the antient ſtatutes (before this) encouraged the bringing commodities by ſtrangers, having regard to the cheapneſs of the commodity, rather than the increaſe of the naval ſtrength of the kingdom—It is very plain, that this great man's extenſive knowledge and reading did not include the ſtatute book, as I have already obſerved upon two or three ſtatutes, with directly the ſame tendency; and this very ſtatute only re-enacts what was law before.

The 13th chapter of this law recites, that whereas, upon truſt of the privilege of the church, diverſe perſons *lettered* have been more bold to commit murders, rapes, robbery, theft, and all other miſchievous deeds; therefore if the perſon is not within holy orders, he is to claim the benefit of the clergy but once; and upon being convicted of murder, he is to be marked with the letter M on the braun of the left thumb; and if for any other felony, with the letter T [*a*].

This is the firſt ſtatute, which, in any meaſure, took away what is called the benefit of clergy [*b*]—As actual reading was at this time required, and few common felons were capable to read, this moſt extraordinary privilege and indulgence had not ſo extenſive bad conſequences, as it would be attended with at preſent—It is true, that it now ſeems to be a moſt abſurd privilege; and though I will not inſiſt upon its being in all reſpects a

[*a*] The letter M was plainly intended to denote the perſon had been convicted of *murder*; and T denoted a conviction for *theft*; that being the moſt common felony, as appears by every calendar of criminals—The ſtatute is by no means clearly worded—It is not, therefore, extraordinary that Biſhop Burnet, in his hiſtory of the reformation, ſhould miſtake in ſaying, that by this law, the clergy were to be burnt in their hands—The biſhop is, however, generally very accurate with regard to points of law; and it is not improbable that his hiſtory was reviſed by his great patron, Sir Harbottle Grimſtone, who was maſter of the rolls—His being likewiſe chaplain to Sir Harbottle muſt have introduced him to the acquaintance of the great lawyers of the time—In his hiſtory of England, he occaſionally gives us their characters, as of *Pollexfen*, *Sir Orlando Bridgeman*, &c.

[*b*] It is properly the *privilege of learning*, as *clergy*, in old French, ſignified *ſcience*, or learning, as appears by the old proverb—*Un poignt de bonne vie, mieux vaut qu'un muy de clergie*—I ſhould apologize for here mentioning, likewiſe, the ſignification of another old French word, in the motto of the order of the garter—*Beaumanoir* (who wrote in the time of *Phillipe le Bel*, cotemporary with *Edward the Third*) uſes the word *houny* for *diſhonour'd*—The ſignification of that motto therefore is, "*may he meet with diſhonour, who thinks ill of the order, and inſtitution.*"

moſt wiſe, and humane indulgence, ſo as to be an advocate for it, yet we are certainly not to judge of the propriety of it, by the preſent ſtate of this country.

Formerly none but clergymen could read; and men ſo well provided for as the clergy were at this time, and who had a more liberal education than the other ranks, and claſſes of people, were not often guilty of the offences which ſwell the calendar at a gaol delivery—It is well known, that nineteen criminals out of twenty are indicted for larceny; and this they had not the common temptation to in the poorer people, viz. that of want, or narrow circumſtances.

With regard to thoſe who were not clerks (and conſequently could not read) it was a high offence for any one to inſtruct them during the time of their impriſonment, ſo that they might be enabled to plead the privilege at the time of their trial. We find, therefore, in the book of *Aſſizes* (p. 138) that amongſt the articles to be given in charge in the King's Bench, there is one "des Gardiens des priſons qui apprennent les laiz "perſons qui ſont en leur garde, *letture*, per cauſe *de ſalvation de leur viz* "& *deſturbation* de la *common ley*, que la juſtice ne ſe puit parfaire per eux, "comme ſur laiz gens, en *deceit* del roy."

Beſides this, the clergymen underwent a trial before the ordinary [*c*], who, though a favourable judge, yet may be preſumed to have ſometimes inflicted very ſevere eccleſiaſtical puniſhments—And there is an inſtance mentioned by *Carte* of a clergyman's being not only degraded (in the time of Henry the Second) by ſentence of a court chriſtian, but likewiſe branded in the cheek with a red-hot iron; vol. i. p. 581.

With regard to the puniſhment of branding inflicted by this ſtatute, it is directed to be on the left hand, both from fear perhaps of mutilation, as alſo from its not expoſing the criminal to ſo public a ſhame; the left hand not being ſo frequently uſed, as the right hand—When the branding was afterwards changed from the thumb to the cheek, by a ſtatute of queen Elizabeth, the preamble of the ſtatute of king William (which re-eſtabliſhes this firſt method of branding on the left thumb) recites, that by the mark being more apparent, the criminals became more abandoned [*d*].

As tranſportation is now become the moſt common puniſhment [*e*] of criminals ſince the eſtabliſhment of our colonies in America [*f*], it may

[*c*] He who claimed benefit of clergy, was priſoner to the ordinary for life. St. Tr. vol. i. p. 367.

[*d*] "Coli rura ergaſtulis peſſimum eſt, damnatis manus, *inſcriptis vultus*." Pliny.

[*e*] The firſt ſtatute, which inflicts the puniſhment of tranſportation, is in 39 Eliz. ch iv.

[*f*] It is likewiſe the puniſhment in all other countries, who happen to have colonies: thus the *Danes* tranſport to *Tranquebar*, and the *Spaniards* to the leaſt cultivated part of their very extenſive dominions of deſart in South America.

not be improper here to conſider, whether it continues to anſwer the purpoſes, for which this mode of puniſhment was originally inſtituted—Our American ſettlements are now in ſuch a ſtate of proſperity, that it cannot be ſuppoſed to carry with it the terror, that it did in the laſt century—It ſhould, therefore, ſeem proper, that the condition of pardon ſhould now be, that the criminal be tranſported to *Hudſon's Bay*, or ſome of the new colonies in *Eaſt* and *Weſt Florida* [*g*]—It was thought in the fourteenth and fifteenth centuries to be ſo dangerous a voyage to the Eaſt, or Weſt Indies, that the crew of both *Columbus*, and *Vaſquez de Gama* [*b*] conſiſted in part of criminals, who were pardoned upon condition of embarking in thoſe expeditions; and long after this they were ſuppoſed to be liable to ſtill greater dangers on ſhore—Theſe terrors are now in a great meaſure vaniſhed; and the paſſage is almoſt conſidered as a voyage of pleaſure, during which they are perfectly idle, and therefore in the very ſtate they would wiſh—When they are landed, they are expoſed, not to wild beaſts and ſavages, but become ſervants to their own countrymen, who ſpeak the ſame language, and have contracted the ſame habits of living, to which they have been uſed in the mother country—It ſhould therefore ſeem, that the place to which the criminals are tranſported [*i*] ſhould be altered, or perhaps a new puniſhment ſubſtituted in the room of it—Confinement in the dock yards hath been propoſed in parliament; and the bill paſſed the lower houſe without any material oppoſition.

Maupertuis, in one of his diſſertations, hath propoſed likewiſe, that criminals, whoſe lives are forfeited, ſhould be pardoned, on condition that ſome hazardous chirurgical experiment ſhould be tried upon them—Thoſe who ſtart at the ſuppoſed inhumanity of this propoſal, ſhould conſider whether certain death, or a chance of ſurviving the experiment, is the greater mercy to the criminal; and ſurely this milder puniſhment is not more ſevere, by the probability of the experiment's becoming of general utility to mankind—The experiment of inoculation was firſt tried upon ſome criminals, who not only ſurvived themſelves, but have ſaved, and will continue to ſave, the lives of thouſands.

I cannot paſs unnoticed the 24th chapter of this law, as lord *Bolingbroke*, and many other writers, have ſtiled it (κατ' ἐξοχήν) *the ſtatute of alienations*,

[*g*] It appears by Sir *John Strange's Reports*, that when, after the peace of Utrecht, we became firſt poſſeſt of *Mahon*, the criminals were frequently tranſported to *Minorca*.

[*b*] Herrera.

[*i*] I have been informed, that there hath been an inſtance within theſe twenty years of a criminal rather chuſing to be executed, than tranſported—This inſtance, however, is too ſingular to be argued from.

and

and have dated the power and influence of the commons as commencing, from perpetuities, and entails being now firſt broke through, and aboliſhed—This is an inſtance (amongſt many others) how little laymen (if I may ſo call them) ever look into the ſtatute book, or looking, *underſtand not*—It is only neceſſary to read the ſtatute to refute theſe crude, and bold aſſertions; and the eſtate of a tenant in tail is ſo far from being deſtroyed by it, that his intereſt is expreſly ſaved, if he makes any claim within five years—The power of alienation, therefore, at this time did not ariſe from this ſtatute, as ſuppoſed, but from the determination of the judges in *Taltaram's caſe*, in the reign of Edward the Fourth, by which that moſt extraordinary of legal fictions, the common recovery, was eſtabliſhed—This ſtatute is indeed very inaccurately and obſcurely penned, which is recited by the 32d of Hen. VIII. ch. xxxvi. and which, five-and-forty years after the paſſing this law, binds the tenant in tail immediately, without allowing him the five years to purſue his claim, which he is moſt expreſly entitled to by this ſtatute—*Lord Bacon*, in his life of Henry the Seventh, ſpeaks of it thus—"As the king himſelf had in his perſon "and marriage made a final concord and agreement in the great ſuit for "the crown, ſo by this law he ſettled the like peace in private poſſeſſions "of his ſubjects"—Lord Bacon further adds, that "this law only re-"vived a more antient ſtatute [*k*], which was likewiſe made in affirmance "of the common law"—He then obſerves, that "ſtatutes of *non-claim* "are proper for turbulent times, as ſtatutes to quiet poſſeſſions, are for "peaceable ones."

The ſtatutes of the preſent, and the next ſeſſions of parliament, were printed by Wynken de Worde, and likewiſe by Julian Notary in 1503—It is ſaid likewiſe, that now firſt began the cuſtom of prefixing titles to the ſtatutes [*l*]—A title is no part of a ſtatute (properly ſpeaking) it not being read three times (as every other part of a law is) and is only propoſed when it is to be ſent from one houſe of parliament, to the other. As arguments are, however, frequently drawn from the title of a ſtatute, it is to be wiſhed that there was a little more attention to the ſettling of it—For example, who would expect to find a moſt material alteration in the ſtatute of *diſtributions*, in a law, the title of which is, *An Act for the revival and continuance of ſeveral acts of parliament* [*m*]; and indeed it is impoſſible, when ſtatutes relate to matters of a very miſcellaneous nature, that the

[*k*] Statute of Edw. III.
[*l*] Lord Raym. 77.—Hardr. 324. Inſtances have however before this occurred.
[*m*] 17 James II. ch. xvii. ſ. 8.

title

title can be co-extenſive with the views of the legiſlature: it is, therefore, to be wiſhed, that ſuch acts of parliament were diſtinct laws, and not thrown together in that very ſtrange confuſion, which hath now obtained the name of a *hodge podge* act—It muſt be admitted, that the antient ſtatutes, however, are much more faulty in this reſpect, than the more modern ones—Some titles to ſtatutes are even ridiculous, as 19 Hen. VII. ch. vi. *Pewterers Walking*.

STATUTES MADE AT WESTMINSTER.

11 Hen. VII. A. D. 1494.

THE firſt chapter of this ſtatute is a moſt humane and wiſe law, made for the protection of thoſe who have aſſiſted and ſupported the king in poſſeſſion of the crown, whether his title be a good one or not, as the preamble recites it, "*to be the duty of the ſubject to ſerve their prince, "and ſovereign lord for the time being*" — Henry the Seventh was now in peaceable poſſeſſion, and we muſt look upon the ſtatute to have been chiefly made with a view to ſecure the crown to himſelf, and his deſcendants — Every ſubject was now ſtrongly intereſted to appear in arms on his behalf; as, if they were overcome by the *Perken Warbeck*, or other *pretender*, they might ſtill plead this ſtatute to protect their perſons, and fortunes — After the Reſtoration, many who had ſubmitted to the parliament and protector, inſiſted upon the equity of this ſtatute, which was denied them, upon a ſtrict conſtruction of the word *king*, and it is wiſely obſerved in the *conſiderations on forfeitures*, that the conſtruction of a ſtatute of this kind, *will always be a political one — Lord Bacon* [r] calls this ſtatute a law of a ſtrange nature, *more juſt than legal*, and more *magnanimous* than *provident*. The diſtinction, however, between *juſt* and *legal* does not ſeem to be a very clear one, or to do honour to the ſentiments of this great writer.

The 4th chapter ſettles the cities and towns which are directed to keep a ſtandard for meaſures — I have had occaſion to remark, in the obſervations on Magna Charta, how ineffectual all regulations of this ſort have ever been in all countries; and one great reaſon for every one's being unwilling to ſubſcribe to theſe regulations, ariſes from the abuſes of office in the clerks of the market, who are to carry them into execution, but only make uſe of their powers, for the purpoſe of extortion [s] — This is dwelt upon in a charge, which was given by Sir Edward Coke to the grand jury of Norwich, in 1607. — His words are theſe: "The clerk of the mar-"ket will come down, and call before him all weights and meaſures — "If there is a fault, he and the informer ſhare the penalty, but never re-"dreſs the abuſe — It was once my hap to take a clerk of the market in "theſe tricks; but I advanced him higher than his father's ſon, by ſo much

[r] Life of Henry VII. [s] Vide Riley's Pl. Parl. p. 568.

"as

" as from the ground to the top of the pillory—If you of the jury, there-
" fore, will preſent theſe offences, by God's grace they ſhall not go un-
" puniſhed, for we have a coif, which ſignifies a ſcull, whereby, in the
" execution of juſtice, we are defended againſt all oppoſitions [*t*]"—It muſt be admitted, that the chief-juſtice ſeems to expreſs himſelf with rather too great warmth againſt this abuſe; but as it was the firſt charge which he had occaſion to deliver in his native county of Norfolk, he ſeems to have been rather too deſirous of popularity.

The 17th chapter is entitled, *The forfeiture for taking of feſants* [*u*] *and partridges, or the eggs of hawkes* [*w*] *or ſwans*—The preamble recites the great injury to lords of manors, not only from the loſs of the *pleaſure and diſport* to their friends and ſervants [*x*], but likewiſe the loſs to *their kitchen and table.*

What are called *Game Laws*, are peculiar to the more northern parts of Europe—They were never even thought of by the antient Greeks and Romans. Plato ſays, μηδ' ἀνθρήνων θήρας αἰμύλος ἵρως (ἀ σφόδρα ἐλευθέριος) ἐπέλθοι· de de Leg. lib. vii. p. 642—Where the expreſſion ἀ σφόδρα ἐλευθέριος ſhews the diverſion to have been thought illiberal—Falconry firſt occaſioned this ſyſtem of laws; and hence herons were held in high eſteem, being the nobleſt bird the falcon could fly at. If they could not procure herons, then any other large bird afforded diverſion; and, hence, by the laws of Hoel Dda in the book of Triades—" Tres ſunt aves, quas in fundo " alieno occidere non licet—et grus et corvus," p. 334—Since this ſtatute of Henry VII. the laws for the preſervation of the game have been much multiplied, and with ſevere penalties, as the game is ſuppoſed to decreaſe daily—It will, however, in time be diſcovered, that the practice of ſhooting flying is the real occaſion of this—By 19th of Henry VII. ch. 4. no perſon may ſhoot with a croſs-bow, without the king's licence, except he be a lord, or have two hundred marks lands—The ſevereſt law for deſtroying any kind of bird ſeems to have been that of the Egyptians, mentioned by *He-*

[*t*] An information was moved for againſt the clerk of the market for extortion, even ſo late as the 6th Geo. II. Barn. Rep. p. 310.

[*u*] I ſhould ſuppoſe pheaſants were now firſt brought into this country, and were conſidered, poſſibly, as peacocks or Guinea hens at preſent.

[*w*] Notwithſtanding the penalty for taking the eggs of hawks, the falcons of this country were never in great repute—The more northern the latitude, the better the falcons, and thoſe of Iceland are particularly famous.

[*x*] In the time of queen Mary, there was not only a keeper of pheaſants and partridges to the queen, but likewiſe a *toker*—The kings of England had alſo, formerly, a Swanherd, and Sir Edward Coke makes this office one of his titles in the fourth Inſtitute.

rodotus, ὃς δ' ἂν ἴδῃ ἢ ἰρῆκα ἀποκτείνῃ, ἢν τε ἐκὼν ἢν τε ἀέκων, τεθνάναι ἀνάγκη. Euterpe, ed. Gale, p. 115—And the deſtroying of birds neſts is forbid, Deut. xxii. 6.

The 20th chapter of this ſtatute provides againſt alienations made by wives, of lands belonging to their deceaſed huſbands, but in which they had an intereſt of dower, or for term of life—I muſt profeſs, I do not underſtand what purpoſe this ſtatute anſwers (if it is not conſidered as a new promulgation of what was law before) as it ſhould ſeem that the woman, having only a temporary intereſt in ſuch lands, could not poſſibly, by any act, affect the rights of thoſe, who were to take after ſuch intereſt expired, though the preſent ſtatute had not declared ſuch alienation to be void—Lord Bacon, in his life of Henry the Seventh, calls theſe alienations, *a branch of ingratitude in women*—There is a very ſingular proviſion for the wife, upon the deceaſe of her huſband, by the antient laws of the Goths whilſt in Spain—"Que la eſpoſa, ſi el eſpoſo la haviere baſado, gana "la mitad de le que ella lo dio"—Fuer. Juſg. l. iii. p. 181.

The 21ſt chapter recites, "*That perjury is much and cuſtomarily uſed with* "*in the city of London, amongſt ſuch perſons as paſſen and been impannelled in* "*iſſue, joined between party and party.*"

The offence of perjury hath been before this ſtatute complained of in preambles to ſeveral laws [*x*]; and, what is very ſingular, it is always the perjury of *a juror*, who finds a verdict contrary to his oath, and not the perjury which we hear too much of at preſent, in the witneſſes produced at a trial.

In *the dance of death*, tranſlated from the French in this king's reign, with ſome additions to adapt it to Engliſh characters, a juryman is mentioned, who had often been bribed for giving a falſe verdict [*y*], which ſhews the offence to have been very common.

It is likewiſe remarkable, that this partiality and perjury in jurors of the city of London, is more particularly complained of than other parts of England, by the preamble of this and other ſtatutes—*Stow* informs us, that in the year 1468, many jurors of this city were puniſhed, by having papers fixed on their heads, ſtating their offence of being tampered with by the parties to the ſuit—He likewiſe complains, that this crying offence continued in the time of queen Elizabeth, when he wrote his account of London; and Fuller, in his Engliſh Worthies, mentions it as a proverbial ſaying, *That London juries hang half, and ſave half*—Grafton alſo, in his

[*x*] 38 Edward III.

[*y*] The ſheriff, who returned the jury, was likewiſe greatly acceſſary to this offence, by returning the moſt partial and prejudiced jurymen—*Carew*, in his Account of Cornwall, informs us, that it was a common article in an attorney's bill, to charge *pro amicitiâ vicecomitis*.

Chronicle,

Chronicle, informs us, that the chancellor of the biſhop of London was proſecuted for a murder, and that the biſhop wrote a letter to cardinal Wolſey, in behalf of his officer, deſiring a *noli proſequi* from the attorney-general, *becauſe London juries were ſo prejudiced, that they would find Abel guilty of the murder of Cain*—The puniſhment for the falſe verdict by the petty jury is by writ of attaint; and the ſtatute directs, that half of the grand jury, on the proſecution, ſhall be ſtrangers, and not Londoners—There is no ſtatute againſt the perjury of a witneſs till the 5th Eliz. ch. 9. — Is it not therefore extraordinary, that the Mexicans [z], when firſt conquered by the ſuppoſed more civilized Europeans, ſhould have puniſhed this offence with death?

[z] *Herrera.*

STATUTES MADE AT WESTMINSTER.

3 Hen. VII. A. D. 1503.

THE ſeventh and laſt chapter of this ſtatute is entitled, briefly, *murder*—The preamble recites that one *James Grame*, *yeoman*, had murdered his maſter *Richard Tracy*, at Brentwood, in Eſſex—The criminal, as the law then ſtood, having a right to claim the benefit of clergy [*a*], this ſtatute deprives him of this privilege, and likewiſe enacts, that if any lay perſon, afterwards, murder his lord, maſter, or *ſovereign immediate*, he ſhall not be allowed to plead his clergy [*b*]—I ſhould, therefore, think, as the preamble recites this particular caſe of petty treaſon, and concludes by taking *clergy* from thoſe who ſhould be convicted of this ſpecies of murder, that, though the word *murder* is uſed in one part of the preamble, the true conſtruction of this law, which in effect puniſhes with death (though the moſt crying of offences) ſhould not extend further than to petty treaſon, though the title makes no mention of petty treaſon, but on the contrary conſiſts of the *ſingle word*, *murder*—This doubt, which I have ventured to ſtate, is now become a mere point of ſpeculation, as the 23d of Henry VIII. ch. i. hath expreſsly taken away the benefit of clergy from murderers: I ſhould be inclined, however, to think, that thoſe criminals, who may have been executed between the preſent ſtatute's paſſing and the 23d of Henry VIII. did not ſuffer according to law.

It ſeems, indeed, very extraordinary, that this moſt horrid of crimes ſhould have been entitled, for ſo many centuries, to ſuch a falſe mercy, and indulgence: I have, however, before obſerved, that this privilege, antiently, could only be claimed by thoſe few who could actually read, and that if any one preſumed to teach a criminal to read, whilſt in priſon, it was conſidered as a miſdemeanor—It likewiſe ſeems moſt extraordinary, that this horrid crime ſhould have been puniſhed capitally in ſo few countries, when not only the dictates of natural juſtice ſeem to require ſuch a

[*a*] In the fourth year of Henry VIII. the abbot of Winchcomb preached againſt the taking away this privilege, upon the text of *nolite tangere chriſtos meos*—He was oppoſed in that convocation with great warmth, and liberality of ſentiment by Dr. *Standiſh*—Burnet's Hiſt. Rap. vol. i. p. 12.

[*b*] I find but one inſtance of a criminal refuſing the benefit of clergy, which is that of the duke of Somerſet. Hayward, p. 137.

retaliation

retaliation and attonement, but likewiſe by the moſt antient of all laws, that of the Jews [c], *blood was to be ſhed for blood.*

In the Homerical times, murder was puniſhed by a wergild, or baniſhment.

——— καὶ μέν τίς τε κασιγνήτοιο φόνοιο
Ποινὴν, ἢ ἔ παιδὸς ἐδέξατο τεθνειῶτος·
Καί ῥ' ὁ μὲν ἐν δήμῳ μένει αὖθι πολλ' ἀποτίσας,
Τῷ δέ τ' ἐρητεύεται κραδίη καὶ θυμὸς ἀγήνωρ
Ποινὴν δεξαμένῳ· Iliad. I. 629.

——— γαίης ἀπὸ πατρίδος, ἄνδρα κατακτάς· Il. O. 335.

There are likewiſe paſſages in the Odyſſey, which ſhew, that the murderer was not looked upon with horror, as Minerva (under diſguiſe, and pretending to be an old friend of Ulyſſes) ſpeaks highly in his praiſe, when he went to procure ſome poiſon for arrows—which were never uſed in thoſe times againſt an enemy in battle.

Φάρμακον ἀνδροφόνον διζήμενος, ὄφρά οἱ εἴη
Ἰὸς χρίεσθαι χαλκήρεας· Odyſſ. A. 261.

And the ſuitors of Penelope afterwards ſuppoſe, that Telemachus, with whom they live upon tolerable terms, is gone to a neighbouring iſland,

ὄφρ' ἐνθὲν θυμόφθορα φάρμακ' ἐνείκῃ,
Ἐν δὲ βαλὴ κρητῆρι, τὰ ἡμέας πάντας ὀλέσσῃ· Odyſſ.

Minerva likewiſe adviſes to deſtroy the ſuitors:

——— ἠὲ δόλῳ, ἢ ἀμφαδὸν ——— Which is very extraordinary advice to be given by a deity; eſpecially as the whole crime in the ſuitors was the treſpaſſing, perhaps, too long upon Telemachus's hoſpitality.

By the laws of the twelve tables, murder was a capital offence amongſt the Romans; but by the *Lex Portia*, all capital puniſhments might be remitted for that of baniſhment, as appears by the famous ſpeeches of *Cæſar*, and *Cato* in Saluſt—Horace claſſes an aſſaſſin only with an adulterer:

Si mœchus foret, aut ſicarius, aut alioqui
Famoſus.

And if we may credit the accounts of modern travellers, this moſt baſe and atrocious crime is ſtill practiſed in Italy with a degree of impunity, and often

[c] The Jewiſh city of refuge, however, amounted nearly to the benefit of clergy, and ſtill more ſo to the privilege of ſanctuary—Both *Herodotus* and *Briſſonius* inform us, that the antient kings of Perſia never permitted a criminal to be puniſhed for the firſt offence, which likewiſe amounted to the ſame thing with our benefit of clergy.

often in the face of the ſun—Aſſaſſination is ſaid, likewiſe, to be ſtill not uncommon in Spain, and Portugal; and amongſt the defences, which a perſon accuſed of murder may inſiſt upon, the firſt mentioned is, that the perſon ſlain was *ſu enemigo conocido* [*d*].

It is well known that the wergild [*e*], or ſatisfaction to the relations of the perſon murdered, was thought ſufficient atonement; and there is in the laws of *Athelſtan*, collected by *Joannes Brompton*, a general head thus collected: "cujus ætatis, et pro quo pretio, aliquis ſit occidendus[*f*]"—Thus likewiſe by the laws of *Ina*, "qui puerum genuerit et celaverit, non habeat interfecti *Weram*, ſed Rex et Dominus [*g*]"—It appears by the 26th of Henry VIII. ch. 6. that compoſitions for murder were then paid *in Wales*, as it does alſo by *Krebs* (in his treatiſe de ligno et lapide [*h*]) that they ſtill continue to be paid in *Saxony*.

Tacitus gives us the reaſon of this very ſingular cuſtom's prevailing amongſt the Germans, "Luitur homicidium certo pecudum vel armento-"rum numero, recipitque ſatisfactionem univerſa domus, utiliter in "publicum, quia periculoſiores ſunt inimicitiæ juxta libertatem"[*i*]—And, indeed, all barbarians are particularly addicted to revenge [*j*].

Boulainvilliers, in his *Hiſtoire abregé de France* [*k*], informs us, that if the criminal himſelf could not pay the *Wergild*, his relations were liable. And in another place he ſays, "*Le Franc ne couroit jamais riſque de ſa vie,* "*que dans les combats.*"

I have before mentioned, that the Mexicans puniſhed murder by a wergild; it ſhould ſeem likewiſe, that this cuſtom is ſpread over moſt parts of Aſia, though the Koran hath, in part, adopted the Moſaical law [*l*]—Modern travellers, and lady Mary Wortley in particular, mention, that little enquiry is made about a murder at this day in Turkey,

[*d*] Fuer. Real de Eſp. 245.

[*e*] It appears by Herrera, that the Mexicans likewiſe puniſh by a wergild for murder.

[*f*] Decem Script. p. 821.

[*g*] The moſt ſingular wergild is by the laws of *Canute*. If murder be committed in a church, the ſatisfaction ſhall be paid to Jeſus Chriſt, the king, and the relation. Wilkins, xli.

[*h*] P. 297.

[*i*] It appears, however, by *Lindenbrogue* and *Baluzius*, that this cuſtom did not prevail in all parts of *Germany*.

[*k*] P. 200.

[*l*] O! true believers, the law of retaliation is ordained you for the ſlain—The free ſhall die for the free, the ſervant for the ſervant, and a woman for a woman—But he whom his brother ſhall forgive, may make ſatisfaction according to what is juſt. This is indulgence from your Lord, and mercy. *Sale's Koran.*

"It

—"It is the buſineſs of the next relation to proſecute, and if they like "better to compound the matter (as they generally do) there is no more "ſaid of it," vol. iii. p. 39 — *Gemelli* likewiſe informs us, that in the Mogul's territories a weregild is due to the relations, but that it is reckoned diſhonourable to claim it.

I ſhould apologize for the length of theſe obſervations, and the many authorities I have cited, to ſhew that murder, by moſt laws, hath not been attended with its proper puniſhment of death (and which, indeed, is not a ſufficient atonement for the crime) did it not tend to make every Engliſhman happy to be born in the preſent times, when a juſt horror is conceived of this moſt atrocious of offences, and that, whilſt he enjoys the bleſſings of a free government, his life, and his continuing to enjoy them, is inſured by every poſſible human precaution; and, what is perhaps ſtill more valuable, he is ſecured even from the apprehenſion of receiving his death from the hands of his neighbour—Life is ſcarcely worth a thought whilſt the mind can harbour ſuch a ſuſpicion [*m*].

This is the laſt ſtatute of Henry the Seventh which I ſhall have occaſion to make any obſervations upon—It is well known, that this king hath had an expreſs panegyriſt in the great lord Bacon, who, however, is obliged to admit, that towards the latter end of his reign he was too much inclined *to the left-hand*, in order to reap forfeitures; and if this had not been admitted by his principal hiſtorians, the known puniſhments of *Empſon* and *Dudley* [*n*] in the next reign for their illegal extortions, in order to fill the king's coffers, have put this blemiſh in his character paſt all cavil or diſpute—I have before obſerved, that the ſtatute of *alienations* (as it is ſtiled by lord *Bolingbroke* and others, and with ſuch profuſion of commendations) was by no means ſo extenſive in its conſequences as they have apprehended, nor could poſſibly have been, if they had read this ſtatute with any degree of attention — Henry had, however, the merit, either from reaſons of policy, or perhaps more humane motives, to render the lower claſs of people more independent and free from the oppreſſion of the rich and powerful, of which a ſtatute of the 11th year of his reign [*o*], entitled, *A mean*

[*m*] Having ſaid ſo much with regard to the *Wergild*, or *Weregild*, I ſhall here hazard an etymology of the word, though it does not agree with the Gloſſaries—The word *wer* is rendered by Bullet, *doux, clement, benin* — And the word *gild* (amongſt other ſignifications) by a *tax* or *fine: Wergild*, therefore, ſignifies the *mild* fine or puniſhment; and ſo it certainly is, for ſo horrid a crime as murder.

[*n*] Henry VII. at firſt compounded for ſmall penalties on penal proſecutions; but growing more avaricious, he appointed Empſon and Dudley to be maſters and ſurveyors of them. Graft. p. 57—Reſtitution was made by the executors of this king of ſeveral of theſe penalties. Ibid.

[*o*] Baſilikon δῶρον.

to

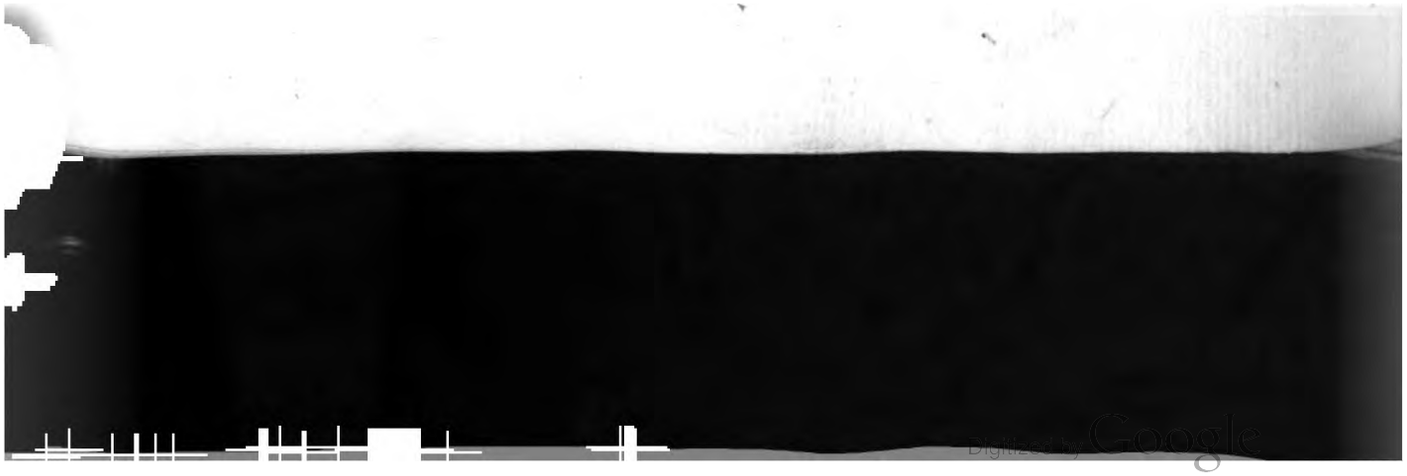
to help and ſpeed poor perſons in their ſuits, and commonly known by the name of the *Pauper* act [*p*], is a very ſufficient proof—He therefore deſerves the honourable title which James the Firſt [*q*] ſays his grandfather had obtained, viz. *The poor man's king*; a title which deſerves to laſt to the remoteſt ages, when his elegant and expenſive monument in Weſtminſter abbey is not to be found in its place.

This protection of the lower claſſes of his ſubjects, produced, as a natural conſequence, a greater freedom and independency in the lower houſe of parliament—Sir Thomas More oppoſed a ſubſidy, with ſucceſs, in the laſt year of this king's reign; which is, perhaps, the firſt inſtance of oppoſition to a meaſure of a crown, by a member of the houſe of commons.

[*p*] Notwithſtanding the humanity of this act, by the 23d of Henry VIII. ch. 15. the pauper may be puniſhed at the direction of the judges, which accounts for what is ſometimes heard of, though ſeldom practiſed, of a pauper plaintiff's being whipped—The Jewiſh law, on the contrary, *forbids the countenancing a poor man in his cauſe*, Exod. xxiii. 3.—Which is to be conſidered, however, as one of our ſtatutes againſt maintenance. The acts which have introduced the neceſſity of ſtamps, in law proceedings, make the conteſt between the rich, and poor, ſtill more unequal, than it was in the time of *Henry* VII.

[*q*] Baſilikon Δωρον, ch. xii.

STATUTES



STATUTES MADE AT WESTMINSTER.

3 Hen. VIII. A. D. 1511.

THE 11th chapter of this ſtatute opens with a very remarkable preamble in favour of the regular phyſicians and ſurgeons: "For "as much as the ſcience and cunning of phyſick and ſurgery is daily with- "in this realm exerciſed by a great multitude of ignorant perſons, of "whom the greater part have no inſight in the ſame, nor in any other kind "of learning: ſome alſo *can* [*r*] no letters on the book, ſo far forth, "that common artificers, as ſmiths and weavers, and women, boldly, "and accuſtomably, take upon them great cures, in which they partly "uſe ſorcery and witchcraft, partly apply ſuch medicines to the diſeaſe "as be very noious, and nothing meet, to the high diſpleaſure of God, "great infamy to the *faculty*, and the grievous damage and deſtruction "of diverſe of the king's people."

From this preamble it ſhould ſeem, that phyſick was more liberally profeſſed in England at this time, than in any other part of *Europe*; and I ſhould conjecture, that this preamble was drawn by the famous *Linacer*, as we find by the 14th of Hen. VIII. ch. 15, that his name is the ſecond mentioned in the firſt charter to the college of phyſicians, after *Ferdinandus de Victoriâ*.

Lord Ch. J. *Hale* ſays, that this ſtatute is a good caution to empiricks, who are certainly ſubject to the penalties, if they tranſgreſs it; but combats much an opinion, which it ſeems prevailed in his time, that if a patient of ſuch an empirick died through his ignorance, he might be indicted for murder. Vol. i. p. 240.

There are among the laws of *Bearn* (in *Du Moulin's* Collection of the Cuſtoms of the different provinces of France) ſome ſeemingly wiſe regulations with regard to the improvement of medicine, and which are at leaſt of equal antiquity with the preſent law—And by the laws of *Provence*, the acting as both phyſician and apothecary is forbid, under no leſs penalty than baniſhment—"*Los medecin no deben haber part en los droguas deus Ipotecaires*, "*ſans pena de perdere talas droguas, et eſtar forabanditz deu Pais.*" Du Moulin, vol. ii. p. 1143.

[*r*] This ſhould be *con*.

By an antient law of the *Wiſigoths* (whilſt in *Spain* [*s*]) a phyſician is not permitted to preſcribe to a criminal, but in preſence of the gaoler; the reaſon of which very ſingular law I take to be, that it was apprehended he would ſupply him with drugs to deſtroy himſelf, and ſo avoid the publick execution due to his guilt—And by a law in the *Fuero Real de Eſpana*, no phyſician, or ſurgeon, is to bleed a man's wife, but in the preſence of her huſband, which, without citing the *Fuero Real*, ſufficiently appears to be a *Spaniſh* regulation.

Not only phyſicians are intended by this law to be put upon the liberal footing, which that moſt learned and uſeful profeſſion merit from their patients and the publick; but ſurgeons alſo, who receive a further encouragement and protection from a ſtatute of the 5th of Hen. VIII. which exempts them from an attendance upon juries [*t*]—A ridicule has been thrown upon ſurgeons, from their having been incorporated, formerly, with barbers, from which union they have but within theſe few years ſeparated themſelves—The ridicule, however, ariſes from the change in the barber's ſituation, and not that of the ſurgeon—Before the invention of perukes, barbers were not employed often in the low office of ſhaving [*u*], and as for the making of perukes, it is a branch of trade which hath no ſort of connection with chirurgery.

[*s*] Fuer. Juſg. l. xi. p. 433.

[*t*] It may, perhaps, be thought ſingular to ſuppoſe, that this exemption from ſerving on juries, is the foundation of the vulgar error, that a ſurgeon, or butcher (from the barbarity of their buſineſs) may be challenged as jurors—It is difficult to account for many of the prevailing vulgar errors with regard to what is ſuppoſed to be law—Such are, that the body of a debtor may be taken in execution after his death; which, however, was practiſed in Pruſſia before this preſent king aboliſhed it by the *Code Frederique*—Other vulgar errors are, that the old ſtatutes have prohibited the planting of vineyards—That it is penal to open a coal mine, or to kill a crow, within five miles of London—That it is penal to ſhoot with a wind gun, or to carry a dark lanthorn—The firſt of theſe I take to ariſe from a ſtatute of Henry VII. prohibiting the uſe of a croſs bow—And the other from *Guy Fawkes's dark lanthorn* in the powder plot.

[*u*] It ſhould ſeem from antient portraits, that the beard was ſuffered either to grow to its full length, or elſe to have been clipped in part only.

STATUTES

STATUTES MADE AT LONDON[a].

21 Hen. VIII. A. D. 1529.

THE title of the 7th chapter of this ſtatute is as follows—"*Ser-*
"*vants embezelling their maſters goods, to the value of forty ſhillings,*
"*ſhall be puniſhed as felony.*" And the preamble ſets forth, that it was *doubtful at common law* whether ſuch embezelling was felony, or not—This ſeems to me to be one of thoſe doubts recited by the preambles of ſtatutes, which have much enervated the principles of the common law, and the bad conſequences of which I have already obſerved upon—It is agreed by all the writers on the crown law, that if a butler ſteals his maſter's plate, or a ſhepherd ſteals his maſter's ſheep, it is felony; and the reaſon why this ſhould be conſidered as a felony is as clear, viz. his having no ſort of property in the thing ſtolen, and therefore he is likewiſe within the general rule of all larcenies including treſpaſs, and the word *cepit* inſerted in all indictments of larceny is fully ſatisfied.

What, therefore, the writers upon the crown law ſay with regard to a carrier's ſtealing goods, who is carrying them from one place to another, ſeems to me (I ſpeak with great deference to ſuch authorities and opinions) not to be conſiſtent with the principles which are above laid down: as the carrier hath no better property in ſuch goods, than the butler hath in his maſter's plate, or the ſhepherd in his maſter's ſheep—The caſe which is generally cited in ſupport of this doctrine, is the 13th of Edward IV. Term. Paſch. pl. 5, which, though it is the foundation of what is conceived to be law with regard to this point, ſeems to have been entirely miſunderſtood—The caſe is a long one, and I ſhall ſtate from it the material parts before the court, together with the final deciſion—"It was de-
"bated in the Star-chamber before the council, whether a perſon having
"bargained with another to carry certain bales of goods to *Southampton*,
"who took and carried them to another place, and broke open the bales,
"and converted them to his own uſe, was guilty of felony or not? A
"variety of opinions upon this ariſe in the Star-chamber, and it is agreed,
"that the point ſhould be argued before the judges in the Exchequer-
"chamber. Upon the ſame point (then again argued) the judges differ

[a] This parliament was afterwards adjourned to Weſtminſter.

" in opinion, though it ſhould ſeem, from the ſhort notes of what they " ſaid, that the majority at firſt thought it was not felony; from which it " hath been conceived, that point was ſo determined." It appears, however, by the concluſion of the caſe, that the judges certified their opinion to the chancellor, *that it was felony.*

It is plain, therefore, that this leading and fundamental caſe hath been miſunderſtood, and the occaſion of it I take to be this—Thoſe judges, who appear by the report to have been of opinion, that the criminal, in this caſe, was not guilty of felony, ſay, he who ſteals goods (*qui lui ſont bailes*) is not guilty of larceny; which poſition may be allowed, if the word (*baile*) is underſtood in its proper ſenſe, which is that of lending *upon pledges*, or ſecurities; and the bailee, or pawnee, in ſuch a caſe, having a ſpecial property in the goods, cannot be indicted for ſtealing them: beſides, that the pawner knows againſt whom he is to bring his civil action, if the goods are detained beyond the juſtifiable time—*Stanford*, in his pleas of the crown, puts many caſes on this head, all of which relate *to bailment upon pledges*; and I am therefore confident, that all thoſe caſes, which have been determined upon mature conſideration, will, if properly attended to, relate to *ſuppoſed larcenies*, where the bailee hath a ſpecial property in the goods ſtolen—I ſubmit this, however, with great deference; and it is a point of infinite conſequence to the publick, as what are called *breaches of truſt* do but too much increaſe, with the greater temptation, which daily ariſes from the increaſe of property and trade in this country, and which neceſſarily require a confidence in men who have had but mean and illiberal educations, and often from thence an illiberal diſpoſition.

Whether I may be thought to have too preſumptuouſly differed from the opinion of the writers on the crown law, in certain parts of what I have here ventured to advance, or not, I ſhould think that the doubt, which is recited in the preamble of this ſtatute, could never have been the doubt of a lawyer, for in what reſpect does a ſervant running away with a caſket of jewels [*b*] (which I have not lent to him upon pledges, or as a ſecurity) to be diſtinguiſhed from the caſe of a butler, who ſteals his maſter's plate, and which the writers upon the crown law (and particularly Hawkins [*c*]) allow to be felony—It is admitted, however, that greater accuracy cannot be expected in a work of ſuch an extent, than is generally to be found in his very valuable treatiſe on the pleas of the crown.

[*b*] Staunford, in his treatiſe on the Pleas of the Crown, p. 25, ſtates the following caſe from the year books: " Si jeo baile un bagge d'argent a mon ſervant a garder, et il fuaſt et allaſt de " moy ove le bagge, *eſt felonie.*"

[*c*] Vol. i. p. 89.

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This chapter of the ſtatute is followed by another, which orders reſtitution of the goods ſtolen, when the proſecution is by indictment, and not by appeal, which hath in effect taken away the *appeal for larceny*, which was antiently ſo frequent—I ſhould ſuppoſe, that both one and the other were laws made (as lord Bacon terms it) *on the ſpur of the occaſion*; and that a ſervant had, at this time, run away with a caſket of jewels, and which happened to be of conſiderable value.

The civil law not only makes a *breach of truſt* (as it is called) amount to a larceny, but declares, "Si creditor pignore, ſive is apud quem res "eſt depoſita eâ re-utatur, ſive is qui rem utendam accepit, in alium uſum "eam transferat, quam cujus gratiâ ei data eſt, furtum commiſiſſe vide-"tur"—And in the preſent ſeſſions of parliament [*d*], a bill was propoſed in the houſe of commons, to declare breaches of truſt, accompanied with certain circumſtances, to be felony—By the *Swediſh law*, if any thing is found, without proper notice, or advertiſement, to thoſe who may be the owners, and the finder converts it to his own uſe, "*in crimen furti incidit*— "*Quin et domeſticorum furta, graviùs quam ſimplicia conſtitutionibus puniuntur* "—*Themis Romano-Suecica, Gryphiſwaldiæ*, 1729."

[*d*] Viz. 1765.

STATUTES

STATUTES MADE AT WESTMINSTER.

23 Henry VIII. A. D. 1531.

THE 3d chapter of this ſtatute may be looked upon as the firſt general law which takes away the benefit of clergy, as the 12th of Hen. VII. had only taken this privilege from thoſe who were convicted of petit treaſon, or by the moſt extenſive conſtruction, *murder* [*a*]—The criminals, who are to ſuffer capitally by this law, are thoſe convicted of murder, ſacrilege, arſon, robbery on the highways, or in dwelling houſes, the owner, his wife or children, or ſervants *being within*, and *put in fear*—From theſe two kinds of larceny, enumerated by the ſtatute, it is very clear, that the legiſlature meant to puniſh capitally only thoſe larcenies or robberies, which were attended not only with the loſs of the perſon's money or goods, but which were likewiſe accompanied with circumſtances of aggravation and violence—As our ſtatute law at preſent hath taken the benefit of clergy from many other kinds of larceny, and hath been by many thought to have extended the ſeverity of capital puniſhments for this offence too far, it may not be improper to take a ſummary view of the different acts of parliament, which will be found to ariſe from the many and great improvements by trade and commerce, from century to century.

Before the reign of Edward the Third, it ſeems to be generally agreed [*b*] we had no gold coin in England, and the ſilver likewiſe is believed not to have been in great profuſion—Rents were paid almoſt entirely in kine; and as there was little or no trade, the money was chiefly in the coffers of the great barons, *centum ſervata clavibus*, which no one could ſteal, or carry away—As for plate (the great object of temptation to a thief) there was ſtill leſs to be found, as it appears by the wills of ſome of the antient kings of England, that they diſpoſed of (as particular legacies) pieces of plate, which a gentleman of a common fortune at preſent would not think worthy a legatee's acceptance—As for other kinds of furniture, it

[*a*] See the obſervations on that ſtatute—The preſent law puniſhes *real clerks* by their being delivered to the ordinary, who is not to allow of what is called *purgation*, but impriſon them for life; which is believed to be the only inſtance of puniſhing by impriſonment for life, either by the common, or ſtatute law.

[*b*] Maitland, in his Hiſtory of Scotland, indeed mentions ſome gold coins of the preceding reign; but they were probably not more numerous than medals.

was clumſy and heavy, conſequently leſs worth ſtealing, or if ſtolen could not be carried off; and as for linen, which is the moſt eaſily diſpoſed of by the pilferer, it is believed that none was worn at this time; and the mountaineers in Wales (who may be ſuppoſed to live at preſent as the Engliſh did centuries ago) ſtill uſe nothing but flannel.

Trade, however, by this year of the reign of Henry the Eighth, had conſiderably increaſed, and with trade, its natural concomitants, luxury and elegance—The houſe had now ſomething to tempt the pilferer; and if it was, by its ſituation, lonely, and at a diſtance from other habitations, gangs of thieves beſet and rifled it [*c*], which ſeems to have been the occaſion of the ſtatutes requiring, that the owner or his family ſhould *be put in fear*.

The next ſtatute, which takes away the benefit of clergy from larceny, is the 5th and 6th of Edward VI. ch. ix. which extends the ſtatute of Henry VIII. to a robbery in a houſe, where the owner, or any of his family, happen to be, although they are *not put in fear*; which was, in all probability, occaſioned by a houſe having been rifled, whilſt the owner and his family were aſleep, and conſequently *not put in fear*; which is a neceſſary circumſtance by the ſtatute of Henry the Eighth—The legiſlature, by the ſame act (having thus explained the 23d of Henry VIII.) take away likewiſe the benefit of clergy from a robbery in a booth, or tent in a fair—This protection to the property of a perſon, who kept a ſhop or booth in a fair, aroſe from fairs being much more conſiderable than they are at preſent, and poſſibly not unlike the great fairs of *Germany*, in which very conſiderable mercantile tranſactions are carried on; whereas with us, the well-ſupplied ſhops in every town and village almoſt (as well as licenſed hawkers) do not make it neceſſary for the inhabitants of the country to wait for a particular anniverſary, which was to ſupply the wants of the whole year.

The next ſtatute, which relates to robberies in dwelling-houſes [*d*], is

[*c*] The firſt ſtatute againſt *Egyptians* paſſed the year before, which recites them to go from place to place in great companies—It appears by Holinſhed's Chronicle, that they had invented a language peculiar to themſelves, called *Pedlars French*, and that they were ſubdivided into fifty-two different claſſes of thieves; the names of which he enumerates, vol. i. p. 183. This very peculiar race of people are baniſhed from almoſt every part of Europe—They are in French called *Bohemiens*—Their complections ſeem to prove, however, that they come originally from Egypt, or ſome ſouthern latitude—Cervantes ſays of them, "los *Gitanos* parece "que ſolamente nacieron en el mundo, para ſer ladrones."

[*d*] It was allowed by the *twelve tables* to kill a Burglar—QVEI. NOX. FORTOM. FAXSIT. SEI. IM. ALIQVIPS. OCCISIT. IOVRE. CAESOS. ESTOD. SEI. LOVCI. FOR-

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the 39th of Eliz. ch. xv. which recites, that the poorer ſort of people were obliged to leave their houſes during divine ſervice, without any one in them; as likewiſe when they were employed in country labours, or buſineſs: it therefore enacts, that if any perſon ſhall ſteal goods from any dwelling-houſe (*though no one is within*) which exceed the value of five ſhillings, he ſhall be excluded from the benefit of clergy.

By this time tenants had procured from their landlords leaſes for terms of years; and having a more permanent intereſt in their farms, they could afford to improve them, and reaped the honeſt fruits of their induſtry—As their rents were now paid in money, they muſt at times have had conſiderable ſums in their houſes, and perhaps a ſilver ſpoon, or linen, to tempt the thief, who watched the opportunity of every one being abſent; and by that means not only plundered the houſe with eaſe, but evaded the two former ſtatutes; both of which required the owner, or ſome of his family, *to be in the houſe, at the time the robbery was committed.*

The legiſlature having thus protected the property of the farmer, in the third year of W. and M. [*e*] (when trade had infinitely increaſed) ſhew the ſame protection to the property of another moſt uſeful claſs of men to ſociety, viz. the merchants, and enacts, that "if any one ſhall ſteal goods "from any ſhop, or warehouſe adjoining *to a dwelling-houſe*, to the value of "five ſhillings, he ſhall not be entitled to his clergy, *although no perſon ſhall* "*happen to be within*"—And the 10th and 11th of William III. (commonly called *the ſhop-lifting act*) takes away clergy from him, who ſhall privately ſteal goods to the value of five ſhillings, from any *ſhop, or warehouſe, coach-houſe, or ſtable*—This laſt ſtatute, beſides including *coach-houſes and ſtables*, does not make it neceſſary, that the ſhop or warehouſe

TOM. FAXIT. TELOQ. SE. PRAEHENDIER. PROHIBESIT. SEI. IM. ALIQVIPS. OCCISIT. IOVRE. CAESOS. ESTOD. AST. SEI. LOVCI. FORTOM. FAXSIT. NEQVE. TELO. SE. PRAEHENDIER. PROHIBESIT. SEI. LEBER. SIET. PRAETOR. IM. VERBERARIER. IOVBETOD. EIQVE. QVOI. FORTOM. FAXSIT. ADDECITO. SEI. SERVOS. SIET. VIRGEIS. CAESOS. EX. SAXO. DEICITOR. SEI. IMPOBES. SIET. PRAETORIS. ARBITRATVV. VERBERATOS. NOXSIAM. SARCITO. — This law is remarkable not only for the matter, but for the language, and ſpelling of it—It ſeems from this ſpelling, that the *Romans* generally pronounced their *u* as the *Grecians* did their υ, and as the French now pronounce thoſe vowels when joined together—At leaſt this obſervation holds true in thoſe ſyllables of words, which are not final as in *joure*, inſtead of *jure*; and the Roman name of Lucullus is in Greek Λυκολλος—In the ends of words, *o* is uſed inſtead of the more modern ſpelling with *u*, as in *cæſos*, inſtead of *cæſus*, which again agrees with the Greek termination of Λυκολλος, inſtead of Λυκολλυς—It may be further obſerved, that the Romans pronounced the letter *i* like an *e*, and as moſt of the nations in Europe pronounce it, as *leber* is uſed inſtead of liber.

[*e*] Ch. ix.

ſhall

ſhall be adjoining to the dwelling-houſe, which is required by the 3d of William and Mary—And I the rather take notice of this diſtinction between the two laws, as Mr. *Juſtice Foſter* hath reported [*f*] a deciſion at the Old Bailey in July 1751, *that this ſtatute does not extend to any warehouſe, which is a mere repoſitory for goods, but only where merchants and traders deal with, and ſell to, their cuſtomers*—It ſhould ſeem, however, that theſe *diſtant warehouſes* were thoſe expreſly, which were intended to be protected by this ſtatute, as the ſhop or warehouſe *adjoining to a dwelling-houſe* was before protected by the 3d of Will. III. ch. ix.—And the more diſtant the warehouſe, the more probable it is that it ſhould be broken open.

Laſtly, the 12th of Ann. ch. i. takes the benefit of clergy from him, who ſhall ſteal goods to the value of forty ſhillings from any *outhouſe*.

I have endeavoured, by this ſtate of the different ſtatutes, which relate to the robbing of the dwelling-houſe [*g*], or building in ſome meaſure connected with it [*h*], to ſhew the one naturally to follow and ariſe out of the other, from the alterations of circumſtances from time to time, and chiefly from increaſe of trade; as alſo to juſtify the ſtatutes from being conſidered as too ſevere—What hath beſides contributed perhaps to the opinion, which many have formed, that our laws, with relation to the puniſhment of this offence, are too bloody, is, perhaps, the compariſon of the Engliſh ſtatutes with thoſe of other countries; but till a country can be found, which contains equal property and riches, the compariſon cannot be a juſt one [*i*]—I allow that, by the laws of moſt countries, this offence is *not* a capital one [*k*]; and *Plato* obſerves, from a paſſage in the *Odyſſey*, that, in the time of Homer, it was not conſidered as a blemiſh, but rather honour to a man's character.

With regard to the Spartans, it is well known, that *Lycurgus* is ſaid to have promoted it by his laws—If this really was one of his inſtructions, it

[*f*] P. 78.

[*g*] As for other larcenies, it is well known, that they are ſeldom puniſhed with death.

[*h*] A ſtatute of the late king hath indeed gone much further, by making it felony to ſteal black lead from the mine.

[*i*] I have not an opportunity of being informed accurately what kind of thefts are puniſhed capitally in Holland.

[*k*] Inſtances, however, are not wanting of it's being ſo—Thus Hector Boëthius informs us, that, by the laws of *Kenneth*, thieves were to be puniſhed with death—And by the laws of Athelſtan, a freeman was to be thrown from a cliff, and a ſlave to be ſtoned—It ſhould ſeem likewiſe, that theft was puniſhed by death by the old Welſh laws, as a particular cliff is ſhewn in Merionethſhire, between Dolgelly and Tal-lyn, from whence the criminal (agreeable to the laws of Athelſtan) uſed to be precipitated: there is likewiſe a traditional ſtory, that a criminal deſiring the ſheriff to ſhake hands with him before he died, involved him likewiſe in his fate, and puniſhment.

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ſerves only to prove the general rule, as he was in all inſtances a moſt paradoxical legiſlator—I ſhould, however, ſuppoſe that we have a very imperfect and inaccurate account of all the *Spartan* cuſtoms and manners, as their inſtitutions were of a moſt forbidding nature to a ſtranger, who would not therefore live with them; and the Spartans themſelves were, by their laws and education, obliged to be illiterate—We therefore cannot be informed by a Spartan writer—I ſhould therefore ſuppoſe that this encouragement of theft hath been miſunderſtood, from an encouragement given by their legiſlator, to make incurſions and *depredations* [*l*] upon the neighbouring ſtates, which tended to keep up their perpetual wars, and martial diſpoſition: as for a theft at home between *Spartan* and *Spartan*, *Lycurgus* had taken care that there ſhould be nothing to ſteal.

The Romans puniſhed this offence in their ſlaves often with death—The ſenatorial order, however, were even exempted from any proſecution for this crime, according to Dio Caſſius—

Ὑπὸ δὲ τὰς αὐτὰς ἡμέρας δόγμα ἐγένετο, μηδένα τῶν ἐς τὴν γερουσίαν τελούντων ἐπὶ λῃστείᾳ κρίνεσθαι· καὶ ἔτως οὔτε τότε ἐν τοιαύτῃ τινὶ αἰτίᾳ ὄντες ἀφείθησαν. Dio Caſſ. l. xlix. p. 477, edit. Hen. Steph. [*m*].

None of theſe inſtances however prove, that thefts, attended with aggravating circumſtances, might not have been puniſhed with ſevere or capital puniſhments; though (as with us) what goes by the general name of larceny, might have been treated with greater indulgence to human temptation and infirmities, or even perhaps ſomewhat encouraged by a whimſical and paradoxical legiſlator.

[*l*] I have before obſerved, on the 4th of Hen. IV. that the civilized Athenians were required, by one of their laws, to make depredations twice a year upon the people of *Megara*.

[*m*] I have before obſerved, p. 231, that Lord *Clarendon* ſays, that the houſe of lords, in the time of *Charles* the Second, inſiſted upon their privileges being ſaved in a bill to puniſh *wood-ſtealers*.

STATUTES

STATUTES MADE AT WESTMINSTER.

27 Hen. VIII. A. D. 1535.

THE 4th chapter of this ſtatute regulates the trial of piracy, or other capital offences committed on the high ſeas, which the preamble recites to have frequently been committed with impunity, becauſe the trial before the admiral, or his commiſſary, was according to the rules of the civil law, which requires either confeſſion of the criminal, *or proof by indifferent witneſſes*—The ſtatute after this recital directs, that ſuch offences ſhall for the future be tried by the king's commiſſion, in any county, in like form and condition as if the crime had been committed on ſhore.

I ſhould conceive that this ſtatute was drawn by the then judge of the admiralty, as it contains a moſt ſtrong and undeſerved reflection on the common law, by the reciting "*that indifferent witneſſes were not required at "the trial* by common law, as they are by the civil law"—It is true, that more exceptions to the teſtimony of witneſſes are allowed by the civil law, than by the law of England[a]; but they are only exceptions of unneceſſary ſub-

[a] By the old French law, the objections to the competency of witneſſes are ſtill more numerous than by the Roman law—Thus *Beaumanoir* in his *Coutumes de Beauvoiſis*, "*Batars et ſerfs "doivent etre deboute de leur teſmoignage, ſe le querele n'eſt contre ſerf ou contre batar—Meſiau "ne doit pas etre oi en teſmoignage, car coutume s'accorde que ils ſoient deboute de la converſation "des autres gens—Chau qui ſont a men pain, et a men pot, ou en me mainburnie, ne doivent pas "etre oi en* teſmoignage pour moi"—As both the language and orthography of the above citation, are very antient, I ſhall tranſlate ſome of the more unuſual terms—*Meſiau* ſignifies a *leper*; it is ſometimes in this author written *meſiè & mezle*, which agrees with our ſenſe of the word *meaſly*, when applied to ſwines fleſh—Such a difference in the ſpelling of a word will not ſurpriſe any one, who hath happened to read many antient authors, in any of the modern languages—*Chaux qui ſont a men pain, et a men pot, ou en mainburnie*, ſignifies *thoſe who eat my bread, or partake of my pot, or are under my guardianſhip, or government.* This treatiſe of *Beaumanoir* is ſo ſyſtematical and compleat, and throws ſo much light upon our antient common law, that it cannot be too much recommended to the peruſal of the Engliſh antiquary, hiſtorian, or lawyer—He was *baily* (or ſteward who kept the courts) of the *Comte de Clermont*, and gives an account of the cuſtomary laws of *Beauvoiſis* (which is a diſtrict of county about forty miles to the northward of Paris) as they prevailed in the year 1283—He is conſequently a more antient writer than *Littleton*, and, to ſpeak with all due deference to this *father of our law*, a better writer—It need hardly be ſaid, that the cuſtoms and laws of the two countries were at this time very ſimilar, eſpecially of the more *northern* parts of France; and if it wanted other proof, the commentators upon the oldeſt French law books cite *Littleton* as illuſtrating their cuſtoms—*Beaumanoir's* work was firſt printed at *Bourges* in 1690, with a ſhort commentary by *Gaſpard Thaumas*

tlety and refinement; and the law of England does not permit a criminal to be convicted, but upon the moſt full and ſatisfactory evidence; and ſuch evidence cannot be expected from what this preamble *by implication ſtiles witneſſes ſwearing under improper bias.*

There is a parentheſis [*b*] of ſome ambiguity likewiſe thrown into this preamble, which relates to the confeſſion of the criminal, required by the civil law (*which they will never do without torture or pains*). I ſhall not dwell, however, upon the true meaning or conſtruction of this whole preamble, but ſhall only obſerve, that the practice of torturing criminals is not ſpoken of with any great abhorrence by the legiſlature; nay, ſeems to be recited as allowed to have been practiſed in this country, in all offences tried before the admiral — I have, in my obſervations on the ſtatute of Weſtminſter the firſt, endeavoured to prove, that torture (though not frequently uſed) was not abſolutely unknown in England, ſince the printing of which ſome additional proofs have occurred—Oldmixon in his hiſtory [*c*] aſſerts, that torture was uſed, in 1558, againſt one Simpſon, to extort a confeſſion [*d*] — And Sir *Walter Raleigh* at his trial mentions, that *Kemiſh* was threatened with the rack, and that the keeper of this horrid inſtrument was ſent for, which ſeems to prove, beyond all doubt, that torture had been occaſionally uſed, otherwiſe there would not have been a regular officer who had the cuſtody of it; and if my memory does not fail me, the yeomen of the guard ſhew, at the Tower, ſome of theſe diabolical inſtruments at this day [*e*].

Torture ſtill continues to be uſed in moſt countries of Europe, and amongſt the reſt in France; though honeſt *Montaigne* hath written with great warmth and freedom againſt it [*f*]. Monteſquieu hath likewiſe a ſhort chapter, by which he would mean to condemn it; but it is the moſt

de la Thaumaſiere, who at the ſame time publiſhed *Les aſſiſes de Jeruſalem*, which contains a moſt complete Code of laws for the government of the Chriſtians, whilſt in poſſeſſion of that part of *Aſia*, and may, therefore, be ſuppoſed to participate of the laws of moſt parts of Europe.

[*b*] This parentheſis (or at leaſt words ſo included between crotchets) is not probably on the roll of parliament, and muſt therefore be conſidered as that of the editor's of the ſtatutes.

[*c*] P. 284.

[*d*] We find by *Cornificius's Rhetorica* (ſometimes publiſhed together with the works of *Cicero*) that it was an uſual topick of diſpute, what kind of credit was to be given to evidence thus procured, "*A quæſtionibus dicemus, cum demonſtrabimus majores noſtros veri inveniendi cauſâ tormentis, et cruciatibus quæri voluiſſe et ſummo dolore cogi, ut quicquid ſciant, dicant*; the ſame appears, likewiſe, by the 5th book of *Quinctilian*.

[*e*] Lord Coke, in his 3d Inſt. p. 35, mentions that the rack, or *brake*, in the Tower, was brought into England by the Duke of Exeter, in the reign of Henry VI. and condemns the uſe of it.

[*f*] Liv. ii. ch. 5.

fantaſtical

fantaſtical and whimſical in his whole work of the *Eſprit des loix* — The very great ability and learning, which appear almoſt in every other part of it, entitle him, however, to theſe, and greater liberties, with his readers.

The preſent king of Pruſſia hath, to his honour, aboliſhed it in his own dominions — "La queſtion ſe donne en Allemagne aux malfaiteurs aprés "quils ſont convaincus, afin d'arracher de leur propre bouche l'aveu de "leurs crimes: elle ſe donne en France pour averer le fait, ou pour de-"couvrir les complices—Il y a huit ans que la queſtion eſt abolie en Pruſſe." Mem. Brandeb. p. 394.

The 6th chapter of this ſtatute was intended to promote the breed of good and ſtrong horſes, to which there was a very particular attention paid at preſent, as appears by ſeveral laws of this reign, with the ſame title—The means of ſecuring ſtrength in the future breed of horſes, is by directing, that no ſtallion ſhall cover a mare which is not at leaſt fourteen hands high — *Carew* (in his account of *Cornwall*) ſuppoſes, that this law hath been the occaſion of loſing a ſmaller and more uſeful horſe, which was almoſt peculiar to that county; and whether from the ſame cauſe I will not pretend to ſay, but it is certain, that the ſmall breed of horſes is now almoſt entirely loſt in *Wales*—It may, perhaps, appear to be a whimſical conjecture; but I ſhould ſuppoſe, that the occaſion of deſiring a ſtronger breed of horſes than the country naturally produced, aroſe from tournaments, as well as other very expenſive and magnificent pageantries of the early parts of their reign, which all hiſtorians agree was exceſſive[*f*]—Beſides this, we find by the 14th and 15th of Henry VIII. ch. 4, that a vaſt number of Engliſhmen went into foreign ſervices—Armour was ſtill uſed; and therefore no horſe was proper for ſuch an officer except a horſe of ſtrength, and, even after his return, he continued to want the ſame breed for a tilt or tournament.

The 10th chapter relates to uſes and wills, and there is a proclamation publiſhed, in conſequence of it, by *Berthelet*, in the ſame year [*g*].

Much hath been ſaid with regard to the convenience and inconvenience ariſing from uſes and truſts—*York*, one of the judges at the time this act paſſed, ſays, "it is abſurd that I ſhould enfeoff another with my land, "and yet claim it againſt my own gift." Year Books Term. Paſch. 27th Hen. VIII—And in the ſame caſe likewiſe (which is a long one) the great

[*f*] *Sir Thomas More*, in the collection of his poems, which go under the name of *Epigrams*, pays his court to the new king, by commending both the magnificence of his tournaments, and the good regulations which he had introduced with regard to the making this extraordinary amuſement more ſafe than it had been.

[*g*] I cannot here omit an opportunity of mentioning, that if a judicious collection was made of theſe proclamations, it might often throw light upon the ſtatutes.

point

point is agitated, whether *a uſe* and a *truſt* is the ſame [*b*], and whether there were either uſes or truſts by the antient common law.

The firſt caſe in which the court of Chancery determined upon a feoffment to an uſe, ſeems to have been in the 18th of Edward the Fourth [*i*]—A married woman made her will, and infeoffed feoffees to the uſe of her huſband and herſelf in fee—The huſband ſued a ſubpœna againſt the feoffees, in order to take the opinion of the court, whether this will was good or not—It was conſidered as a caſe of ſome importance, as common law judges aſſiſted the chancellor—One of theſe aſſiſtants ſeemed to think it good in chancery, being a *court of conſcience*—The other judges, in concurrence with the chancellor, agreed, that, as the will was void at common law, it was void, likewiſe, in that court.

The next caſe is in Eaſter term the 21ſt of Edward IV. when it was attempted to make the feoffment of an infant, under the age of fifteen, good, after the execution of which he made a ſecret truſt to the feoffees by parol. This was likewiſe determined to be void—And in the 15th of Henry VII. it is agreed by the judges, that the *ceſtuy que uſe* hath no right whatſoever to the land, but by permiſſion of the feoffees.

Theſe caſes are not, indeed, ſuch as will be probably looked after by a modern practitioner in a court of equity—They ſhew, however, that theſe *fideicommiſſa*, and ingenious inventions, were at firſt much diſcountenanced. The preamble to the ſtatute likewiſe inveighs much againſt the ill-conſequences ariſing from them [*k*], and, therefore, as lawyers ſomewhat technically expreſs it, *executes the uſe to the poſſeſſion*; or, to ſpeak more intelligibly to a common apprehenſion, *unites them* [*l*]—It would have been ſtill more commendable, perhaps, to have, in many inſtances, aboliſhed them; for why is any one, either in the poſſeſſion or transferring of his property, moſt unneceſſarily to make uſe of the intervention and name of another? at leaſt in the greater part of worldly tranſactions, this is by no means requiſite. As lord Bacon hath an elaborate reading on this ſtatute, and which ſeems to be much the moſt accurate and compleat of all his treatiſes on the law; I ſhall not obtrude any of my own crude obſervations, but refer the reader to this more ſatisfactory authority

[*b*] Roper, in his life of Sir *Thomas More*, mentions the reaſons, why the judges would not conſider a truſt to be the ſame thing with an uſe; p. 25, &c. ſeq.

[*i*] Y. book.

[*k*] Lord Hardwicke (in Davenport and Oldys, July 17, 1738) ſpeaks thus of this ſtatute, "*and by this means a ſtatute made upon great conſideration, introduced in a ſolemn, pompous manner, hath had no other effect, than to add at moſt three words to a conveyance.*" *Atkins's Rep.* p. 591.

[*l*] It is one of the inſtructions to the Earl of Suſſex, lord deputy of Ireland, that he ſhould

The latter part of this ſtatute relates to wills; and as every one for the two laſt centuries has had the power of deviſing his land, it may perhaps be thought extraordinary, that this power ſhould not have been derived from the common law [*m*], but from an act of parliament. The reaſon of this I take to ariſe from ſo few being capable formerly of writing a will, or finding a perſon who could write what they dictated—If it is ſaid, that by the common law every one had a right thus to diſpoſe of his perſonal property; the anſwer is, that perſonal eſtate was antiently one of thoſe *minima de quibus lex non curat*—Beſides this, land could not be transferred without the conſent of the king, or the ſuperior lord; and a fine was paid for the obtaining his conſent to ſuch alienation—The will, moreover, could not be opened, or known, till after the teſtator's death, and poſſibly the deviſee was the mortal enemy of the feudal lord, who could not permit ſuch a tenant to be impoſed upon him — Theſe, or other reaſons, muſt have occaſioned this power's not being given to the owner of land by the common law; as by moſt other laws [*n*] the ſubject has this indulgence, which ſeems to be a great ſpur to induſtry, as well as a ſecurity of the dutiful behaviour of the family and relations, to him who is inveſted with ſuch a power.

As wills are often conſtrued, the teſtator might as well have continued to have had no ſuch power—It is a fundamental rule in all countries, where the party may make a will, that it ſhall be carried into execution according to the intention—Notwithſtanding this, it hath been determined by a modern deciſion, that an eſtate deviſed to A, for *his life and no longer*, ſhould be an *eſtate tail*— The reaſon generally given for theſe deciſions is, that precedents of other adjudged caſes muſt be followed, as otherwiſe the law will be afloat, and advocates will not know how to adviſe their clients —The anſwer to this ſeems to be, that there cannot be a caſe in point, without the two wills are conceived *in verbis ipſiſſimis*, and made by teſtators in the ſame ſituation and circumſtances; for it is ſure ſtrange to contend, that the will of a duke and a mechanic can be made with the ſame views— The firſt will undoubtedly be a mere will of pride, the other probably of affection and equity; and if the intention of the teſtator is to be followed

introduce a ſtatute of uſes. Cox's Hiſt. of Irel. p. 315. The reaſon of which probably was, that the forfeitures to the king might not be evaded.

[*m*] There are inſtances in *Rymer* of the kings of England empowering particular perſons to make their wills—Edward III. gives ſuch a power to his ſon the *Black* prince.

[*n*] By the laws of the twelve tables, *uti quiſque legaſſit, ita jus eſto*. There are many regulations with regard to wills in the Koran; and Herrera mentions, that the native Mexicans had this power; ſo that it may be ſaid to prevail as law in three parts of the globe—It is difficult to know, in the antient laws collected by *Lindenbrogue* and *Baluzius*, whether the Germans had this power or not, as *Mabillon* obſerves, that in the early ages *teſtamentum* ſignified any kind of contract. De Dipl. p. 3.

(which

(which all agree, if it does not contradict a rule of law [o]) the ſame words may reaſonably receive a different conſtruction.

As for the objection, *that advocates would not know how to adviſe their clients, if precedents were not followed*, I ſhould think it may be ſtill more eaſily anſwered: the advocate ſhould read the will, and find out the teſtator's intention, without conſidering what determinations have been made upon other wills; and I remember to have heard a learned judge, within theſe few years, thank the bar, for not having in an argument upon a will cited any caſes, as every will was to ſtand upon its own bottom. If it would not be thought too preſumptuous, I would venture ſtill to go further, and contend, that the ſame rule ſhould prevail with regard to the conſtruction of a deed; nor is it proper to ſuppoſe, that they are all drawn with the ſtricteſt accuracy and beſt advice, when it is well known, that the greater part are never reviſed, but by thoſe whoſe imperfect knowledge of the law is, perhaps, rather productive of more errors, than if the deed was penned by one who had not had what is called a profeſſional education —It is in ſhort to ſuppoſe what is contrary to the fact, and every one's experience; and an argument built upon ſuch a ſuppoſal can never carry with it, or deſerve, any great weight.

[o] As if a teſtator *deviſes a perpetuity*, which he cannot do by *any words*, though moſt clearly expreſſive of his intention.

STATUTES

STATUTES MADE AT WESTMINSTER.

31 Hen. VIII. A. D. 1539.

THIS ſeſſions of parliament is remarkable, not only for ſome of the laws which continue in force, but likewiſe for others which were preferred, and rejected, as well as ſome which paſſed indeed, but were either repealed, or ſuffered to expire—The manuſcript *Calendar* of the Journals of the houſe of Lords begins with this reign, and by that it appears, that in this year, viz. 1539, a bill was *preferred* to the houſe of Lords, by the lord chancellor, *concerning huſbands and wives, together with a book containing diverſe heads thereon*—We have no further light from the *Calendar* with regard to this bill, which muſt be allowed to have an extraordinary title. I ſhould ſuppoſe, however, that the purport of it was, to make divorces and ſeparations more eaſy; and that the book, which the chancellor brought with him to the houſe, was a treatiſe, written by Henry the Eighth, on that ſubject. He is well known to have been a man of letters [*a*], and to have entered the liſts as a polemical divine; as his own divorce from *Katharine of Arragon* had raiſed ſo warm a controverſy, it is probable he had read much upon this particular ſubject; and it muſt have made the deeper impreſſion, as he was ſo much intereſted in the deciſion of that point.

The 8th chapter of this ſtatute enacts, that the king, with the advice of his council, may *ſet forth* proclamations, under ſuch pains and penalties as he ſhall think proper, provided they do not extend to forfeiture of land, or life; and if any one leaves the kingdom, with intention to avoid a proſecution thereon, he is *adjudged to be a traytor*—This ſtatute is moſt properly repealed by 1ſt Edward VI. and muſt be allowed to be, perhaps, the moſt unconſtitutional of all the tyrannical acts of this reign. The latter part of it is ſo ſingular, that it muſt have been occaſioned by an intention to iſſue a proclamation, which would have immediately affected ſome particular perſon, who would probably leave the kingdom—I muſt admit,

[*a*] He was, likewiſe, very muſical, and a compoſer—An anthem of his compoſition is frequently ſung at Chriſt church cathedral—It is what is called a *full anthem*, without any ſolo part, and the harmony is good.

however, that I cannot, from the hiſtory of the times, diſcover what perſon was in view.

The 10th chapter is entitled, *for placing of the Lords*; and the Calendar of that houſe informs us, that it was preſented by the lord chancellor, and *by the king's eſpecial command*—Biſhop *Burnet*, in his Hiſtory of the reformation, obſerves upon ſome miſtakes of Selden, with regard to this ſtatute,

" There is another act, which but collaterally belongs to eccleſiaſtical " affairs, and therefore ſhall be but ſlightly touched. It is the act of the " precedency of the officers of ſtate, by which the lord vice-gerent has the " precedence of all perſons in the kingdom, next the royal family: and " on this I muſt make one remark, which may ſeem very improper for " one of my profeſſion; eſpecially when it is an animadverſion on one of " the greateſt men that any age has produced, the moſt learned Mr. *Sel-* " *den*. He, in his Titles of honour, ſays, 'That this ſtatute was never " printed in the ſtatute-book, and but incorrectly by another, and that " therefore he inſerts it literally as is in the record.' In which there are " two miſtakes. For it is printed in the ſtatute-book that was ſet out in " that king's reign, though left out in ſome later ſtatute-books; and that " which he prints, is not exactly according to the record. For as he " prints it, the biſhop of London is not named in the precedency; which " is not according to the parliament-roll, in which the biſhop of London " has the precedence next the archbiſhop of York; and though this is " corrected in a poſthumous edition, yet in that ſet out by himſelf, it is " wanting: nor is that omiſſion among the errors of the preſs, for though " there are many of theſe gathered to be amended, this is none of them. " This I do not take notice of out of any vanity, or humour of cenſuring " a man ſo great in all ſorts of learning; but my deſign is only to let in- " genious perſons ſee, that they ought not to take things on truſt eaſily, " no not from the greateſt authors." Burnet, vol. i. p. 264.

The 13th chapter of this ſtatute laid the ax to the root of popery, by the diſſolution of monaſteries and abbies—Biſhop Burnet informs us, that previous to this diſſolution there was a book written by one *Simon Fiſh*, of Grays Inn, entitled *The ſupplication of the beggars, againſt the ſtrong and idle*, which was preſented to the king by *Anne Boleyn*, and had at that time a great run—The preamble recites a *voluntary and free ſurrender*[*b*] by the eccleſiaſtical houſes, which I ſhall, without heſitation, add to the liſt of ſtatutes which recite falſhoods — It is generally ſuppoſed, that this diſſolution of monaſteries occaſioned the proviſion for the poor in the latter end of queen Eli-

[*b*] The form of this ſurrender may be ſeen in Burnet's Hiſtory of the Reformation.

zabeth,

zabeth, which I ſhould much doubt—In the *firſt place I do not find*, that great numbers of poor are ſubſiſted by the *monaſteries, which con-*tinue ſtill in the Roman Catholick countries; *and Dr. Ducarrel informs* us [*c*], that he paid a particular attention to this *in the province of Nor-*mandy, and could not find that the poor had *any very conſiderable cha-*rity, or ſupport, from the religious houſes—*Beſides*, the 43d of Elizabeth was near ſixty years after the diſſolution; and if the poor, at any time, found the difference, it muſt have been more ſenſibly felt in the firſt years after this ſtatute took place.

Though the law was not probably attended with that moſt terrible and inhuman conſequence, the ſtarving of the poor; yet I ſhould imagine, that it was the occaſion of a great increaſe of law ſuits—*Roper*, in his life of Sir *Thomas More*, informs us, that Sir Thomas, who was an advocate of the greateſt eminence, and in full buſineſs, did not, by his profeſſion, make above four hundred pounds per annum; and there is a common tradition in Weſtminſter-hall, that Sir Edward Coke's gains, at leaſt, equalled thoſe of a modern attorney-general. It is likewiſe ſaid, that the value of the places of the prothonotaries [*d*] of the common-pleas, in the reign of Queen Elizabeth, were at leaſt ten thouſand pounds per annum—Theſe facts ſeem indubitably to prove, that, ſoon after the preſent ſtatute, the buſineſs of the courts of Weſtminſter-hall had infinitely increaſed [*e*]—The diſſolu-tion of the monaſteries threw that land into circulation, which before was unalienably fixed in a religious houſe; and it is very remarkable, that the preſent colleges and corporated bodies, which are permitted to continue ſuch, have very few law ſuits; being flux bodies, they chooſe the imme-diate dividend, rather than wait the event of a tedious and expenſive law ſuit.

The compilers of the Parliamentary hiſtory mention the having ſeen an edition of *Fabian's* Chronicle, in which the word *Pope* is eraſed through-out, and from thence ſuppoſe a proclamation to have iſſued this year, in which it was forbid to uſe *this odious name*—It ſhould, perhaps, be rather attributed to the indiſcreet zeal of ſome enthuſiaſtick reformer.

Proteſtantiſm hath been ſo long eſtabliſhed in this country, and to it's ſo very great improvement and proſperity, that one may venture to mention a ſuppoſed advantage to chriſtendom, from the great influence and aſcendency

[*c*] In a tour through Normandy, publiſhed in 1755.

[*d*] Poſſibly there was at that time but one prothonotary inſtead of three.

[*e*] If it ſhould be aſked what may have occaſioned the preſent great decreaſe of law buſineſs, I ſhould ſuppoſe that it ariſes from the ſtamp duties, and the law being *more certain, and underſtood upon principles*, but chiefly from 120 millions being inveſted in the funds, with regard to the *ſecurity* of which no diſpute can ariſe. I ſuppoſe by this, the remaining part of the national debt to be-long to foreigners.

which the Popes formerly claimed, without being ſuſpected of being tainted with the groſs abſurdity of the popiſh doctrines, or a wiſh to ſee them reeſtabliſhed—As Engliſhmen, we are particularly indignant at the ſubmiſſion made by king John of his crown and rights to the ſee of Rome (and with reaſon); but ſtill there was a great uſe to Europe in general, from there being a common referee in all matters of diſpute, who *could not himſelf ever think of extending his dominions*, though he often might make a moſt improper uſe of his power as a mediator [*f*].

Muſt not a proteſtant then admit, (that when the weaker power was oppreſſed by the more powerful, and when there were no alliances between the different parts of Europe to ſupport each other with a certain number of troops, in caſe of an attack) there was often convenience in appealing to a mediator, who by the terror of his anathemas might ſay, and ſay with effect, your conqueſt and oppreſſion muſt not extend any further, *I have taken the oppreſſed under my protection?* — And was not England delivered from a foreign army in the center of the country, and that chiefly by the interceſſion, and menaces of the pope [*g*]. ?

The 14th chapter of this ſtatute is entitled, "*An act for aboliſhing diverſity of opinions in certain articles concerning the Chriſtian religion*," and which I ſhould not have obſerved upon, did not Grafton in his Chronicle inform us, that it was called *the Bloody Statute*—Gr. Chron. p. 174.

[*f*] The popes have raiſed moſt exorbitant contributions upon the different countries of Europe, profeſſing chriſtianity, by every kind of abuſe; but they have ſeldom thought of extending their dominions, and the patrimony of St. Peter is not believed at preſent to be much larger than it was many centuries ago.

[*g*] The army of Lewis, the ſon of Philip of France, who acted not barely as an ally of the barons, but actually claimed the crown of England.

STATUTES

STATUTES MADE AT WESTMINSTER.

34 and 35 Hen. VIII. A. D. 1542-3.

THE firſt chapter of the ſtatutes of this year is levelled againſt the *falſe tranſlation* of the Bible by *Tindal*; and likewiſe directs, that the New Teſtament, in Engliſh [*a*], ſhall not be read by *women*, *artificers*, *'prentices*, *journeymen*, *ſerving men of the degree of yeomen*, or under.

The original name of this *Tindal* was *Hitchins* [*b*]: he travelled much in Germany; and printed his tranſlation of the New Teſtament at *Antwerp* in 1526, and afterwards both the Old and New Teſtament at Paris in 1536 [*c*]—Biſhop Burnet informs us, that the oppoſition to this tranſlation aroſe from the convocation [*d*], who, within three years afterwards, publiſhed another tranſlation under their own inſpection; and yet it is very ſingular that he does not give us the names of thoſe who were thus employed by authority [*e*].

It is generally ſuppoſed, that the Engliſh of the Bible hath fixed our language, which ſeems to have been too implicitly admitted—Surely the modern Engliſh differs much, both in the words uſed, and in the phraſeology, from the tranſlation of the Bible, and comes infinitely more near to the Engliſh of the legiſlature in their acts: I have already obſerved theſe to have continued in the *maternal tongue* (as the ſtatutes of this reign

[*a*] In the year 1539 a proclamation iſſued *de Bibliis in vulgari non edendis*, Ames's Hiſt. Print. p. 542; and in the year 1541 another proclamation iſſued, that there ſhould be a Bible in every church, Fab. Chron. 546—The Bible was not tranſlated into Welſh till the year 1567, in conſequence of the 5th Eliz. ch. viii. which gives a very extraordinary reaſon for it, viz. that it might promote the knowledge of *the Engliſh* tongue in Wales—It was not tranſlated into Iriſh till the year 1685.

[*b*] Tanner's Bibl. Whilſt he was in Germany, he aſſumed the name of Thomas Matthew.

[*c*] Ames's Hiſt. Print.

[*d*] There is in Rymer a proclamation *in Engliſh* of the year 1539, which is entitled *De Bibliis in vulgari edendis ex ſuperviſione Domini de Crumwell*—Tyndal had therefore probably neglected proper application and reſpect to the *vicar general*.

[*e*] Fabian, in his Chronicle, ſays, that the Bible was tranſlated into Engliſh by one Treviſe of Cornwall, in the reign of Richard the Second.

There is now in the Muſeum a very fine manuſcript, in vellum, of a French tranſlation of the Bible, which was found in the tent of king John of France after the battle of Poitiers—And Bullet (in his *Memoires de la langue Celtique*) mentions a French tranſlation of the Pſalms in the king's library, which is as antient as the 11th century.

frequently

frequently term it) from the reign of Richard the Third down to the preſent times [*f*].

The 26th ſtatute of this chapter is poſſibly the longeſt in the ſtatute book (it being divided into 130 chapters) if we perhaps except a modern land-tax act.

The title of it is, *An Act for certain ordinances in the king's dominion and principality of Wales*, and contains a moſt compleat code of regulations for the adminiſtration of juſtice, with ſuch preciſion and accuracy, that no one clauſe of it hath ever yet occaſioned a doubt, or required an explanation—Though the calendar of the lords journals begins with the firſt year of this reign [*g*]; yet I cannot find any thing relative to this moſt excellent law; and therefore the principality muſt for ever remain ignorant of their greateſt patriot, and benefactor [*b*].

The ſtatute begins by dividing Wales into twelve ſhires; and *Lord Herbert* of Cherbury, in his life of Henry the Eighth, informs us, that before this it was divided into 141 lordſhips marchers, with jura regalia; and that the great view of the ſtatute was to reduce the jarring laws and cuſtoms of theſe lordſhips to uniformity.

Previous ſteps had been indeed taken to introduce a thorough union of laws between the two countries, by the 5th and 6th chapters of the 26th of Henry VIII. as well as by the 25th chapter of the 27th of Hen. VIII.

One of theſe [*i*] moſt particularly injoins, that the jurors in Wales, who are recited to be frequently tampered with, ſhould not, without leave of the court, be permitted to have either meat or drink [*k*], which ſhews,

[*f*] The Engliſh of the ſtatutes of Richard the Third, and Henry the Seventh, is more pure than thoſe of the reign of Henry the Eighth, which ariſes from the preambles of the latter being more figurative in the expreſſion.

[*g*] Thoſe of the commons do not begin till the 1ſt of Edw. VI.

[*b*] There were no repreſentatives for Wales at this time in the houſe of commons—I cannot find any light from the *Sydney* papers, which might naturally be expected, as Sir Henry Sydney was now lord preſident of the marches.

[*i*] 26 Hen. VIII. ch. iv.

[*k*] The ill effects of a bribe to a jury, by better meat and drink being given to them by one party than another, are not now apprehended, though I am perſuaded this was the original cauſe of it's being forbid—We now think the regulation a wiſe one, and adhere to it, becauſe it contributes to the greater diſpatch of buſineſs—Cauſes at this time, however, did not *hang* as they do at preſent: one reaſon for which (amongſt many others) aroſe from all witneſſes in civil cauſes being examined by the judge, as is ſtill the practice at the crown bar—This information with regard to the antient practice, I remember to have heard from an aged and eminent ſerjeant, who likewiſe believed the firſt precedent for an adjournment to have been within theſe thirty years—Adjournments are, by the great diligence and ſpirit of the preſent bench, avoided as much as poſſible: if a cauſe, however, laſts more than ſixteen hours, it is ridiculous to call it a deciſion, as human attention to the evidence cannot be longer expected.

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that for ſome time the trial by jury had prevailed in thoſe parts of the principality at leaſt, where there had been an opportunity of introducing the Engliſh laws; and it is for this reaſon that the preſent ſtatute continually refers to, and approves of, the laws uſed in the three maritime counties of North Wales, becauſe Edward the Firſt, and his ſucceſſors, by means of his garriſons in thoſe counties, was the better enabled to inforce the eſtabliſhment of the Engliſh laws.

Another regulation [*l*] is, that no *Welſhman* may carry with him to any court of juſtice, or place of public reſort, any kind of offenſive weapon; which ſhews that there were frequently great riots and inſurrections in the principality — Johannes Major, however, who lived at this time, ſays, that the cuſtom of going armed was by no means peculiar to Wales—"*In Anglia* "ad templum, ſive forum, ſine armis vadit nemo."

But the moſt material previous regulations, is that of the 37th ſection of the 27th of Hen. VIII. by which it is enacted, that the lord chancellor, immediately after the prorogation of parliament, ſhall iſſue the king's commiſſion, to enquire and ſearch out, *by all ways and means that they can, all and ſingular laws, uſages, and cuſtoms, uſed within the ſaid dominion and counties of Wales, and return and certify them to the king in council.*

This return, therefore, muſt have been made (though I cannot find it in *Rymer*) and muſt contain many curious particulars, upon which the preſent moſt compleat and comprehenſive law of the 34th and 35th of Hen. VIII. was undoubtedly formed.

I have already ſaid, that this ſtatute is ſo clear, that it never hath required any parliamentary expoſition, much leſs does it want my illuſtrations; and the more ſo, as the great lord Bacon hath barely abridged ſome of the regulations [*m*], thinking that they ſpoke ſufficiently for themſelves—Mr. *Juſtice Dodderidge* hath done the ſame in his account of the principality of Wales, without any obſervations, except *that the juſtices of the great ſeſſions have the ſame powers with the antient juſtices in Eyre*—He could not mean by this, that the antient juſtices in Eyre had the powers of deciding cauſes in a court of equity, which the juſtices of the great ſeſſions have ſo long exerciſed, that it cannot be now diſputed—How they originally obtained this juriſdiction [*n*] is rather dark, as in the preſent ſtatute, which moſt parti-

[*l*] By 26th Hen. VIII. ch. vi.

[*m*] Bacon's Law tracts.

[*n*] By a manuſcript of all the king's officers, in the firſt year of queen Mary, it appears, that *Roger Vaughan* was chancellor of *Brecknock*, with a fee of 6*l.* 8*s.* but *Walter Devereux, viſcount Hereford, was at that time juſtice*—Likewiſe *Sir John Saliſbury* was then *chancellor of North Wales*, and *William Cook* was juſtice; ſo that the offices then were conſidered as diſtinct.

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cularly enumerates every officer in the courts of law, there is no mention made of any officer for the court of equity.

By the 37th chapter of the 27th of Hen. VIII. the king is indeed empowered, *for the next five years, to erect and conſtitute what courts he ſhall pleaſe*; during which time he might probably have inſtituted the preſent courts of equity in Wales; but it is ſtill ſingular, that this ſtatute ſhould be entirely ſilent, with regard to any ſuch court or officer belonging to it.

Biſhop Godwyn, in his life of Henry the Eighth, much commends this ſtatute, and union between England and Wales; and ſays, that the good effects of it were fully experienced at the time he wrote; from theſe effects and advantages he ſtrongly preſſes an union with Scotland.

Henry the Eighth lived to hold two ſeſſions of parliament after this; but nothing occurs in the ſtatutes of thoſe years, which is deſerving of particular notice or obſervation.

He began his reign with the greateſt expectations of his people, and in this (according to biſhop Godwyn) they were not deceived in the twelve firſt years, which may be compared to the *Quinquennium Neronis*—He was, in the early parts of his life, magnificent and generous; but afterwards his prevailing paſſion appears to have been that of deſpotiſm and tyranny, attended with no ſmall degree of cruelty: he was the firſt king of England, who was ſtiled *metuendiſſimus*; and no predeceſſor, or ſucceſſor, ever equally deſerved the epithet.

He was learned beyond the common learning of a king; and biſhop Burnet informs us, that he had ſeen many ſtatutes, if not entirely drawn by him, at leaſt altered and corrected with his own hand—His pen may, therefore, be ſaid to have often been dipped in blood, as every ſeſſions almoſt produced new treaſons and felonies—Hollinſhed aſſerts, that 72,000 criminals were executed during his reign, which would amount nearly to 2000 a year; whereas he ſays, that, in the latter end of queen Elizabeth's reign (when he wrote), the number did not exceed 400 [o]—I muſt own, I cannot but think that there is either great exaggeration in the account, or an egregious miſtake in this chronicler, who is generally very accurate; for though I believe that the world rather improves in point of morality, and ſocial duties, from century to century, yet this is too great a diſpro-

[o] It is not believed that there are 100 criminals executed in a year at preſent; and the county of Middleſex furniſhes a conſiderable part of them. *Braunau* in his treatiſe upon *the criminal law of France* (printed at Paris in 1716) mentions the ſame kind of diſproportion between the number of executions at *that time in* France, and *a century before*—I *cannot*, however, but diſtruſt the account given by *Hollinſhed*.

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portion in the comparative number of criminals, who might be condemned to ſuffer [p].

We ſhould not dwell, however, entirely on the blamable part of *Henry's* character as a legiſlator; but conſider, on the other hand, if ſome laws may not have paſſed during his reign, which may make him deſerve to be remembered with gratitude by poſterity.

Thoſe who conceive him to be a mere tyrant have ſuppoſed that all the laws againſt popery (which have eſtabliſhed both our civil and religious liberties, ever ſo cloſely connected) have proceeded entirely from a deſire to change one wife for another—If this might have had it's weight upon particular occaſions, it is too much to ſuppoſe, that it was always the ſole motive of the ſteps which he took to deliver his kingdom from this moſt ignominious and intolerable thraldom; and it is more becoming thoſe, who feel the benefits of ſalutary regulations, to attribute them to good, than to bad motives, unleſs the proof is nearly irrefragable—Whether this merit may, therefore, be allowed to him or not, his having united England and Wales, by the wiſeſt and moſt regular ſyſtem of laws, ſhould never be forgotten by the two countries, when his tyranny and oppreſſions are dwelt upon; nor could the Reformation perhaps have been thoroughly eſtabliſhed, if the king on the throne had not had an extraordinary firmneſs of character.

[p] The milder puniſhment of tranſportation may indeed prevent many executions; but in the time of Henry the Eighth, there ſeems to have been no alternative in capital offences but death, or a very long impriſonment. *Forteſcue*, who was chief juſtice in the reign of Henry the Sixth (in his treatiſe on limited monarchy) gives this reaſon for the number of executions in England, which is rather an extraordinary one from the mouth of a great magiſtrate—"More "men are hanged in *Englonde* in one year, than in *Fraunce* in ſeven, *becauſe the Engliſhe have* "*better hartes*—The Scotchmenne likewiſe never *dare rob*, but *only commit larcenies*." P. 99.

STATUTES MADE AT WESTMINSTER.

1 Edw. VI. A. D. 1547.

THE 12th chapter of this ſtatute repeals moſt of the new treaſons and felonies during the reign of Henry the Eighth, and recites, "That "ſubjects ſhould rather obey from the love of their prince, than from dread "of ſevere laws — That as in *tempeſt, or winter*, one courſe and garment "is convenient, and in *calm or more warm weather* a more liberal caſe, or "lighter garments, both may, and ought to be followed and uſed — So "it is likewiſe neceſſary to alter the laws according to the times."

After this very ſingular preamble, it occurs to the legiſlature, that ſome of the offences, which had been made capital by Henry the Eighth, were proper to be reſtrained by the ſame ſeverity of puniſhment; and therefore they excluded thoſe who ſhall be guilty of murder, houſe-breaking, ſacrilege, robbery, or ſtealing of horſes, *geldings* or *mares*, from the benefit of clergy.

This is the clauſe upon which the *well-known doubt* aroſe whether ſtealing a ſingle horſe was to be puniſhed with death, and which afterwards required an explanatory ſtatute — It ſeems, indeed, rather extraordinary, why this ſhould be claſſed with crimes of the blackeſt dye, but *Hollinſhed* [*a*] mentions, that it was one of the moſt common offences at this time in a criminal calendar — He likewiſe mentions the name of a particular thief, who had at once ſixty ſtolen horſes in his poſſeſſion; and that if a buyer would not give him his price, he uſed to ſay, "*that he had given more himſelf, or* "*otherwiſe by Jeſus he had ſtolen him.*"

In the year 1584, ten criminals were executed at *Smithfield* for this crime [*b*].

The 13th ſection takes away the benefit of clergy from him who ſhall murder by poiſon, in the following words: "Provided alſo, and be it or-"dained and enacted by the authority aforeſaid, that the wilful killing by "poyſon of any perſon or perſons, that at any time hereafter ſhall be per-"petrated, or committed, ſhall be adjudged, deemed, and taken to be "wilful murder of malice prepenſed."

[*a*] Holl. vol. i. 186.
[*b*] Stowe's Chron. p. 697.

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What could have been the occaſion of this very extraordinary clauſe muſt naturally be aſked by every one who reads it—Mr. Juſtice *Foſter*, in his Reports [*c*], hath taken notice of the different opinions of *Coke*, *Kelyng*, and *Holt*, on this part of the law, with neither of which he appears to be ſatisfied, though it ſhould ſeem to be doubtful whether his own ſolution of the difficulty may have been more happy—I ſhall give it in his own words:

" I take the true ground of the ſtatute of the 1ſt Edw. VI. to be this; " the 22d Hen. VIII. had made wilful poiſoning high treaſon, and had ex- " preſly excluded the offenders from clergy, and directed that they ſhould " be boiled to death. The 1ſt Edw. VI. reduced all treaſons to the antient " ſtandard of the 25th Edw. III. This was a virtual repeal of the 22d " Hen. VIII. and ſo in the judgment of the parliament it became neceſſa- " ry to make ſome new proviſion for the caſe of wilful poiſoning, which " undoubtedly deſerved a capital puniſhment; accordingly by the 10th " ſection of the act, the offenders are ouſted of clergy. And the 13th " enacteth, not in *affirmance* of the common law as *Kelyng* ſuppoſeth, but " by way of *revival* of it, that the offence ſhall from thenceforth be deemed " wilful murder of malice prepenſed, and that the offenders ſhall ſuffer " and forfeit as in other caſes of wilful murder of malice prepenſed.

" The taking away clergy by expreſs words, which is done by the 10th " ſection, was, in my opinion, though *Coke* thinketh otherwiſe, abſolutely " neceſſary; becauſe the ſtatutes, which ouſted clergy in the caſe of wilful " murder, were made while the offence of wilful poiſoning did not fall " under the denomination of murder, but of high treaſon, in which the " crime of murder was merged: and conſequently, thoſe ſtatutes could " not reach the offence of wilful poiſoning."

The ſtatute of the 22d of Henry VIII. alluded to by Mr. Juſtice Foſter, is printed at length in Raſtal's edition; and by the preamble it appears that one *John Roofe*, a cook, had poiſoned ſeventeen perſons of the biſhop of Rocheſter's family, two of which died—*John Roofe*, therefore, by a law *ex poſt facto*, is made guilty of high treaſon, and he is ordered to be thrown into boiling water, the idea of which new puniſhment probably aroſe from Rooſe's having been a cook [*d*].

Shocking as this crime muſt have been conſidered by the legiſlature, yet it was not thought proper to confound it with the offence of treaſon; the

[*c*] P. 68, 69.

[*d*] He threw the poiſon into a pot of gruel, which was prepared not only for the biſhop of Rocheſter's family, but the poor of the pariſh, ſo that it might have probably been large enough for his execution.

ſtatute of king Henry the Eighth is therefore repealed: but could it poſſibly follow from this, that killing by poiſon did not continue a murder by the common law?—And if a miſdemeanor is made a felony by a ſtatute, which is afterwards repealed, does it not continue a miſdemeanor as before?—The ſtatute, whilſt it continues in force, ſuperſedes, indeed, the common law; but when it is repealed, the common law is of courſe reſtored.

Perhaps, the trueſt reaſon and ſolution of theſe difficulties is the moſt obvious, viz. the great ignorance of the penner of the law, of which there are not wanting very ſufficient proofs in other parts of the ſtatute—I have already mentioned part of the preamble, which is even ridiculous, and the inſertion of *mares* and *geldings* after horſes is another proof of this ignorance; as for the ſame reaſon a doubt might be raiſed, whether if a ſtatute makes the murder of a man felony, it might be doubtful whether it extended to a *woman* or an *eunuch*.

If I may preſume, however, to riſque my conjecture, with regard to the occaſion of this very ſingular clauſe, it is the following:

It was at this time a prevailing notion, that what was called *ſlow poiſon* [*e*] might be given to a perſon, which would infallibly kill him within a given number of months, or years—By our criminal law, if the death of the perſon murdered does not enſue within a year and a day, after the ſtroke or ſtab given, it is not conſidered as murder [*f*]—The legiſlature might therefore intend, that ſuch poiſoning ſhould have all the conſequences of a murder, provided the death enſued within a year and a day; and for that reaſon directs, that they ſhall ſuffer as for a murder of *malice prepenſed*, though *no ſtroke or ſtab* had been given, as the proof of the death occaſioned by ſo lingering an operation, muſt have been attended with infinite difficulty.

This moſt horrid and atrocious of all crimes, the murdering by poiſons, cannot but alarm every member of ſociety who, if he harbours ſuch a ſuſpicion, muſt be the moſt unhappy of wretches—It fortunately, however, carries with it, from the manner of its being perpetrated, it's own check—He who hath the diabolical malice to deſign the murder of his fel-

[*e*] This notion of a ſlow poiſon is now exploded by modern phyſicians, who have accordingly ſtruck out all the antidotes to prevent the effects of it from the new *Pharmacopœia*.

[*f*] By the laws of *Bretagne*, the death muſt enſue within forty days (*D'Argentre*) which ſeems to be a better rule in favour of the perſon accuſed, as it is believed to be often very difficult for a ſurgeon, or phyſician, to ſay, when ſo much time hath elapſed, whether the blow was the occaſion of the death or not, eſpecially if the bruiſe is inward — The year and day being thought by the legiſlature too diſtant a time by the 2d James I. ch. viii. (commonly called the *Stabbing act*) the death muſt enſue within ſix months after the ſtab.

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low creature, but half gratifies that malice, if the perſon killed does not know that he receives his death from the hand of his enemy.

As no human precaution, however, ſhould be omitted to prevent the poſſibility of the crime's being perpetrated, it may not, perhaps, be improper to adopt the policy of an antient Scots ſtatute [g], by which it is made high treaſon to bring any poiſon into the kingdom [b]—Might it not therefore be proper to make it capital, either to import or vend any poiſons in England, as the chief pretence for an apothecary's having arſenick in his ſhop, is for the deſtruction of rats, which may be deſtroyed by other methods—Or at leaſt, ſhould it be permitted, to ſell poiſons but under certain reſtrictions.

This is the only ſtatute of the ſhort reign of this infant king, which ſeems to require any illuſtration — There were indeed four ſeſſions of parliament, during which ſeveral laws were enacted. They rather conſiſt, however, of ſtatutes repealing what was done by the parliaments of the preceding reign, than make any conſiderable alteration in the common law — As for thoſe which relate to the further eſtabliſhment of the proteſtant religion, I ſhall refer the reader to Biſhop *Burnet's* Hiſtory of the Reformation, as they are a moſt neceſſary part of that learned work.

Edward was but nine years of age when he came to the throne, and died before he was ſixteen—It is fortunate for the memory of theſe infant kings, and infant princes deſtined to a throne, that, as they cannot offend any party or faction in the ſtate, they are always repreſented by thoſe employed in their education, as being of a moſt promiſing diſpoſition [i] and genius, by which part of the commendation due is reflected upon the inſtructors; and when any thing diſpleaſing happens in the ſucceeding reign, it is always ſuppoſed that the reverſe would have happened, if the infant predeceſſor had lived to that time.

There are not, however, wanting proofs, that Edward had abilities rather *ultra annos*, and that he payed a very early attention to the laws, which paſſed during his reign. The manuſcript of a journal, which he kept, is printed in Biſhop *Burnet's* Hiſtory of the Reformation; and in the original (which is now in the Muſeum) the gradual improvements, both

[g] Jam. II. Parl. 7. ch. 30.

[b] It was probably by this chiefly intended to provide againſt the importation of poiſons from Italy, where aſſaſſination, and this kind of murder, hath but too much prevailed—I have been informed that it is not uncommon in Italy to ſay, upon a man's expreſſing himſelf with regard to another, from whom he hath received an injury, *I wiſh he would but drink a diſh of chocolate with me.*

[i] Thus Henry, prince of Wales, ſon of James the Firſt, is ſuppoſed to have been a moſt promiſing prince; and the duke of Glouceſter, ſon of queen Anne.

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of his underſtanding and hand-writing may be ſeen to keep pace from year to year: the firſt part is a ſcrawl of a child, which is ſcarcely legible—This Journal contains many ſchemes for improvements, and particularly with regard to the woolen manufacture, the incloſing of waſte grounds, and the preventing the offence of foreſtalling, as alſo that of the ſale of offices [*k*]; with regard to every one of which points, ſtatutes paſſed at the latter end of his reign, and in which he may therefore be ſuppoſed to have been conſulted by his miniſters.

[*k*] It appears by the Calendar of the houſe of lords, that the commons, for a conſiderable time, inſiſted that the clauſe in the 5th and 6th of Edward VI. ch. xv. which allows the two chief juſtices to ſell certain offices, ſhould be cancelled.

STATUTES

ACTS MADE AT WESTMINSTER.

1 Mariæ R. A. D. 1553.

THE firſt parliament of this reign was (after different prorogations) held at three different ſeſſions, of which no inſtance hath before occurred—There paſſed but one law during the firſt of theſe ſeſſions, and that a moſt truly conſtitutional ſtatute, which reduced all treaſons to thoſe which were declared to be ſuch by the 25th of Edward the Third—The new treaſons, during the reign of Henry the Eighth, were thoſe chiefly intended to be repealed; and ſome of the members of this parliament exclaimed with proper warmth againſt the ſeverity of his laws, ſaying, *they were more bloody than* Draco's, Dionyſius's, *or any other tyrant in hiſtory* [*l*].

The preamble to this moſt excellent law is to the ſame purport with that of the ſtatute of Edward the Sixth (laſt obſerved upon); but is ſo much ſuperior in ſtile, that I ſhall here inſert part of it for the ſake of the compariſon.

"Foraſmuch as the ſtate of every king and ruler ſtandeth more aſſured "by the love of the ſubject towards their ſovereign, than in the dread and "fear of laws made with rigorous pains; and laws alſo juſtly made for "the preſervation of the commonweal, without extreme puniſhment or "rigour, are more often obeyed and kept, than laws and ſtatutes made with "extreme puniſhments, &c."—This is the language of a legiſlator promulgating his laws with dignity—That of the ſtatute of Edward the Sixth is the idle flouriſh of a rhetorician, or rather half-learned ſchoolmaſter.

It is very ſingular, that the firſt ſtatutes, both of the preceding and preſent reign, ſhould open with ſuch ſtrong reflections on the laws and government of Henry the Eighth. This is indeed not uncommon when the kingdom hath been diſputed; but no ſuch inſtance can, perhaps, be found in hiſtory, when two children have ſucceded to a throne which they received from their father; and it ſhews moſt ſtrongly, in what deteſtation thoſe tyrannical ſtatutes were univerſally held.

Four years after their paſſing this moſt conſtitutional law, Sir *Nicholas Throckmorton* often inſiſted upon it in his defence [*m*], but was little regarded

[*l*] St. Tr. vol. i. p. 76.

[*m*] St. Tr.

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by the court—*Staunford*, the writer upon the pleas of the crown, had the conduct of the profecution, as king's ſerjeant, and had been ſtrenuous for this act as a member of parliament: by the account given of this trial, he appears to have entirely forgot what he had ſo ſtrongly contended for—The jury, however, to their great diſhonour, reſpected the law (though the court and profecutor conſidered it as a dead letter) and acquitted the priſoner.

Between this firſt opening of the queen's reign, and her marriage the next year, the tone was much changed; for in the preamble to the 1ſt and 2d of Ph. M. ch. x. it is recited, "That the great mercy and clemency heretofore declared by the queen's highneſs in releaſing the penal laws made by her progenitors, had given occaſion to many *traiterous and cankered hearts*, to ſtir the people to diſobedience:" and the judges of thoſe times were but too apt rather to conſider the diſpoſition of the crown in a ſtate proſecution, than the law upon which it might be ſupported, or which might be urged by the criminal in his defence.

Another ſtatute paſſed the preſent reign, which hath occaſioned a very conſiderable alteration in the common law, with regard to the conviction of criminals [*n*], by which juſtices of peace are directed to take their examinations, which they are to reduce into writing within two days, and certify them to the next gaol delivery—It ſeems to be generally agreed, that before this ſtatute no ſuch examination could have been taken, as it tended to make the priſoner charge himſelf—I ſhould doubt much, however, whether this was not before practiſed; but as few could read, and ſtill fewer could write, neither the juſtice nor his clerk were capable of uſing this help to their memory, but proved the confeſſion, perhaps, at a great diſtance of time, and when it was too inaccurate to be depended upon [*o*].

I ſhall not have occaſion to obſerve upon any other ſtatutes [*p*] of this reign—As for the queen's conſort *Philip* the Second, he knew ſo little of

[*n*] Montaigne ſays ſomewhere, *a tuer les gents il faut une clarté bien lumineuſe, et nette.*

[*o*] 2d and 3d Ph. M. ch. x.

[*p*] There is indeed a ſtatute of the 1ſt and 2d Ph. M. which relates to a very ſingular inconvenience in Glamorganſhire, *of having their lands covered with ſea ſands*—The law with this view gives powers to the commiſſioners of ſewers to prevent it—The only effectual means, however, of ſtopping this prejudice to the adjoining lands, is by encouraging the growth of the *juncus acutus capitulis ſorghi* *, and which ſhould not be ſuffered to be deſtroyed, as it too often is.

"Si quis ſpinas, ſentes, & dumos in promontorio juxta mare occidentale creſcentes eruerit, "extirpaverit, aliove modo exciderit, tam ipſe qui delictum hoc admittit quam qui auctoritatem "ei accommodavit (citra ſpem gratiæ) præter damni reparationem, furti pœnæ obnoxius erit"—Leg. Dan. lib. vi. ch. xvii. art. 29—I would not be underſtood, however, to recommend ſo ſevere a puniſhment for this offence, though it is attended with very bad conſequences to thoſe who have lands near a ſandy beach.

* Ray's Synopſis.

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our language, or conſtitution, that he cannot be ſuppoſed to have interfered greatly in legiſlation — With regard to the queen herſelf, ſhe is known to have been a moſt unhappy woman, and had ſo many domeſtic concerns, that ſhe probably left the direction of her affairs entirely to her miniſters — Her intentions upon her acceſſion to the throne ſeem to have been good, as appears by the ſtatute of *treaſons*; for the latter part of her reign, her *confeſſors* ſhould chiefly anſwer.

STATUTES MADE AT WESTMINSTER.

43 Eliz. A. D. 1601.

THE 2d chapter of the laws of this ſeſſion is the well known ſtatute *with regard to the maintenance of the poor* — I have before obſerved, that theſe regulations could not have ariſen from the diſſolution of the monaſteries (as is generally ſuppoſed) becauſe ſixty years had intervened; and if the poor were at any time diſtreſſed by there being no religious houſes, that diſtreſs muſt have been moſt ſenſibly felt immediately after the ſtatute of Henry the Eighth.

The 5th chapter of the 14th year of this queen [q] had directed, *that aſſeſſments ſhould be made in every pariſh for the relief of the poor*—This ſtatute is printed at length in *Raſtal*, and conſiſts of a great number of chapters—It was to continue to the end of that parliament, and was probably ſuffered to expire from the great ſeverity of this law againſt thoſe who are ſtiled *vagabonds*—If above the age of fourteen, a vagabond is to be whipped, and *burned through the ear with a hot iron, the compaſs of an inch*; and for the ſecond offence, he is to ſuffer death.

This ſtatute of the 14th of Elizabeth was probably occaſioned by a printed *petition againſt the oppreſſors of the poor*, which *Ames* mentions to have been diſperſed with great induſtry in the year 1567, and which he repreſents to have been written with great ſpirit [r]; and therefore excited the reſentment of *the rich*.

Other cauſes likewiſe concurred, as there had been no foreign or civil wars, of any conſequence, for near a century preceding this ſtatute, nor was there the preſent drain of the colonies, by which the mother country is ſo greatly depopulated [s]—The conſequence of this muſt neceſſarily have been a very great increaſe of people, which there was not ſufficient trade, or number of manufactures to employ — *Cock*, indeed, who publiſhed a pamphlet on the poor laws in 1658, aſſerts, that this increaſe was ſo much dreaded, that a poor man was not permitted to marry till the age of thirty-five, nor a poor woman till the age of thirty.

(q) There are ſtatutes which relate to the poor more early than this 14th Eliz. which the reader may ſee collected together by Dr. *Burn*, in his *Hiſtory* of the poor laws, publiſhed in 1764, 12mo. Dr. Burn hath likewiſe collected all *the propoſed alterations* of this ſyſtem of laws.

(r) Hiſt. of Printing, 272.

(s) I do not find neither that there had been any conſiderable plague, and the diſſolution of the religious houſes might, likewiſe, have greatly contributed to the increaſe of the people.—Be-

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I cannot find in the Journals of the houſe of Commons, that this moſt important ſtatute occaſioned much debate; and it is alſo very remarkable, that there is no preamble to it, ſetting forth the motives of humanity or policy upon which it was propoſed.

It appears by a letter of Mr. *Aubrey*, the antiquary, that it was at firſt by no means generally carried into execution (and particularly in Wiltſhire) nor are the *poor's laws* to this day executed in the greateſt part of North Wales, though this ſtatute moſt expreſsly extends to the principality.

Carew, who wrote his account of *Cornwall* in the ſucceeding reign, calls it, however, *the late moſt beneficial ſtatute*, and *King James* (in his works) ſays, "*Look to the houſes of correction, and remember that in the time of* "*Ch. J. Popham* there was not a wanderering beggar to be found in all "*Somerſetſhire*, being his native country (*t*)".

As the maintenance of the poor is in many pariſhes attended with ſuch infinite expence to the landholders, it is not to be wondered at, if thoſe who have eſtates are perpetually complaining of this ſyſtem of laws—The firſt anſwer to which complaint is, that the expence in great meaſure ariſes from their own negligence in not following the wiſe directions of the law; and particularly, as the royal author above adviſes, by not *looking to the houſes of correction*—By a diligence and attention of this kind in the magiſtrates of *Cheſter*, the poor's rates have within theſe few years been reduced from eighteen hundred, to three hundred pounds per annum—And the ſame good conſequences might be reaſonably expected elſewhere, from the ſame attentions in the management to the poor.

Theſe laws are likewiſe complained of from their having occaſioned many litigations—This objection ſeems to be now almoſt entirely removed; the different ſtatutes (tho' not ſo clearly penned, perhaps, as they ſhould have been) are now moſt thoroughly underſtood, and it is believed there are not at preſent four queſtions in a year (in the court of king's bench at

ſides the drain of the colonies, the garriſons of *Gibraltar* and *Portmahon*, as well as the regiments ſtationed in *Jamaica* and the *Leeward iſlands*, are a further cauſe of depopulation at preſent—As the *colonies* ſeem at preſent to have an inclination to aſſert their *independence* upon the legiſlature of this country, I ſhall here inſert the preamble to an ordinance of the *3d of October*, 1650; though it may require ſome apology, not having any relation to the preſent ſtatute—"Whereas in *Virginia*, and the iſlands of *St. Chriſtopher's*, *Nevis*, *Montſerrat*, *Bermudas*, and "diverſe other iſlands, and places in *America*, which were planted *at the coſt, and ſettled by the* "*people and authority of this nation, which are, and ought to be, ſubordinate to, and dependent upon* "*England*, and hath ever ſince the planting thereof, and ought to be ſubject to *ſuch laws, orders,* "*and regulations as are, or ſhall be made by the parliament of England.*" Scobell. pt. ii. p. 132.

(*t*) King James's works, p. 567.

leaſt) upon the conſtruction of them [*t*]; and to this Dr. *Burn's* valuable treatiſe hath likewiſe much contributed.

Theſe ſtatutes, it is hoped, however, ſtand upon ſuch wiſe and humane principles, that they will not eaſily, nor haſtily be repealed—The principles are, *that every one capable of working ſhall be employed*; *and that he who is incapable ſhall be relieved and ſupported by the pariſh*: and it ſhould ſeem that a day-labourer, who hath been induſtrious (whilſt he was able) hath as much right, when weakened by old age or ſickneſs, to a certain ſupport, as the worn-out ſoldier has to his *Chelſea*, or ſeaman to his *Greenwich*.

As for that ſupport which may ariſe from voluntary contributions, it is but a moſt precarious maintenance; and ſuppoſing the gentlemen of a pariſh to be of an humane diſpoſition (which is often contradicted by the fact) yet, during minorities, or other neceſſary abſence of the men of property, this uncertain maintenance immediately fails; and in many pariſhes of England and Wales there is no inhabitant of any conſiderable fortune or eſtate.

Laws have been enacted in many other countries, which have puniſhed the idle beggar, and exhorted the rich to extend their charity to the poor: but it is peculiar to the humanity of England, to have made their ſupport a matter of obligation and neceſſity on the more wealthy.

As for the puniſhment of beggars, laws of rigour may be made againſt them; but what man of common feelings for his fellow creature can order him, who intreats his alms, to be laſhed with ſtripes, when, perhaps, he may really want the pittance he implores [*u*].

The Engliſh ſeem to be confeſſedly the firſt nation of Europe in ſcience, arts, and arms—They likewiſe are poſſeſſed of the freeſt and moſt perfect of conſtitutions, and the bleſſings conſequential to that freedom—If virtues in an individual are ſometimes ſuppoſed to be rewarded in this world, I do not think it too preſumptuous to ſuppoſe, that national virtues may likewiſe meet with their reward—England hath, to it's peculiar honour, not only made their poor free, but hath provided a certain and ſolid eſtabliſhment to prevent their neceſſities and indigence, when they ariſe from what the law calls *The act of God*—And are not theſe beneficent and humane atten-

[*t*] As for the appeals to the *Quarter Seſſions*, this is a neceſſary, and moderate expence to the county, as, without ſuch appeals, no barriſter would attend, nor can the county buſineſs be properly diſpatched, without their aſſiſtance.

[*u*] This relates to the laws of other parts of *Europe*, which puniſh the beggar with ſtripes, at the ſame time that no certain proviſion is made for him—I have before obſerved, that a foreigner may ſtill want our alms, as he belongs to no pariſh, which is obliged to ſupport him.

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tions to the miſeries of our fellow creatures, the firſt of thoſe poor pleas which we are capable of offering in behalf of our imperfections to an all-wiſe, and merciful Creator?

This ſtatute of the laſt year of queen Elizabeth is the only law which I have had occaſion to remark upon. Her reign is known to have laſted near half a century; and during this time many acts of parliament paſſed, which ſtill continue in force.

She was undoubtedly a woman of a ſtrong underſtanding, and moſt uncontroulable ſpirit; the proper exertion of which, upon the apprehenſion of the Spaniſh armada, infinitely endeared her to her people—Upon moſt other occaſions, however, ſhe was the true daughter of Henry the Eighth, and carried the prerogative of the crown to ſuch extent, as, poſſibly, involved Charles the Firſt in thoſe misfortunes, which have rendered his reign the moſt intereſting and melancholy period in hiſtory.

I have peruſed her laws with attention; and except the ſtatute *to prevent fraudulent conveyances*, I do not find any other of very great importance—The ſtatute of the 14th of Elizabeth, which relates to the poor, was a very hard and oppreſſive law; and as for that of the 43d, which I have preſumed to commend ſo highly, it can hardly be aſcribed to the dictates of her humanity, as ſhe ſeems to have doated, from old age and infirmities, in this laſt year of her reign.

STATUTE

STATUTES made ſecundo, vulgò primo, JACOBI Regis.

A. D. 1604.

THE ſtatutes from the beginning of the reign of Edward the Sixth, inſtead of being divided into chapters, to which only one title is prefixed, are printed as diſtinct laws, and with ſeparate and peculiar titles to each. The 8th chapter of this ſeſſion of parliament is entitled, *An act to take away the benefit of clergy for ſome kind of manſlaughter*, commonly known by the name of *the ſtabbing act*, and recites, "that ſtabbing and killing men on the ſudden done and committed by many inhuman and wicked perſons, in the time of their rage, drunkenneſs, hidden diſpleaſure, or other paſſion of the mind, muſt be reſtrained, &c."

This ſtatute is very obſcurely penned, and may be pronounced not to have been drawn by any very able crown-lawyer [*a*]—It is ſaid in *Keiling* to have been intended to prevent a notion, which at this time prevailed amongſt juries, that *offenſive words given* might make a ſtab, in reſentment for ſuch injury, *only manſlaughter*—And the ſtatute *(by it's title at leaſt)* determines ſuch a ſtab in conſequence of rage, drunkenneſs [*b*], hidden diſpleaſure, or other paſſion of mind, *to be only manſlaughter*—I ſhould hardly conceive, however, that any jury, or judge of the time, would have held that a ſtab given by a drunken perſon, or from hidden diſpleaſure, could be any thing elſe in the eye of the law but a murder; and therefore I cannot ſuppoſe that the reaſon aſſigned by *Keiling* for the making of this ſtatute was the true one.

I ſhould rather imagine (as is ſuppoſed by ſome) that it aroſe from the great enmities and quarrels which ſubſiſted at this time, between the *Engliſh* and *Scots*, who had followed James the Firſt in ſhoals on his acceſſion

[*a*] There is a proviſo, that the ſtatute ſhall not extend to any perſon who ſhall kill another ſe defendendo, or by misfortune—Theſe caſes do not ſtand in need of any ſuch exception, and cannot poſſibly come within the penalties of any law.

There is another act of this reign, which ſhews very great ignorance of the common law, though one ſhould imagine that no one but a lawyer could have propoſed the bill, I mean the 7th James I. ch. xii. which declares, that a tradeſman's books ſhall not be evidence for him, which never could have been allowed to be evidence in any court of law, if no ſuch declaratory ſtatute had paſſed.

[*b*] Drunkenneſs, by the 4th James I. ch. v. is again recited to be the cauſe of ſuch ſtabs, as well as other miſdemeanors.

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to the crown — The Scots were, in reality, foreigners, and therefore not acquainted with our laws, which this ſtatute is, therefore, declaratory of [*b*].

What is here conjectured, ſeems to receive a confirmation, as ſtabbing is the great object of this ſtatute, to which the Engliſh never were addicted, nor carried about them a proper weapon for—They provoked the Scots by their taunts, however, and reflections, who made uſe of their *dirks*, which I apprehend to be a kind of poinard—Theſe quarrels frequently ended both in ſtabs and duels, as Philip the Second had, during his ſhort ſtay in this country, introduced the Spaniſh punctilio, as appears by the plays of the times, and particularly *Every Man in his Humour*.

The 11th chapter is entitled, *An act to reſtrain all perſons from marriage, until their former huſbands be dead*, and makes the offence felony.

The king of Pruſſia hath the following ill-grounded obſervation upon this ſtatute—" Il y avoit une loi en Angleterre, qui defendoit la bigamie; " un homme fut accuſé d'avoir cinque femmes, et comme la loi ne s'expli- " quoit pas ſur ce cas, et qu'on l'interprete litteralement, il fut mis hors " de cour, et de proces [*c*]" —This miſtake of the *royal writer's* probably aroſe from his having heard, that, it being made felony by an act of parliament to ſteal *horſes*, it was doubted whether the ſtealing *one horſe only* was within the ſtatute—But though, in the conſtruction of a penal law, the leſſer number may not be included under the greater, yet the reverſe never can follow in the conſtruction of any kind of law.

The criminal convicted of this offence is entitled to his clergy, which many have thought he little deſerves—By the law of *Denmark* the crime is capital, as it ſhould ſeem alſo to be by that of *Spain*; which, legitimates the children, if the woman is ignorant of the huſband's former marriage—In Portugal, however, it ſhould ſeem, that it is an offence of eccleſiaſtical conuſance only, as by the liſt of criminals, who were punished at the laſt Auto da Fe in October 1765, there are no leſs than ſeven convicts for this crime, who are ſentenced to the galleys for ſeven years.

[*b*] I have before obſerved, that, by the *Civil Law*, as well as the law of Scotland, there is no ſuch offence as what is with us termed *Manſlaughter*—In Scotland, apprehended, that, if not convicted of *Murder*, they ſhould [illegible]

[*c*] Raiſons d'etablir ou d'abroger les loix, p. 306.

Twenty-firſt of JAMES I.

Ch. xxvii. A. D. 1623.

THE title of this ſtatute is, *An act to prevent the deſtroying and murdering of baſtard children.*

This hath by many been conſidered as a law of ſeverity, as it ſubſtitutes preſumption of guilt, in the room of actual proof againſt the criminal—I ſhould conceive that it aroſe from the difficulty of proving the offence againſt the mother, rather than an intention to make the bare concealment (ariſing from a miſtaken ſhame) amount to a capital felony—I conclude it muſt have frequently happened in theſe proſecutions, that the child being found dead (perhaps in the mother's room) ſhe inſiſted upon it's having been born in that ſtate, of which no witneſs being able to prove the contrary, ſhe was of courſe acquitted. If the dead child, however, was found with any apparent marks of violence upon it, I ſhould apprehend that this, with other circumſtances, might have proved the guilt, even at common law, without the intervention of this ſtatute; and I the rather mention this, as I ſhould think, no execution ſhould be permitted, unleſs the criminal, convicted under this act, would have been guilty of murder at the common law, as ſhe is otherwiſe to ſuffer merely from the preſumption *ariſing from the circumſtance of concealment*, of which it is believed there is no other inſtance in the Engliſh law—If this preſumption is by the ſtatute made the offence itſelf, ſhould it not be encountered by another natural, and moſt ſtrong preſumption in favour of the criminal? viz. that the mother cannot be ſuppoſed to be the wilful author of the death of her new born child, which by it's cries entreats her protection and ſupport, and the father of which ſhe is probably as fond of, as if ſhe had a right to call him by the name of *huſband*—And are not children born dead every day? or may not the mother, in the agonies of childbirth, be the involuntary occaſion of the infant's death?—As for the circumſtance of diſpoſing of the body in places proper for it's concealment, if the death is not received from the hands of the mother, it is but a natural conſequence of endeavouring to continue to bear a good character in her neighbourhood.

It muſt be admitted, however, that by the laws of ſome other parts of Europe, the ſame preſumption from concealing the approaching birth, is made the offence itſelf, and puniſhed capitally—By the Daniſh and Swediſh law,

law, " Mulier impudica, quæ ex illegitimo concubitu uterum geſtat, nec " hoc ante partum aperit, latebras quærens quo furtim enitatur partum, " et deinde abſcondit, percutiatur ſecuri, et in pegmate comburatur, " non attento prætextu, mortuum, vel ante juſtum terminum editum " fuiſſe [a]."

" Femina quæ per inpudicitiam prægnans fuerit, et partum celaverit, " nec uſitata remedia quæ ſibi et partui ſalutaria ſunt adhibuerit, partum " qui non oſtenditur, aut exanimis prodiiſſe dicitur, conſultò interfeciſſe " præſumitur [b]."

The deſtroying of the infant by procuring an abortion is a crime which bears a great affinity to this, and is made capital by many laws, though not by that of England. " Cicero, in oratione pro Cluentio, ſcripſit Mile- " ſiam quandam mulierem, cum eſſet in Aſiâ, quod ab hæredibus ſecun- " dis, pecuniâ acceptâ *partum abegiſſet, rei capitalis eſſe damnatam*, Dig. 48, " 19, 89, de partu abacto." And it is likewiſe aſſerted (in the Comment on the *Couſtume reformée de Normandie*) that this crime is puniſhed capitally in moſt parts of Europe [c].

James the Firſt affected to be ſtiled and thought the *Solomon* of his age; he therefore had a particular attention to the laws which were enacted during his reign.

In his youth, when he went to *Denmark*, in order to bring back his queen [d], it appears (by his own works) that he ſpent more time in the *Daniſh* courts of juſtice [e], than in attending upon his deſtin'd conſort.

After this, when he became king of England, he had frequent conferences with Sir Edward Coke, and other eminent lawyers, on the ſubject of the Engliſh law, and wanted much to preſide in the King's Bench—Though Sir *Edward Coke* prevented this for the moſt part; yet, if we may believe *Ruſhworth*, he abſolutely did preſide in the cauſe of *Sir Thomas Lake, and Lady Exeter* [f].

[a] Leg. Suec. de Crim. ch. xvi.

[b] Leg. Dan. lib. vi. ch. vi. art. 9.

[c] Vol. i. p. 35.

[d] The Daniſh law was at this time comprehended in one code; and therefore it is not improbable that he might have peruſed it with attention; and it is remarkable that three of the laws of this reign for the puniſhment of criminals agree exactly with the Daniſh laws, on the ſame head.

[e] This expedition of the king's to Denmark probably occaſioned his ſon's more extraordinary expedition to Spain for the ſame purpoſe; and James could not (with this precedent) well refuſe his aſſent—There is a record in *Rymer*, which provides a regency during his abſence in Denmark.

[f] Ruſhw. vol. i. p. 473.

Beſides this, we find in each of his ſpeeches to parliament (which are known to be his own compoſitions) that he dwells much upon the laws which he would recommend to their conſideration—He therefore not only attended to the ſtatutes of his reign, but, in all probability, many of them might take their firſt riſe from his commands to his miniſters—Some laws paſſed, which deſerve much to be inforced [*g*]; nor do I find any one which hath the leaſt tendency to extend the prerogative, or abridge the liberties and rights of his ſubjects; a negative merit in a king, which deſerves to be ſet againſt many poſitive ones.—It is at preſent a ſort of faſhion to ſuppoſe, that this king, becauſe he was a pedant, had no real underſtanding, or merits—Now pedantry is only comparative; and Mr. *Hume* very fairly compares the ſpeeches of the king with thoſe of the ſpeaker in every ſeſſion of parliament, and very juſtly gives the preference to thoſe of the king—The ſame obſervation may be made between the biſhop who writes the prefatory diſcourſe to the king's works, and the works themſelves, and equally to the king's advantage, if it is not ſuppoſed that the biſhop (like a good courtier) under-wrote himſelf.

What hath greatly tended to his character's having been conſidered in ſo low a light, is the notion which prevails, that he had not any martial ſpirit [*b*]—I cannot ſay indeed that I have met with any proofs of his being a man of reſolution; but as for his declining the *Palatinate* war (which he is generally ſo much condemned for) he ſeems to deſerve the higheſt praiſes and commendation from a nation of Iſlanders—He by this prudent caution prevented our being involved in a moſt unneceſſary expence, which he would have incurred, however, without the leaſt danger to himſelf in perſon, and conſequently cannot, from thence, merit the imputation, of either puſillanimity, or cowardice.

[*g*] 2 James I. ch. xxiii. xxv. xxxi.—3d James I. ch. xviii. which is the act for bringing the New River to the city of London; and the king himſelf had contributed liberally to this undertaking—4 James I. ch. i.—And many acts to prevent the increaſe of popery—And laſtly the 21ſt of James I. to prevent monopolies, which the preamble recites the king himſelf to have publiſhed a treatiſe full of zeal and warmth againſt, in order to ſuppreſs this growing evil.

[*b*] His apprehenſions and diſcovery of the powder plot, are ridiculed by ſome—The ſame plot, however, was abſolutely on the point of being carried into execution within theſe thirty years at *Antigua*, on the governor's birth-day, when all the inhabitants of the iſland (of any property) were aſſembled together at a ball.

ADDENDA.

ADDENDA.

HAVING met with ſome authorities, which confirm what I have advanced, ſince the greater part of theſe obſervations were printed off, I ſhall inſert them under this title of *Addenda*.

In the comment upon Magna Charta, p. 21, 22. I have ſuppoſed that the French Parliament was antiently conſtituted nearly in the ſame manner with our Parliaments, and ſhall here ſubjoin, what *Forteſcue* (in his treatiſe *on limited Monarchy*) ſays with regard to this—" And how ſo be it, that " the French Kinge reynithe upon his people *dominio Regali*, yet *Saynte* " *Lewes* ſometime Kinge of *France*, ne anye of his progenitoures, *ſet* " *never talys, or other impoſicions without the aſſent of the aſtatts, which whan* " *they be aſſembled, ar like to the Court of Parliament in England.*—And this " order kept many of his ſucceſſoures, untill late days, that Engliſhmen " made ſuch a warr in France, that the *three aſtatts* durſt not come togeder. " And then from neceſſity the Kynge took upon him to ſet talys upon the " Commons *without the aſſent of the* three *aſtatts*, but yet he would not ſet " any ſuch charge upon the nobles, for fear of rebellion." Fort. on Lim. Mon. p. 15.—It may not be improper here to obſerve, that no proof can be more irrefragable than the citation from this author, as he was a conſiderable time in *France* whilſt he attended upon the Prince of Wales, ſon to Henry VI. and at the very period when the requiring the aſſent of the three conſtituent parts of the French Legiſlature was firſt diſus'd.—

In the comment on the *Statutum Hiberniæ de Cohæredibus*, p. 27. it is ſuppoſed that the right of Primogeniture amongſt Brothers was not in the time of Henry III. fully eſtabliſhed—The ſtatute *de Cohærcdibus* paſſed in the year 1229, and 14th of Henry III. and I find by ſome old French verſes of *Guilliaume Guiart D'Orleans* [*a*], that in the year 1263,

[*a*] Theſe verſes are cited by *Borrel*, from a manuſcript under the article *Ygaument*, in his learned Gloſſary, which is printed at the end of *Menage's* Dictionaire Etymologique.

at the latter end of the reign of Henry III. this point was conſidered by the Engliſh Parliament, and that the eſtate was at that time equally divided in France.

" L'an ſe dit faux, ne ſui noiſans,
" Mil deux cens ſoixante trois ans,
" Sans plus, d'incarnation quierre;
" Fit venir le Roi d'Angleterre,
" Des fiez qui luy appartindrent,
" Tous les Barons que terres tindrent;
" Leſquiex enſemble a Parlement,
" Il pria debonnairement,
" Que communement s'accordaſſent,
" A ce qu'une conſtume oſtaſſent,
" Qu'en eſt de tres longue tenue;
" Par ſon Royaume maintenus,
" Et vous diray quel, en diſant,
" *S'uns boms gentis, ou plaiſant* (* *paiſant* perhaps)
" *Fut la mors, et enfans euſt,*
" *Pleut li, on le depleuſt,*
" *Le ſtatut a ce s'apportoit,*
" *Que l'aiſne le tout emportoit,*
" *Li autre rien n'en reconſciſſent*
" *Al aſſent, quel part quil vouſiſſent.*
" Leurs droits ierrent anſi deviſez;
" Li Barons du fait aviſez,
" Quils commirent a deſhoneſte,
" Obeirent a ſa requeſte,
" Et *voudrent* * tant furent menez, (* *oultre* probably)
" Que les enfans d'un pere nez,
" S'engendrez fuſſent loyaument,
" Partiſſent a leur ygaument,
" Et ſelon l'ordre quils devoient,
" *Comme cil di France faiſoient.*

As I muſt own that I did not underſtand the firſt line of theſe ancient hiſtorical verſes, till after a ſecond or third reading, I ſhall by a tranſlation of it poſſibly ſave the Reader the ſame trouble—*It ſignifies that if there is*

a miſtake in the date of the year, it is not very material.—I muſt own beſides, that I do not underſtand the 20th line.

" Al aſſent quel part qu'ils vouſiſſent."

I have, p. 58 and 59, ventured to condemn ſome part of what is delivered as law, in the caſe *de libellis famoſis*, reported in 7th *Cok.* Rep. and I ſhould conceive that the doctrine there inſiſted upon, had alarmed the famous *Dr. Donne*, who was then Dean of St. Paul's, as from a letter of his written at that time I have copied the following paſſage. " There be " many caſes where a man may do his country good, and ſervice, by " libelling, for where a man is either too great, or his vices too general " to be brought under a judiciary accuſation, there is no way but the ex- " traordinary method of accuſation, and I have heard that nothing hath " ſoupled, and allay'd the *D. of Lerma* ſo much, as the frequent libels " made upon him—*Seal'd letters in the Star Chamber* have now a days " been judg'd Libels." Dr. *Donne's letters*, p. 92. Q°.—I muſt here beg leave to repeat however what I have ſaid in my Preface, that libels cannot be too much diſcouraged in a well-regulated government. I would only inſiſt that the doctrines in that caſe are not to be reſorted to, as the Common Law is otherwiſe ſufficient to puniſh the offender.

I have taken notice, p. 89, of a diſtinction in the 34. ch. of the 13th of Edward I. between a *rape by force, or otherwiſe*, which I have admitted that I did not underſtand—I have however ſince found, by the peruſal of ſome Writers on the French Law, that a diſtinction was anciently made between a *rape* and a *viol.*—The firſt of theſe was only the ſeduction of a ward with intention to marry her, and which was only a miſdemeanor; the *viol* on the contrary was what we underſtand by the word *rape*, and was puniſhed capitally.—This diſtinction likewiſe accounts for the difference in opinion between the Writers on the Crown Law, whether Rape was a *Felony* before 13th Edw. I.—The *viol* was Felony with us, as in *France*; but the *rapt* or *ſeduction* was not.

In a note upon the *Statute of Purveyors* (10 Edw. III.) I have taken notice of a ſtatute of the 14th Edward III. ch. 1. which complains of the great oppreſſion in finding purveyance for the *King's dogs*, which may poſſibly ſurprize the Reader to be recited as a grievance in an act of Parliament.—This grievance however was not only felt in *England*, but in *France*, as in the *Notice de diplommes*, (p. 48, 213.) there are ſome ancient French Records, to the ſame purport.—This learned collection is printed at

at *Paris* in the preſent year (viz. 1765.) It was begun by Monſieur de *Secouſſes*, by command of the King, and is now continued by the *Abbé de Foy*, who promiſes a ſecond volume.—*Carte's* publication of the *Rolles Gaſcoynes*, gave the firſt idea of making this compilation.

In addition to what I have advanced with regard to the preſſing of mariners, p. 209 & ſeq. I meſt beg leave to add that *Lord Clarendon* makes mention of it, without any particular notice, or even doubt of the legality of the practice.

I have ventured to propoſe (p. 296) that criminals, whoſe lives are forfeited, might be pardoned, upon their ſubmitting to have ſome hazardous chirurgical experiment performed; and I find by the Philoſophical Tranſactions for the year 1667, that the transfuſion of blood (from which ſo great benefit was at that time expected) was tried upon *Anthony Maurez*, who is ſtated to have been a madman; but it is ſuppos'd that his inſanity did not appear, till after his condemnation at the *Chatelet*. Phil. Tranſ. Vol. II. p. 713.

I have ſuppos'd (p. 273.) in ſome obſervations on the 11th Hen. VII. with regard to the preſervation of the game, that it will be found that the modern practice of ſhooting at the bird on the wing, is the great occaſion of their deſtruction, and ſcarcity—As this is looked upon to be the only *fair ſporting*, aud the decreaſe of the game is not only attributed to other cauſes; but productive of Statutes attended with ſome rigour, this aſſertion may poſſibly ſeem to require ſome proof—Leſs than a century ago, when a bird was once on the wing, the ſhooter dropt his gun, deſpairing to hit it, and I have myſelf converſed with old men, who could find all ſorts of game on the ground — The conſequence of this was that the Gentleman had no other amuſement, but *what is now called poaching*, and in the reign of Charles II. a very coſtly and pompous book (in folio, with engravings) was publiſhed, and entitled, the *Gentleman's Recreation*; in which there are cuts, repreſenting tunelling, and all other kinds of ſnares. This Treatiſe was in ſo great repute at the time of it's publication, and was conſidered as being of ſuch general utility, that it was abridg'd in the Philoſophical Tranſactions for the year 1675.

I have mentioned in the obſervations on the 43d of *Elizabeth*, that the Landholders dreaded ſo much the increaſe of the *Poor*, in their Pariſhes, that a *poor* Man was not permitted to marry till the age of thirty, nor a *poor* woman till the age of twenty-five. This muſt have probably happened during the *Proteƈtorate*, when marriages were celebrated before a Juſtice of the Peace, who would not ſuffer any additional burthen on his eſtate.

eſtate.—The authority which I have cited for this, is a pamphlet publiſhed by one *Cock* in 1658, and as what is aſſerted by this writer, may poſſibly be thought to want ſupport, I ſhall here inſert the account which I find of this Pamphleteer, in a tract publiſhed in Q°. by *Fabian Phillips* in 1676, on writs of *Capias*, and *Proceſs of Outlawry*.—Mr. *Charles George Cock*, who "was ſomething of a Common Lawyer, but nothing at all of a Civil, "and was advanced, in the time of the Uſurpation, to be one of the "Judges (in the ſaid Court) for the probate of wills," p. 103.

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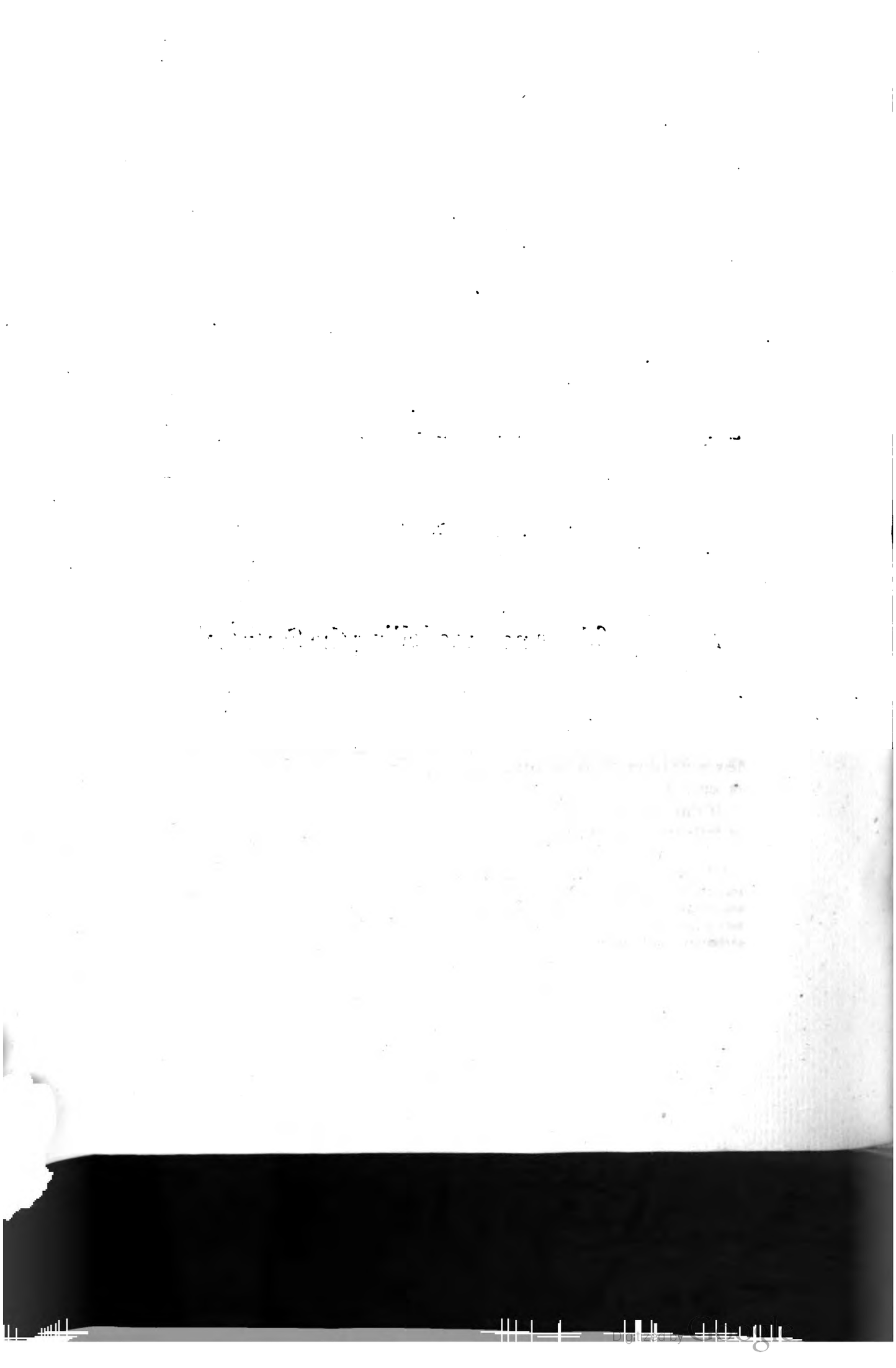

APPENDIX.

THE reformation of the law hath generally been an object, and often the chief glory, of every good and great reign: it is not, therefore, to be doubted, but that under the preſent auſpicious one, which hath begun by an act recommended from the throne itſelf [a], to perpetuate to this nation the moſt pure and upright adminiſtration of juſtice, this great object will be, ſooner or later, attended to.

It is not, however, propoſed by the term *Reformation of the Law*, that there ſhould be a new arrangement and inſtitute of the whole body of the law, as in the time of *Juſtinian*, or a *Code Frederique*, which is not practicable in this country, where every alteration muſt have the ſanction of parliament—Nor, was it practicable, would the propoſer preſume to alter what is founded in the deepeſt wiſdom.

Thoſe who ridicule the laws of England can never have been witneſſes of that conſtant, deliberate, and upright adminiſtration of juſtice, which hath prevailed in the different courts of this kingdom ſince the Revolution, and that upon the moſt ſolid and rational principles.

Will it be ſaid, that the law is uncertain, when there is hardly a difference of opinion between the judges of the courts at Weſtminſter upon the variety of points, that come before them from year to year, and how few writs of error are brought from their judgments, but for the purpoſe of delay?

If this uncertainty is not to be objected to the courts of common law, as little can it be objected to the courts of equity—Near twenty years of

[a] It appears by the Calendar of the Journals of the Houſe of Lords, that, in the year 1691, the king refuſed his aſſent to a bill *for aſcertaining the commiſſions and ſalaries of the judges*—There was a clauſe inſerted in this bill, that the judges ſhould be ſubject to actions for corrupt judgment; but their being removed upon addreſs of both houſes of parliament, was thought a more proper check and reſtriction by the 12th and 13th William III. ch. ii.

well-conſidered decrees, made by the ſame moſt conſummate lawyer without reverſal, have now eſtabliſhed ſo clear, conſiſtent, and beneficial a ſyſtem of equity, that ignorance only can reproach it with being *jus vagum aut incognitum*.

As the object of every court of juſtice, ſince the Revolution, hath been invariably the ſame, viz. an honeſt and impartial deciſion, certainty, in the law muſt be a neceſſary conſequence [*b*]—It is in other countries, where judges have decided (occaſionally at leaſt) from ſelf-intereſted motives, that uncertainty and fluctuation of opinions hath ariſen, and muſt neceſſarily ariſe; but in this iſland, the common-place epigram, or ſatire upon bribing a judge, would loſe its ſting, as even he againſt whom the cauſe is decided, though he may diſapprove the determination, yet never even ſuſpects the integrity of the judge.

But the law of England is ſaid to be a law of delay—It is difficult to anſwer a charge of ſo general a nature; but to which of the common law-courts can this be objected?—It is believed that there is not any arrears of buſineſs in any one of them; and in the King's Bench, where ſome years ago this objection might have been made with propriety, no ſuitor ever waits beyond the enſuing term, and then receives a deciſion not only ſatisfactory to the diſputant parties, but which, from it's cogent and irreſiſtible force, muſt not only decide the point then in queſtion, but remain a kind of law land-mark to the lateſt poſterity.

But Chancery cauſes have remained undecided for twenty years and upwards—This muſt be admitted to have ſometimes happened, but cannot be prevented by any new rules of court, or alteration of the practice: when cauſes have been ſo long depending, it almoſt always hath ariſen by the frequent deaths of parties to the ſuit, and natural juſtice requires, that thoſe who become intereſted by ſuch an event, and were not ſo before, ſhould have an opportunity of defending their right.

When a cauſe is once brought to a hearing, nothing can be more expeditious — The Lord Chancellor or Maſter of the Rolls ſits five or ſix hours in court for the greateſt part of the year, and nineteen cauſes out of twenty receive an immediate determination [*c*].

Thus much hath been ſaid to obviate the objection, that, if any reformation of the law is deſigned, it ſhould be of the moſt extenſive nature.

[*b*] It is remarkable, in the Reports of Caſes determined ſoon after the Revolution, that the judges continually differed in opinion—The reaſon ſeems obvious, that the law was not then fixed by a long courſe of impartial and unbiaſſed deciſions.

[*c*] Beſides this, what are generally called delays, are abſolutely eſſential to the liberties of a free country.

The

The reformation of the Code of Statutes, however, ſo far as to repeal obſolete [*d*], and ſometimes dangerous laws, as well as the reducing the different acts of parliament, which relate to the ſame ſubject, into one conſiſtent law, would be a ſalutary, nay, is almoſt become a neceſſary work [*e*].

To prove, that ſome acts of parliament, (which fortunately, for the moſt part, lie buried in the Statute Book, till the ſpleen and reſentment of individuals calls them forth, to the diſgrace of the law, and the diſtreſs of the perſon proſecuted) are really detrimental and dangerous; three or four out of an immenſe number, need only be mentioned—It is felony [*f*] by the 8th of Eliz. ch. iii. to carry live ſheep out of the kingdom; and there is no exception of the live ſtock, which is neceſſary for the freſh proviſions of a ſhip's company.— Upon ſuch an indictment, indeed, both judge and jury would probably unite in preventing a conviction, but the criminal may be obnoxious tothe jury; and, at all events, ſuch a proſecution ſhould not be ſuffered.

By 25 Henry VIII. ch. xiii. (during whoſe reign there are many acts which ſhould be repealed, as they then began to make regulations relative to trade and agriculture, without underſtanding the true principles by which they may be promoted) it is made penal to keep above 2000 ſheep.— The greateſt part of moſt of the Welſh counties, and perhaps ſome of the Engliſh, is fit for nothing elſe, and cannot profitably be converted to arable; and yet there was an indictment in *Cardiganſhire* within theſe ſix years upon this obſolete and injudicious ſtatute [*g*].

It is ſubmitted, that the laws of queen Elizabeth, which enforce the going to church under penalties (our preſent rational religion does not want to be ſo enforced) ſhould be repealed—A ſon proſecuted his mother

[*d*] It may be ſaid, that an obſolete ſtatute, from which no bad conſequences have ariſen, ſhould not be repealed, as it may occaſionally be of uſe to the hiſtorian and the lawyer—This objection would prove, that moſt of the acts contained in Raſtal ſhould have continued unrepealed; and a ſufficient number of that edition of the ſtatutes remains for the above purpoſes.— Beſides, every uſeleſs obſolete ſtatute, in ſome meaſure, takes away from the reverence which is due to thoſe which are more frequently inforced—An opportunity cannot be here omitted of mentioning, that a judicious collection of propoſed and rejected acts would have it's uſe.

[*e*] This is ſtrongly recommended by the preamble to the 5th Eliz. ch. iv.

[*f*] It is only felony for the ſecond offence; but the firſt is puniſhed with impriſonment and loſs of the left hand.

[*g*] By 2 and 3 of Ph. M. ch. iii. for every ſix ſcore ſheep, a milch cow and calf, is to be reared every year under penalties—There is ſcarcely a farmer or landholder in the kingdom, who is not, perhaps, liable to a proſecution on this ſtatute.

upon theſe acts within theſe eight years; and it may almoſt be ſaid, that no man of buſineſs can go through life, without ſubjecting himſelf to many proſecutions; when, at the ſame time, he was not conſcious of having offended againſt any law whatſoever [*b*].

Sir *William Young*, fifteen or ſixteen years ago, moved for a committee of the Houſe of Commons for this very purpoſe, of which he himſelf was chairman: it is believed however, that nothing material was done, or reſolved upon.

This was poſſibly owing to its being a work of time and deliberation, which the flux body of a committee, ſitting from year to year, is not at all calculated for—The aſſiſtance of lawyers was likewiſe probably wanting—Thoſe barriſters, who are members of the Houſe of Commons, have generally too much buſineſs in their profeſſion to ſpare time for ſuch an attendance; and without ſuch aſſiſtance the committee could not well proceed.

As this obſtacle muſt for ever continue to this great work being done by a committee ſolely, it is propoſed, that two or more barriſters ſhould be appointed, who, from year to year, might make a report to the privy council, as likewiſe to the lord chancellor, the maſter of the rolls, and the twelve judges, of a [*i*] certain number of Statutes, which ſhould either be repealed, or reduced into one conſiſtent act; and ſend as a ſchedule, annexed to ſuch report, a copy of ſuch propoſed conſiſtent act, on or before the laſt day of every Trinity Term—There will then be the whole vacation for the conſideration of ſuch propoſed alterations; and if they ſhould be approved of, they might paſs into laws the ſubſequent ſeſſion of parliament.

The good conſequences of ſuch a reformation of the law need not be dwelt upon, as the Statute Book would be reduced to half it's preſent ſize, and the ſubject better know the law he is to be governed by—It is indeed much to be feared, that the complaint (which Sir *George Mackenzie* makes in the introduction to his obſervations upon the Scots Statute Law) may be applicable to our own—After having mentioned the *ardent deſire*

[*b*] It may be proper likewiſe to mention ſome inſtances (out of many) of a ſtatute moſt abſurdly placed, where no one could expect to find ſuch a law—A moſt material alteration, in the ſtatute of diſtributions, is inſerted in the 1 Jac. II. c. xvii. entitled, *An Act for the reviving and continuing the ſeveral acts therein mentioned*—And by 20 G. II. ch. xxii. for *explaining the Window-Tax act*, there is a clauſe, that all laws, which were then in force, or which ſhall hereafter be enacted, are to extend to Wales and Berwick, though not particularly mentioned.

[*i*] If too many are inſerted in the report, they will not be properly conſidered—And Trebonianus is much condemned by the writers on the Civil Law, who, when Juſtinian had allowed him and his aſſiſtants ten years for compiling the Pandects, from a too great deſire of diſpatch, publiſhed the collection in three years, Duck. de Auth. Jur. Civ.

of the Scots parliament for the amending their laws, he ſays, that one of his chief inducements for writing on the Statute Law of Scotland was, *that, though a lawyer*, he found a difficulty in underſtanding the Statutes, which were the *pillars of the law*.

N. B. As I have (p. 70) ſaid that I ſhould print (in the *Appendix*) a citation at length from *Prynne's* Obſervations on Sir *Edward Coke's* Inſtitutes, I ſhall here only inſert the pages referred to, as the citation is of a very conſiderable length, and though it contains many curious particulars, yet perhaps they will be chiefly intereſting to the *Welſh Hiſtorian*, or *Geographer*— See Prynne's Animadv. p. 55, 56, 57.

FINIS.

ERRATA ET CORRIGENDA.

P. 10. in note *b*, for *ſpoke*, read *ſpoken*.
P. 12, after *faire faire les proces*, add *we ſay a writ iſſues*.
P. 13, after *regulation*, dele *however*.
P. 18, after *admitted*, dele *to*. Ibid. *to* after *to*.
P. 21, for *right*, read *rights*.
P. 24, dele the crochets.
P. 27, for *pareners*, in note *x*, read *parceners*. Ibid, in note *w*, for *introduction*, read *appointing*.
P. 28, in note *z*, for *Macdonal*, read *Macdoual*.
P. 33, in note *b*, for *more*, read *other*.
P. 34, in note *k*, for *wrote*, read *written*.
P. 40, for *becauſe the attachment*, read *becauſe attachments*. Ibid. for *wrote*, read *written*.
P. 44, after *conſiſts*, dele *the building*.
P. 47. for *ſubjects*, read *people*.
P. 51, for *lord Ch. J. Hales*, read *Hale*; as alſo p. 52 and 54.
P. 52, for *writ*, read *written*.
P. 63, for *prounditas*, read *profunditas*.
P. 65, before *Mr. Lewis Morris*, dele the *Rev.*
P. 68, in note *a*, dele *great part of*.
P. 82, in note *t*, for *tepujours*, read *toujours*.
P. 83, for *antiently*, read *anciently*.
P. 91, for *ſervant*, read *ſervants*.
P. 96, in note *r*, for 6000, read 60,000.
P. 100, in note *x*, for *ſubſtantiam*, read *ſubſtantia*.
P. 108, after *eigth*, inſtead of *or*, read *and*.
P. 115, for 18 *Edw. I.* read 28*th of Edw. the Firſt.*
P. 134, for *obſervation*, read *obſervations*.
P. 138, after *floor*, dele --- and ſeems to agree with the ancient form of pronouncing this judgment, viz. that he ſhould be ſet in and upon the pillory.
P. 148, in note *i*, between the words *Montgomery* and *Cheſhire*, dele *that*.
P. 150, inſtead of *enabled to pardon*, read *obliged*.
P. 152, for *words is rendered*, read *are* ---
P. 154, in note *t*, for *ſeur*, read *ſous*.
P. 168, for [*c*] read [*ć*]
P. 170, before *diſſoluteneſs*, read *this*.
P. 171, in note *m*, for *fanchcour*, read *fauchcour*.
P. 175, after *omitted*, inſert --- the ſtatute then proceeds to offences againſt the coin. Ibid. after *it is*, dele *made*.
P. 178, in note *b*, after *fourteenth*, inſert *century*.
P. 182, dele *he ſays*.
P. 184, in note *r*, for *ſame*, read *game*.
P. 189, for *eigth*, read *eigths*.
P. 214, in note *f*, for *combination*, read *combinations*.
P. 216, in note *r*, between *ſecond and re-enacted*, inſert *is*.
P. 216, in note *q*, for *michi*, read *mihi*.
P. 231, for [*b*] read [*i*]
P. 235, for *invention*, read *intervention*.
P. 236, for *fegeries*, read *forgeries*.
P. 237, in note *w*, for *legg.* read *leg.*
P. 240, between *Oxford and all*, dele *that*.
P. 243, after φωτα, add --- Ibid. read *Petit*.
P. 256, for *Court of Pipowders*, read *Pipowder*.
P. 261, in note *b*, for *decoraters*, read *decorators*.
P. 273, in the citation from Plato, inſtead of μηδ' ἀναπλωσῶν read μηδ' αὖ πλησῶν.
P. 275. for *noli*, read *nolle*.
P. 276, after *perſon afterwards*, inſert *ſhall*. Ibid. for 3 Hen. VII. read 19.
P. 278, for *collected*, read *entitled*.
P. 280, in note *p*, for *direction*, read *diſcretion*.
P. 283, for *felony*, read *felons*.
P. 303, *form'd*, read *framed*.
P. 309, for *antient*, read *ancient*.