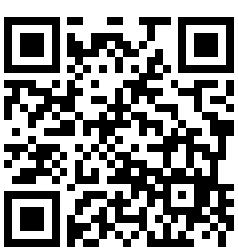

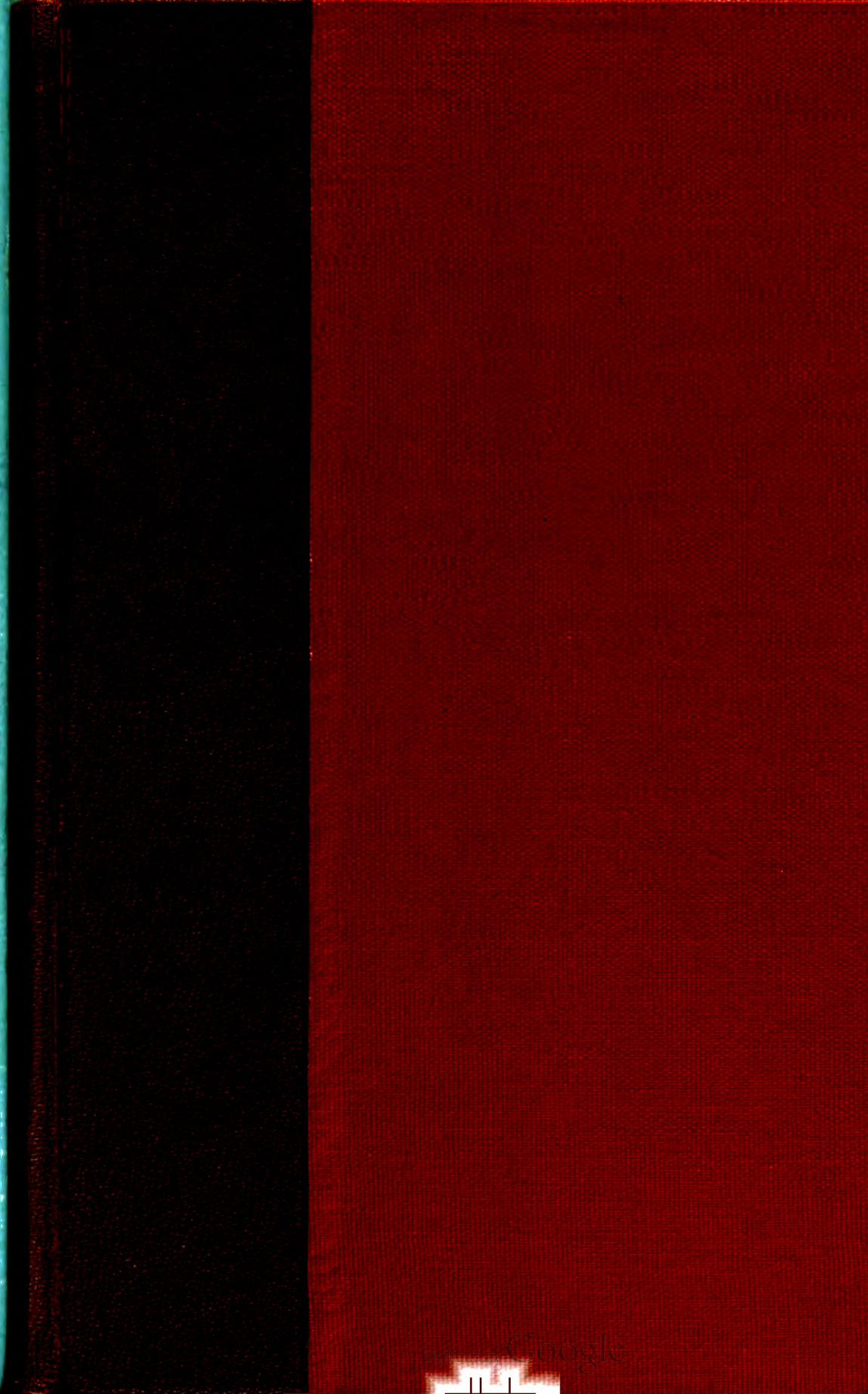

THE SECOND PART OF THE INSTITUTES

Of the Lawes of *England*.

CONTAINING

The Exposition of many ancient, and other Statutes;

Whereof you may see the particulars in a Table following.

Jurisperito dixit, In lege quid scriptum est? quomodo legis? Luc. 10. 26.

Quod non lego, non credo. *August.*

Jurisprudentia est iuvenibus regimen, senibus solamen, pauperibus divitiæ, & divitibus securitas.

Authore Edw. Coke *Milite, I. C.*

Hac ego grandævus posthàc tibi, candide Lector.

LONDON,
Printed by *M. Flesher*, and *R. Young*, for *E. D. R. M. W. L.* and *D. P.* 1642.

A Table of the ſeverall Statutes treated of in this ſecond Part of the *Inſtitutes*.

DEO,

DEO,
PATRIÆ,
TIBI.

A Proeme to the ſecond Part of the Inſtitutes.

IN the firſt Part of the *Inſtitutes*, following *Littleton* our Guide, we have treated of ſuch parts of the Common Laws, Statutes, and Cuſtomes, as he in his three Books hath left unto us. We are in this ſecond Part of the *Inſtitutes* to ſpeak of *Magna Charta*, and many ancient and other Statutes, as in the Table precedent doe appeare.

It is called *Magna Charta*, not that it is great in quantity, for there be many voluminous Charters commonly paſſed, ſpecially in theſe later times, longer then this is; nor comparatively in reſpect that it is greater then *Charta de Foreſta*, but in reſpect of the great importance, and weightineſſe of the matter, as hereafter ſhall appeare: And likewiſe for the ſame cauſe *Charta de Foreſta*, is called, *Magna Charta de Foreſta*, and both of them are called *Magna Charta libertatum Angliæ*.

Marlb. cap. 5. Inſpex. 25 E. 1. 12 H. 3. *Sententia lata ſuper chartas.* Bract. lib. 3. fol. 291. & lib. 5. fol. 414. Mirror cap 5 Regiſtr. 8 E. 3. Itin' Pick. Rot. 43. Atons Caſe. Rot. Par. 20. Marcii 1 E. 3. de perambulatione for in Com' Eſſex. Rot. Parl. 22 E. 3. nu. 36.

King *Alexander* was called *Alexander Magnus*, not in reſpect of the largeneſſe of his body, for he was a little man, but in reſpect of the greatneſſe of his heroicall ſpirit, of whom it might be truly ſaid,

Mens tamen in parvo corpore magna fuit;

So as of this Great Charter it may be truly ſaid, that it is *Magnum in parvo*.

And it is alſo called *Charta libertatum Regni*; and upon great reaſon it is ſo called of the effect, *Quia liberos facit*: Sometime for the ſame cauſe, *Communis libertas*, and *le Chartre des franchiſes*.

There be four ends of this Great Charter, mentioned in the Preface, *viz.* 1. The honour of Almighty God, &c. 2. The ſafety of the Kings Soule; 3. The advancement of holy Church; and 4. The amendment of the Realme: foure moſt excellent ends, whereof more ſhall be ſaid hereafter.

The Ends. *Sapiens incipit à fine.*

By Charter bearing date the 11. day of *February*, in the 9. yeare of King *H.* 3. and ſecondly, by that Charter eſtabliſhed by Authority of Parliament then ſitting, and ſo entred into the Parliament Roll; the Witneſſes to the ſaid Charter were 31. Lords Spirituall, *viz. Stephen Langton* Archbiſhop of *Canterbury*, *E.* Biſhop of *London*, *I.* B. of *Bath*, *P.* of *Wincheſter*, *H.* of *Lincoln*, *Robert* of *Salisbury*, *W.* of *Rocheſter*, *W.* of *Worceſter*, *I.* of *Ely*, *H.* of *Hereford*, *R.* of *Chiceſter*, *William* of *Exeter*, Biſhops.

By what Authority, and when.

shops: The Abbot of S. *Edes*, the Abbot of S. *Albons*, the Abbot of *Battaile*, the Abbot of S. *Augustines* in *Canterbury*, the Abbot of *Evesham*, the Abbot of *Westminster*, the Abbot of *Burghe* S. *Peter*, the Abbot of *Reading*, the Abbot of *Abindon*, the Abbot of *Malmesbury*, the Abbot of *Winchcombe*, the Abbot of *Hyde*, the Abbot of *Certesey*, the Abbot of *Shernborn*, the Abbot of *Cerne*, the Abbot of *Abbotebury*, the Abbot of *Middleton*, the Abbot of *Selbie*, the Abbot of *Cirencester*; And 33. of the Nobility, *viz.* *Hubert de Burgo* Chiefe Iustice of *England*, and 32. Earles and Barons, *viz.* *Randall* Earle of *Chester* and *Lincoln*, *William* Earle of *Salisbury*, *William* Earle *Warren*, *Gilbert* of *Clare* Earle of *Gloucester* and *Hertford*, *William de Ferrars* Earle of *Derby*, *William Mandevile* Earle of *Essex*, *H. de Bigod* Earle of *Norffolk*, *William* Earle of *Albemarle*, *H.* Earle of *Hereford*, *Iohn* Constable of *Chester*, *Robert de Ros*, *R. Fitzwalter*, *Robert de Vipont*, *William de Bruer*, *R. de Mountfitchet*, *P. Fitzherbert*, *William de Aubeine*, *Robert Gresly*, *Reignald de Brehus*, *Iohn de Movenne*, *I. Fitz-Alen*, *Hugh de Mortimer*, *Walter de Beauchamp*, *William de S. Iohn*, *Peter de Mololacu*, *Brian de Lisle*, *T. de Mahon*, *Richard de Argentein*, *Ieffrey de Nevill*, *William Mandint*, *Iohn de Baalun*, and others.

The great providence and policy for preservation of it.

There were many of the great Charters, and *Charta de Foresta*, put under the Great Seale, and sent to Archbishops, Bishops, and other men of the Clergie, to be safely kept, whereof one of them remain at this day at *Lambeth*, with the Archbishop of *Canterbury*.

Also the same was entred of Record in a Parliament Roll.

25 E. 1. cap. 1.

And after King *E.* 1. by Act of Parliament did ordain that both the said Charters should be sent under the Great Seale, as well to the Iustices of the Forest, as to others, and to all Sheriffes, and to all other the Kings Officers, and to all the Cities through the Realme, and that the same Charters should be sent to all the Cathedrall Churches, and that they should be read and published in every County four times in the yeare in full County, *viz.* the next County day after the feast of S. *Michael*, and the next County day after *Christmas*, and the next County day after *Easter*, and the next County day after the Feast of S. *Iohn*.

25 E. 1. cap. 3. 28 E. 1. ca. 1. & 17

The quality.

It was for the most part declaratory of the principall grounds of the fundamentall Laws of *England*, and for the residue it is additionall to supply some defects of the Common Law; and it was no new declaration: for King *Iohn* in the 17. yeare of his raigne had granted the like, which also was called *Magna Charta*, as appeareth by a Record before this Great Charter made by King *H.* 3.

Mat. Par. fo. 246 247, 248.

Pasch. 5 H. 3. tit. Mordaunc' f. 53.

Home ne fuer' Mordanc' apud Westmonasterium des terres in auter Countie, car ceo ser encont' Lestatus de Magna Charta sinon que illa assisa semel interminata fuit coram Iustic'.

Also by the said Act of 25. *E.* 1. (called *Confirm' Chartar'*) it is adjudged in Parliament that the Great Charter, and the Charter of the Forest should be taken as the Common Law.

Stat. 25 E. 1. Confirm. Chart.

How, and upon what grounds it hath been impugned.

Soon after the making of this Great Charter, the young King by evill Counsell fell into great mislike with it, which *Hubert de Burgo summus Iusticiarius Angliæ* perceiving (who in former times had been a great lover, and well deserving Patriot of his Country, and learned in the

the Laws (for *Rot. clauſ.* 11 *H.*3. *membr.*44. I finde that he, and many others were Iuſtices *Itinerant* in 5 *H.*3. and I have ſeen a fine levied before him, and ſixe other Iudges, between *Stephen de Wanceſle*, and the Abbot of *Hales*) yet meaning to make this a ſtep to his ambition (which ever rideth without reines) perſwaded and humored the King that he might avoid the Charter of his Father King *Iohn* by dureſſe, and his own great Charter, and *Charta de Foreſta* alſo, for that he was within age when he granted the ſame; whereupon the King in the 11. yeare of his raign, being then of full age, got one of the great Charters, and of the Foreſt into his hands, and by the counſell principally of this *Hubert* his Chiefe Iuſtice, at a Counſell holden at *Oxford*, unjuſtly cancelled both the ſaid Charters, (notwithſtanding the ſaid *Hubert de Burgo* was the primier Witneſſe of all the temporall Lords to both the ſaid Charters) whereupon he became in high favour with the King, inſomuch as he was ſoon after (*viz.* the 10. of *December*, in the 13. yeare of that King, created to the higheſt dignity that in thoſe times any Subject had) to be an Earle, *viz.* of *Kent*. But ſoon after (for flatterers and humoriſts have no ſure foundation) he fell into the Kings heavy indignation, and after many fearfull and miſerable troubles, he was juſtly, and according to Law ſentenced by his Peeres in open Parliament, and juſtly degraded of that dignity which he unjuſtly had obtained by his counſell for cancelling of *Magna Charta*, and *Charta de Foreſta*. And the King by his Charter granted, *Quod nos firmiter & integrè tenebimus judicium de Huberto de Burgo per Barones dictum*, he was buried in the Frier predicants where *Whitehall* is now built, ſo as no Monument remains of him at this day.

Rot. clauſ. 11 H.3 membr. 44. 5 H.3

Rot. clauſ. 17 H.3 m. 1. & 2. Rot. Pat. 17 H.3. m. 1. à tergo & 12.

In this advice *Hubert de Burgo* either diſſembled his opinion, or groſly erred (as ever ambitious flattery bedazles the eye, even of them, that be learned) firſt, for that a King cannot avoid his Charter, albeit he make it when he is within age, for in reſpect of his royall and politique capacity as King, the Law adjudgeth him of full age. Secondly, it being done by Authority of Parliament, and enrolled of Record, it was ſtrange that any man ſhould think that the King could avoid them in reſpect he was within age. Thirdly, it was to no end to cancell one where there were ſo many, or to have cancelled all, when they were of Record in the Parliament Roll, or to have cancelled Roll and all, when they were, for the moſt part, but declaratories of the ancient Common Laws of *England*, to the obſervation, and keeping whereof, the King was bound and ſworn. What ſucceſſe thoſe potent and opulent Subjects, *Hugh Spencer* the Father, and Son had, for giving raſh and evill counſell to King *E.*2. *enconter la forme de la grand Chartre*, I had rather you ſhould read then I ſhould declare.

Exilium turgonis la Spencer pais & filii.

After the making of *Magna Charta*, and *Charta de Foreſta*, divers learned men in the Laws, that I may uſe the words of the Record, kept Schooles of the Law in the City of *London*, and taught ſuch as reſorted to them, the Laws of the Realme, taking their foundation of *Magna Charta*, and *Charta de Foreſta*, which as you have heard, the King by ill advice ſought to impeach.

Rot. clauſ. Anno 19 H.3. m. 22.

The King in the 19. year of his raign, by his Writ, commanded the Maior

19 H.3. ubi ſupra.

Maior and Sheriffes of *London*, *Quod per totam Civitatem London clamari faciant & firmiter prohiberi, ne aliquis ſcholas tenens de legibus in eadem Civitate de cætero ibidem leges doceat, & ſi aliquis ibidem fuerit hujuſmodi ſcholas tenens, ipſum ſine dilatione ceſſare fac'; Teſte Rege, &c. 11. die Decembris, Anno Regni ſui decimo nono.* But this Writ took no better effect then it deſerved, for evill counſell being removed from the King, he in the next yeare, *viz.* in the 20. yeare of his raigne compleat, and in the one and twentieth yeare current, did by his Charter under his great Seale confirme both *Magna Charta*, and *Charta de Foreſta*, he being then 29. years old. And after in the 52. yeare of his raigne eſtabliſhed and confirmed both the ſame by Act of Parliament, with the clauſe, *Quod contravenientes per Dominum Regem, cum convicti fuerint, graviter puniantur.* Hereby ſhall ſome opinions and reſolutions in our Books be the better underſtood, which ſpeak of alienations without licenſe before or after 20 *H.*3. which yeare was named for that the King then confirmed the ſaid great Charter, and in like manner did King *E.*1. by Act of Parliament in the 25. year of his raign: and the ſaid two Charters have been confirmed, eſtabliſhed, and commanded to be put in execution by 32. ſeverall Acts of Parliament in all.

Marlb. cap. 5. 15 E. 4. 13.

20 Aſſ. p. 17. 24 H. 4. 2, & 3. Bro. Alien. ſans licenſe. 10.

Of what high eſtimation it hath been.

This appeareth partly by that which hath been ſaid, for that it hath ſo often been confirmed by the wiſe providence of ſo many Acts of Parliament.

And albeit judgements in the Kings Courts are of high regard in Law, and *Iudicia* are accounted as *Iuris dicta*, yet it is provided by Act of Parliament, that if any judgement be given contrary to any of the points of the great Charter, or *Charta de Foreſta*, by the Iuſtices, or by any other of the Kings Miniſters, &c. it ſhall be undone, and holden for nought.

Confirm. Chart. 25 E. 1. ca. 1. & 2. Vet. Mag. Chart. 2. part, fol. 35.

And that both the ſaid Charters ſhall be ſent under the great Seale to all Cathedrall Churches throughout the Realm there to remain, and ſhall be read to the people twice every yeare.

25 E. 1. ubi ſupra.

The higheſt and moſt binding Laws are the Statutes which are eſtabliſhed by Parliament; and by Authority of that higheſt Court it is enacted (onely to ſhew their tender care of *Magna Charta*, and *Charta de Foreſta*) *That if any Statute be made contrary to the great Charter, or the Charter of the Foreſt, that ſhall be holden for none;* By which words all former Statutes made againſt either of thoſe Charters are now repealed; And the Nobles and great Officers were to be ſworn to the obſervation of *Magna Charta*, and *Charta de Foreſta*.

42 E. 3. cap. 1. 25 E. 1. ubi ſupra.

Magna fuit quondam Magnæ reverentia Chartæ.

We in this ſecond Part of the *Inſtitutes*, treating of the ancient and other Statutes have been inforced almoſt of neceſſity to cite our ancient Authors, *Bracton*, *Britton*, the *Mirror*, *Fleta*, and many Records, never before publiſhed in print, to the end the prudent Reader may diſcerne what the Common Law was before the making of every of thoſe Statutes, which we handle in this work, and thereby know whether the Statute be introductory of a new Law, or declaratory of the old, which will conduce much to the true underſtanding of the Text it ſelfe. We have alſo ſometime in this and other Parts of the *Inſtitutes*, cited the

Grand

Grand Custumier de Normandy, where it agreeth with the Laws of *England*, and sometime where they disagree, *ex diametro*, being a Book compounded as well of the Laws of *England*, which King *Edward* the Confessor gave them, as he that Commenteth upon that Book testifieth (as elswhere we have noted) as of divers Customes of the Duchie of *Normandie*, which book was composed in the raign of King *H.3. viz.* about 40. yeares after the Coronation of King *Richard* the first, 3. *Septembris*, *Anno* 1. of his raign, *Anno Dom.* 1189. about 138. yeares after the Conquest. See that Book *cap.*22. *fo.*29. *a.* and the Comment upon the same, & *cap.*112. In which *Custumier* a great number of the Courts of Iustice, of the originall Writs, and of many other of the titles of the Laws of *England*, are not so much as named or mentioned. And seeing we have in these, and other parts of our *Institutes*, cited the Laws and Statutes of divers Kings before the Conquest, and in the Conquerors time, we have thought good for the ease of the Reader, to set down the times wherein those Kings lived, and deceased. *Inas* began to raign *Anno Dom.* 689. and deceased 726. *Aluredus*, *alias Alfredus*, *alias Elfredus*, began to raign *Anno Dom.*872. and deceased 901. Of this *Alured* it is thus written, *Aluredus acerrimi ingenii princeps per Grimbaldum & Iohannem doctissimos Monachos tantum instructus est, ut in brevi librorum omnium notitiam haberet, totumque novum & vetus Testamentum in eulogiam Anglicæ gentis transmutaret* (*cujus translationis pars nobis feliciter accidit.*) This learned King in advancement of Divine and humane knowledge, by the perswasion of those two Monks founded the famous Vniversity of *Cambridge*. *Edwardus*, son of the said *Alured*, began to raign *Anno Dom.*901. and deceased 924. [a] *Ethelstanus*, *alias*, *Adelstane* eldest son of the said *Edward* began to raign *Anno Dom.*924. and deceased 940. [b] *Edmundus* began to raign *Anno Dom.* 940. and deceased 946. [c] *Edgarus* began to raign *Anno Dom.* 959. and deceased 975. [d] *Etheldredus* began to raign *Anno Dom.* 979. and deceased 1016. [e] *Canutus* began to raign *Anno Dom.* 1016. and deceased 1035. [f] *Edwardus* began to raign *Anno Dom.* 1042. and deceased 1066. [g] *Willielmus Bastardus* began to raign *Anno Dom.* 1066. and deceased 1087.

In Historia Eliensi fol.38. lib.2.

Cl: Caius D. m. Cant.

a *Fortis, sapiens, & fortunatus: Danos expulit & Angliam in Monarchiam reduxit.*
b *Martir apud Hoxon olim Hegilsdon.*
c *Pacificus, Rex excellentissimus.*
d Named in Domesday. Glouc' Ecclesia de Evesham. Adelredus.
e In Domesday he is ever written *Cnut' Rex.*
f He is ever called in Domesd. *Episcopus S. Edw. Cestr: Rex Edwardus dedit Regi Griffino terram quæ jacebat trans aquam quæ De vocatur.*
g He is in Domes. written Willielmus Rex, *vel* Willielmus, *vel* W. Rex.

Some fragments of the Statutes in the raigns of the aboveſaid Kings doe yet remain, but not onely many of the Statutes, and Acts of Parliament, but also the Books and Treatises of the Common Laws both in these and other Kings times, and specially in the times of the ancient *Brittons* (an inestimable losse) are not to be found.

It is to be observed that in *Domesday Haroldus*, who usurped the Crown of *England*, after the decease of King *Edward* the Confessor, is never named *per nomen Regis, sed per nomen Comitis Haroldi, seu Heraldi*; And therefore we have omitted him.

In citing of the aboveſaid Laws originally written in the Saxon tongue, we have referred you to M. *Lambard*, who accurately and faithfully translated the same into Latin, one page containing the Saxon, and the next the Latin, and is in print (for our manner is not to cite any thing, but so to referre the Reader, as he may easily finde it;) *Sed ut unicuique suus tribuatur honos*, all those Statutes in the raigns of all the aboveſaid Kings were of ancient time plainly and truly translated into Latin,

Latin, (whereof we have a very ancient, if not the first Manuscript) which no doubt did not a little abbreviate M. *Lambards* pains.

Vpon the Text of the Civill Law, there be so many glosses and interpretations, and again upon those so many Commentaries, and all these written by Doctors of equall degree and authority, and therein so many diversities of opinions, as they do rather increase then resolve doubts, and incertainties, and the professors of that noble Science say, That it is like a Sea full of waves. The difference then between those glosses and Commentaries, and this which we publish, is, that their glosses and Commentaries are written by Doctors, which be Advocates, and so in a manner private interpretations: And our Expositions or Commentaries upon *Magna Charta*, and other Statutes, are the resolutions of Iudges in Courts of Iustice in judiciall courses of proceeding, either related and reported in our Books, or extant in judiciall Records, or in both, and therefore being collected together, shall (as we conceive) produce certainty, the Mother and Nurse of repose and quietnesse, and are not like to the waves of the Sea, but *Statio bene fida peritis*: for *Iudicia sunt tanquam Iuris dicta.*

Regula.

Finis Proœmii.

But now let us peruse the Text it selfe.

MAGNA

MAGNA CHARTA,

EDITA *Anno nono* H. 3.

HENRICUS Dei gratia rex Angliæ, Dominus Hiberniæ, Dux Normaniæ, & Aquitaniæ, & Comes Andegaviæ, Archiepiscopis, Episcopis, Abbatibus, Prioribus, Comitibus, Baronibus, Vicecomitibus, Præpositis, Ministris, & omnibus Ballivis, & fidelibus suis, præsentem Chartam inspecturis, salutem. Sciatis quod nos intuitu Dei, et pro salute animæ nostræ, &c. et ad exaltationem sanctæ Ecclesiæ, et emendationem regni nostri, spontanea & bona voluntate nostra, dedimus & concessimus Archiepiscopis, Episcopis, Abbatibus, Prioribus, Comitibus, Baronibus, & omnibus liberis de Regno nostro, has libertates subscript', tenend' in regno nostro Angliæ inperpetuum.

¶ Henricus Dei gratia Rex Angliæ, &c.] **Concerning the Styles of the Kings of England, both before and after this King, and how often they altered the same, see in the first part of the Institutes,** Sectione prima.

The first Part of the Institutes, *Sect.* 1.

℄ Archiepiscopis, Episcopis, Abbatibus, Prioribus, Comitibus, Baronibus, &c.] **This or the like particular direction, this King and his Progenitors before him used; and so did** E. 1. E. 2. & E. 3. **King** R. 2. **in his Letters Patents used a more generall, and compendious direction,** viz. Omnibus ad quos præsentes literæ pervenerint, &c. **which direction is used to this day, saving in Charters of Creation of Dignities, the directions to this day, are** Archiepiscopis, Episcopis, Ducibus, Marchionibus, &c. **and hiis testibus, in the end.**

Note not onely the preamble of this Charter, & of the forest, but the bodies of the Charters themselves are contained in the Charter of King *Iohn*, An. 17. of his reign, *Mat. Par. pag.* 246. *Quæ ex parte maxima leges antiquas & regni consuetudines continebant. pag.* 244.

℄ Nos intuitu Dei, pro salute animæ nostræ, ad exaltationē sanctæ Ecclesiæ, & emendationem regni nostri.] **Here bee foure notable causes of the making of this great Charter rehearsed. 1. The honour of God. 2. For the health of the Kings soul. 3. For the exaltation of holy Church; and fourthly, for the amendment of the Kingdome.**

These be those excellent Lawes contained in this great Charter, and digested into 38. Chapters, which tend to the honour of God, the safety of the Kings conscience, the advancement of the Church, and amendment of the Kingdome, granted and allowed to all the Subjects of the Realme.

℄ Spontanea,

¶ Spontanea, & bona voluntate noſtra.] These words were added, for that King John, as hath been ſaid, made the like Charter in effect, and ſought to avoid the ſame, pretending it was made by dureſſe.

This great Charter is divided into 38. Chapters.

CAP. I.

IMprimis, Conceſsimus Deo, & hac præſenti Charta noſtra confirmavimus pro nobis & hæredibus noſtris inperpetuum, quod Eccleſia Anglicana libera ſit, & habeat omnia jura ſua integra, & libertates ſuas illæſas. Conceſsimus etiam, & dedimus omnibus liberis hominibus regni noſtri, pro nobis & hæredibus noſtris inperpetuum, has libertates ſubſcriptas; Tenend' & habend' eis & hæredibus ſuis, de nobis & hæredibus noſtris inperpetuum.

Inter leges ſeu Inſtitutiones Regis H. 1. cap. 1

Sanctam Dei, inprimis, Eccleſiam liberam facio, ita quod nec vendam, nec ad firmam ponam, nec mortuo Archiepiſcopo ſive Epiſcopo, vel Abbate aliquid accipiam de dominio Eccleſiæ, ſeu de hominibus ejus, donec ſucceſſor in eam ingrediatur, et omnes malas conſuetudines, quibus regnum Angliæ injuſte opprimebatur, inde aufero.

¶ Conceſsimus Deo.] We have graunted to God: when any thing is graunted for God, it is deemed in Law to be graunted to God, and whatſoever is graunted to his Church for his honour, and the maintenance of his Religion and ſervice, is graunted for and to God; Quod datum eſt Eccleſiæ, datum eſt Deo.

See the firſt part of the Inſtitutes. Sect. 1.

And this and the like were the formes of ancient Acts and Graunts, and thoſe ancient acts and graunts muſt be conſtrued and taken as the Law was holden at that time when they were made.

Here in this Charter, both in the title and in diuers parts of the body of the Charter, the King ſpeaketh in the plurall number, conceſſimus; The firſt King that I read of before him, that in his graunts wrote in the plurall number, was King John, Father of our King H. 3. other Kings before him wrote in the ſingular number, they vſed Ego, and King John, and all the Kings after him, Nos.

¶ Pro nobis et hæredibus noſtris inperpetuum.] These words were added to avoid all ſcruples, that this great Parliamentary Charter might liue and take effect in all ſucceſſions of ages for euer. More of this word (heires) hereafter in this Chapter: When Pro nobis, hæredibus & ſucceſſoribus noſtris came in, ſhall be ſhewed in his fit place.

¶ Quod Eccleſia Anglicana, &c.] This at the making of this great Charter, extended not to Ireland, nor to any of the Kings forain Dominions; but by the Law of Poynings, made by the Authority of Parliament in Ireland, in Anno 11. H. 7. all the Laws and Statutes of this Realm of England before that time had or made do extend to Ireland, ſo as now Magna Charta doth extend into Ireland.

¶ Quod Eccleſia Anglicana libera ſit.] That is, that all Eccleſiaſticall perſons within the Realm, their poſſeſſions, and goods ſhall be freed from all vnjuſt exactions,

actions and oppreſſions, but notwithſtanding ſhould yéeld all lawfull duties, either to the King or to any of his Subjects, ſo as libera here, is taken for liberata, for as hath béen ſaid, this Charter is declaratory of the ancient Law and Liberty of England, and therefore no new frédom is hereby granted, (to be diſcharged of lawfull tenures, ſeruices, rents, and aids) but a reſtitution of ſuch as lawfully they had before, and to frée them of that which had béen vſurped and incroached vpon them by any power whatſoeuer; And purpoſely, and materially, the Charter ſaith Eccleſia, becauſe Eccleſia non moritur, but moriuntur Eccleſiaſtici, and this extends to all Eccleſiaſticall perſons of what quality or order ſoeuer.

¶ Et habeat omnia jura ſua integra.] That is, that all Eccleſiaſticall perſons ſhall enjoy all their lawful juriſdictions, and other their rights wholly without any diminution or ſubſtraction whatſoeuer; and jura ſua proue plainly, that no new rights were giuen vnto them, but ſuch as they had before, hereby are confirmed; and great were ſometimes their rights, for they had the third part of the poſſeſſions of the Realme, as it is affirmed in a Parliament Roll. Rot. Parliam. 4. R. 2. Nu. 13.

¶ Et libertates ſuas illæſas.] Libertates are here taken in two ſenſes. 1. For the Laws of England ſo called, becauſe liberos faciunt, as hath been ſaid. 2. They are here taken for priuiledges held by Parliament, Charter or preſcription more then ordinary; and in this ſenſe it is taken in the Writ De libertatibus allocandis and in another Writ De libertatibus exigendis in itinere, but it is but libertates ſuas, ſuch as of right they had before; Jura Eccleſiæ publicis æquiparantur. Regiſt. fol. 19. & 262. F.N.B. fo. 229. *Regula.*

Euery Archbiſhoprick and Biſhoprick in England are of the Kings foundation, and holden of the King per Baroniam, and many Abbots and Priors of Monaſteries were alſo of the Kings foundation, and did hold of him per Baroniam, and in this right the Archbiſhop and Biſhops, and ſuch of the Abbots and Priors as held per Baroniam, and called by Writ to Parliament, were Lords of Parliament; and this is a right of great honour that the Church, viz. the Archbiſhop and Biſhops now haue. Eccleſia eſt infra ætatem, & in cuſtodia Domini Regis, qui tenetur jura & hæreditates ſuas manutenere & defendere; And in other Records it is ſaid, Eccleſia quæ ſemper eſt infra ætatem fungitur ſemper vice minoris, nec eſt juri conſonum quod infra ætatem exiſtentes, per negligentiam cuſtodum ſuorum exhæredationem patiantur ſeu ab actione repellantur. Glanv. l. 7. c. 1. Bract. lib. 3. fol. 226. l. 5. fo. 427. Tr. 22 E. 1. in com. Banc. Rot. Fleta lib. 2.

They are diſcharged of purueyance for their own proper goods.

And this was the ancient Common Law, and ſo declared by diuers Acts of Parliament, and there is a Writ in the Regiſter for their diſcharge in that behalfe: And this is not reſtrained by the ſaid Act of 27. H. 8. for thereby it is prouided that the Purueyor ſhall obſerue the Statutes for them prouided, ſo as where the Purueyor is prohibited to puruey by any Statute, the ſaid Act of 27. H. 8. ſetteth him not at liberty. See hereafter c. 21. 14. E. 3. cap. 12. Stat. 2. 18. E. 3. cap. 4. 1 R. 2. cap. 3. 8 E. 3. fol. 26. Regiſt. 289. vid. 27. H. 8. c. 24 vid. *poſtea.* c 21.

And true it is, that Eccleſiaſticall perſons haue more and greater liberties then other of the Kings Subjects, wherein, to ſet down all, would take vp a whole Volume of it ſelf, and to ſet down no example, agréeth not with the Office of an Expoſitor; therefore ſome few examples ſhall be expreſſed, and the ſtudious Reader left to obſerue the reſt as he ſhall reade them in our Bookes, and other Authorities of Law.

If a man holdeth Lands or Tenements, by reaſon whereof he ought (vpon election, &c.) to ſerue in a temporall office, if this man be made an Eccleſiaſticall perſon within holy Orders, he ought not to be elected to any ſuch office, and if he be, he may haue the Kings Writ for his diſcharge, and the words of the Writ are obſeruable, Rex, &c. Cum ſecundum legem & conſuetudinem Regni noſtri Angliæ Clerici infra ſacros ordines conſtituti ad tale officium eligi non debeant, nec hactenus conſueuerunt, &c. and the reaſon thereof is expreſſed in the Writ, Quia juri non eſt conſonum, quod hii qui ſalubri ſtatu animarum, &c. (in tali loco, &c.) deſerviunt, alibi extra (eundem locum) ſecularibus negotiis compellantur. Regiſt. 58. F. N. B. 175.

2. Timot.c.2.

By this writ it appeareth that this was the ancient common Law, and custome of England, and had a sure foundation, Nemo militans Deo, implicet se negotiis secularibus, ut ei placeat cui se probavit. Ecclesiasticall persons have this priviledge that they ought not in person to serve in warre. Also Ecclesiasticall persons ought to be quit and discharged of Tolles and Customes, Aviage, Pontage, Pavage, and the like, for their Ecclesiasticall goods, and if they be molested therefore, they have a writ for their discharge, by which writ it appeareth that this was the ancient Common Law of England. Rex, &c. cum personæ Ecclesiasticæ secundum consuetudinem hactenus in regno nostro usitatam, & approbatam; ac ad telonium, paviagium & muragium, &c. de bonis suis Ecclesiasticis alicubi in eodem regno præstand' nullatenus teneantur, &c.

Litt.fol.20. Regist. fol. F. N. B. 227.

F. N. B. 29. Regist. 289.

If any Ecclesiasticall person be in feare or doubt that his goods or Chattells, or Beasts, or the goods of his farmer, &c. should be taken by the ministers of the King, for the business of the King, he may purchase a protection cum clausula nolumus.

See the exposition of the statute of Artic. Cler. cap 9.

Distresses shall not be taken by Sheriffs or other of the Kings ministers in the inheritance of the Church wherewith it was anciently endowed, but otherwise it is of late purchase.

If any Ecclesiasticall person knowledge a statute Merchant or statute staple or a recognizance in the nature of a statute staple, his body shall not be taken by force of any processe thereupon, and for more surety thereof the writ thereupon to take the body of the conusor is si laicus sit.

Regist. 300. F. N.B.266.a.16. E.3.proces165. Regist.judi.22. *18.E.2.Proc. 205.9 E.3 30. 24.E.3.44. 25.E.3.44 29.E.3.44. 32.E.3.Proces 58. 34.E.3. *Scir.fac.* 153. 45.E.3.6. 47.E.3.14. 21.H.6.16. Regist.judic.62. *Artic.Cler.c.9.*

If a person bee bound in a recognizance in the Chancery or in any other Court, &c. and he pay not the sum at the day, by the Common Law, if the person had nothing but Ecclesiasticall goods, the recognizee could not have had a levari fac' to the Sheriffe to levie the same of these goods, but the writ ought to be directed to the Bishop of the Dioces to levie the same of his Ecclesiasticall goods.

*In an action brought against a person (wherein a Capias lieth) for example, an account, the Sheriffe returns quod clericus est beneficiatus, nullum habens laicū feodum, in which he may be summoned, in this case the plaintiffe cannot have a Capias to the Sheriffe to take the body of the person, but he shall have a writ to the Bishop to cause the person to come and appeare. But if he had returned quod clericus est nullum habens laicum feodum, then is a Capias to be granted to the Sheriffe, for that it appeared not by the returne that he had a benefice, so as he might bee warned by the Bishop his Diocesan, and no man can be exempt from justice. See more of this matter Artic. Cleri. cap. 9.

Marlebr.c.10. Briton.f.19.B. Fleta.li.2.c.45. Rot.brevi.an.2. R.2.part 2.m.8

Secundum legem & consuetudinē Regni Angliæ clerici in decenna, &c. poni non debeant, vel ea occasione distringi vel inquietari non consueverunt: and Ecclesiasticall persons are not bound to appeare at Tournes or Viewes of Frankpledge.

But hereof this little taste shall in this place suffice, with this, that as the overflowing of waters doe many times make the river to lose his proper chanell, so in times past Ecclesiasticall persons seeking to extend their liberties beyond their true bounds, either lost or enjoyed not that which of right belonged to them.

Litt.sect. 189.

¶ Concessimus etiam & dedimus omnibus liberis hominibus regni nostri, &c.] These words (omnibus liberis hominibus regni) doe include all persons Ecclesiasticall and temporall incorporate politique or naturall, nay they extend also to villeines, for they are accounted free against all men saving against the Lords.

*See the statute of 34. E.1. de tallagio non conc. cap.4. which is more generall.

*¶ Has libertates subscriptas.] Here it is to be observed that the aforesaid clause that concerned the Church onely, is in favour of the Church generall without any restraint, but this clause that concernes all the Kings subjects hath a restraint by reason of this word (subscriptas) which restraineth libertates to the 38. Chapters of this great Charter.

*Mich. 17. E. 1. in Com.banc. rot. 221. leic. see the first part of the Institut. sect. 1.

*Note that Courts of justice are also called *libertates*, because in them the Lawes of the Realme *quæ liberos faciunt*, are administred.

¶ Hæredi-

¶ Hæredibus.] At this time Hæredes were taken for Successores, and Successores for Hæredes.

¶ De nobis.] In this place these words are not inserted to make a legall tenure of the King, but to intimate that all liberties at the first were derived from the Crowne.

CAP. II.

SI quis Comitum, vel Baronum noſtrorum, ſive aliorum tenentium de nobis in capite per ſervitium Militare, mortuus fuerit, & cum deceſſerit, hæres ejus plenæ ætatis fuerit, & relevium nobis debeat, habeat hæreditament' ſuum per antiquum relevium, ſcilicet, hæres, vel hæredes Comitis, de com' integro, per centum libras, hæres vel hæredes Baronis, de Baronia integra, per centum marcas, hæres vel hæredes Militis, de feodo militis integro, per centum ſolidos ad plus. Et qui minus habuerit, minus det, ſecundum antiquam conſuetudinem feodorum.

¶ Si quis Comitum vel Baronum.] At this time there was never a Duke, Marquesse, or Viscount in England, for if there had bin, they had (no doubt) bin named in this Chapter: the first Duke that was created since the Conquest, was Edward the Black Prince, in 11 E. 3. Robert de Vere Earle of Oxford, was in the 8. year of Richard the second, created Marquesse of Dublin in Ireland, and he was the first Marquesse that any of our Kings created. Rot. Parliam. anno 11. E. 3. li. 5. fo. 1. in calu principis. Rot. Pat. 8. R. 2.

The first Viscount that I finde of Record, and that sate in Parliament by that name, was John Beaumont, who in the 18. yeare of H. 6. was created Viscount Beaumont. Rot. Pat. 18 H. 6. 12. Febr.

¶ Comites.] Dicuntur Comites, *viz.* quia in Comitatu ſive à ſocietate nomen ſumpſerunt, qui etiam dici poſſunt Conſules à conſulendo: Reges enim tales ſibi aſſociant ad conſulendum & regendum populum Dei, ordinantes eos in magno honore, & poteſtate, & nomine, quando accingunt eos gladiis, ringis gladiorum, &c. gladius autem ſignificat defenſionem Regni & Patriæ. Bract. lib. 1. fol. 5. b. Fleta lib. 1. cap. 5. Briton 68. b.

¶ Barones.] Sunt & alii potentes ſub Rege qui dicuntur Barones, hoc eſt, robur belli: And where some have thought that Baro is no Latin word, we find it in Tullies Epistles, Apud Patronem, Et alios Barones te in maxima gratia poſui. Galfridus Cornwall tenet manerium de Burford de Rege, per ſervitium Baroniæ, But it is to be understood, that if the King give Land to one and his heirs, Tenend de rege per ſervitium Baroniæ, he is no Lord of Parliament untill he be called by Writ to the Parliament. These which are Earls and Barons have offices and duties annexed to their dignities of great trust and confidence, for two purposes. 1. Ad conſulendum tempore pacis. 2. Ad defendendum Regem & Patriam tempore belli. And prudent Antiquity hath given unto them two ensignes to resemble, and to put them in minde of their duties; for first they have an honourable and long robe of scarlet resembling Counsell, in respect whereof they are accounted in Law, De magno concilio Regis. 2. They are girt with a sword that they should ever be ready Bract. *ubi ſupra.* Ad Attic. Ep. 5. Inquiſ. 40. E. 3. Inter record. in Turri 27. Aug. 5. H. 4. the Earle of Northumb. Case, &c.

Glanv. l. 9. c. 4. ready to defend their King and Country: And it is to be obſerued that in ancient Records the Barony (vnder one word) included all the Nobility of England, becauſe regularly all Noblemen were Barons, though they had a higher dignity, and therefore of the Charter of King E. 1. in the Expoſition of this Chapter hereafter mentioned, the concluſion is, Teſtibus Archiepiſcopis, Epiſcopis, Baronibus, &c. So placed, in reſpect that Barones included the whole Nobility: and the great Councell of the Nobility, when there were beſides Earles and Barons, Dukes and Marqueſſes, were all comprehended vnder the name De la Councell de Baronage.

5. H. 4. *ubi ſupr.*

¶ Sive aliorum tenentium in capite.] It is worthy of obſeruation, with what great iudgement this Statute concerning reliefe is penned; for by the Act of Parliament called, The Aſſiſe of Clarendon, Anno 10. H. 2. Anno Domini 1164. it is thus enacted; Archiepiſcopi, Epiſcopi, & univerſæ perſonæ Regni, qui de Rege tenent in capite, habeant poſſeſſiones ſuas de Rege, ſicut Baroniam, & inde reſpondeant Juſticiariis & miniſtris Regis, & ſicut cæteri Barones debent intereſſe curiæ Regis cum Baronibus, &c. Therefore this Chapter beginneth, Si quis Comitum, vel Baronum; So as (as to reliefe of an Earle or Baron) it is not materiall that he hath Baroniam, vnleſſe he be Noble, that is, Earle or Baron, and others being not Noble, but holding in Capite, ſhall pay reliefe according to the Knights fées which he hath. See hereafter Cap. 31. who ſhall be ſaid to hold in Capite.

¶ Per ſervitium militare.] For this ſee the firſt part of the Inſtitutes, Sect. 103, 112, 154, 157, 126, 127. whereunto you may adde this Record following.

Hil. 8. E. 1. in Banc. Rot. 86. Midd. Which Record is cited in the firſt part of the Inſtit. *Sect.* 157. *in marg.*

*Per Aſſiſam Iohannes de Moyſe, qui eſt infra ætatẽ, implacitat Thom' de Weylaund & Marg' ux' ejus pro uno Meſſuag. ii. molendinis, iiii. acris prati, & xlii. s. red. in Eaſtſmithfield ext' Algate. Ipſi voc' ad war' Rad' de Berners, qui war' & dic' quod nihil clamat niſi cuſtod. eo quod Iohannes pater dicti Iohannis tenuit de eo prædicta ten' per homag' & ſervic' vi. d. & inveniendi quendam hominem pro eo in turri London. cum arcubus & ſagittis per quadraginta dies tempore guerræ. Iohannes dic' quod tenet ten' præd. per homagium & ſervitium quorundam calcariorũ vel vi. d. pro omni ſervic'. Et ſic omittendo multa ex utrag. parte manifeſte patebit per verd' Iur' & per Iud' Cur' quid in hac aſſ. terminatum fuit. Iur' dic' quod prædicta ten' tenent' de prædicto Radulpho per homagium & ſervic' unius paris calcariorũ deauratorũ vel ſex den' * & inven' quend' hominẽ pro ipſo Radulpho in turri Lond. cum arcub' & ſagit' per xl. dies tempore guerræ in boreal' Angulo turris prædictæ pro omni ſervic'. * Et quia compertũ eſt, &c. quod Radulphus cognoſcit in reſponc' quod prædict' herestenere debet eadem ten' per prædict' homag' & ſervic' prædict' calcar' vel ſex denar' & per ſerjantiã invenicndi unũ hominẽ pro eo in præd' turri per xl. dies, & manifeſtè liquet quod huõdi minores ſerjantiæ quæ debent fieri pro Dominis ſuis de quibus tenent tenementa ſua per alios quã ſeipſos nullã indedabunt cuſtodiã eiſdẽ Dominis, nec dare debent licèt iidem Domini infra ætatem hæredũ per negligentiam propinquorum parentũ hujuſmodi cuſtodias occupaverint, & iſte Radulphus non poteſt dedicere quod unquã aliquã habuit ſeiſinam de prædict' Cuſtod' niſi per occupationem ſuam & negligentiam parentum prædicti hæredis anteceſſoris ſui dum infra ætatem fuit, & non alio jure. Conſiderat' eſt quod prædict' Iohannes rec' inde ſeiſ. &c. & damn' Cx. l. iv. s. vii. d. &c. Valor terr' per annum xx. l. x. d.*

Veredictum.

* Tr. 17. E. 1. in Banc. Rot. 29. Salop. Walt. de Hoptons Caſe. Acc.

* The Judgement.

See the firſt part of the Inſtitutes, Sect. 155. & 157. and note the diverſitie betweén ſuch a tenure of the King, for in that caſe it ſhould be a tenure by Grand-ſerjanty, and that Grand-ſerjanty, for the greateſt part, is to be done within the

See 11 H. 4. 72. & 24. E. 3. 32.

Realme,

Realme, and Knights ſervice out of the Realme, as Littleton there ſaith.

¶ Plenæ ætatis.] See the firſt part of the Inſtitutes, Sect. 104.

¶ Antiquum relevium ſcilicet, &c.] Concerning the word Relevium, vide 1. Part Inſtitut. Sect. 103. It appeareth that the reliefe here ſet down, is the ancient relief, and was certain at the Common Law; But there had been of long time an heavy incroachment of an incertain reliefe at will and pleaſure, which under a fair term was called rationabile Relevium, and this Act had juſt cauſe to ſay, Per Antiquum relevium, for in the raign of H. 2. Grandfather to H. 3. the King erected an incertain reliefe, for ſo Glanvill ſaith, who wrote in his time, De Baroniis verò nihil certum Statutum eſt, quia juxta voluntatem & miſericordiam Domini Regis ſolent Baroniæ Capitales de releviis ſuis Domino Regi ſatisfacere. And Glanvill under the name of Baronies doth include Earledomes alſo, ſo the reliefe of all the Nobility was taken as incertain at that time, and therefore how neceſſary it was that the ancient reliefe ſhould be reſtored is evident.

Glanv. l. 9. c. 4. Ockham cap. *Quod non abſolvitur. Cuſtumer de Norm. Cap.* 34. and the Comment thereupon.

¶ Scilicet hæres vel hæredes.] Of this word (heire) ſee the firſt part of the Inſtitutes, Sect. 1. whereunto you may adde that which was there omitted, concerning the Antiquity of deſcents, which the Germanes had agreeable with the ancient Laws of the Britons, continued in England to this day, out of that faithfull and learned Hiſtorian, who of the ancient Germanes ſaith; Hæredes ſucceſſoreſq; ſui cuique liberi, & nullũ Teſtamentum: ſi liberi non ſunt, proximus gradus in poſſeſſione, fratres, patrui, avunculi, &c. Wherein we obſerve three things. 1. That for default of children and brethren, the Uncle, &c. and not the Father, or any in the right line aſcendent ſhould inherit, but the collaterall onely. 2. That by the Common Law no Teſtament or laſt Will could be made of Land. 3. That of ancient time Succeſſores were Synonyma with hæredes. But in this ancient Statute it is pertinently ſaid, hæres, and not ſucceſſor, for every Biſhop of England hath a Barony, and ſo had many Abbots and Priors (in reſpect whereof they were Lords of Parliament) and yet they paid no reliefe, becauſe their ſucceſſors came to it by ſucceſſion, and not as heire by inheritance; And this Act ſaith, Habeat hæreditatem ſuam. And they are ſeiſed in Jure Epiſcopatus Monaſterii, &c. de Comitatu integro & de Baronia integra. The Barons in Domeſday are accounted amongſt the Tenants in Chiefe. Vide Glanv. lib. 9. cap. 6. Magna Charta cap. 31.

Tacitus de moribus Germanorum.

It is to be underſtood that of ancient time (as it evidently appeareth by this Chapter, and by our Books) every Earledome and Barony were holden of the King in Capite, which proveth that both the Dignities of the Earle and the Baron, and the Earldome and Barony were derived from the Crown. [a] And it is to be known that the fourth part of the yearly value of an Earledome, a Barony, and the living of a Knight, was the ancient reliefe that this Chapter ſpeaketh of. And for that of ancient time, [b] a Knights living was eſtéemed at 20. l. per ann. (which in thoſe dayes was ſufficient to maintain the dignity of a Knight) his ancient [c] relief was 5. l. which is the fourth part of his living by one year.

Bract. lib. 2. fol. 76. a. 84. 16. E. 3 eſchaunge 2. 20. E. 3. Aſſiſe. 122. & tit. avowr. 126. 22. E. 3. 18. 18. Aſſ. Pl. ult. 24. E. 3. 66. non-tenure 16. 46. E. 3. forfeit. 18. 20. H. 7. 19 a.

The yearly value of a Barony was to conſiſt of 13. Knights fées, and a quarter, which by juſt account amounted to 400. Marks by the year, therefore his reliefe was as is here ſet down 100. Marks.

a See the firſt part of the Inſtitutes, ſect 95. Cambden Brit. 122. Acc.

See an ancient Manuſcript intituled, De modo tenendi Parliamentum, &c. tempore Regis Edwardi filii Regis Etheldredi, qui quidem modus fuit per diſcretiores Regni corã Willielmo Duce Normannorũ & Conqueſtore & Rege Angliæ ipſo conqueſtore hoc tempore præcipiente recitat' & per ipſum approbat', &c. Of the Authority and Antiquity whereof you may reade in the fourth part of the Inſtitutes Cap. of the Court of Parliament, Et hic infra.

b 1 E. 2. cap. 1. 7. H. 6. 15. M. 2. Jac. lib. 11. Mercalfs Caſe. fol. 33, 34.

Now every Earledome conſiſted of the value of an entire Barony and an halfe, which amounted to 20. Knights fées amounting to 400. l. per annum, and therefore his ancient reliefe here called Antiquum relevium, being the fourth part of the yearly value of his Earledome was 100. l. In that excellent Charter which King H. 1. made

made on the day of his Coronation, Communi Concilio & assensu Baronum Regni Angliæ, amongst other things it is thus contained, Omnes malas consuetudines, quibus Regnum Angliæ opprimebatur, inde aufero, quas malas consuetudines exinde suppono. Si quis Baronum meorum, Comitum, sive aliorum, qui de me tenet, mortuus fuerit, hæres suus non redimet terram suam, sicut faciebat tempore fratris mei, sed legitima & justa relevatione relevabit eam, sicut homines Baronum meorum legitima & justa relevatione relevabunt terras suas a Dominis suis, &c. Legem * Regis Edw. vobis reddo cum illis emendationibus, quibus Pater meus emendavit consilio Baronum suorum.

* i. Edw. filii Etheldredi.

By this Charter it appeareth, 1. that there was a lawfull and just relieſe, to be paid by the Earle, and Baron, which implyeth a proportionable relieſe according to the value of the living, by reason of this word (Justa) which cannot be intended of an uncertaine relieſe, but of the just relieſe, upon the Computation of so many Knights Fées contained in the Modus, whereunto this Charter hath relation. 2. It appeareth that there was an unjuſt relieſe, in the time of William Rufus his Brother, which upon search we have found in an ancient Manuscript in the Library of Arch-Bishop Parker, which we have séene, and will transcribe, in that Language that we finde it.

De releefe al cunte que al Roy afert 8. chivals enfrenees, & ensebees, & 4. Hawberts & 4. Hawmes & 4. escues, & 4. launces, & 4. espees les aultres, & 4. chaceurs & 4. palefrees à freins et a cheveſtre.

De reliefe a barun 4. chivals les 2. enfrenes & euseeles & 2. hauberts & 2. hawmes & 2. escus, & 2. espees & 2. launces, & les autres 2. chivals un chaceur & un palfrey a freins & a cheveſtres.

De reliefe a vavaſſur a ſon lige ſenior doit eſtre quite per le chival ſon pier, tiel come il avoit jour de ſon mort, & per ſon hawme, & per ſon escu & per ſon haubert, & per ſon lance, & ſil fuit diſaparaile, que il nouſt chiual ne arme juſte quite per C. ſol.

Le relief al villain le meliour avoir que il averad 2. Chivals, 2. Boefs, 2. Vaches durrad a ſon ſeignior, & puis ſont touts les villains in frankpledge.

Inter leges Canuti cap. 97. * CC. mare.

In K. Canutus time, *Relevatio Comitis fuit 8. equi, 4. ſellati, 4. inſellati, & galeæ 4. & lorice. 4. cum 8. lanceis, & totidem ſcutis, et gladii. 4. et * CC. mancæ auri.*

* i. Baronis.

*Poſtea * thani Regis, qui ei proximus ſit, 4. equi, 2. ſellati, 2. non ſellati. 2. gladii. 4. lancee, et totidem ſcuta, et galea cum lorica ſua, et 50. mancæ auri.*

Et mediocris thani equus cum apparatu ſuo et arma ſua et halſtang in Weſt-ſexa, &c.

Lastly, this Chapter of Magna Charta is but a restitution and declaration of the ancient Common Law, and that antiquum relevium of the Earle, and Baron was certaine; so now joyning both together, this certaine relieſe here set downe is legitimum, justum & antiquum relevium, mentioned in the Modus, &c.

It is said that there be ancient precedents in the Exchequer, that he that held by a Dukedome, which being valued at two Earles livings, should pay according to the proportionall and just fourth part of his living by yeare, 200. li. And a Marques that held by a Marquesdome, who should have two Baronies, should pay for his relieſe 200. marks. What the value of the living of a Viscount should be, I have not heard, but certaine it is he should pay the fourth part of the yeerely value of his Viscountesdome.

But all this is to be intended, where the King granteth a Dukedome, Marquesdome, Earledome, Viscountesdome, or Barony to hold, as here it is spoken, de nobis in Capite per servitium militare, viz. De Comitatu integro & de Baronia integra, & qui minus habuerit, minus det secundum antiquam consuetudinē feodorū.

But

But in ſome caſes the heire of an Earle, or a Baron may pay the reliefe expreſſed in this Statute, albeit he hath not ſo many Knights Fees, as is abovesaid: for if upon the creation of the Earle the King did grant any Mannors, Lands, or Annuity per Comitatum, & nomine Comitis, or ſub nomine & honore Comitis or the like, he ſhould pay, C. li. for reliefe, and ſo of the Baron, mutatis mutandis, for a ſpeciall reſervation may derogate from the Common Law.

Com. Mich. 14. E. 3. rot. 8. ex prerem Theſ. Com. Hil. 25. E. 3. rot 4. ex prerem. Theſ. Com. Hil. 7. H. 4. rot. 2. rot. cart. 36. E. 3. nu. 8. the Earle of Cambridges caſe.

But otherwiſe it is, if the Mannors, Lands, or annuity be granted unto the Earle, ut idem Comes ſtatum & honorem Comitis melius manutenere & ſupportare poſſit, or, ad ſuſtinendum nomen et onus, or the like; For then the Earle holdeth not per Comitatum, or, nomine Comitis.

But now the ancient manner of creation is altered, for now, when the King creates a Duke, a Marques, an Earle, a Viſcount, or Baron, he ſeldome creates a Dukedome, Marquiſdome, Earldome, &c. ad ſuſtinendum nomen & onus, viz. to grant him Mannors, Lands, tenements, &c. to hold of him in chiefe, for commonly upon creations the King grants to them created an annuity; And therefore at this day Noblemen doe pay ſuch reliefes, as other men uſe to doe, in reſpect of their tenures, for as the heire of a Knight ſhall not pay reliefe, unleſſe he have a Knights Fee, &c. ſo the heire of an Earle, or Baron, ſhall not pay reliefe by this great Charter, unleſſe he hath an Earledome, or Baronie, as is aforeſaid.

6. H. 8. Dier. 2. 17. E. 2 prer. regis cap. 3.

¶ Ad centum ſolidos ad plus.] And this was the ancient reliefe for a Knights Fée, and ſo was holden in the reigne of H. 2. for Glanvil ſaith, dicitur autem rationabile relevium alicujus juxta conſuetudinem regni de feodo unius militis p centum ſolidos, ſo as the Fée of a Knight at that time was certaine, viz. the fourth part of his living per annum, and ſo ought, as appeareth, the relief of the Nobility to have beene in certainty, though they were not permitted to have it ſo, which favored of the power of a conqueror to keepe the Nobility under, or to make himſelfe the more amiable to them.

Glanvil lib. 9. cap. 4. lib. 9. fol. 124. Antony Lowes caſe. Stat. 1. E. 2. de militibus. 2. Part of the Inſtitut. ſect. 103. 112. 113. 154. 157. *vide* Bracton: *ubi ſupra.* Britton cap. 69. Fleta. l. 3. c. 17. * 11. H. 4. 72. b. 1. part of the Inſtitut. ſect. 154. 157. Litt. ſect. 156.

¶ Secundum antiquam conſuetudinem feodorum.] This is obſervable, that theſe certaine and proportionable rates are according to the ancient cuſtome of reliefes.

* A Knight holds land by Grand Serjantie, he is not within this Statute, and therefore ſhall not pay the reliefe of a Knight declared by this act, but the heire being of full age at the deceaſe of his anceſtor, ſhall pay the value of his lands for one peere which is his Primer ſeaſon.

But here it is demanded, ſeeing Littleton ſaith, that tenure by Cornage, if it be of any other Lord then the King, is Knights ſervice, what reliefe the Heir of ſuch a tenant ſhall pay, or whether he ſhall pay any reliefe at all. Littleton in the ſame place ſaith, that tenure by Cornage draweth unto it ward, and mariage, and ſpeaketh nothing of reliefe, and by this act reliefe is to be payed according to the quantity of the Knights Fée, viz. De feodo militis integro per centum ſolidos & qui minus habuerit, minus: but a tenure by Cornage hath no ſuch quantities, nec ſuſcipit majus & minus, and therefore tenure by Cornage, though it be Knights ſervice, is not within this Statute; Hereof you may read a Record to this Effect.

Mich. 18. E. 1. in Banco rot. 84. Weſtmerl. *& eodem anno.* rot. 158. Cumberland. Io. Swinborne caſe *ace. cornagium.*

Inter Iohannem Craiſtoke querentem verſus Idoneam de Leybourne quæ diſtrinxit ipſum per averia pro relevio dando, pro terris in Dunſton, Brampton yanene which, Eſeclyve, *et* Boulton, *quæ valent* C. li. per ann. *quæ tenet de ea per homagium et Cornagium. Et ipſe dicit quod talis eſt conſuetudo patriæ de Weſtm. quod hæredes poſt mortem anteceſſorum ſuorum debent relevare terras ſuas dominis de quibus,* &c. *ſcilicet ſolvendo pro relevio quantum terræ valent per annum, quæ de ipſis dominis tenentur, niſi de minori ipſis dominis poſſunt ſatiſfacere, unde ipſa advocat captionem pro relevio ſecundum prædictam conſuetudinem,* &c.

Iohannes negat talem eſſe conſuetudinem, ſet concedit, quod tenet tenementa prædicta

dicta per Cornag' xxv.s.vi.d. et dicit quod anteceſſores ſui prius duplicarunt anteceſſor. ipſius Idoneæ ſolvendo Li.s. Ipſa dicit quod cum Iohannes cogn', quod ipſe tenet prædicta ten' de ipſa per cornagiū, ad quod hujuſmodi relevium mere eſt acceſſor', ratione conſuet' prædictæ. Et dic' quod idem Iohannes exigit tale relevium verſus tenentes ſuos in eadem patria à tempore quo non, &c. Et de conſuet' uterq; pon' ſe ſuper patriam. Ideo ven' Iur' in Crō S. Iohannis Baptiſtæ, &c.

Alba firma Cornagium.

Inſuper Idonea dic' quod duplex eſt tenura in Com' Weſtmerl. ſcilicet, una per Albā firmā, et alia per Cornagium. Et quod tenentes per Albam firmam poſt mortem anteceſſorum ſuorum debent duplicare firmam ſuam tantum. Et tenentes per Cornagium poſt mortem anteceſſ. ſuorum tenentur reddere valorem terrarum ſuarum unius anni. Et Iohannes è contra dic' quod conſuetudo patriæ eſt quod hæredes non ſolvant niſi duplicando Cornaginm, &c.

Bract. l.2.fo.84 vide Glanv.l.7. cap 9. Flet.li.3. cap.17. Brit. fo.177,178,&c

Bracton li.2.fo.84. cap. 36. nu.2. Et imprimis de feodo militari quale ſit rationabile relevium antiquum de feodo militari diſtinguitur in Carta libertatum, cap.2. &c. **And in the ſame Chapter**, nu.7. **ſaith thus**, De ſergantiis verò nihil certum exprimitur, quid vel quantum dare debeant hæredes ideò juxta voluntatem Dominorum Dominis ſatisfaciant pro relevio, dum tamen ipſi Domini rationem & menſuram non excedant.

Lit. ſect.111.

Certain it is, that he that hold by Caſtle-guard ſhall pay no Eſcuage, for Eſcuage muſt be rated according to the quantity of the Knights fées, as for a whole Knights fée, or half a Knights fée, &c. and of that nature is not Caſtle-guard.

Lit. ſect.97.

Lit. ſect.111.

Littleton **treating of Caſtle-guard, ſaith, that in all caſes where a man holdeth by Knights ſervice, ſuch ſervice draweth to it Ward and Marriage, and ſpeaks not there of relief.**

CAP. III.

SI autem hæres alicujus talium fuerit infra ætatem, Dominus ejus non habeat cuſtodiam ejus, nec terræ ſuæ, antequam homagium ceperit; et poſtquam talis hæres fuerit in cuſtodia, cum ad ætatem pervenerit (ſcilicet xxi. annorum) habeat hæreditatem ſuam ſine relevio, & ſine fine, ita tamen quod ſi ipſe (dum infra ætatem fuerit) fiat Miles, nihilominus terra remaneat in cuſtodia Dominorum ſuorum, uſque ad terminum prædictum.

35 H.6.52.

¶ Hæres.] **This Statute is onely to be intended of an heire male, whereof hæres is derived: and who ſhall be** hæres, &c. **See the firſt part of the** Inſtitutes, lib. 1. ſect. 1,2,3. Cuſtumier de Norm. 99. **and the Expoſitions upon the ſame.**

See the Cuſtumier de Norm. cap.29. and the Comment upon the ſame. & cap.32. & le Latine Com. fol.48. b.

¶ Antequam homagium ceperit.] **For homage ſée the firſt part of the** Inſtitutes, ſect.85. **and it is to be obſerved that in England and France it is called** Homage, Homagium, **and in Italy** Vaſſalagium.

Some have thought that theſe words are to be underſtood that the heire within age ſhall not be in Ward untill the Lord hath taken the homage of ſome of the anceſtors of the Ward, ſo as the anceſtor of the heire may die in the homage of the Lord: for in a Writ of Ward brought by the Lord, it is a good plea to ſay that the anceſtor died not in his homage, and the Statute ſaith not Antequam homagium

ſuum

suum ceperit, but homagium generally; and, say they, if the Lord should receive homage of the heire, he should not be in Ward at all.

But this is not the right intendment of these words, but the Statute meant that the homage should be taken of the heire himselfe, and that for the benefit of the heire, and so doth it appear by [a] our old Bookes that wrote some after this Statute, and contemporanea expositio est fortissima in lege, and so do the words themselves of this Law import, and the reason thereof is notable, which was, that before the Lord should have benefit of Wardship, he should be bound to two things; [b] 1. To warrant the Land to the heir, and to that end the heir might have a Writ, De homagio capiendo; 2. To acquit him from service and other duties to be done and paid to all other Lords, both which the Lord was bound to do ([c] as the law was then holden) if the Lord accepted homage de droit of his tenant, (in such sort as the Lord is, if he receiveth homage auncestrel at this day) but otherwise it is of homage in fait; [d] Homagium est juris vinculum, quo quis astringitur ad warrantizandum, defendendum, & acquietandum tenentem suum in seisina versus omnes per certum servitium in donatione nominatum & expressum; & etiam vice versâ, quo tenens astringitur ad fidem Domino suo servand' & servitium debitum faciend'. [e] We have an ancient Manuscript of a case adjudged in a Writ of Customes and Services betweene Alexander of Poulton, and Robert de Norton, that homage is of an higher nature to divers purposes then escuage. 1. [f] For that homage bindeth to warranty, which escuage doth not. 2. Homage is so solemne as that it cannot be done again as long as the Tenant that made it liveth, but escuage may be given every other year. 3. And Littleton saith that homage is the most honourable service, and humble service of reverence, and yet it is true that escuage taking it for service, giveth to it homage.

[h] But at the Common Law, if a man holding Land by Knights service, had made a gift in frank-marriage, and the donée had died, his heir within age, the heir should be in Ward before any homage received, Quia Dominus non potest capere homagium usque ad tertium hæredem, and this Statute is to be intended where homage was to be received by Law, yet did the Tenant in judgement of Law die in the homage of the Lord, or otherwise he could not be in Ward, a case worthy of great consideration.

[i] But after when it was resolved for Law, and so held to this day, that homage of it selfe doth not binde the Lord to any warranty or acquitall, unlesse it were homage auncestrell, which either is worne out, or very rare in England at this day; then according to the old rule, Cessante ratione legis cessat ipsa lex; The heir cannot binde the Lord to receive homage in this case, but if the tenure be by homage auncestrell, there the Lord shall not have the custody of body or land before he receiveth homage of the heire, for that homage bindeth him to warranty and acquitall, and consequently within the reason of this Law.

[k] Here is to be noted that one within age may doe homage, but he cannot do fealty because that is to be done upon oath. Hoc observato, quod si minor homagium fecerit nullum tamen juramentum fidelitatis, antequam ad ætatem pervenerit, præstabit. See more concerning this matter 1. Part. Institut. lib. 2. cap. Homage & Fealty.

¶ Fiat miles.] Be made a Knight; And his tenure of service is called Servitium militare, Knights service, and therefore if the King create the heire within age, a Duke, a Marquesse, an Earle, a Viscount or a Baron, yet he shall remain in Ward for his body, but if the heire of a Duke, or of any other of the Nobility be made a Knight, he shall be out of Ward for his body. If the heire in Ward be created a Knight of the Garter, a Knight of the Bathe, a Knight Banneret, or a Knight Bachelor, he shall be out of Ward for his body for that he is a Knight, and somewhat more, and the Statute speaketh generally, Unlesse a Knight, and therefore within the words and meaning of this Law, and the Soveraigne of Chivalry hath adjudged him able to doe Knights service.

And this word Fiat, be made, proveth that Knighthood ought to be by creation or making, and cannot be by descent.

[m] But albeit the heir be made a Knight within age, yet is he not freed of the value of

16 E. 3. Relief 6. & 10.

[a] Bract. l. 2. fo. 41 71, 81, 89. 252. Brit. fol. 171. Fleta li. 1. c. 9. Mirror c. 9 § 2. Glanv. lib. 9. cap. 1. & 6. 13 E. 1. gard. 136. 31 E. 1. gard. 155.

[b] Trin. 4 E. 2. fo. 65. b. *in libro meo.* William St. Quintins case. Homage auncestrel only bindeth to warranty, but homage *in fait* bindeth to acquitall.

See the first part of the Institutes, sect. 143. fol. 101. Verb. & ad receive homage.

[c] Tr. 9. E. 2. *Vbi supra.*

[d] Bract. fol. 78. Britt. & Fleta *ubi supra.*

47 E. 3. gar. 99. Temp. E. 1. garr. 90.

[e] M.S. in temp. E. 1.

[f] See the first part of the Institutes, sect. 149. Rule

[g] Lit. sect. 85. Sect. 99.

[h] 13 H. 3. gar. 45

[i] 35 H. 6. gard. 72 14 H. 7. 11. Lit. sect.

[k] Bract. l. 2. fo. 79 See the first part of the Institutes. Lit. lib. 2. cap. homage & fealty.

[l] Lib. 6. fol. 73. Sir Drue Druries case. 15 E. 4. 10. Pl. Com. Ratcliffes case. See hereafter *verbo remanet.*

[m] See Sir Drue Druries case. *ubi supra.*

of his marriage, for that was vested before in the King, or other Lord, and the King being Soveraigne of Chivalry hath adjudged him of full age, that is, able to doe Knights service, to this intent, to free his body from custody, but neither to barre the King or other Lord of the value of the marriage, no more then if he had attained to his full age of 21. years.

Lib. 8. fol. 171. Sir Henry Constables case. 15. E. 4. 10. Pl. Com. 167. 2 E. 6. tit. gard. Br. Sir Anthony Browns case Sir Drue Druries case. *Vbi supra.* Pl. Com. Ratcliffs case.

¶ Remaneat in Custodia Dominorum suorum.] This word (remaneat) implieth that this Statute is to be understood onely, where the heir after he be in Ward is made Knight within age, for when the heire apparent is made Knight within age in the life of the ancestor, and the ancestor dieth, his heir within age, he shall be out of Ward both for body and Land, because the Soveraign of Chivalry hath adjudged him of full age, and able to do Knights service in the life of his ancestor, so as in that case no title of Wardship did ever accrew, and there can be no remanere or residue, but of that thing that had his essence or being.

CAP. IV.

CVstos terræ hujusmodi hæredis, qui infra ætatem fuerit, non capiat de terra hæredis, nisi rationabiles exitus, & rationabiles consuetudines, & rationabilia servitia, & hoc sine destructione, & vasto hominum & rerum. Et si nos commiserimus custodiam alicujus talis terræ Vic', vel alicui alii, qui de exitibus terræ illius nobis debeat respondere, & ille de custodia illa, destructionem, vel vastum fecerit: Nos ab eo capiemus emend', & terra committatur duobus legal' & discretis hominibus de feodo illo, qui de exitibus terræ illius nobis respondeant, vel illi cui nos illam assignaverimus. Et si dederimus, vel vendiderimns custod' alicujus talis terræ, & ille inde destructionem fecerit, vel vastum, amittat illam custod', & tradatur duobus discret' & legal' hominibus de feodo illo, qui similiter nobis respondeant, sicut prædict' est. [Vide Gloc' cap. 5. W. 1. ca. 21.]

¶ Custos.] A Keeper, some derive the word à cura & sto, quia custos est is cui cura rei stat custodiend'; and thereupon sometime he is called Curator, in French he is called a Gardien, so as his name custos doth put him in minde of his office and duty, that is not onely to keep and preserve the Lands and Tenements of the Ward committed to his custody in safety, but also to educate and bring up his Ward vertuously, and to advance him in marriage without disparagement. Vide 1. part Institut. Sect. 103. of the cause and end of Wardship; and see the 4. part of the Institut. cap. Court of Wards and Liveries.

Bract. lib. 7. fol. 87. W. 2. ca. 39. Flet. li. 6. ca. 61. 5 E. 3. 6. 34 E. 3 28, 29.

¶ Rationabiles exitus.] Exitus is derived ab exeundo, and signifieth the rents and profits issuing out or comming of the Lands or Tenements of the Ward, which must be taken by the Gardien in reasonable manner, and therefore to exitus, rationabiles is added, for that nothing that is unreasonable is allowed by Law.

Brac. li. 2. fo. 87.

¶ Rationabiles consuetudines.] That is, things due by custome or prescription, and appendant or appurtenant to the Lands or Tenements in Ward, as advowsons, commons, waife, estraie, wreck, and the like; also the reasonable

nable cuſtomes, fines, &c. of Tenants in Villenage, or by Copy of Court-roll where fines be incertain: for though the cuſtomes, duties, fines, or the like be incertain, yet if that which is exacted or demanded be unreaſonable, it is againſt the Common Law. For this word (conſuetud) and the divers ſignifications thereof, ſee hereafter cap. 30.

¶ Et rationabilia ſervitia.] This alſo, as appeares by Glanvill that wrote in the reigne of H. 2. was the Common Law of England, that incertain ſervices and aides ought to be reaſonable; for, ſaith he, the Lord may rationabilia auxilia de hominibus ſuis inde exigere, ita tamen moderate ſecundum quantitatem feodorum ſuorum & ſecundum facultates, ne minus gravari inde videantur, vel ſuum contenementum amittere; and that which he ſpeaketh there of aids, is to be applied to all incertain ſervices, cuſtomes, fines, or duties. Glanv. li. 9. c. 8. W. 1. cap. 31. 25 E. 3. cap. 11. *Contenement.*

But it may be demanded, How and by whom ſhall the ſaid reaſonableneſſe in the caſes aforeſaid be tried? This you may reade in the firſt part of the Inſtitutes, Sect. 69.

¶ Et hoc ſine deſtructione & vaſto hominum & rerum.] For theſe words, Deſtruction and Waſte, ſee the firſt part of the Inſtitutes, Sect. 67. and the Statute of Gloc. cap. 5. Marleb. cap. 17. mirror. cap. 5. § 2. li. 4. fol. 57.

¶ Et ſi nos commiſerimus, &c.] For this word commiſerimus, vide the firſt part of the Inſtitutes, Sect. 58. & 531. Here the Committée of the King is taken for him to whom the King committeth the cuſtody of the Land to one or more; by this word commiſimus, reſerving a Rent, Quamdiu quis alius plus dare voluerit, and there the King remain Gardien.

¶ Nos ab eo capiemus emenda.] And this may be upon an office found, or by Writ directed to the Sheriffe to this effect, Quia datum eſt nobis intelligi, &c. Reg. fo. 72, 73. Brac. li. 2. fo. 47 lib. 4. fol. 317. 20 H. 3. Waſte 138. 40 Aſſiſ. Pl. 22. lib. intrat. Raſt. 616

¶ Et ſi dederimus vel vendiderimus alicui cuſtodiam, &c.] In this caſe the King graunteth, or ſelleth the very cuſtody it ſelfe, ſo as the graunte or vendée becommeth Guardian in fact; and that this diſtinction betweene the Committée and Graunte was by the Common Law, hear what Glanvill ſaith, Si verò Dominus Rex aliquam cuſtodiam alicui commiſerit, tunc diſtinguitur utrum ei cuſtodiam pleno jure commiſerit ita quod nullum inde reddere computum oportet ad Scaccarium, aut aliter: ſi vero plene ei cuſtodiam commiſerit, tunc poterit, &c. negotia ſicut ſua recte diſponere. King H. 7. graunted a Ward to the Dutches of Buckingham, quamdiu in manibus ſuis fore contigerit; And afterwards the King made a ſpeciall Livery, as by Law he might, to the heir within age, and it was adjudged, as Juſtice Frowick reported, that the Duches was without remedy; but otherwiſe it had bèen if the graunt were durante minore ætate hæredis, or, durante minore ætate & quamdiu in manibus noſtris, &c. Glanv. li. 7. c. 10

But here it may be materially demaunded, What if the Committée or Graunteé doth waſte, and the King during the minority taketh no amends, what remedy hath the heire after his full age? The anſwer is, That he ſhall have an action of Waſte, and that by order of the Common Law: and then it is further doubted and demanded, What ſhall the heirs then recover, for the Wardſhip cannot be loſt, ſeeing the heire is of full age, neither by this Statute nor by the Statute of Gloc. To this the anſwer is very obſervable, that ſeeing that the Wardſhip cannot be loſt, and the Waſte, being to the heirs diſherſion, ought not to remain unpuniſhed, that the heire ſhall recover treble damage, for that penalty is annexed to the action of Waſte; and therefore if an action of Waſte were given againſt Tenant in tail apres poſſibilitie, generally the plaintife ſhall recover treble damages, becauſe they are annexed to this ſuit. But if the King doe take amends, then the heire at full age ſhall have no action of Waſte. 7 E. 3. 12, 13. 3 E. 2 Waſte 3. Regiſtr. 72. 12 H. 4. 3. F. N. B. 59. c. & 60. c. Vide *notabile recordum*. M. 32. E. 1. Coram Rege. Rot. 76. Dublin. See hereafter in the Expoſition upon the Statute of Gloc. ca. 5.

¶ Amittat

Bracton lib. 4. fol. 285. 316, 217. Gloc. cap. 5. Dier 28. H. 8. fol 25. Britt. fo. 33. 34. * W. 1. cap. 21. Gloc. cap. 5. Artic sup. cart. cap. 18. 14. E. 3. cap. 13. 36. E. 3. cap. 13.

¶ Amittat cuſtodiam.] This is underſtood of the land, and not of the body, for the words be tradatur duobus, &c. qui de exitibus terræ nobis inde reſpondeant.

*Nota, ſince this ſtatute of Magna Charta divers other ſtatutes againſt waſts and deſtructions in the lands of Wards have been made.

At the making of this ſtatute, the King had not any prerogative in the Cuſtodie of the lands of Idiots during the life of the Idiot, for if he had had, this Act would have provided againſt Waſt, &c. committed by the Committee, or aſſignee of the King to be done in their poſſeſſions, aſwell as in the poſſeſſions of Wards, but at this time the gardianſhip of Idiots, &c. was to the Lords and others according to the Courſe of the Common law. And Idiots from their nativity were accounted alwayes within age, and therefore the Cuſtodie of them was perpetuall ſo long as they lived, for that their impotencie was perpetuall. And the Lord of whom the Land was holden, had not a tenant that was able to doe him ſervice. And therefore within the reaſon of a Cuſtodie of a minor or of an heire within age in Caſe of Wardſhip. And this appeareth by Fleta, Solent tutores Idiotarum & ſtultorum cum corporibus eorum perpetuo, quod licitum fuit & proviſum, eo quod ſe ipſos regere non noverint, * nam ſemper judicabantur infra ætatem: vel quia verumq; plures per hujuſmodi cuſtodiam exhæredationes compatiebantur, proviſum fuit, & cõmuniter conceſſum quod Rex corporũ & hæreditatũ hujuſmodi idiotarum & ſtultorum ſub perpetuis cuſtodiam obtineret, dum tamen à nativitate fuerint idiotæ & ſtulti; ſecus autẽ ſi tardæ à quocunque Domino tenuerint, & ipſos maritaret, & ex omni exhæredatione ſalvaret hoc cum adjecto quod dominis feodorum & aliis quorum interfuerit ut ſervitiis, redditibus & cuſtodiis uſque ad legitimam ætatem ſecundùm conditionem feodorum, releviis & hujuſmodi nihil juris deperiret.

Fleta lib. 1. cap 10. ¶ Solent. * Nota, the cauſe of alteration by Act of Parliament. Mirror cap 1. ſ 9 Et auter maner &c. Britton. cap. 66. fol. 167. b. acc. 17. E. 2. cap. 9. 3. E. 3. tit. gar. 5.

But then it is demanded, when was this prerogative given to the King? Certaine it is, that the King had it before the ſtatute of 17. E. 2. de prærogativa Regis, for it appeareth in our Bookes, that the King had this prerogative, Anno. 3. E. 2. And before that, it is manifeſt that the King had it before Britton wrote in the raigne of E. 1. as you may read in his booke.

Britton cap. 66. fol. 167. b. Brac l. 5. 421. a. Stanf. prerog. ca. 9. fol. 33. 34.

And it is as cleare, that when Bracton wrote (who wrote about the end of the reigne of H. 3. that the King had not then this prerogative.

And therefore it followeth, that this prerogative was given to King E. 1. before that Britton wrote, by ſome Act of Parliament, which is not now extant. And it appeareth by the Mirror of Juſtices agreeing with Fleta, that this prerogative was granted by Common aſſent, vide. lib. 4. Beverleys Caſe fol. 126.

CAP. V.

Cuſtos autem quamdiu cuſtodiam terræ hujuſmodi habuerit, ſuſtentet domos, parcos, vivaria, ſtagna, molendina, &c. ad terram illam pertinentia, de exitibus terræ ejuſdem, & reddat hæredi cum ad plenam ætatem pervenerit, terram ſuam tot' inſtauratam de carucis, & omnibus aliis rebus, ad minus, ſicut illam recepit. Hæc omnia obſerventur de cuſtodiis Archiepiſcopatuum, Epiſcopatuum, Abbatiarum, Prioratuum, Eccleſiarum, & dignitatum vacantium, quæ ad nos pertinent, except' quod cuſtod' hujuſmodi vendi non debent.

That

That this was the Common Law appeareth by Glanvile, who saith, Restituere autem tenentur custodes hæreditates ipsis hæredibus instauratas & debitis acquietatas juxta exigentiam temporis custodiæ & quantitatis hæreditatis. Glanvil lib. 7. cap 9. Fleta li. 1. c. 11. 10. H. 7. 6. & 30

¶ Hæc omnia observantur de custodiis Archiepiscoporum, &c.

The Custodie of the temporalties of every Arch-Bishop, and Bishop within the realme, and of such Abbeyes, and Priories, as were of the Kings foundation, after the same became voide, belonged to the king during the vacation thereof by his prerogative: for as the spiritualties belonged during that time to the Deane and Chapter, de cõmuni jure, or to some other Ecclesiasticall person by prescription, or composition, so the temporalties came to the King as founder, and this doth belong to the King, being patronus & protector Ecclesiæ, in so high a prerogative incident to his Crowne, as no subject can claime the temporalties of an Arch-Bishop, or Bishop, when they fall by grant or prescription. See the 1 part of the Institutes sect. 67. See prer. regis. cap. 14. W. 1. cap 21. Fleta li. 1. c. 11. 14. E. 3. ca. 4. 5. vide cap. 33.

But as, In omni re nascitur res quæ ipsam rem exterminat, unlesse it bee timely prevented (as the worme in the wood, or the mothe in the Cloth, and the like) so oftentimes no profession receives a greater blow, then by one of their owne coat: For Ranulph an Ecclesiasticall person, and King William Rufus his Chaplain, a man subacto ingenio, and profunda nequitia, was a factor for the King in making merchandize of Church livings, in as much, as when any Archbishoprick, Bishoprick, or Monastery became void, first he perswaded the King to keepe them voide a long time, and converted the profits thereof sometime by letting, and sometime by sale of the same, whereby the temporalties were exceedingly wasted, and destroyed. Secondly, after a long time no man was preferred to them per traditionem annuli & baculi, by livery of season, freely, as the old fashion was, but by bargain, and sale from the King to him, that would give most, by meanes whereof the Church was stuffed with unworthy, and insufficient men, and many men of lively wits, and towardlinesse in learning despairing of preferment turned their studies to other professions. This Ranulph, for serving the Kings turnes, was advanced, first, to be the Kings Chancellour, & after to be Bishop of Duresme, who after his advancement to so high dignities, made them servants to his sacrilegious and simoniacall designes. King Henry the first seing this mischiefe, and foreseeing the great inconvenience that would follow thereupon, was contented for his owne time to binde his owne hands, to the end the Church now naked and bare might receive some comfort, and have meanes to provide things necessary for their profession, and calling. He thereupon at his Coronation made a Charter to this effect, Quia regnum oppressum erat injustis exactionibus, ego in respectu dei & amore quem erga vos omnes habeo, sanctã Dei Ecclesiam imprimis liberam fac' ita quod nec vendam, nec ad firmam ponam, nec mortuo Archiepiscopo, sive Episcopo vel abbate, aliquid accipiam de Dominio Ecclesiæ vel hominibus ejus, donec successor eam ingrediatur, & omnes malas consuetudines, quibus regnum Angliæ opprimebatur, inde aufero. He committed the said Ranulph then Bishop of Durham to prison for his intolerable misdeeds, and injuries to the Church, where he lived without love, and died without pity, saving of those, that thought it pity, he lived so long. Regula. See this charter at large in Mat. Par. See *libr. rubeus in principio.*

¶ Vendi non debent: Fleta, ubi supra, saith, vendi non debent nec legari; Yet the King may commit the temporalties of them during the vacation, as by the statute of 14. Ed. 3. appeareth. Flet. *ubi supra.* 14 E. 3. ca. 4. 5. F. N. B. 59. b.

CAP. VI.

Maxim

HÆredes autem maritentur absque disparagatione.

This is an ancient maxime of the Common Law: see more hereof in the first part of the Institutes sect. 107. 108. 109.

CAP. VII.

VIdua poſt mortẽ mariti ſui ſtatim & ſine difficultate aliqua, habeat Maritagiũ ſuũ & hæreditatẽ ſuam: nec aliquid det pro dote ſua, nec pro maritagio ſuo, vel pro hæreditate ſua habenda, quã hæreditatẽ maritus ſuus, & ipſa tenuerunt ſimul, die obitus ipſius mariti ſui: & maneat in capitali meſſuagio mariti ſui, per quadraginta dies poſt obitũ mariti ſui, infra quos dies aſſignetur ei dos ſua, niſi prius ei aſſignata fuerit, vel niſi domus illa ſit caſtrũ: & ſi de caſtro receſſerit, ſtatim domus ei competens provideatur, in qua poſsit honeſte morari, quouſq; dos ſua ei aſſignetur, ſecundũ quod prædictum eſt: & habeat rationabile eſtoverium ſuum interim de communi. Aſſignetur autem ei, pro dote ſua, tertia pars totius terræ mariti ſui, quæ fuit ſua in vita ſua, niſi de minori fuerit dotata ad oſtium eccleſiæ. Nulla vidua diſtringatur ad ſe maritandam dummodo voluerit vivere ſine marito: Ita tamen quod ſecuritatem faciat, quod ſe non maritabit ſine aſſenſu noſtro, ſi de nobis tenuerit, vel ſine aſſenſu domini ſui, ſi de alio tenuerit. [*Prærogativa Regis cap.* 4.]

Bracton li. 2. fol. 88. Fleta. li 5. cap. 23. 35. H. 6. 52. Mat. Par. 407.

It appeareth by Bracton **of ancient time, that a woman being heire,** ſine Dominorum diſpoſitione & aſſenſu, hæreditatem habens, maritari non poteſt, nec etiam in vita anteceſſorum de jure ſine aſſenſu Domini capitalis, quod ſi olim feciſſent, hæreditatem amitterent ſine ſpe recuperandi, niſi ſolum per gratiam: hodie tamen aliam pœnam incurrunt, ſicut inferius dicetur, & hoc ideo ne cogatur Dominus homagium capere de capitali inimico, vel de alio minime idoneo.

Mirrour. cap. 1. §. 3. See the 1. part of the Inſtitutes ſect. 36.

Alſo it appeareth by the ſame Author, quod ſi mulier dotem habens pro voluntate ſua alicui nuberet, præter aſſenſum Warranti ſui de dote, olim ex tali cauſa dotem amitteret, nunc tamen non amittet.

Item cum ſemel legitime maritatæ fuerint, & poſtea viduæ, iterum non cuſtodientur ſub cuſtodia Dominorum, licet teneantur aſſenſum eorum requirere maritandi ſe, &c. **And herewith agreeth** Glanvile, **who wrote before this Statute.**

Glanvil. lib. 7. cap. 12. Fleta. lib. 3. cap. 13.

Hereby you may ſee what had bene uſed of ancient time in theſe caſes: But at this day widowes are preſently after the deceaſe of their huſbands without any difficulty to have their marriage (that is, to marrie where they will without any licence, or aſſent of their Lords) and their inheritance, without any thing to be given to them; but in this branch the King is not included, as hereafter in the end of this Chapter ſhall appeare.

¶ Et maneat in Capitali Meſſuagio mariti ſui per quadraginta dies poſt obitum mariti ſui.] **And this is called her Quarentine, and if the Widow be withholden from her Quarentine, ſhe ſhall have her Writ, De quarenten a habenda to the Sheriffe, which reciting this Statute, is in nature of a Commiſſion to him,** Quod vocatis coram vobis partibus prædictis, & auditis inde earum rationibus, eidem B. C. Viduæ plenam & celerem juſtitiam inde fieri faciatis juxta tenorẽ cartæ prædictæ, ne pro defectu juſtitiæ querela ad nos perveniat iterata.

Bract. lib. 2. c. 40. Britton. c. 103. Fleta. li. 5. c. 23. Regiſter. 175. F. N. B. 161.

By force of which Writ, the Sheriffe may make processe against the defendant, returnable within two or three dayes, &c. and may, and ought (if no just cause may be shewed against it) speedily to put her in possession; and the reason why such speed is made, is for that her Quarentine is but for forty dayes.

¶ Vidua, &c. maneat, &c.] Therefore if she marry within the forty dayes, she loseth her Quarentine, for then her Widow-hood is past, and she hath provided for her selfe, and the Quarentine is appropriate to her Widowes estate. 1 Mar. Br. Dower 101.

¶ Infra quos dies assignetur ei dos.] Here it appeareth how speedily Dower ought to be assigned, to the end the Widow might not be without libelihood. Britton ca. 103.

¶ Post obitum mariti sui.] The day wherein the husband dieth, shall be accounted the first day, so as she shall have but thirty nine after. Dier 7 E. 6. fo. 76. 4. & 5. Phil. & Mar. fol. 161.

¶ Nisi domus illa sit castrum.] This is intended of a Castle, that is warlike, and maintained for the necessary defence of the Realm, and not for a Castle in name maintained for habitation of the owner, but hereof see more in the first part of the Institutes, Sect. 36. & 242. De ædibus kernelatis. Kernellare, or cernellare, by some is derived from the French word kerner, or cerner, to fortifie, inviron, or inclose round about: And by others, from karnean, or carnean, a battlement of a wall; or from karnele, or carnele, imbatteled, or having imbattlements; and the truth is, it beareth all these significations in the Lawes of England, and the use of it in Castles and forts was to defend himselfe by the higher place, and to offend the assailants at the lower. Bract. li. 2. fol 46. Britton ca. 103. Fleta lib. 5. ca. 23. 30 E. 3. Dow. 81. 30 E. 1. vouch 298 8 H. 3. Dower 196 8 H. 3. Dower 194 17 H. 3. ibid. 192. Rot. pat. part 1. nu. 17. Escheat 4. E. 1. m. 88.

Brittons words be, Si le chief mees soit chief del Countee, ou del Barony, ou Castle, &c. So as it appeareth by him that she is not to have her Quarentine of that, which is Caput Comitatus, seu Baroniæ, and with him, agreeth Fleta, but Bracton only speaketh de Castro. The ancient Law of England had great regard of honour and order. Britton ubi supra. Ubi supra.

¶ Statim domus ei competens provideatur, in qua possit honestè morari.] But this must be of a house, whereof she is Dowable, for she must have her Quarentine of that, whereof she may be endowed. Britton ubi supra.

¶ Et habeat rationabile estoverium interim de communi.] Britton saith, Que eux eient des issues del intier de les terres lour covenable sustenance, &c. Britton ubi supra.

Fleta saith, Ubi inveniantur ei necessaria honestè de hæreditate communi, donec rationabilis dos fuerit ei assignata. Fleta ubi supra.

So as estoverium here is taken for sustenance: There is an opinion in our Books, that the Widow cannot kill any of the Oxen of the husbands, whiles she remain in the house; But the register saith, Quod interim habeant rationabilia estoveria de bonis eorundem maritorum, which seemeth to be an exposition of this Branch. 19 H. 6. 14. b. Registr. 175.

In the Statute intituled, De catallis felonum, it is said, Cum ibidem captus coram Justiciariis nostris fuerit convictus de felonia, tunc resid catallorum ultra estoverium suum secundum Regni consuetudinem nobis remaneant; where estoverium signifieth sustenance, or aliment, or nourishment. This word estoverium commeth of the French verb estover, id est, alere, to sustain, or nourish, and this agreeth with the said old Books, and in this sense it is taken in the Statute of Gloc. Trover estovers in viver & vesture, that is, things that concern the nourishment, or maintenance of man in victu & vestitu, wherein is contained meat, Vet. Mag. Chart. 2 pt fol. 66. Bract. li. 3. fo. 137. Gloc. ca. 4.

drink, garments, and habitation. Alimentorum appellatione venit victus, vestitus & habitatio.

When estovers are restrained to woods, it signifieth housebote, hedgebote, and ploughbote.

¶ Assignetur autem ei pro dote sua tertia pars totius terræ mariti sui, &c. See for this in the first part of the Institutes, Sect. 37.

Prer. Regis. cap. 4. Stamford prer. 17. F.N.B. 265. c. Britton fol. 28. a. & 29. b.

¶ Nulla vidua distringatur ad se maritandam, &c. This is to be understood of Widowes Tenants in Dower of Lands holden of the King by Knights service in chiefe, and thereupon she is called the Kings Widow, and if the Kings Widow marry without license, she shall pay a fine of the value of her Dower by one year.

Rot. pat. 4. E. 1. m. 31. Bract. ubi supra. Fleta lib. 1. ca. 12.

And the reason of this Law is yelded wherefore they should not marry without the Kings license, Ne forte capitalibus inimicis Domini Regis maritentur.

And old Readers have yelded this reason, lest they should marry unto strangers, and so the treasure of the Realme might be carried out, and others say that the reason is for that upon the assignement of her Dower she is sworn in the Chancery, Que el ne marier sans license, & pur ceo si el fait enconˉ son serement el ferra fine.

35 H. 6. 52. Fortes.

Others say that it is a contempt to marry without the Kings license, and against this Statute, and therefore for this contempt she shall make a fine.

If the Kings Tenant in Capite dye seised, his heire female of full age, if she marry without the Kings license, she shall pay no fine, for she is no Widow, and the words be nulla vidua distringatur, &c.

35 H. 6 52. 15 E. 4. 13.

Rot. Parl. anno 6 H. 6. nu. 41.

If the Quæn being the Widow of a King be endowed, and marry without the Kings license, because she is endowed of the seison of the King himselfe, she is out of this Statute: But at the Parliament holden in anno 6. H. 6. it is enacted by the King, the Lords tempozall, and the Commons, that no man should contract with, or marry himselfe to any Quæn of England, without the speciall license or assent of the King, on pain to lose all his goods, and lands; to which Act the Bishops, and other Lords Spirituall gave their consent, as farre forth, as the same swerved not from the Law of God, and of the Church, and so as the same imported no deadly sin.

See the first part of the Institutes. sect. 174.

¶ Si de alio tenuerit.] This is to be understood, where such a license of marriage in case of a common person, was due by custome, prescription, or speciall tenure, the words being si de alio tenuerit; and this exposition is approved by constant and continuall use and experience, Et optimus interpres legum consuetudo.

CAP. VIII.

Pl. Com. 457. in Sir Tho: Wrothes case. Pl. Com. in the Lord Berklies Case, &c.

NOs verò, vel Ballivi nostri, non seisiemus terram aliquam, vel redditum pro debito aliquo, quamdiu catalla debitoris præsentia sufficiunt ad debitum reddendum, & ipse debit' paratus sit inde satisfacere. Nec pleg' ipsius debitoris distringantur, quamdiu ipse capitalis debitor sufficiat ad solutionem ipsius debiti. Et si capitalis debitor defecerit in solutione debiti, non habens unde solvat, aut reddere noluerit cum possit, plegii de

de debito reſpondeant, et ſi voluerint, habeant terras et reddit' debitoris, quouſquè ſit eis ſatisfact' de debit', quod antea pro eo ſolverint, niſi capitalis debitor monſtraverit, ſe eſſe quietum verſus eoſdem plegios.

℄ Nos verò.] These words being ſpoken in the politique capacity doe extend to the ſucceſſors, for in judgement of Law the King in his politique capacity dieth not.

℄ Vel balivi noſtri.] In this place the Sheriffe and his Underbailiffes are intended and meant, and to this day the Sheriffe uſeth this in his Returns, Infra balivam meam, for Infra comitatum, &c. See the firſt part of the Inſtitutes, And hereafter cap. 28.

℄ Non ſeiſiemus terram aliquam, vel redditum pro debito aliquo, quamdiu catalla debitoris præſentia ſufficiunt ad debitum reddendum.] By order of the Common Law, the King for his debt had execution of the body, lands, and goods of the debtor: This is an act of grace, and reſtraineth the power that the King before had. See Artic. ſuper Cart. cap. 12. li. 3. fol. 12. b. Sir William Herberts caſe. 5. Eliz. Dier 224. Walter de Chirtons caſe. 24 E. 3. Pl. Com. 32. *Debet ſemper principalis excuti antequã perveniatur ad fidei juſſores.* An act of grace, ſee W. 2. ca. 10. & 29. 18 E. 1. Stat. de quo warranto optime. Art. ſuper Cart. ca. 12. & 14. Cuſtumier de Norm. cap. 60. Vide 43. El. c. 13.

℄ Redditum.] For the leverall kinde of rents, ſée the firſt part of the Inſtitutes; Lit. lib. 2. cap. 12. whereunto you may adde, 1. Redditus aſſiſus, or redditus aſſiſæ: Vulgarly rents of Aſſiſe are the certain rents of the Freeholders, and ancient Copiholders, becauſe they be aſſiſed, and certain, and doth diſtinguiſh the ſame from redditus mobiles, farm rents for life, years, or at will, which are variable and incertain. 2. Redditus albi, White rents, blanch Farmes, or rents, vulgarly and commonly called quitrents; they are called white rents, becauſe they were paid in ſilver, to diſtinguiſh them from work-dayes, rent cummin, rent corn, &c. And again theſe are called, 3. Redditus nigri, black maile, that is, black rents, to diſtinguiſh them from white rents; ſée Rot. clauſ. 12. H. 3. m. 12. Rex conceſſit hominibus de Andevor maneria de M. F. A, &c. Reddendo per annum ad Scaccar' Regis Lxxx. li. blanc, de Antiqua firma. 4. Redditus reſoluti be rents iſſuing out of the Mannors, &c. to other Lords, &c. Feodi firma, ſée Farm, for this kinde of rent, vide infra Gloc. cap. 8.

After the Statute of 33. H. 8. cap. 39. was made for levying of the Kings debts the uſuall proceſſe to the Sheriffe at this day, is, Quod diligenter per ſacramentum proborum & legalium hominum de baliva tua, &c. inquiras quæ & cujuſmodi bona & catalla, & cujus precii idem (debitor) habuit in dicta baliva tua, &c. Et ea omnia capias in manus noſtras, ad valentiam debiti prædict', & inde fieri fac' debitum prædict', &c. Et ſi forte bona & catalla prædict' (debitoris) ad ſolutionem debiti prædict' non ſufficerent, tunc non omittas propter aliquam libertatem, quin eam ingrediaris, & per ſacramentum præfat' proborum, & legalium hominum diligenter inquiras, quas terras, & quæ tenementa, & cujus annui valoris, idem (debitor) habuit, ſeu ſeiſitus fuit in dicta baliva tua, &c. Et ea omnia & ſingula in quorumcunque manibus jam exiſtunt, extendi fac', & in manus noſtras capias, &c. Et capias prædict' debitorem, ita quod habeas corpus prædict' (debitoris) ad ſatisfac' nobis de debito prædict'. See cap. 18. Glanv. li. 10. ca. 3. Britton cap. 28. Fleta lib. 2. ca. 62. F. N. B. 137. f. Pl. Com. 440. Pepys Caſe. lib. 3 fol. 13. Sir William Herberts caſe. lib. 7. fol. 17. 18, 22. 50. aſſ. p. 5. 21 E. 4. 21.

Whereby it appeareth, that if the goods and chattels of the Kings Debtor be ſufficient, and ſo can be made to appeare to the Sheriffe, whereupon he may levy the Kings debt, then ought not the Sheriffe to extend the Lands, and Tenements of the Debtor, or of his heire, or of any Purchaſer, or terre-Tenant. To conclude this point with the Authority of old and Auncient Ockham.

Terræ & tenementa debitoris regis, ad quæcunq; manus quocunq; titulo devenerunt, post debitum Regis inceptum Regi tenentur, si non aliunde satisfacere possit.

¶ Nec plegii ipsius debitoris.] As pledges, or sureties to keepe the peace, pledges for a fine to the King upon a contempt, &c. are within this branch, but otherwise it is of mainperners, and this appeareth by Glanvile, to be the Common Law before the making of this act.

And the author of the Mirror saith, ceux sont pleges queux plevisher aut' chose que corps de home, car ceux ne sont proprment pledges, mes sont mainperners pur ceo que ils supposont plevishables sont liver a ceux per baille Corps pur Corps.

¶ Et si capitalis debitor defecerit in solutione, &c. aut reddere noluerit cum possit.] Some have thought that this branch hath taken away the next precedent, concerning pledges, but both doe stand well together, for reddere noluerit cum possit must be understood, when the principall is able, and yet his ability cannot bee made to appeare, being in money, treasure or the like, or in debts owing to him, which he conceales, and will not reddere, so as de non apparentibus, & non existentibus eadem est lex, and in that case plegii de debito respondeant, and yet the former branch concerning pledges doth stand, where the pledges can make it appeare to the Sheriffe, that he may levie the Kings debt: see in the Statute of articuli super cartas. cap. 11.

¶ Et si voluerint, habeant terras, & redditus debitoris, &c.] [a] Upon these words some have said that the writ de plegiis acquietandis is grounded, and seeing no mention is made in this Statute of any deed, the pledges shall have that writ without any deed. And if the pledges have any deed, covenant, or other assurance for their indemnitie, then may they take their remedie at the Common Law; [b] but it appeareth by Glanvile that this was the Common Law, for he saith, Soluto vero eo quod debetur ab ipsis plegiis, recuperare inde poterint ad principalem debitorem, si postea habuerit unde eis satisfacere possit per principale placitum, and set downe the [c] Writ de plegiis acquietandis.

Note here is a Chapter omitted, viz. nullum scutagium, vel auxilium ponam in regno nostro nisi p commune conciliū regni nostri, which clause was in the Charter, anno 17. Regis Johannis, and was omitted in the exemplification of this great Charter, by Ed. 1. vide Cap. 30.

CAP. IX.

CIvitas London' habeat omnes libertates suas antiquas, & consuetudines suas. Præterea volumus, et concedimus, quod omnes aliæ civitates, burg', & villæ, & Barones de quinque portubus, & omnes alii portus, habeant omnes libertates, & liberas consuetudines suas. Articuli super Chartas cap. 7.

[d] This Chapter is excellently interpreted by an ancient Author, who saith, In pointe que demaunde, que le Citie de Londres eit ses auncient franchises, & ses frank Customes, est interpretable in cest maner, que les Citizens eient lour fraunchises, dont ils sont inherit per loyall title, de dones, & confirmements des royes, & les queux ilz ne ont forfeits per nul abusion, & que ilz eient lour franchises, & customes, que sont sufferable per droit, & nient repugnant al Ley: Et le interpretation que est dit de Londres soit intendu de les cinque ports, & des autres lieus; And this interpretation agreeth with divers of our later Bookes.

It is a maxime in Law, that a man cannot claim any thing by custome or prescription

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Ockham, cap. quod vicecomes à fundis eius, &c.

Custumier de Nor. cap. 60. fol. 73. &c. 76.

Glanvil. lib. 10. cap. 3.

a Britton. cap. 28. Fleta lib. 2. c. 56. F. N. B. 137. Reg. 158. 43. E. 3. 11. a. 44. E. 3. 21. 48. E. 3. 28. 32. E. 3. mians des faitz. 179. 1. E. 46. Dyer, 22. Eliz. 170.

b Glanvil. lib. 10. cap. 4. 5.

c Regist. 158. Mat. Paris 247. 2 Wendov. Walf. 40 Vide postea Stat. de Tallagio concedendo. 34. E. 1.

d Mirror. ca. 5. §. 2. Fleta lib. 2. cap. 48. Pl. Com. fol. 400. 5 H. 7. 10, 19. 8 H. 7. 4. 11 H. 7 21. 28. Assis 24. 45 E. 3. 26.

See acts of Parliament. Art. super chartas c. 7. W. 3. cap. 9. 7 R. 2. nient in primee. 9 H. 4. cap. 1. 2 H. 6. cap. 1. &c. See the first of th. Instit. fc. & 7 31. e

8 H. 7. 4. b.

ſcription againſt a Statute, unleſſe the cuſtome, or preſcription be ſaved by another Statute; For example: They of London claim by cuſtome, to give lands without licenſe to mortmain, becauſe this cuſtome is ſaved, and preſerved, not onely by this Chapter of Magna Charta, but by divers other Statutes, & ſic de cæteris. See more in particular concerning London, in the fourth part of the Inſtitutes, Cap. of the Courts of the City of London.

CAP. X.

NUllus diſtringatur ad faciendum majus ſervitium de feodo Militis, nec de alio libero tenemento, quam inde debetur.

Cuſtumier de Norm cap. 114. fol. 132. b.

That this was the auncient Law of England, appeareth by Glanvill, and alſo that the Writ of Ne injuſte vexes was not grounded upon this Act, appeareth alſo by him, for he ſaith. Et alia quædam placita, veluti, ſi quis conqueratur ſe curiæ de Domino ſuo, quod conſuetudines, & indebita ſervitia, vel plus ſervitii exigit ab eo, quã inde facere debeat: And ſetteth down the form of the writ of Ne injuſte vexes; Rex N. ſalutem. Prohibeo tibi, ne injuſte vexes, vel vexari permittas H. de libero tenemento ſuo, quod tenet de te in talí villa, nec inde ab eo exigas, aut exigi permittas conſuetudines vel ſervitia, quæ tibi inde facere non debet, &c.

Glanv. li. 12. ca. 9. 10. Reg fol. 4. & 59. b. Bracton fo. 329. Fleta li. 5. cap. 38. lib. 2. c. 60. Brit. c. 17. fo. 60. b.

And another ancient Author which wrote of the ancient Laws long before this Statute, maketh mention of the Writ of Ne injuſte vexes.

Mirror ca. 2. § 19. & cap. 5. § 1.

Hereby it appeareth how they are deceived, that hold that this Writ is grounded upon this Act, and how neceſſary the reading of ancient Authors is, to give the ancient Common Law his right, as hereby it appeareth.

F.N.B. 10. c. Pl.Com. 243. b.

The words of the Statute be, nullus diſtringatur, therefore if the Lord incroach more Rent of the ſame nature, by the voluntary payment of the Tenant, he ſhall not avoid this incroachment in an avowry, but in an aſſiſe ceſſavit, or ne injuſte vexes, the Tenant ſhall avoyd the incroachment; This rule holdeth not in caſe of a ſucceſſor, or of the iſſue in taile, for they ſhall avoyd it in an avowry, but if the ſervice incroached be of another nature, the Tenant ſhall avoyd that ſeaſon in an avowry, for majus ſervitium implieth a greater exaction of the ſame nature: if the incroachment of the ſame nature be gotten by cohertion of diſtreſſe, there the Tenant ſhall avoyd that ſeaſon in an avowry, for nullus diſtringatur ad faciendum majus ſervitium. But if an incroachment be made upon a Tenant in tail, or Tenant for life, or any other, who cannot maintain a Writ of ne injuſte vexes, nor a contra formam collationis, nor other remedy, he ſhall have an action upon this Statute; for this Statute intendeth to relieve thoſe, which had no remedy by the Common Law.

Pl.Com. 94. 243. 10 H. 7. 11. b. 30 H. 6. 5. b. 22. aſſ. 68. 28. aſſ. 33. 12. E. 4. 7. b. 8. E. 4 28. b. 4. E. 2. Avow. 202. 18. E. 2. ibidem. 217. 20. E. 3. ibid. 131. 5 E. 4. 2. 16 E. 4. 11. 20. E. 4. 11. 12. H. 423. F.N.B. 10. h. See the firſt part of the Inſt. ſect.

CAP. XI.

COmmunia placita non ſequantur Curiam noſtram, ſed teneantur in aliquo certo loco. Articuli ſuper chartas ca. 7.

Mirror cap. 5. § 2.

Before this Statute, Common pleas might have been holden in the Kings Bench, and all originall Writs returnable into the ſame Bench: And becauſe the Court was holden Coram Rege, and followed the Kings Court, and removable at the Kings will, the Returns were Ubicunque fuerimus, &c. whereupon many

many discontinuances ensued, and great trouble of jurors, charges of parties, and delay of Justice, for these causes this Statute was made.

¶ Communia placita.] Here it is to be understood, a division of Pleas, for Placita are divided in Placita Coronæ, and Communia placita: Placita Coronæ are otherwise, and aptly called criminalia, or mortalia, and placita communia are aptly called civilia: Placita Coronæ are divided into high Treason, misprision of Treason, petit Treason, Felony, &c. and to their accessories, so called, because they are contra coronam & dignitatem; and of these the Court of Common pleas cannot hold plea; of these you may reade at large in the third part of the Institutes. Common or civill pleas are divided into reall, personall, and mixt.

Mirror ca. 1. § 4. Stamf. Pl. cor. fo. 1 Vide cap. 17.

Vide cap. 17.

They are not called Placita Coronæ, as some have said, because the King jure Coronæ shall have the suite, and Common pleas, because they be held by common persons. For a plea of the Crown may be holden between common persons, as an appeale of murder, robbery, rape, felony, mayhem, &c. and the King may be party to a common plea, as to a Quare impedit, and the like.

Now as out of the old fields must come the new corne, so our old books do excellently expound, and expresse this matter, as the Law is holden at this day, therefore Glanvill saith, Placitorum aliud est criminale, aliud civile; where Placitum criminale, is Placitum Coronæ; and Placitum civile, placitum commune, named in this Statute.

Glanv. li. 1. cap. 1.

Bracton lib. 3. fol. 101. b. Fleta li. 2. cap. 58.

And Bracton that lived when this Statute was made, saith, Sciendum quod omnium actionum sive placitorum, (ut inde utatur æquivoce) hæc est prima divisio, quod quædam sunt in rem, quædam in personam, & quædam mixtæ; Item earū quæ sunt in personam, alia criminalia, & alia civilia, secundum quod descendunt ex maleficiis vel contractibus; Item criminalium, alia major, alia minor, alia maxima, secundum criminum quantitatem.

Fleta li. 1. cap. 15.

Fleta saith, Personalium injuriarum quædam sunt criminales, & quædam civiles; criminalium quædam sententialiter mortem inducunt, quædam verò minime.

Britton fol. 3. &c.

Britton calleth them pleas de la Corone, & Common pleas, and the Court taketh his name of the Common pleas.

To treat of the jurisdiction of this Court, doth belong to another part of the Institutes, but a word or two of the Antiquity of the Court of Common pleas, which is the lock and the key of the Common Law.

Glanv. lib. 11. c. 1. & lib. 2. cap. 6.

Glanvill saith, Placita in superioribus, &c. sicut & alia quælibet placita civilia, &c. solet autem id fieri corā Justiciariis Domini Regis in Banco residentibus, &c. And in another place, Coram Justic' in Banco sedentibus.

Bract. li. 3. fol. 105. b. & 108. b.

Bracton in divers places calls the Justices of the Court of Common pleas, as Glanvill did, Justiciarii in Banco residentes, so called for that the Returns in the Kings Bench, are Coram Rege ubicunque fuerimus in Anglia, as hath been said, because in ancient time it was, as hath been said, removable, and followed the Kings Court.

Artic. super. Cart. cap 5. Fleta lib. 2. cap. 2. F.N.B. 69. m.

And therefore all Writs returnable, Coram Justiciariis nostris apud Westm. are returnable before the Judges of the Common Pleas, and all Writs returnable, Coram nobis ubicunque tunc fuerimus in Anglia, are returnable into the Kings Bench.

Britton.

Britton speaking of the Court of Common Pleas, saith, Ouster ceo voilloms que Justices demurgent continualment à Westm. ou ailours, ou nous voudrous ordinaire a pleader Common pleas. &c.

Fleta li. c. 28. et 54

Fleta saith, Habet & (Rex) curiam suam & justiciarios suos residentes, qui recordum habent in hiis, quæ coram eis fuer placitata, & qui potestatem habent de omnibus placitis, & actionibus realibus, personalibus, & mixtis, &c.

& cap. 13. 7 E. 4. 53. D. & St. 12. b.

It is manifest that this Court began not after the making of this Act, as some have thought, for in the next Chapter, and divers others of this very great Charter mention is made De Justiciariis nostris de Banco, which all men know to be the Justices of the Court of Common pleas, commonly called the Common Bench,

Bench, or the Bench, and Doct. and Stud. saith, that it is a Court created by Custome.

The Abbot of B. claimed conusans of plea in Writs of assise, &c. in the times of King Etheldred, and Edward the Confessor, and before that time, time out of minde, and pleaded a Charter of confirmation of King H. 1. to his predecessor, and a graunt, &c. so that the Justices of the one Bench, or of the other should not intermeddle. 26. Ass. p. 24.

It appeareth by our Books that the Court of Common pleas was in the reign of H. 1. 4. E. 3. 49. 39. E. 3. 21.

That there was a Court of Common pleas in anno 1. H. 3. which was before this Act; Martinus de Pateshull, was by Letters Patents constituted chiefe Justice of the Court of Common pleas in the first peare of H. 3. Rot. pat. 1 H. 3.

It is resolved by all the Judges in the Exchequer Chamber, that all the Courts, viz. the Kings Bench, the Common Place, the Exchequer, and the Chancery, are the Kings Courts, and have been time out of memory, Issint que home ne poet scaver que est plus auncient. 9 E. 4. 53.

¶ Non sequantur curiam nostram.] Divers speciall cases are out of this Statute. 21 H. 3. brief. 883. Tr. 26. E. 1. Coram Rege Northampton.

1. The King may sue any action for any Common plea in the Kings Bench, for this generall act doth not extend to the King. Tr. 18. E. 1. Coram Rege Rot. 62.

* 2. If any man be in custodia Mareschalli of the Kings Bench, any other may have an action of Debt, Covenant, or the like personall action by Bill in the Kings Bench, because he that is in custodia Mareschalli ought to have the privilege of that Court, and this Act taketh not away the privilege of any Court, because if he should be sued in any other Court, he should not in respect of his privilege answer there, and so it is of any officers, or ministers of that Court: The like Law is of the Court of Chancery, and Exchequer. 31 E. 3. prer. 28. 17 E. 3. 50. 31 H. 6. fo. 10, 11 Artic. super cart. cap. 4. Pl. Com. 298. b. 38 ass. p. 20. simil.

3. Any action that is Quare vi & armis, where the King is to have a fine, may be purchased out of the Chancery, retournable into the Kings Bench, as ejectione firmæ trīs, vi & armis, forcible entry, and the like.

4. And a replevin may be removed into the Kings Bench, because the King is to have a fine, and so it is in an assise brought in the County where the Kings Bench is. 9 H. 7. 10. 19 E. 3. assise 84. 1 H. 7. 12. Reg. F. N. B. 177.

5. Albeit originally the Kings Bench be restrained by this Act to hold plea of any real action, &c. yet by a mean they may. As if a writ in a real action be by judgment abated in the Court of Common pleas, if this judgement in a Writ of Erroz be reversed in the Kings Bench, and the Writ adjudged good, they shall proceed upon that Writ in the Kings Bench, as the Judges of the Court of Common pleas should have done, which they doe in the default of others, for necessity, lest any party that hath right should be without remedy, or that there should be a failer of Justice, and therefore Statutes are always so to be expounded, that there should be no failer of Justice, but rather then that should fall out, that case (by construction) should be excepted out of the Statute, whether the Statute be in the negative, or affirmative. 14 H. 7. 14. 16 E. 3. brc. 661. Stat. de Mirton. cap. 10.

6. In a rediſſeiſin, or the like.

¶ Curia nostra.] Are words collective, and not onely extend to the Kings Bench, but into the Court of Exchequer, Vide Artic. super Cart. Cap. 4. F. N. B. 190. 224. 246.

When judgement is given before the Sheriffe, and the Tenant hath no goods, &c. in that County, he may have a Certiorare to remove the Record into the Kings Bench, and there have execution, for that is not Placitum. See more hereof in the fourth part of the Institutes, Cap. Of the Court of Exchequer.

CAP.

CAP. XII.

REcognitiones de nova diſſeiſina, & de morte anteceſſoris, non capiantur niſi in ſuis comitat', & hoc modo; Nos vero ſi extra regnum fuerimus, capital' Juſtic' noſtri mittent Juſticiar' noſtros per unumquemque comitatum, ſemel in ann', qui cum Militibus eorund' com', capiant in com' illis aſſiſ. prædict'. Et ea quæ in adventu ſuo in illo comitat' per Juſtic' noſtr' prædict' ad dictas aſſiſas capiend' miſſos, terminari non poſſunt, per eoſdem terminent' alibi in itinere ſuo. Et ea quæ per eoſdem, propter difficultatem aliquorum articulorum terminari non poſſunt, referant' ad Juſticiar' noſtros de banco, & ibi terminentur.

Before the making of this Statute, the Writs of aſſiſe of Novel diſſeiſin, and Mordanc' were retournable, either coram Rege, or into the Court of Common Pleas, and to be taken there, and this appeareth by Glanvill, Coram me, vel coram Juſticiariis meis. But ſince this Statute, theſe Writs are retournable, Coram Juſticiariis noſtris ad aſſiſas, cum in partes illas venerint; by force of theſe words, Mittent Juſticiarios noſtros per unumquemque comitat' noſtrum ſemel in anno, qui cum militibus eorundem comitatuum capiant in comitat' illis aſſiſas prædict'.

Glanv. li. 13. ca. 3. & 33. F.N.B. 177. f. Regiſtrum.

Mirror ca. 5. § 2. See W. 2. ca. 30.

¶ Niſi in ſuis Comitatibus.] This tended greatly to the eaſe of the Jurors, and for ſaving of charges of the parties, and of time, ſo as they might follow their vocations, and proper buſineſſe, and the rather, for that the Aſſiſe of Novel diſſeiſin, was frequens & feſtinum remedium in thoſe dayes, and ſo was the aſſiſe of Mordanc' alſo: It is a great benefit to the ſubject to have juſtice adminiſtred vnto him at home in his owne Country.

See the firſt part of the Inſtitutes. ſect. 234. Bract. l. 4. fo. 164.

For an aſſiſe of Novel diſſeiſin, and aſſiſe of Mordanc' ſee the firſt part of the Inſtitutes.

And where Bracton ſaith, Succurritur ei, (1. diſſeiſito) per recognitionem aſſiſæ novæ diſſeiſinæ multis vigiliis excogitatam, & inventam recuperandæ poſſeſſionis gratia, quam diſſeiſitus injuſte amiſit, & ſine judicio, ut per ſummariam cognitionem abſq; magna juris ſolemnitate quaſi per compendium, negotium terminetur. See the Cuſtumier de Normand', (compoſed, as hath been ſaid, in 14. H. 3.) ſect. 91. & 93. of the Aſſiſe of Novel diſſeiſin, which being invented and framed in England, as Bracton and others have teſtified, muſt of neceſſity be tranſported into Normandy.

See the Preface of the 2. pt of the Inſtitutes.

But where we yéld to Bracton, that the Aſſiſe of Novel diſſeiſin was ſo invented, ſo he muſt yéld to us, that it was a very auncient invention, for Glanvill maketh mention thereof, and of the Aſſiſe of Mordaunc', as hath been ſaid, and by the Mirror alſo the antiquity of Aſſiſe De novel diſſeiſin doth appeare, who ſaith, that this Writ of Aſſiſe of Novel diſſeiſin, was ordained in the time of Ranulph de Glanvill.

Glanv. lib. 13. ca. 3. & 33. Cuſtumier de Norm. ubi ſupra. Mir. ca. 2. § 15. 26. Aſſ. p. 24.

But the caſe of 26. Aſſiſe before touched, doth prove that the Writs of Aſſiſe are of farre greater antiquity, for there it appeareth that in an Aſſiſe of Novel diſſeiſin, claimed to have Conuſans of Plea, and Writs of Aſſiſe, and other originall Writs out of the Kings Courts by preſcription time out of minde of man,

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in the times of S. Edmond, and S. Edward the Confessor, Kings of this Realme before the Conquest, and shewed divers allowances thereof: but true it is, as the ancient Authors affirme, that a new forme of Writs of Assise, for the more speedy recovery of possession, which were called Festina remedia, was inuented in England since the Conquest, & were called Brevia de assisa novæ disseisinæ; which Writs so altered continue so untill this day, and according to the alteration is cited in the Custumier, cap. 93. fol. 107. b.

If an Assise be taken in proprio comitatu, and the tenant pleade, and after the Assise is discontinued by the non venu of the Justices, this Act extends to the Assise, but not to a reattachment thereupon, for that the Assise was first arrained and examined in the proper County, neither doth this Act extend to a Writ of attaint, brought upon the verdict of the recognitors of the Assise: And herewith agreeth Britton, who saith, Et tout conteine la grand Chre des franchises, que aſcuns assises soient prises in Counties, pur ceo ne intent nul que certifications, & attraints auter foitz estre pledes, &c. 24. E. 3. 23. 2. E. 3. 23. 1. 1. E. 4. 1. 6. E. 3. 55. 56. Britton cap. 97. fol. 240. F. N. B. 181.

And Bracton saith. Et si ad hoc se habeat communis libertas, quod assisæ extra comitatum capi non debeant, non sequitur quod propter hoc remaneant juratæ in com capiendæ; aliud enim habet privilegium assisa, & aliud jurata. Bracton. lib. 4. fol. 291.

An assise is brought in the Kings bench, then being in the County of Suff. (as it may be, as hath been said) of lands lying in that County, the tenant plead in barre, the pl' reply and pray the Assise, the Kings bench is removed to Westm. and there the pl' prayed the Assise, this Statute is, that the Assise shall not be taken but in the County, and now the Kings bench is in another County, and the originall cannot goe out of this place, for when a Record is once in this Court, here it must remaine, wherefore by th'advise of all the Judges, the Assise was awarded at large, quia nihil dicit, and a Nisi prius granted in the County of Suff. that there might the Assise be taken. A case worthy of observation, how by this exposition both the parties sute was preserved, and the purview of this statute observed. 6. E. 3. 55. 56. 19. E. 3. ass. 84.

Yet in some case notwithstanding this negative Statute, the assise should not have been taken in his proper County. And therefore if a man be disseised of a Commote or Lordship Marcher in Wales, holden of the King in Capite, as for example of Gowre, the Writ of assise should have been directed to the Sherife of Gloc. within the Realme of England, and albeit the land of Gowre was out of the power of the Sherife of Gloc. being out of his County within the dominion of Wales, and this Statute saith that the assise shall not be taken but in his proper County, yet was the assise taken in the County of Gloc. and Judgement thereupon given and affirmed in a Writ of error: and the reason is notable, for the Lord Marcher though he had jura Regalia, yet could not be doe iustice in his owne case, and if he should not have remedy in this case by the Kings Writ out of the Chauncery in England, he should have right and no remedy by Law given for the wrong done unto him, which the Law will not suffer, and therefore this case of necessity is by construction excepted out of the Statute. And it was well said in an old booke, Quamvis prohibetur quod communia placita non sequantur curiam nostram, non sequitur propter hoc, quin aliqua placita singularia sequantur Dominum Regem, and the like in this negative Statute. 18 E. 2. assise 382. 13. E. 3. iurisd. 3. Rot. Parliam. de anno 18. E. 1. inter petitiones. 28. E. 3. cap. 2. 20. H. 3. tit. brev. 881.

Hereby it appeareth (that I may observe it once for all) that the best expositors of this and all other Statutes are our bookes and use or experience.

More shall be said hereof in the exposition of the Statute of W. 2.

¶ De morte antecessoris.] See the first part of the Institutes, sect. 234. Custumier de Norm. cap. 98. fol. 115.

¶ Nos vero si extra Regnum fuerimus, Capitales Iustitiarii nostri.] This Capitalis Iustitiarius (when the King is extra Regnum, out of the Realme) is well described by Ockham, Rege extra Regnum agente, bria dirigebantur sub nomine præsidentis Iustitiarii & testimonio ejusdem. This is he that

is constituted by letters patents when the King is out of the Kingdome, to be custos sive gardianus Regni, keeper of the Kingdome, and locum tenens Regis, and for his time is Prorex, such as was Edward Duke of Cornewall 13. E. 3. Lionell Duke of Clarence 21. E. 3. And the teste to all original Writs, were teste Lionello filio nostro charissimo custode Angliæ &c. Iohn Duke of Bedford 5. H. 5. Richard Duke of Warwick 3. E. 4. and many others: before whom as keepers of the Kingdome, Parliaments have been holden, and as hath been said, the teste of original Writs are under the name of the Keeper, which no officer can doe, when the King is within the Realme. In 8. H. 5. a great question arose whether if the Kings Lieutenant, or Keeper of his Kingdome under his teste, doth summon a Parliament, the King being beyond sea, and in the meane time the King returne into England, whether the Parliament so summoned might proceed: it was doubted that in præsentia majoris cessaret potestas minoris, and therefore it was enacted that the Parliament should proceed, and not be dissolved by the Kings returne. Now that this Statute is to be intended of such a Lieutenant or keeper of the Kingdome, it is proved by this Act it selfe, Capitales Justitiarii nostri mittent Iustitiarios nostros. that is, they shall name and send Justices by authority under the great seale under their owne teste, which none can doe but the King himselfe if he be present, or his Lieutenant, or the keeper or guardian of his Kingdome, if he be, as this Act speaketh, extra Regnum: and this exposition is made ex verbis & visceribus Actus. But then it is demanded, whether this locum tenens Regis, seu custos Regni, was called capitalis Iustitiarius before the making of this act, and this very name you shall read in Glanvile, who saith Præterea sciendum, quod secundum consuetudines Regni, nemo tenetur respondere in Curia Domini sui de aliquo libero tenemento suo sine præcepto domini Regis, vel ejus Capitalis Iustitiarii, where Capitalis Iustitiarius is taken for Custos Regni.

Rot. Parliament 13. E. 3. nu. 11. 5. H. 5. nu. 1. 3. E. 4. nu. 14. 21. E. 3. fol. 37.

8. H. 5. cap. 1.

Glanvil lib. 12. cap. 25.

It is to be observed, that before the raigne of King Ed. 1. the Kings Chiefe Justice was some time called summus Iustitiarius, sometime præsidens Iustitiarius, and sometimes Capitalis Iustitiarius. In anno primo E. 1. his chiefe Justice was called Capitalis Iustitiarius ad placita coram Rege tenenda, and so ever since; and this chiefe Justice is created by Writ, and all the rest of the Justices of either bench, by letters patents.

Rot. Pat. an. 1. E. 1.

Hereof you may reade more in the 4. part of the Institut. cap. of the Court of Kings bench.

In Glanviles time, and before, the Kings Justices were called Iusticiæ, the returnes of Writs being coram Iusticiis meis, so as the Kings Justices were anciently called Iustitiæ, for that they ought not to be only Iusti in the concrete, but ipsa Iustitia in the abstract. Since that time, as by this great Charter in many places it appeareth, they are called Iustitiarii à Iustitia. The honourable manner of the creation of these Justices you may read in Forteſcue.

Glanvil. lib. 2. c. 6. Hovend. fol. 413.

Forteſcu. cap. 51.

¶ Alibi in Itinere suo.] This is taken largely and beneficially, for they may not only make adjournement before the same Justices in their Circuite, but also to Westm. or to Serjeants Inne, or any other place out of their Circuite, by the equity of this Statute, and according as it hath been alwaies used: For constant allowance in many cases doth make Law.

12. H. 4. 20. 29. Ass. 1. 27. Ass. 5. 60. 4. E. 3. 41. *a* 12. H. 4. 9. *b Regula.* *c* 48. E. 3. 7. 47. ass. 1. 39. E. 3. 6. 32 ass. 9. 21. E. 3. 3. 42. E. 3. 11. * 7. H. 6. 9. 3. E. 3. 16. 8. ass. 15. 15. E. 3. ass. 96. 17. E. 3. 28 14. E. 3. ass. 110. 20. E. 3. ass. 123. 22. E. 3. 5. 29. ass. 7 34. ass. 3. 43. ass. 1. 3. H. 4. 18. 22. H. 6. 19.

[a] The Statute speaking only of an adjournment in Assise of novell disseisin, &c. and yet a certificate of an Assise is within this Statute.

[b] Sed rerum progressus ostendunt multa, quæ initio prævideri non possunt.

* Time found out, that because the justices of Assise came not but once in the yeare, and that any adjournment could not have beene made by this Act, unles the jurors had given a verdict, for this Act saith propter difficultatem aliquorum articulorum, and not upon demurrer, doubtfull plea, Estoppel, &c. * or for preservation of the Kings peace, and no provision was made by this Act, if the tenn in the assise of Mordaunc. had made a foreine bowcher, or pleaded a foreine plea: all these are holpen by the Statute of W. 2. cap. 30. as shall appeare when we come thereunto.

CAP.

CAP. XIII.

ASsisæ de ultima præsentatione semper capiantur coram Justitiariis de banco, & ibi terminentur.

It appeareth by Glanvil, that before this Statute the Writ of Darrein presentment was retornable coram me vel Iustic. meis. And the reason of this Act was for expedition, for doubt of the laps. Glanvil. lib. 13. cap. 16. 18. 19. Bracton. lib. 4. fol. 238. &c.

By the Statute of W. 2. it is provided, that justices of Nisi prius may give judgement in an assise of Darrein presentment, and Quare impedit. Britton cap. 90. fol. 222. Fleta lib. 5. c. 11. Regist. fol. 30. F. N. B. fol. 30. W. 2. cap. 30. 5. Mar. Dier. 135. 9. Eliz. Dier. 260.

CAP. XIV.

LIber homo non amercietur pro parvo delicto, nisi secundum modum illius delicti, & pro magno delicto secundum magnitudinem delicti, salvo sibi contenemento suo: & Mercator eodem modo, salva merchandisa sua, & villanus alterius quam noster, eodem modo amercietur: salvo wainagio suo, si inciderit in misericordiam nostram. Et nulla prædictarum misericordiarum ponatur, nisi per sacramentum proborum & legalium hominum de vicineto. Comites & Barones non amercientur, nisi per pares suos, & non nisi secundum modum delicti. Nulla Ecclesiastica persona amercietur secundum quantitatem beneficii sui ecclesiastici, sed secundum laicum tenementum suum, & secundum quantitatem delicti.

℄ Liber homo.] A free man hath here a speciall understanding, and is taken for him, qui tenet libere, for a free-holder, as it is taken in the venire fac. where duodecim liberos, &c. homines are taken for free-holders, and this appeareth by this Act which saith, salvo contenemento suo, whereof more shall be said in this Chapter. The words of this Act being liber homo, it extendeth as well to sole Corporations, as Bishops &c. as to lay men, but not to Corporations aggregate of many, as Maior and Commonalty, and the like, for they cannot be comprehended under these words liber homo, &c. Vide W. 1. cap. 6.

℄ Amercietur.] This Act extends to amerciaments, and not to fines imposed by any Court of Justice: what amerciaments be, and whereof this word Amerciament cometh, see the 8. book of my Reports, see also there, that this Statute is in some cases of amerciaments, to be intended of private men, and not of amerciaments of officers, or ministers of Justice, so as liber homo, is not intended of officers, or ministers of Justice. And how, and in what cases the afferment shall be, you shall also read there, together also with the ancient Authors, and many other authorities of Law, concerning these matters. W. 1. cap. 18. 11. H. 4. 5. Lib. 8. fol. 39. 40. Greyslies case. Glanvil. lib. 9. cap. 11. Fleta lib. 2. c. 60. 10. E. 2. action sur le statut. 84. Regist. 86. 184. 187.

It appeareth by Glanvile that this Act was made in affirmance of the common

mon Law, as hereafter shall appeare, but yet the Writ de moderata misericordia, is grounded upon this Statute, for it reciteth the Statute and giveth remedy to the partie that is excessively amerced.

¶ Salvo contenemento suo.] First for the word, you shall read it in Glanvile, Est autem misericordia Domini Regis, qua quis per juramentum legalium hominum de viceneto eatenus amerciandus est, ne quid de suo honorabili contenemento amittet.

Glanvil. ubi sup.

And Bracton. Salvo contenemento suo.

Bracton lib. 3. fol. 116.

Fleta, continentia.

Fleta. lib. 1. c. 43.

2. For the signification, Contenement signifieth his countenance, which he hath, together with, and by reason of his free-hold, and therefore is called contenement, or continence, and in this sense both the Statute of 1. E. 3. and old Nat. Brev. use it, where countenance is used for contenement; the armor of a Souldior is his countenance, the books of a Scholler his countenance, and the like.

W. 1. cap. 6.

1. E. 3. cap. 4. Stat. 2. Vet. N. B. fol. 11.

¶ Et Mercator eodem modo salva merchandisa sua.] For trave and traffique is the livelihood of a Merchant, and the life of the Commonwealth, wherein the King and every subject hath interest, for the Merchant is the good bayliffe of the Realme to export and vent the native commodities of the Realme, and to import and bring in the necessary commodities for the defence and benefit of the Realme.

¶ Et villanus alterius quam noster eodem modo amercietur salvo wainagio suo.] Here Villanus is taken for one that is a bondman, nativus de sanguine or servus.

See the first part of the Institutes sect. 172. 189.

A Villein is free to sue, and to be sued, by and against all men, saving his Lord.

¶ Salvo wainagio suo.] Wainagium, is the contenement or countenance of the Villen, and cometh of the Saxon word Wagna, which signifieth a Cart or Waine, wherewith he was to doe Villein service, as to carry the dung of the Lord out of the scite of the Manor unto the Lords land, and casting it upon the same, and the like, and it was great reason to save his wainage, for otherwise the miserable creature, was to carry it on his back; it is said here Wainagio suo, but yet the Lord may take it at his pleasure.

See the first part of the Institutes sect. 172.

But hereby it appeareth, that albeit the Law of England, is a Law of mercy, yet is it a Law, which is now turned into a shadow, for where by the wisdome of the Law, these amerciaments were instituted to deterre both demaundants and plaintiffs from unjust suits, and tenants, and defendants from unjust defences, which was the cause in ancient times of fewer suits, but now we have but a shadow of it. Habemus quidem senatus-consultum, sed in tabulis reconditum, & tanquam gladium in vagina repositum.

Cicero.

¶ Comites & Barones non amercientur nisi per pares &c.] Although this statute be in the negative, yet long usage hath prevailed against it, for the amerciament of the Nobility is reduced to a certainty, *viz.* a Duke 10 l. an Earle 5 l. a Bishop, who hath a Baronie 5 l. &c. in the Mirror it is said that the amerciament of an Earle was an C l. and of a Baron an C. marks.

Mirror cap. 1. Sect. 3. 38. E. 3. 31. 4. H. 6. 7. 9 H. 6. 2. 19. E. 4. 9. 21. E. 4. 77. b. Mirror. cap. 4. de amerciam. 3. E. 43. Coron. 370 Stanf. pl. cor. fol. 35. b. Mirror. ubi sup. Britton fol. 17. b. & 34 b.

It is said that a Bishop shall be amerced for an escape 100 l. A Gayler shall be amerced for a negligent escape of a Felon attaint 100 l. and of a Felon indicted only 5 l.

If a Noble man and a Common person joyne in an action, and become nonsuite, they shall be severally amerced: viz. the Noble man at C s. and the Common person according to the Statute, therefore when a Noble man is plaintife, it is policy rather to discontinue the action, then to be non-suite.

¶ Per Pares,] By his Peeres, that is, by his equalls.

The

The generall diuision of persons by the law of England, is either one that is noble, and in respect of his nobility of the Lords house of Parliament, or one of the Commons of the Realme, and in respect thereof, of the house of Commons in Parliament: and as there be diverse degrees of Nobility, as Dukes, Marquesses, Earles, Viscounts and Barons, and yet all of them are comprehended within this word, Pares, so of the Commons of the Realme, there be Knights, Esquires, Gentlemen, Citizens, Yeomen, and Burgesses of severall degrees, and yet all of them of the Commons of the Realme, and as every of the Nobles is one a Peer to another, though he be of a severall degree, so is it of the Commons; and as it hath been said of Men, so doth it hold of Noble Women, either by birth, or by mariage, but see hereof Cap. 29. Britton cap. 2. fol. 36.

Bracton saith, Comites verò vel Barones, non sunt amerciandi, nisi per Pares suos, & secundum modum delicti, & hoc per Barones de Scaccario, vel coram ipso Rege. Nulla Ecclesiastica persona amercietur secundum quantitatem beneficii sui Ecclesiastici, sed secundum Laicum tenent̃ suum. Bracton. lib. 3. fol. 116. b. Brit. fol. 2. b. Fleta lib. 1. cap. 43. & lib. 2. c. 60. Vide lib. nigr. Scaccarii parte 1. cap. 4. Of Ancient time the Barons of the Exchequer were Barons and Peers of the Realme. See the first part of the Institutes Sect. 133.

¶ Ecclesiastica persona.] For Ecclesiasticall persons, and their diversities, and degrees, see the first part of the Institutes, ubi sup.

¶ Beneficium,] Benefice. Beneficium is a large word, and is taken for any Ecclesiasticall promotion or Spirituall living whatsoever.

Here appeareth a priviledge of the Church, that if an Ecclesiasticall person be amerced (though amerciaments belong to the King) yet he shall not be amerced in respect of his Ecclesiasticall promotion, or benefice, but in respect of his lay fee, and according to the quantity of his fault, which is to be afferred: and Bracton setteth downe the oath of the afferers of amerciaments, & ad hoc fideliter faciend. affidabunt amerciatores, quod neminem gravabunt per odium, nec alicui deferent propter amorem, & quòd celabunt ea quæ audierunt. Bracton lib. 3. fol. 116. Fleta lib. 1. c. 43.

CAP. XV.

NUlla villa, nec liber homo distringatur facere pontes, aut riparias, nisi qui ab antiquo, & de jure facere consueverunt tempore Henrici Regis avi nostri.

Here it is to be observed, that in the raigne of King Iohn, and of his elder brother King Richard, which were troublesome and irregular times, divers oppressions, exactions, and injuries, were incroached upon the Subject in these Kings names, for making of Bulwarks, Fortresses, Bridges, and Bankes, contrary to Law and right.

But the raigne of King H. 2. is commended for three things, first, that his priby Counsell were wise, and expert in the Lawes of the Realme. Secondly, that he was a great defender, and maintainer of the rights of his Crowne, and of the Lawes of his Realme. Thirdly, that he had learned and upright Judges, who executed Justice according to his Lawes. Therefore for his great and neber dying honour, this and many other Acts made in the raigne of H. 3. doe referre to his raigne, that matters should be put in ure, as they were of right accustomed in his time, so as this Chapter is a declaration of the common Law, and so in the raignes of H. 4. and H. 5. the Parliaments referre to the raigne of King E. 1. who was a Prince of great fortitude, wisedome and justice. See cap. 35. 37. See chart. de Forresta cap. 1. & 3. Rot. Parliam. nu. 82. 13. R. 2. c. 5. 4. H. 4. cap. 2. 3. H. 5. cap. 8. 27. H. 6. cap. 2.

And divers Statutes referre to King Edw. 3. who was a noble, wise, and warlike King, in whose raigne, the Lawes did principally flourish.

¶ Riparia.] Is here taken for Ripa, which is extrema & eminentior terræ ora, quam fluvius utrinque alluit.

4 H.8. cap.1. 2 & 3 Phil. & Mar.3. Phil.1

But the making of bulwarks, fortreſſes, and other things of like kinde, were not prohibited by this Act, becauſe they could not be erected, but either by the King himſelf, or by Act of Parliament.

CAP. XVI.

NUllæ ripariæ defendantur de cætero, niſi illæ quæ fuerunt in defenſo tempore Henrici regis avi noſtri, & per eadem loca, & eoſdem terminos, ſicut eſſe conſueverunt tempore ſuo.

That is, that no owner of the Banks of rivers ſhall ſo appropriate, or kéep the rivers ſeverall to him, to defend or barre others, either to have paſſage, or fiſh there, otherwiſe, then they were uſed in the raigne of King H.2.

Mirror ca.5. §2.

This Statute, ſaith the Mirror, is out of uſe, Car pluſors rivers ſont ore appropries & engarnies, & miſe in defence, que ſoilount eſtre commons a piſher & uſer en temps le Roy Henry 2.

CAP. XVII.

NUllus Vicecomes, Conſtabularius, Coronator, vel alii balivi noſtri teneant placita Coronæ noſtræ.

One of the miſchiefes before this Statute was, That none of them here named, could command the Biſhop of the Dioceſſe to give the delinquent his Clergy, where he ought to have it, for as Bracton ſaith, Nullus alius, præter regem, poſſit Epiſcopo demandare, &c. And therewith agréeth our other old, and later Books, that the Biſhop is not to attend upon any inferiour Court, nor that any inferiour Court can write unto, or command the Biſhop, but the King, (that is) the Kings great Courts of Record, and ſuch, as ſince that time have authority by Act of Parliament.

Bract.li.3.fo.106. Brit.c.104.fo.248. Fleta li.5.ca.24. 8 E.3.59. 40 E.3.2. 14 H.4.27. 15 E.3. conuſans 41. 14 H.7.26. 21 H.7.34,35.

Regula.

Another cauſe was, that the life of man, which of all things in this world, is the moſt precious, ought to be tried before Judges of learning, and experience in the Laws of the Realme: For ignorantia Judicis eſt ſæpenumero calamitas innocentis. Et cum ex quo Magna charta de libertatibus Angliæ alias conceſſa, (quam quidem chartam Dominus Rex in Parliamento ſuo apud Weſtm. an. Regni ſui 28. ad requiſitionem omnium prælatorum, Comitum, Baronum, & communitatis totius Regni, de novo conceſſit, renovavit, & confirmavit) placita coronæ ipſi Domino Regi ſpecialiter reſervantur, per quod nullus de Regno hujuſmodi placita tenere poteſt, ſeu habere, ſine ſpeciali conceſſione, poſt confirmationem chartæ prædictæ factæ. In the ſame yeare, and terme, Coram Rege, a complaint by the Abbot of Feverſham, both caſes adjudged in the Kings Bench, whereunto they were referred by the Parliament. See Michael. 17. Edw. 1. in Banco. Rotulo. 33. Southampton.

Paſch. 30. E.1. Coram Rege Kanc. The Mayor and Barons of the 5. Ports. compl. in Parliament.

The Chapter of Magna charta here intended, and in both the ſaid Records expreſſed,

erpzeſſed, is this 17. Chapter of Magna charta now in hand. By these Recozds two things are to be obserued. 1. That this is a generall Law, by reason of these wozds, Vel alii balivi noſtri, under which wozds are compzehended all Iudges oz Iustices of any Courts of Iustice. 2. Albeit it be pzovided by the ninth Chapter of Magna Charta, Quod Barones de quinque portubus, & omnes alii portus habeant omnes libertates, & liberas conſuetudines ſuas; That these generall wozds must be understood of such liberties, and customes onely, as are not afterwards in the same Charter by expzesse wozds taken away, and resumed to the Crown. And therefoze if the Maioz and Barons of the Cinque Pozts had power before this Act to hold pleas of the Crown, yet by this Act of the seventeenth Chapter, they are abzogated, and resumed: a notable and a leading iudgement. Both these Recozds being within two years after the confirmation of King E. 1. of Magna Charta, are wozthy to be read and obserued.

See Pasch. 33. E. 1. Coram Rege. The Prior of Tinemouths case. Northumberl.

¶ Vicecomes.] See foz his name, office, and antiquity in the first part of the Institutes. sect. 234.

1. pt Institutes sect. 234, 248.

¶ Conſtabularius.] Is here taken foz Caſtellanus, à Caſtellein, oz Conſtable of a Caſtle, foz so both the Mirror interpzet it. And Caſtellanus eſt qui cuſtodit caſtellum, aut eſt Dominus caſtelli; And so both Bracton; Debet, &c. oſtendere caſtellano, ſicut conſtabulario turris, &c. And therewith agreeth Fleta, Item nullæ priſæ capiantur de aliquo per aliquem conſtabularium, caſtellanum, præterquam de villa, in qua ſitum eſt caſtrum.

Mirror cap 5. § 2. Bracton lib. 5. fo. 363. li 2 fo. 69. Vide cap. 19. Fleta lib. 2. ca. 43.

And the Statute of W. 1. agreeth herewith, Des priſes, des conſtables, ou caſtelleins, faits des autres, &c.

W. 1. ca. 7. & 31.

And Caſtellani were men in these dayes of account, and authozity, and foz pleas of the Crown, &c. had the like authozity within their pzecincts, as the Sheriffe had within his Bailiwick before this Act, and they commonly sealed (which I have often seen in many, and have cause to know, that some of the auncient family of de Sperham in Norff. did) with their poztraiture on hozseback.

Now foz the number of Caſtles, in ancient time, within this Realme, Certum eſt Regis Henrici ſecundi temporibus Caſtella 1115. in Anglia extitiſſe.

And it is to be obserued, That regularly every Caſtle containeth a Pannoz: so as every Conſtable of a Caſtle, is Conſtable of a Pannoz, and by the name of the Caſtle the Pannoz shall passe, and by the name of the Pannoz the Caſtle shall passe.

See the first part of the Institutes, fol. 5. Verbo Holme.

Foz this wozd, Conſtabularius, his office, and antiquity, see the first part of the Institutes. sect. 379.

Lamb. leg. Ed. c. 2. Bract. li 3. fo. 154 Brit. ca. 15. fo. 90. Fleta li. 1. ca. 47. Hoveden. pre posterior. fol. 345. Mat. Par. Anno 1259. 44 H. 3. Pl. Parl. 18 E. 1. Rot. 11. 2 R. 3. 10.

And albeit the franchises of Infangthiefe, and Outfangthiefe, to be heard and determined within Court Barons belonging to Pannozs, were within the said mischiefe, yet we finde, but not without great inconvenience, that the same had some continuance after this Act. But either by this Act, oz per deſuetudinem, foz inconvenience, these franchises within Pannozs are antiquated and gone.

¶ Coronator.] His name is derived à Corona, so called, because he is an Officer of the Crown, and hath Conuſance of some pleas, which are called Placita coronæ.

Foz his antiquity, see the Mirror, who (treating of Articles established by the ancient Kings, Alfred, &c.) saith, Auxi ordains fuer Coronours in cheſcun County, & Viſcounts a garder le peace, quant les Countees ſoy demiſterent del gard, & Bayliffes in lieu de centeners, (that is) Coroners in every County, and Sheriffes were ozdained to kep the peace, when the Earles diſmiſt themſelves of the cuſtody of the Counties, and Bayliffes in place of Hundzeders.

Mirror cap. 1 § 3.

Foz his dignity and authozity, Britton saith in the person of the King, Pur ceo que nous volons, que Coroners ſoyt in cheſcun County principals gardens de noſtre

Brit. ca. 3. fol. 3. Stam. Pl. Cor. 48. 6

noſtre peace, a porter Record des pleas de noſtre Corone, & de lour views, & abjurations. & de utlagaries, volons que ilz ſont eſlieus ſolonque ceo, que eſt contein in nous Statutes de lour election, &c.

Rot. brevium. 5 E. 3. nu. 38. Regiſtr. 177. W. 1. cap. 10. * Regiſtr. 177.

And a Common Merchant being choſen a Coroner, was removed, for that he was Communis Mercator.

*** By the auncient Law, he ought to be a Knight, honeſt, loyall, and ſage,** Et qui melius ſciat, & poſſit officio illi intendere. **For this was the policy of prudent antiquity, that Officers did ever give a grace to the place, and not the place only to grace the Officer.**

Vide poſtea c. 35. Glanv. li. 1. cap. 2. & lib. 14. cap. 8. W. 2. cap. 13. 22 E. 4. fol. 22.

But what authority had the Sheriffe in pleas of the Crown before this Statute? This appeareth by Glanvill, **that the Sheriffe in the Tourn, (for that is to be intended) held plea of theft, for he ſaith** ; Excipitur crimen furti, quod ad Vicecomitem pertinet, & in Comitatibus placitatur; **But he may enquire of all felonies by the Common Law, except the death of man.**

Mirror cap. 1. § Coroners. & cap. 5. § 2. Bracton lib. 3. fol. 121. Brit c. 1. fol. 3. Fleta li. 1. cap. 18. 25. 22. Aſſ. 97. 98, &c. 3. H. 7. cap. 3. Stamf. Pl. co. 64. 116, 117. 19. H. 6. fol. 47.

And what authority had the Coroner? the ſame authority he now hath, in caſe when any man come to violent, or untimely death, ſuper viſum corporis, &c. **Abjurations, and out-lawries, &c. appeales of deaths by bill, &c. This authority of the Coroner,** viz. **the Coroner ſolely to take an indictment,** ſuper viſum corporis ; **and to take an appeale, and to enter the appeale, and the Count remaineth to this day. But he can proceed no further, either upon the indictment, or appeale, but to deliver them over to the Juſtices. And this is ſaved to them by the Statute of** W. 1. cap. 10. **And this appeareth by all our old Bookes, Book caſes, and continuall experience.**

And for the further authority of the Coroner in caſe of high treaſon, ſee the Book of 19. H. 6. fol. 47. **and conſider well thereof.**

W. 2, c. 13. 1 E. 3. Stat. 2. ca. 17. 1 E. 4. 3. 1 R. 3. cap. 4.

But the authority of the Sheriffe to heare and determine theft, or other felonies, by the Common Law, (except the death of man) in the Tourn, is wholly taken away by this Statute, howbeit his power to take indictments of felonies, and other miſ-deeds within his juriſdiction, is not taken away by this Act.

CAP. XVIII.

SI quis tenens de nobis laicum feodum moritur, & Vic', vel Balivus noſter oſtendat literas noſtras patentes de ſummonitione [noſtra] de debito, quod defunctus nobis debuit: liceat Vic', vel balivo noſtro attachiar', & imbreviare omnia bona & catalla defuncti inventa in laico feodo ad valentiam ipſius debiti, per viſum & teſtimonium legalium hominum, ita tamen quod nihil inde amoveatur, donec perſolvat nobis debit', quod clarum fuerit, & reſiduum relinquatur executoribus ad faciendum teſtamentum defunct'. Et ſi nihil nobis debeatur ab ipſo, omnia catalla cedant defunct': Salvis uxori ejus, & liberis pueris ſuis, rationabilibus partibus ſuis.

Ockham Regiſt. 281. b. 17. E. 3. 73. 27. E. 3. 88. 29. E. 3. 13. 41. E. 3. 15. 41. E. 3. execut. 38. 4. E. 4. 16. F. N. B. 28. b. 33. H. 8. c. 39. See before cap. 8.

By this Chapter three things are to be obſerved; Firſt, that the King by his prerogative ſhall be preferred in ſatisfaction of his debt by the Executors, before any other: Secondly, that if the Executors have ſufficient to pay the Kings debt, the

the heire that is to beare the countenance, and sit in the seate of his ancester, or any purchaser of his lands shall not be charged. Thirdly, if nothing be owing to the King, or any other, all the Chattells shall goe to the use of the dead, that is, to his Executors, or Administrators, saving to his Wife and Children their reasonable parts, which is consilium, and not præceptum; and the nature of a saving regularly is, to save a former right, and not to give, or create a new, and therefore, where such a Custome is, that the Wife and Children shall have the Writ de rationabili parte bonorum, this Statute saveth it. And this Writ doth not lye without a particular Custome, for that the Writ in the Register is grounded upon a Custome, which (as hath been said) is saved by this Act.

Mirror cap. 5. § 2. Glanv. lib. 12. c. 20. Bracton. l. 2. fol. 60. b. Fleta. l. 2. cap. 50. Regist. 142. 34. E. 1. de new 60. 1. E. 2. ib. 56. 17. E. 2. ib. 58. 30. E. 3. 2. 26. 31. E. 3. rfider 6. 39. E. 3. 6. 10. 17. E. 3. 17. 40. E. 3. 38. 3. E. 3. det. 156. 1. E. 4. 6. 7. E. 4. 21. 13. H. 4 Sever. 30. 31. H. 8. Rationab. parte Bro. 6. Bract. l. 2. fol. 61.

* But that it was never the Common-law (though there be great variety in books) heare what Bracton saith, who wrote some after this Act. Neq; uxorem, neq; liberos amplius capere de bonis defuncti patris vel viri mobilibus, quam fuerit eis specialiter relictum, nisi hoc sit de speciali gratia testatoris, utpote si bene meriti in ejus vita fuerint, &c. vix enim inveniretur aliquis civis, qui in vita magnum quæstum faceret, si in morte sua cogeretur invitus bona sua relinquere pueris indoctis, vel luxuriosis, & uxoribus male meritis: & ideo necessarium est valde, quòd illis in hac parte libera facultas tribuatur. Per hoc enim tollet maleficium, animabit ad virtutem, & tam uxoribus, quam liberis bene faciendi dabit occasionem, quod quidem non fieret, si se scirent indubitanter certam partem obtinere etiam sine testatoris voluntate.

But the administrators of a man, that die intestate, or executor of any, that make no disposition of his whole personall estate, goods, debts, and chattells, the administrators or executors after the debts paid and Will performed, ought not to take any thing to his or their owne use, but ought, though there be no particular Custome, to divide them, according to this Statute: and the said ancient, and latter authorities (then which there can be no better direction) may guide them therein: and this right doth this Statute of Magna Charta save by these words, salvis uxori, & liberis suis, rationabilibus partibus suis. So as though the Statute doth give no Action, yet their parts are saved hereby, which by Glanvile, and other ancient Authors appeare to belong to them; and the executor, or administrator shall be allowed of this distribution, according to this Statute, upon his account before the Ordinary.

Note the reason hereof maketh against perpetuities.

CAP. XIX.

NUllus Constabularius, vel ejus Balivus capiat blada, vel alia catalla alicujus, qui non sit de villa, ubi castrum suum situm est, nisi statim reddat denarios, aut respectum inde habere possit de voluntate venditoris: Si autem de villa illa fuerit, infra quadraginta dies precium redd'.

Here also it appeareth, that in this Chapter Constabularius is taken for Castellanus: and this taking by Castelleins, though the Castell was kept for the defence of the Realme, was an unjust oppression of the Subject, and this expressly appeareth by the Mirror, Ceo que est defendu a Constables a prender le autre, defend droit a touts gents de cy que nul difference parenter prise dautrui maugre soen, et robbery, lequel cel prise soit de chivalls, de vitaille, de marchandise, de cariage, de ostiels, ou des autres manners de biens. And this appeareth also by Fleta, l. 2. cap. 43. Quia multa gravamina multis inferuntur per diversas districtiones, quæ quidem sub colore prisarum advocantur, &c. inhibetur in Magna charta de libertatibus

See W. 1. cap. 7. & 31.

Mirror. cap. 5. S. 2.

tibus &c. no purveyance shall be taken, but only for the houses of the King, and Queene, and for no other person: so as the grievance before this, and other like Acts, is wholly taken away.

36.E.3.cap.2. 23.H.6.cap.2.

CAP. XX.

NVllus Constabularius distringat aliquem Militem ad dandum denarios pro custodia castri, si ipse eam facere voluerit, in propria persona sua, vel per alium probum hominem faciat, si ipse eam facere non possit, propter rationabilem causam. Et si nos abducerimus, vel miserimus eum in exercitum, sit quietus de custodia castri, secundum quantitatem temporis, quo per nos fuerit in exercitu, de feod' pro quo fecit servitium in exercitu.

Here Constabularius is taken in the former sense: see the first parte of the Institutes Sect. 96.

Fleta lib.2.ca.43. See the 1. part of the Instit. 96.

See this Act in Fleta: And note, this Act (consisting upon two branches) is declaratory of the Common Law, for first, that he, that held by Castle gard, that is, to keepe a tower, or a gate, or such like of a Castle in time of warre might doe it, either by himselfe, or by any other sufficient person for him, and in his place. And some hold by such service, as cannot doe it in person, as Major, and Comunalty Deane, and Chapter, Bishops, Abbots, &c. Infants being purchasers, women, and the like, and therefore they might make a deputy by order of the Common Law. If two joynt-tenants hold by such service, if one of them performe, it is sufficient.

For the second; if such a tenant be by the King led, or sent to his host, in time of warre, the tenant is excused and quit of his service for keeping of the Castle, either by himselfe, or by another during the time, that he so serve the King in his host, for that when the King commandeth his service in his host, he dispenceth with his service, by reason of his tenure, for that one man cannot serve in person in two places, and when he serves the King in person in one place, he is not bound to finde a deputy in the other, for he is not bound to make a deputy, but at his pleasure, and this is also declaratory of the ancient Common Law. See the first part of the Institutes 111.121.

CAP. XXI.

NUllus Vicecomes, vel Balivus noster, vel aliquis alius, capiat equos, vel carectas alicujus pro cariagio faciendo, nisi reddat liberationem antiquitus statutam, scilicet pro una carecta ad duos equos decem denarios per diem, & pro carecta ad tres equos quatuordecim denarios per diem. Nulla carecta dominica alicujus personæ Ecclesiasticæ, vel militis, vel alicujus

W.1.c.1.verb. & que nul face &c. Artic. super cart. cap.2. Regist.fol.98. Bracton lib.3.fol. 177. Britton fol. 33.36.38. Fleta lib.1.c.20. see cap.Itineris.

jus Domini, per balivos noſtros capiatur, nec nos, nec balivi noſtri, nec alii, capiemus boſcum alienum ad caſtra, vel ad alia agenda noſtra, niſi per voluntatem illius, cujus boſcus ille fuerit.

This Chapter conſiſteth of three branches, the firſt ſetteth down the auncient hire or allowance for the carriage for the King: the ſecond ſetteth down, who are exempted from that carriage; the third, concerning purveyance of wood.

For the firſt, the carriage muſt be taken for the King, and Quéen onely, and for no other, implied in theſe words, Nullus Vicecomes vel balivus noſter, and this is explained by divers other Statutes, and by our Books.

W.1.cap.1.& 32. 36.E.3.cap.2. 38.H.6.cap.2. Fleta lib.2.ca.1. & 24.32.E.3. Barre.259. 7.H.3.tit.Waſte.

The hire or allowance is certainly expreſſed, as auncientlie due, Reddat liberationem antiquitus ſtatutam; So as this alſo is declaratory of the auncient Law, and the hire or allowance ought to be paid in hand, for the Statute ſaith, Nullus capiat, &c. niſi reddat, &c.

And this liberatio antiquitus ſtatuta, is, (as it appeareth by this Act) per diem, by the day.

Aver-penny, and averagium, are words common in auncient Charters, and ſignifie to be free from the Kings carriages, cum averiis, and this is meant where it is ſaid, Aver-penny, hoc eſt, quietum eſſe de diverſis denariis pro * averagiis Domini Regis.

Raſtall * i. carragis cum averis.

For the ſecond branch: No demean, or proper Cart for the neceſſary uſe of any Eccleſiaſticall perſon, or of any Knight, or of any Lord, for or about the demean Lands of any of them, ought to be taken for the Kings carriage, but they are exempted by the auncient Law of England from any ſuch carriage.

W.1.cap.1. 14.E.3.cap.1. 1.R.2.cap.3. 10.E.2.Vet.Mag. Chart.pt 2.fo.46 Fleta lib.3.cap.5.

This Statute extendeth not to any perſon Eccleſiaſticall, of what eſtate, order, or degrée ſoever: and this was an auncient priviledge belonging to holy Church.

Alſo it extendeth to all degrées, and orders of the leſſer, and greater Nobility, or dignity, as of Knighthood, Dukes, Marqueſſes, Earles, Viſcounts, and Barons, for albeit there were no Dukes, Marqueſſes, or Viſcounts within England at the making of the Statute, yet this Statute doth extend to them, for they are all Domini, Lords of Parliament, and of the Barony of England; and this alſo was an ancient priviledge belonging to theſe orders and dignities: And all this concerning the Eccleſiaſticall and temporall State was (amongſt other things for the advancement and maintenance of that great peace-maker, and love-holder, hoſpitality) one of the auncient ornaments, and commendations of the Kingdome of England.

The third branch is, That neither the King, nor any of his Baylies, or Miniſters, ſhall take the wood of any other, for the Kings Caſtles, or other neceſſaries to be done, but by the license of him whoſe wood it is. And all Statutes made againſt this branch (amongſt others) before the Parliament of 42 E.3. are repealed: And this branch, amongſt others, hath (as hath been ſaid) been confirmed, and commanded to bee put in execution at 32. Seſſions of Parliament. And ſo it was reſolved by all the Judges of England, and Barons of the Exchequer, Mich. 2. Jac. Reg. upon mature deliberation; and that the Kings Purveyor could take no Timber, growing upon the inheritance of the Subject, becauſe it was parcell of the inheritance, no more then the inheritance it ſelfe. Whereof the King, and Counſell being informed, the King by his Proclamation, by advice of his Counſell, under the great Seale, 23. Aprilis, anno 4. declared the Law to be in theſe words: Firſt, when We were informed, that ſome inferiour Miniſters had preſumed to goe ſo farre beyond their commiſſion, as they have adventured, not onely to take timber trees growing, which being parcell

W.1.cap.1.& 32. See 25.E.3.ca.6. 35.H.8.cap.17. 5.Eliz.cap.8. 7.H.3.tit.Wa.141 11.H.4.28. Pl. Com.322.

42.E.3.cap.1. Mich.2 Jac. reſolved 11.H.4.fo.28. No purveyance of gravell, becauſe it is part of the inheritance. See 47.E.3.fo.18 Iſſue taken upon the ſale of timber for repara.ion of Calais.

Nota

parcell of Our Subjects inheritance, was never intended by Us to be taken without the good will, and full consent of the owners, but have accustomed also to take greater quantities of provisions for Our house, and Stable, then ever came, or were needfull, to Our use, &c. As by the said Proclamation bearing date 23. Aprilis, anno 4. Jac. Reg. appeareth. And divers Purveyors were according to the said resolution of the Judges punished in the Starchamber, for purveying of Timber growing, without the consent of the Owners.

Boscus is an ancient word used in the Law of England, for all manner of wood, and the Italian useth the word bosco in the same sense, and the French, boys, accordingly. Boscus is divided into two sorts, viz. high-wood, haut-boys, or timber, and Coppice-wood (so called, because it is usually cut) or underwood. High-wood is properly called Saltus, Quia arbores ibi exiliunt in altum. It is called in Fleta, maeremium.

Fleta ubi supra.

Pl. Com. 236.

The Common Law hath so admeasured the Prerogative of the King, as he cannot take, nor prejudice the inheritance of any, and (as hath been said) a man hath an inheritance in his woods.

Marlebr. cap. 5.

And see the Statute of Marlebridge, Anno 52. H. 3. Magna Charta in singulis teneatur, tam in hiis, quæ ad regem pertinent, quam ad alios, and 31 other Statutes. So as all pretence of prerogative against Magna Charta is taken away.

34. E. 1. Vet. Magna Charta. fol. 37. 2. Part.

See hereafter the exposition of the Statute De tallagio. Anno 34. E. 1. & de prisis, Anno 18 E. 2. vet. Magna Charta. fol. 125. 1 part.

CAP. XXII.

NOs non tenebimus terras illorum, qui convicti fuerint de felonia, nisi per unum annum, & unum diem, & tunc reddantur terræ illæ Dominis feodorum.

Glanv. li. 7. ca. 17. fol. 59.

This appeareth by Glanvill, to be due to the King by his auncient Prerogative, for he saith, Sin autem de alio, quam de Rege tenuerit is, qui utlagatus est, vel de felonia convict. tunc quoque omnes res suæ mobiles Regis erunt, terra quoq; per unum annum remanebit in manu Domini Regis, elapso autem anno, terra eadem ad rectum Dominum, scilicet ad ipsum, de cujus feod est, revertetur, veruntamen cum domorum subversione, & arborum extirpatione.

This Chapter of Magna Charta doth expresse that, which doth belong to the King, viz. the yeare, and the day, and omit the Waste, as not belonging to him, and this is notably explained by our auncient Books with an uniforme consent:

Bracton lib. 3. fol. 129. & 137.

Bracton treating of the yeare, and the day in this case due to the King, saith, Sed quæ sit causa, quare terra remanebit in manibus Domini Regis? Videtur quod talis est, quia revera, cum quis convictus fuerit de aliqua felonia, in potestate Domini Regis erit, prosternendi ædificia, extirpandi gardina, & arandi prata, & quoniam hujusmodi verterentur in grave dammum dominorum, pro communi utilitate provisum fuit, quod hujusmodi ædificia, gardina, & prata remanerent, & quod Dominus Rex propter hoc haberet commoditatem totius terræ illius per unum annum, & unum diem, & sic omnia cum integritate reverterentur in manus Dominorum capitalium, nunc autem petitur utrumque, s. finis pro termino, & similiter pro vasto, & non video rationem quare, &c.

Nota. Provisum fuit.

Britton cap. 5. fol. 14.

And Britton treating of this very matter, saith, Lour biens mobles sont les nous, et lour heires disherit et voilons aver lour tenements de qui que unques sont tenus le an, et le jour, issint que lour heritages, demourgent un an & un jour in nostre maine,

si

& que nous ne faisons estre perie les tenements, ne gaster les boys, ne arer les prees, sicome lensoloit faire in remembrance des felons attaints, &c.

Fleta saith, Si autem utlagati, vel alii convicti terram liberam habuerint, illa statim capienda est in manus Regis, & per unum annum, & unum diem tenend, ad capitales Dominos post illum terminum reversura, & hoc habetur ex Statuto Magnæ Chartæ, quod tale est, nos non tenebimus terras illorum, qui convicti fuerint de felonia, nisi per unū annū, & unum diem, & tunc reddantur terræ illæ Dominis feodorū, causa verò talis termini Regis, quia in signum felonia olim provisum fuit, quod ædificia talium prosternentur in terram, extirpentur gardina, ararentur prata, truncarentur bosci, & quoniam hujusmodi verterentur in grave damnum dominorum feodorum, pro communi utilitate provisum fuit, quod hujusmodi dura, & gravia cessarent, & quod Rex propterea per annum & diem totius terræ commoditatem perciperet, secus autem, si terra non esset eschaeta Dominorum, post quem terminum Dominis proprietariis integre absque vasto vel destructione reverterentur. Fleta li. 1. cap. 28. Nota. Nota.

The Mirror speaking of this Chapter saith, Le point des terres aux felons tener per un an, est desusie, car p la ou le Roy ne duist aver q̄ le gast de droit, ou lan in nosme de fine, pur salver le fief de lestripment, preignont les Ministers le roy ambideux. Upon all which it appeareth, that the King originally was to have no benefit in this case, upon the attainder of felony, where the free-land was holden of a Subject, but onely in detestation of the crime, Ut pœna ad paucos, metus ad omnes perveniat, to prostrate the houses, to extirpe the gardens, to eradicate his woods, and to plow up the meadows of the felon, for saving whereof, et pro bono publico, the Lords, of whom the Lands were holden, were contented to yeild the lands to the King for a year, and a day, and therefore not only the Waste was justly omitted out of this Chapter of Magna Charta, but thereby it is enacted, that after the year and day, the land shall be reuered to the Lord of the fee, after which no Waste can be done. Mirror cap. 5. §. 2.

And where the treatise of Prerogativa Regis, made in 17. E. 2. saith, Et postquam Dominus Rex habuerit annum, diem, & vastum, tunc reddatur tenementum illud capitali Domino feodi illius, Nisi prius faciat finem pro anno, die, et vasto. Which is so to be expounded, that forasmuch, as it appeareth in the said old books, that the Officers, and Ministers, did demaund both for the Waste, and for the year, and day, that came in lieu thereof, therefore this Treatise named both, not that both were due, but that a reasonable fine might be paid for all that, which the King might lawfully claim. But if this act of 17. E. 2. be against this branch of Magna Charta, then is it repealed by the said Act of 42. E. 3. cap. 1.

Vide Stamford. Pl. Cor. 190. 191. Vide 3. E. 3. coron. 327. 3. E. 3. ibid. 58. 3. E. 3. ibid. 310. Pasc. 31. E. 1. Cor. Rege Norff. Wil. de Ormesby.

Hereby it also appeareth, how necessary the reading of auncient Authors is for understanding of auncient Statutes. And out of these old Books, you may observe, that when any thing is given to the King in lieu, or satisfaction of an auncient right of his Crown, when once he is in possession of the new recompence, and the same in charge, his Officers and Ministers will many times demand the old also, which may turn to great prejudice, if it be not duly, and discretly prevented.

¶ Non tenebimus terras.] If there be Lord, Peine, and Tenant, and the Peine is attainted of felony, the Lord Paramount shall have the Peinalty presently. For this prerogative belonging to the King extend onely to the Land, which might be wasted, in lieu whereof the yeare and day was granted.

And this is to be understood when a Tenant in fee-simple is attainted, for when Tenant in taile, or Tenant for life is attainted, there the King shall have the profits of the Lands, during the life of Tenant in taile, or of the Tenant for life.

¶ Convicti fuerint.] Here Convicti in a large sense is taken for Attincti, for the nature, and true sense of both these words, see the first part of the Institutes, and likewise for this word felony there. See the first part of the Institutes. sect. 745.

¶ De

¶ De felonia.] Must be understood of all manner of Felonies punished by death, and not of petit larceny, which notwithstanding is felony.

CAP. XXIII.

25.E.3.cap.4. 1.H.4. cap.12. 12. E.4.cap.7.

OMnes Kidelli deponantur de cætero penitus per Thamesiam & Medewein per totam Angliam nisi per costeram maris.

Rot.cart.18.Feb. Anno 11.H.3.

Rex,&c. Noveritis nos pro communi utilitate Civitatis nostræ London' & totius Regni nostri concessisse, & firmiter præcepisse, ut omnes Kidelli qui sunt in Tamisia,vel Medeweia,ubicunque fuerint in Tamisia, vel in Medeweia, amoveant', & non de cætero Kidelli alicubi ponant' in Tamisia, vel in Medeweya; super forisfactur' decem libr' sterlingorum : quietum etiam clamavimus omne id, quod custodes Turr' nostræ London' annuatim percipere solebant de prædictis Kidellis: Quare volumus & firmiter præcipimus, ne aliquis custos præfat' turr' aliquo tempore post hoc, aliquid exigat ab aliquo, nec aliquam demandam, aut gravamen, sive molestiam alicui inferat occasione prædictorum Kidellorum, satis enim nobis constat, & per fideles nostros sufficienter nobis datum est intelligi, quod maximum detrimentum, & incommodum prædictæ Civitati London', nec non & toto Regno nostro occasione prædictorum Kidellorum perveniebat ; quod ut firmum, & stabile perseveret imperpetuum, præsentis paginæ inscriptione & sigilli nostri appositione communimus, sicut carta Domini Regis Iohannis Patris nostri quam Barones nostri London' inde habent rationabilit' testat'.

Lib.10. fo.138. in the case of Chester Mill. Keylw.15.H.7.15 Cap.Itineris.nu.5 Tr.5.E.2. Coram Rege. Rot.18. Glanv.li.9.ca.11.

¶ Kidelli.] Kidels is a proper word for open weares whereby fish are caught.

It was specially given in charge by the Justices in Eire, that all Juries should enquire, De hiis qui piscantur cum Kidellis & Skarkellis.

And it appeareth by Glanvill, that this pourpresture was forbidden by the Common Law, for he saith, Dicitur autem purpresture, vel porpresture proprie, quando aliquid super Dominum Regem injuste occupatur, ut in dominicis Regis, vel in viis publicis obstructis, vel in aquis publicis transversis à recto cursu, vel quando aliquis in Civitate super Regiam plateam aliquid ædificando occupaverit, & generaliter, quoties aliquid fit ad nocumentum Regii tenementi, vel Regiæ viæ, vel Civitatis, and every publique River or Streame, is alta Regia via, the Kings high-way.]

Pourpresture commeth of the French word pourprise, which signifieth a close, or inclosure, that is, when one encroacheth, or makes that severall to himselfe, which ought to be common to many.

CAP.

CAP. XXIV.

BReve, quod dicitur Præcipe in capite, de cætero non fiat alicui de aliquo libero tenemento, unde liber homo perdat curiam ſuam.

Mirror cap.5.§ 2 Bracton lib.5.fol. 328.& 414.b. Regiſtr 4.3.E.3. 23. 6.E.3.15. 38.E.3.13. 39.E.3. 26. F.N.B. 5.c.

This is for reformation of an abuſe, and wrong offered to the Lord, of whom the land was holden, and yet upon this Statute, the tenant cannot pleade, that the lands are not holden of the King in chiefe, for two cauſes, firſt for that this Act was made for the benefit of the Lord, of whom this land is holden, and he cannot pleade it, becauſe he is an eſtrang', and if one claiming to be Lord ſhould be admitted, another might come in and pretend the like, and ſo infinite. Secondly, this Act extends to the Chancery, for the words be Breve &c. non fiat, ſo in that Court the Writ is made: and therefore when the Writ is granted in the Chancery, and returned into the Court of Common pleas, that which is by this Act prohibited in the Chancery, extendeth not to the Court of Common pleas; and therefore they cannot admit of ſuch a plea: now the tenant, leaſt he be concluded, muſt take the tenure by proteſtation, and the King, though he be not party to the Record, yet ſhall he take advantage of the Eſtoppel, for he is ever preſent in Court.

20.E.3.eſtoppel. 187.22.E.3.17. 40.E.3.30.

And ſince this Statute, no man ought to have this Writ out of the Chancery upon a ſuggeſtion, but oath muſt be made, before the granting thereof, that the land is holden of the King in Capite.

See Mich. 4.E.1. de banco Rot. 114. Norff. Barth. de Redhams caſe, pro terris in curia comitis warren apud Caſtleacre, notabile recordum ſuper hoc Statutum. Per breve præcipitur Juſticiariis, quod inquirant, ſi terræ tenentur de Rege in Capite. See the Writ in the Regiſter. 4. b. by which Writ power is given to the Juſtices, that if it may appeare to them, that the land is not holden in Capite, then that the plea be holden in the Lords Court, according to this Statute. And for that the demandant Peter Grellye, confeſſed that the lands were not holden of the King in Capite, but of Edmond brother of the King, thereupon the entrie was, Ideo Petrus perquirat ſibi per breve de recto pat' in curia ipſius Edi verſus R. ſi voluerit. Mich.14.E.1.Rot.48.Som.acc. Regiſt.fo.4.b.& 6.a.

Mic. 7.E.1. in banco rot.65. Lanc'. acc'. Peter Grellyes caſe.

And the Lord, of whom the land is holden, ſhall upon this Statute, have his Writ of diſceit againſt the Demandant, which have recovered by default, and recover his damages, but the Record of the judgement ſhall ſtand in force; and concerning the concluſion of the tenure, the Lord ſhall have remedy againſt the King by petition of right. But if the recovery be given upon triall againſt the tenant, then the tenant hath concluded himſelfe for the tenure, becauſe his proteſtation cannot availe him, when his plea is found againſt him: But the Lord may have in that caſe, his action againſt the tenant, and his petition of right to the King, to be reſtored to his Seigniorie, and by that meanes the tenant himſelfe may be relieved.

8.E.4.6.6.E.3.15 Vet.N.B.13.a. F.N.B.98.n.

See the firſt part of the Inſtitutes ſect.192. 17.E.3.31.36. 37.59. 32.E.3. Avowry 113. 45.E.3. petition 9.

¶ Breve.] Dicitur ideo breve, quia rem de qua agitur, & intentionem petentis paucis verbis breviter enarrat, ſicut facit regula Juris, quæ rem, quæ eſt, breviter enarrat.

Bract.lib.3.f.112 cap.12.nu.2.& lib.5 fol.413.c. 17.nu.2.

Breve quidem cum ſit formatum ad ſimilitudinem regulæ juris, quia breviter & paucis verbis intentionem proferentis exponit & explanat, ſicut regula juris rem quæ eſt breviter enarrat.

And Fleta deſines a Writ, totidem verbis, as Bracton hath done.

Fleta.lib.2.c.12.§ dicuntur etiam brevia.

There is a great diverſity betweene a Writ, and an Action, (although by ſome

some they are often confounded) which will best appeare by their severall definitions.

Bracton. lib.3. fol.98.b. cap.1. Fleta lib.1.cap. 16.§ actio & § 3.Actors. Mirror.cap.2 § 1. nest.

Actio nihil aliud est, quam jus prosequendi in judicio quod alicui debetur.

And with Bracton agreeth Fleta.

Actio nihil aliud est, quam jus prosequendi in judicio quod alicui debetur, & quod nascitur ex maleficio, vel quod provenit ex delicto, vel injuria.

And the Mirror saith, Action nest aut' chose que loiall demand de son droit. Actors sont queux suont lour droit per pleint, &c.

So as the first diversity between an Action, and a Writ is, that an Action is the right of a suite, and the Writ is grounded thereupon, and the meane to bring the demandant or pl' to his right.

The second diversity, a Writ grounded upon right of Action is eyer in foro contentioso, but so are not all Writs, for that Writs are much more large, then Actions are, as shall appeare by the division of Writs.

Bracton.lib. 3. fol.101.cap.3. nu.1. Fleta lib. 1. cap.16.

Of Writs grounded upon rights of Action, some be criminall, and some be civill or common.

Of Criminall, some be in personam, to have judgement of death, as Writs of appeale, of death, robberie, rape, &c. and some to have judgement of dammage to the partie, fine to the King, and imprisonment, as Writs of Appeale of Mayhem. &c.

Glanvil.lib.1.c.1. Bracton ubi sup. Fleta ubi sup. Mirror ubi sup. Plowd. Com. 73. &c. Regist. 187.

Of Writs Civill or Common, some be reall, some personall, and some mixt. And of these, some be originall, and all they goe out of the Chancery, and some judiciall, and they issue out of the Court, where the plea depended. Some Conditionall, as Writs of Error, redissin, &c. some without Condition, some retornable, and some not retornable. And all these are warranted, either by the Common Law, or grounded upon some Act of Parliament. Which are so well knowne, as this little touch shall suffice.

Bract. l. 5.413.b. Fleta.lib.2.cap.12

Of Originall Writs, some be brevia formata, and some ex cursu, some magistralia, & sæpius variantur.

a Dier.23.Fitz. 377.a. b F.N.B.28.29.

Regularly the Kings Writs are, ex debito Justitiæ, to be granted to the subject, which cannot be denied, and some be ex gratia, as [a] speciall liberties, and [b] Writs of Protections for the safegard of the Subject, being in the Kings warre out of the Realme.

c Regist.227. d Ibid. 267. e Regist.133.b. Fitz.N.B. 185. Regist.206. F.N.B.ib.

In nature of Commissions; as Writs of Error, of Oier, and Terminer, of election of Knights and Burgesses of the Parliament, of election of a Coroner, or of discharging of him. Of election of Verderers, [c] De ventre inspiciendo. [d] De viis & venellis mundandis, Regist.267. Of the surety of the good behaviour, or of the peace. [e] De odio & atia. Association, of de admittendo in socium, of Si non omnes, and the like. Writs of Justicies.

Of Writs of Præcipe, some be, quod reddat, as Writs of right &c. debt, &c. Some be quod permittat, as Writs De quod permittat. Some be quod faciat, as De consuetudinibus & servitiis. De domo reparanda. And of Writs of Præcipe, some containe severall precepts, and some joynt, and some are sole.

Writs Mandatory, and extrajudiciall, whereof some be affirmative, and some negative. Affirmative, as calling of men to the upper house of Parliament to be Peers of the Realme. De Comitat' commissis. Regist.295. Of Conge de eslier, licence to choose a Bishop. Regist.294.b. De regio assensu. Regist. ibid. To call one to be Chiefe Justice of England. To call apprentices of Law to be Serjants. De brevibus & Rot. deliberandis. Regist. 295. De restitutione spiritualium. Regist.294.b. Negative, as De non ponendis in assisis, & juratis. De securitate invenienda, quod se non divertat ad partes exteras sine licentia. De non residentia clerici Regis. De clerico infra sacros ordines constituto non eligendo in officium. Ne fines capias pro non pulchre placitando.

Regist.295.F.N. B.170. Regist.294.F.N. B.165 a FN.B. 85.a. Regist.58.b. Artic.sup.cart. c.6.Regist.187.b. ibid.179.a. F.N.B.240.d.

Of Writs, some are for furtherance of Justice, and for ousting of delayes, and to proceed. As the Writ De procedendo ad judicium, that the Justices shall not surcease to doe common right, for no commandement under the great Seale, petit

petit Seale, or message from the King. Or [a] if the Judges of themselves delay judgement, there lyeth also a procedendo ad judicium. Againe, there is a procedendo in loquela, & ad judicium, after Aid of the King. A Writ de executione judicii.

[b] Some for advancement of Justice not to proceed.

[c] Regularly Writs are directed to the Sheriffes, or Coroners, but in speciall cases to the partie, or others. To the partie, as Writs of prohibitions, Ne exeat regnum. To others, as to Judges Temporall, Ecclesiasticall, and Civill. To Serjeants at Armes. To the [d] party that hath the custody of an idiot. To the [e] Major, and Bayliffes, &c. ad amovendum eos ab officio, quousq; inquisitio foret de eorum gestu. [f] Liberate thesaurario, & camerariis, thesaurario & baronibus.

Note of Writs of right (whereof the præcipe in Capite is one) some be close, and some be patent.

Writs of right retornable into the Court of Common pleas be patent, and Writs directed into auncient Demesne, are close; and the reason wherefore in other Courts of the Lords, the Writs shall be patent, is, because there is a clause in those Writs, & nisi feceris, Vicecomes N. hoc faciat, ne amplius clamorem audiamus pro defectu recti: which clause is not in the other Writs, and necessary it is that such Writs should be patent, that the Sheriffe might take notice thereof.

[a] F.N.B.153.b 2.E.3.ca.8. 5.E.3.ca.9. 14.E.3. cap.14. Regist fo.186. F.N.B.153. Regist.18. F.N.B 20.

[b] Regist.124.125 revocat brevis de audiendo &c. All Writs of supersedeas.

[c] Pl. com. fol. 73. &c. See 12.H.4.24. in debt not cited in that case. Regist. 114. 115. Writs of Audita querela &c. prohibitions ad jura regal.

[d] Regist.267.a.

[e] ib.126.b.

[f] Ib.192.b, 193.a.b.

CAP. XXV.

VNa mensura vini per totum Regnum nostrum, & una mensura cervisiæ, & una mensura bladi, scilicet, quarterium Lond', & una latitudo pannorum tinctorum, russatorum, & haubergettarum, scilicet duæ ulnæ infra listas. De Ponderibus verò sic sicut de Mensuris.

This Act concerning Measures and Weights, that there should be one measure and one weight through England, is grounded upon the Law of God. Non habebis in sacculo diversa pondera, majus, & minus, non erit in domo tua modius major & minor, pondus habebis justum & verum, & modius æqualis erit tibi, ut multo vivas tempore super terram, &c. And this hath often by authority of Parliament been enacted, but never could be effected, so forcible is custome concerning multitudes, when it hath gotten an head, therefore good Lawes are timely to be executed, and not in the beginning to be neglected.

Stat.de 31.E.1. 14.E.3.cap.12. 27.E.3.cap.10. See the Custum. de Norm.cap.16. Deutr. 25. v.13. 14.

For Weights and Measures, there are good Lawes made before the Conquest: In dimensione, & pondere nihil esto iniquum, ab iniquitate verò deinceps quisq; temperet: Per commune concilium regni statuimus, quòd habeant per universum Regnum mensuras fidelissimas, & signatas, & pondera fidelissima, & signata, sicut boni prædecessores statuerunt.

Int' leges Canut. cap.9. Int' leges Will. Regis conq.

¶ Una latitudo pannorum, &c.] True it is that broade cloathes were made, though in small number, at the time, and long before this Statute, but in the beginning of the raigne of Edward 3. the same came to so great perfection, as in the 11. peare of his raigne, all men were prohibited to bring in privilie, or apertly by himselfe, or any other, any clothes made in any other places, &c. And this is the worthiest and richest commoditie of this Kingdome, for divide our native commodities exported into tenne parts, and that which comes from the sheepes back, is nine parts in value of the tenne, and setteth

Mirror.cap.5.§ 2. Vet.Mag. Cart. cap. Itin. f.151. 11.E.3.cap.3.

great numbers of people on worke. For the breadth, and length of Clothes, see many Statutes made after this Act.

CAP. XXVI.

NIhil de cætero detur pro brevi inquisitionis ab eo, qui inquisitionem petit de vita, vel de membris, sed gratis concedatur, & non negetur.

¶ Brevi inquisitionis.] That is the Writ de odio & atia, anciently called Breve de bono & malo, and here, of life, and member, which the Common Law gave to a man, that was imprisoned, though it were for the most odious cause, for the death of a man, for the which, without the Kings Writ he could not be bayled, yet the Law favouring the liberty, and freedome of a man from imprisonment, and that he should not be detained in prison, untill the Justices in Eire should come, at what time he was to be tried, he might sue out this writ of inquisition directed to the Sheriffe, quod assumptis tecum custodibus placitorum Coronæ in pleno comitatu per sacramentum proborum, & legalium hominum de &c. inquiras (inde appellatur Breve inquisitionis) utrum A captus, & detentus in prisona &c. pro morte W. unde rettatus (1. accusatus existit) rettatus sit odio, & atia &c. nisi indictatus vel appellatus fuerit, coram Iustitiariis nostris ultimo itinerantibus in partibus illis, & pro hoc captus, & imprisonatus, For by the Common Law, in omnibus autem placitis de felonia, solet accusatus per plegios dimitti, præterquam de placito de homicidio, ubi ad terrorem aliter statutum est. In this Writ, fower things are to be observed.

Mirror. cap. 5. §. 2. Regist fol. 133. Glanv. lib. 14. c. 3 Bract. l. 3. f. 121. Fleta. lib. 1. c 23. 25. W. 1. ca. 11. Glos. c. 9. W. 2. cap. 29. Hill. 2. E. 1. coram Rege Rott. 71. & 79. 5. H. 7. 5.

Glanv. lib. 14. c. 1.

First, though the offence, whereof he was accused, were such, as he was not bayleable by Law, yet the Law did so highly hate the long imprisonment of any man, though accused of an odious, and heynous crime, that it gave him this Writ for his relefe.

Secondly, If he were indited, or appealed thereof, before the Justices in Eyre, he could not have this Writ, because this Writ was grounded upon a surmise, which could not be received against a matter of record.

Thirdly, Upon this Writ, though it were found, that he was accused de odio & atia, and that he was not guilty, or that he did this Act se defendendo, vel per infortunium, yet the Sheriffe by this Writ had no authority to bayle him, but then the party was to sue a Writ de ponendo in ballium, directed to the Sheriffe, whereby he was commanded, quod si prædictus A. invenerit tibi 12. probos, & legales homines de comitatu tuo &c. qui eum manucapiant habere coram Iusticiariis nostris ad primam assisam, &c. Standum, &c. tunc ipsum A. &c. prædictis duodecim tradas in ballium.

Hill. 32. E. 1. ubi sup.

Lastly, that there was a meane by the Common Law, before indictement, or appeale, to protect the innocent against false accusation, and to deliver him out of prison.

Odium, signifieth hatred, and atia or acia in this Writ signifieth malice, because that malice is acida, that is, eager, sharpe and cruell.

Regist f. 133. 134. Mirror c. 5. § 2.

And this branch, for further benefit, and in favour of the prisoner, doth enact, that he shall have it gratis, without fee, and without delay, or deniall, of which the Mirror saith thus, Le defence que se fait del breife de odio, & atia, que le Roy ne son Chancelor ne preignont pur le breife granter se doit extend a touts breifs remedials. & le dit breife ne doit solement extender a selonies de homicide, mes a touts selonies, & ne solemt in Appeles, mes en inditement.

But

But this Writ was taken away by a later Statute, viz. in 28. E.3. because as some pretended, it became unnecessary, for that Justices of Assise, Justices of Oyer & Terminer, & Justices of Gaole delivery came at the least into every County twice every yeare; but within 12. years after this Statute, it was it enacted, as often hath bẽn said, that all Statutes made against Magna Charta (as the said act of 28. E.3. was) should be voyd, whereby the Writs of Odio & atia, & Deponendo in balium are revived, and so in like cases upon all the branches of Magna Charta. And therefore the Justices of Assise, Justices of Oyer & Terminer, and of Gaole delivery have not suffered the Prisoner to be long detained, but at their next comming have given the Prisoner full and spedy Justice, by due triall, without detaining him long in Prison: Nay, they have bẽn so farre from allowance of his detaining in Prison without due triall, that it was resolved in the case of the Abbot of S. Albon by the whole Court, that where the King had graunted to the Abbot of S. Albon, to have a Gaole, and to have a Gaole delivery, and divers persons were committed to that Gaole for felony, and because the Abbot would not be at cost to make deliverance, he detained them in prison long time without making lawfull deliverance, that the Abbot had for that cause forfeited his franchise, and that the same might bee seised into the Kings hand.

28.E.3.ca.9. Stamf.Pl.Cor.77. F.N.B.92. 42.E.3.ca.1.

See the Statute of Gloc.ca 9.

8.H.4.18. 20.E.4.6. Bro.tit,forfeiture.

For his committing to prison is onely to this end, that he may be forth coming, to be duly tried, according to the Law and custome of the Realme. The Abbot of Crowland had a gaole, wherein divers men were imprisoned, and because he detained some that were acquited of felony after their fees paid, the King seised the gaole for ever.

20.E.4.6.

And it is provided by the Statute of 5. H.4. that none be imprisoned by any Justice of Peace, but in the Common gaole, to the end they might have their triall at the next Gaole delivery, or Sessions of the peace. Vide cap.29.

5.H.4.cap.10. Lib.9.fol.119. Seigniór Zanchars Case.

And some say, that this Statute extendeth to all other Judges, and Justices for two reasons. 1. They say, that this Act is but declaratory of the Common Law. 2. Ubi lex est specialis, & ratio ejus generalis, generaliter accipienda est.

See the Statute of Gloc. cap.9.

Breve Regis De bono & malo is so called of the words, De bono & malo, contained in the Writ. This Writ lay when A.B. was committed to prison for the death of a man, the King did write to the Justices of Gaole delivery; Quod si A.B. captus, & detentus in gaola prædicta pro morte C.D. de bono & malo super patriam inde ponere voluerit, & ea occasione (& non per aliquod speciale mandatum nostrum) detentus sit in eadem, tunc eandem gaolam de prædicto A.B. secundum legem, & consuetudinem Angliæ, deliberetis. So as without question the Writ De bono & malo, is not the Writ De odio & atia, as some have imagined.

Hil.31.E.1. Coram Rege Eborũ. Roger le Wildes Case. See the forme of this Writ at large in this Record.

Note, in those dayes the Justices of Gaole delivery would not proceed in case of the death of a man, without the Kings Writ: For in the same Record it appeareth, that R. W. Indictatus de morte W.E. non tulit breve Regis de bono, & malo, ideo retornatur gaolæ, & sic de aliis.

CAP. XXVII.

SI aliqui teneant de nobis per feodi firmam, vel per Socagium, vel Burgagium, & de alio teneant terram per servitium militare, nos non habebimus custodiam hæredis, nec terræ suæ, quæ est de feodo alterius, occasione illius feodi firmæ, vel Socagii, vel Burgagii. Nec habebimus

cuſtodiam illius feodi firmæ, vel ſocagii, vel burgagii, niſi ipſa feodi firma nobis debeat ſervitium Militare. Nos non habebimus cuſtodiam hæred', vel alicujus terræ, quam tenet de aliquo alio per ſervitium militare, occaſione alicujus parvæ Serjantiæ, quam tenet de nobis per ſervitium, reddend' nobis cultellos, ſagittas, vel hujuſmodi.

See the Statute of Gloc. cap. 4. F.N.B. 210. 45.E.3.15.

℄ Per feodi firmam.] **Fée farme properly taken is, when the Lord upon the creation of the Tenancy reſerve to himſelfe, and his heires, either the rent, for the which it was before letten to farme, or at leaſt a fourth part of that farme rent.**

Brit. fol. 164. b. Bract. li. 2. fo. 35. Fleta lib. 1. ca. 10. Mirror ca. 2 § 17.

But Britton **ſaith,** Fee farmes ſont terres tenus in fee, a rendre pur eux per anũ le veray value, ou plus, ou meins, **and is called a fée farme, becauſe a farme rent is reſerved upon a graunt in fée. And regularly, as it appeareth by this act, lands graunted in fée farme are holden in ſocage, unleſſe an expreſſe tenure by knights ſervice be reſerved, as it appeareth hereafter in this Chapter.**

See the firſt part of the Inſtitutes. ſect. 117. * Rot. clauſ. 12. H. 3. m. 12.

℄ Vel per ſocagium.] * Tenere per firmam Albam eſt tenere libere in ſocagio. Vide in libro nigro Scaccarii, capite De officio clericorum de firma blanca. **It is commonly called blanch Farme.** Lucubrat Ockham, firma blanca, & vide ibi antiquum verbum [dealbari.]

Litt. ſect. 162.

℄ Burgagium.] **See the** Cuſtumier de Normandie cap. 32. **and the Commentaries upon the ſame.**

Ibid. ſect. 103.

℄ Per ſervitium militare.] **See** le Cuſtumier de Norman. cap. 33. De gard de Orphelines, fol. 49. **and the Comment upon the ſame.**

Glanv. li. 7. ca. 9.

This Act, as well concerning tenures in fee farme, ſocage, and burgage, as by little ſerjanty, is declaratory of the Common Law, and conſtantly in uſe to this day, and needeth no further explanation.

CAP. XXVIII.

NUllus balivus de cætero ponat aliquem ad legem manifeſtam, nec ad juramentum ſimplici loquela ſua, ſine teſtibus fidelibus ad hoc inductis.

Mirror cap. 5. § 2. Fleta li. 2. cap. 56. W. 2. ca. 35. des hauts homes.

The Mirror **treating of this Chapter ſaith,** Le point que defend, que nul Bayliffe met frank home a ſerement ſans ſute preſent, eſt interpretable en ceſt manner, Que nul Juſtice, nul Miniſter le Roy, né auter ſeneſchall, ne bailif ne eit power a mitter frank home a ſerement faire, ſans le Commaundement le Roy, ne puit reſceive a ſcuns teſtmoignes, que teſtmoignent le monſtrance eſtre veray.

Fleta ubi ſupra. Vide Vet Magna Charta. pt 2. in ſtat. Hibern. 68. b. See the firſt part of the Inſtitutes. ſect. 248.

By this it appeareth, that under this word balivus, in this Act is comprehended every Juſtice, Miniſter of the King, Steward and Bayliffe.

℄ Simplici loquela ſua.] **For as** Bracton **ſaith,** Vox ſimplex nec probationem facit, nec præſumptionem inducit; Item non per ſectam, quæ fieri poteſt

Brac. l. 5. fo. 400. b

poteſt per domeſticos, & familiares, ſecta enim probationem non facit, ſed levem inducit præſumptionem, & vincitur per probationem in contrarium, & per defenſionem per legem.

It appeareth by Glanvill, that the defendant ought to make his Law, 12. manu. And ſo it appeareth by a judgement in the ſame yeare, and term, that this great Charter was made, for there, in debt the defendant waged his Law, Ideo conſideratum eſt per Curiam, quod defendens ſe duodecima manu venit cum lege. Glanv.li.1.ca.9. Mich.9.H.3.tit. Ley 78.

Every wager of Law doth counterbaile a Jury, for the defendant ſhall make his Law, de duodecima manu. viz. an eleven, and himſelf. And it ſhould ſeeme, that this making of Law was very auncient, for one writing of the auncient Law of England ſaith, Hujus purgationis non omnis evanuit vetuſtate memoria, nam per hæc tempora de pecunia poſtulatus, debitum nonnunquam duodecima, quod aiunt, manu diſſolvit. 33.H.6.8.

How much, and for what cauſe the Law reſpecteth the number of 12. ſée the firſt part of the Inſtitutes. See the firſt part of the Inſtitutes, ſect.234.

The party himſelfe, when he maketh his Law, ſhall be ſworne de fidelitate, that is, directly or abſolutely, and the others de credulitate, that is, that they beléeve, that he ſaith true.

To make his Law, is as much as to ſay, as to take his oath, &c. and it is ſo called, becauſe the Law giveth him that meane by his owne oath, to free himſelfe.

And the reaſon, wherefore in an action of Debt upon a ſimple contract, the Defendant may wage his Law, is, for that the Defendant may ſatisfie the party in ſecret, or before witneſſe, and all the witneſſes may die, ſo the Law doth allow him to wage his Law for his diſcharge: and this, for ought I could ever reade, is peculiar to the Law of England, and no miſchiefe inſueth hereupon, for the Plaintiffe may take a Bill or Bond for his money, or if it be a ſimple contract, he may bring his action upon his caſe upon his agréement or promiſe, which every contract executory implieth, and then the Defendant cannot wage his Law.

CAP. XXIX.

NUllus liber homo capiatur, vel impriſonetur, aut diſſeiſietur de libero tenemento ſuo, vel libertatibus, vel liberis conſuetudinibus ſuis, aut utlagetur, aut exuletur, aut aliquo modo deſtruatur, nec ſuper eum ibimus, nec ſuper eum mittemus, niſi per legale judicium parium ſuorum, vel per legem terræ. Nulli vendemus, nulli negabimus, aut differemus juſtitiam, vel rectum. See the Statute anno 34.E.1. de tallagio, &c. an excellent Law.

¶ Nullus liber, &c.] This extends to Villeins, ſaving againſt their Lord, for they are free againſt all men, ſaving againſt their Lord. See the firſt part of the Inſtitutes, ſect. 189. 20.H.6. cap.9. Stamf.Pl. Cor. 152.b. 25.E.3. 43.b. li.6.fol.52. The Counteſſe of Rutlands caſe. 11.H.4.15. 3.H.6.58. 48.E.3.30. 35.H.6.46.

¶ Nullus liber homo.] Albeit homo doth extend to both ſexes, men and women, yet by Act of Parliament it is enacted, and declared, that this Chapter ſhould extend to Ducheſſes, Counteſſes, and Baroneſſes, but Marchioneſſes, and Viſcounteſſes are omitted, but notwithſtanding they are alſo comprehended within this Chapter.

Upon

Upon this Chapter, as out of a roote, many fruitfull branches of the Law of England have ſpꝛung.

And therefoꝛe firſt the genuine ſenſe hereof is to be ſéne, and after how the ſame hath bén declared, and interpꝛeted. Foꝛ the firſt, foꝛ meꝛe perſpicuity, it is neceſſary to divide this Chapter into ſeverall branches, accoꝛding to the true conſtruction and reference of the woꝛds.

This Chapter containeth nine ſeverall branches.

See W. 1. ca. 15. 1. That no man be taken oꝛ impꝛiſoned, but per legem terræ, that is, by the Common Law, Statute Law, oꝛ Cuſtome of England; foꝛ theſe woꝛds, Per legem terræ, being towards the end of this Chapter, doe referre to all the pꝛecedent matters in this Chapter, and this hath the firſt place, becauſe the liberty of a mans perſon is moꝛe pꝛecious to him, then all the reſt that follow, and theꝛefoꝛe it is great reaſon, that he ſhould by Law be relieved therein, if he be wꝛonged, as hereafter ſhall be ſhewed.

2. No man ſhall be diſſeiſed, that is, put out of ſeiſon, oꝛ diſpoſſeſſed of his frée-hold (that is) lands, oꝛ livelihood, oꝛ of his liberties, oꝛ frée-cuſtomes, that is, of ſuch franchiſes, and frédomes, and frée-cuſtomes, as belong to him by his frée birth-right, unleſſe it be by the lawfull judgement, that is, verdict of his equals (that is, of men of his own condition) oꝛ by the Law of the Land (that is, to ſpeak it once foꝛ all) by the due courſe, and pꝛoceſſe of Law.

3. No man ſhall be out-lawed, made an exlex, put out of the Law, that is, depꝛived of the benefit of the Law, unleſſe he be out-lawed accoꝛding to the Law of the Land.

4. No man ſhall be exiled, oꝛ baniſhed out of his Country, that is, Nemo perdet patriam, no man ſhall loſe his Country, unleſſe he be exiled accoꝛding to the Law of the Land.

5. No man ſhall be in any ſoꝛt deſtroyed (Deſtruere. i. quod prius ſtructum, & factum fuit, penitus evertere & diruere) unleſſe it be by the verdict of his equals, oꝛ accoꝛding to the Law of the Land.

6. No man ſhall be condemned at the Kings ſuite, either beꝛoꝛe the King in his Bench, where the Pleas are Coram Rege, (and ſo are the woꝛds, Nec ſuper eum ibimus, to be underſtood) noꝛ beꝛoꝛe any other Commiſſioner, oꝛ Judge whatſoever, and ſo are the woꝛds, Nec ſuper eum mittemus, to be underſtood, but by the judgement of his Péers, that is, equalls, oꝛ accoꝛding to the Law of the Land.

7. We ſhall ſell to no man Juſtice oꝛ Right.

8. We ſhall deny to no man Juſtice oꝛ Right.

9. We ſhall defer to no man Juſtice oꝛ Right.

[a] 5. E. 3. cap. 9.
[a] 5. E. 3. ca. 4.
37. E. 3. ca. 8.
38. E. 3. ca. 9.
42. E. 3. ca. 3.
17. R. 2. cap. 6.
Rot. Parl. 43. E. 3.
Sir Jo. a Lees caſe.
nu. 21, 22, 23. &c.
lib. 10. fol. 74.
in caſe del Marſhalſea.
*See W. 1. ca. 15.
[b] Sec 43. Aſſ. p. 21 where this branch of Magna Charta, and other Statutes are cited, *nota bene*, the uſurpation to an advowſon is within this Act. 5. E. 3. cap. 9.
25 E. 3. cap. 4.
[c] 43. E. 3. 32.

The genuine ſenſe being diſtinctly underſtood, we ſhall pꝛoceed in oꝛder to unfold how the ſame have bén declared, and interpꝛeted. 1. By authoꝛity of Parliament. 2. By our books. 3. By pꝛecedent.

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

1. No man ſhall be taken, (that is) reſtrained of liberty, by petition, oꝛ ſuggeſtion to the King, oꝛ to his Councell,* unleſſe it be by indictment, oꝛ pꝛeſentment of good, and lawfull men, where ſuch dœds be done. This branch, and divers other parts of this Act have bén notably explained by divers [a] Acts of Parliament, &c. quoted in the margent.

2. No man ſhall be diſſeiſed, &c.

[b] Hereby is intended, that lands, tenements, goods, and chattells ſhall not be ſeiſed into the Kings hands, contrary to this great Charter, and the Law of the Land; Noꝛ any man ſhall be diſſeiſed of his lands, oꝛ tenements, oꝛ diſpoſſeſſed of his goods, oꝛ chattels, contrary to the Law of the Land.

[c] A cuſtome was alledged in the town of C. that if the Tenant ceaſe by two yeares, that the Loꝛd ſhould enter into the fœhold of the Tenant, and hold the ſame untill he were ſatisfied of the arrerages, and it was adjudged a cuſtome againſt

againſt the Law of the Land, to enter into a mans freehold in that caſe without action or anſwer.

King H.6. graunted to the Corporation of Diers within London, power to ſearch, &c. and if they found any cloth died with Logwood, that the cloth ſhould be forfeit: and it was adiudged, that this Charter concerning the forfeiture, was againſt the Law of the Land, and this Statute: For no forfeiture can grow by Letters Patents. Lib.8. Tr.41.El. fol.125 Caſe de Londres.

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

3. No man outlawed, that is, barred to have the benefit of the Law. Vide for the word, the firſt part of the Inſtitutes. 2. & 3.Ph.et Mar. Dier.114,115.

Note to this word utlageur, theſe words, Niſi per legem terræ, do reſer.

¶ De libertatibus.] This word, libertates, liberties, hath three ſignifications:

1. Firſt, as it hath been ſaid, it ſignifieth the Laws of the Realme, in which reſpect this Charter is called, Charta libertatum.

2. It ſignifieth the freedomes, that the Subjects of England have; For example, the Company of the Merchant Tailors of England, having power by their Charter to make Ordinances, made an Ordinance, that every brother of the ſame Society ſhould put the one half of his clothes to be dreſſed by ſome Clothworker free of the ſame Company, upon pain to forfeit x. s. &c. and it was adiudged that this Ordinance was againſt Law, becauſe it was againſt the Liberty of the Subject, for every Subject hath freedome to put his clothes to be dreſſed by whom he will, & ſic de ſimilibus: And ſo it is, if ſuch or the like graunt had been made by his Letters Patents. Tr.41.Eliz. Coram Rege.Rot 92 in tris int. Davenant & Hurdes.

3. Liberties ſignifieth the franchiſes, and priviledges, which the Subjects have of the gift of the King, as the goods, and Chattels of felons, outlawes, and the like, or which the Subject claim by preſcription, as wreck, waife, ſtraie, and the like.

So likewiſe, and for the ſame reaſon, if a graunt be made to any man, to have the ſole making of Cards, or the ſole dealing with any other trade, that graunt is againſt the liberty, and freedome of the Subject, that before did, or lawfully might have uſed that trade, and conſequently againſt this great Charter. Tr.44.Eliz. Coram Rege.lib.11. fol 84,85.&c. Edw.Darcies caſe

Generally all monopolies are againſt this great Charter, becauſe they are againſt the liberty and freedome of the Subject, and againſt the Law of the Land.

¶ Liberis conſuetudinibus.] Of Cuſtomes of the Realme, ſome be generall, and ſome particular. Of theſe reade in the firſt part of the Inſtitutes. And liberis is added, for that the Cuſtomes of England bring a freedome with them.

4. No man exiled.

By the Law of the Land no man can be exiled, or baniſhed out of his native Countrey, but either by authority of Parliament, or in caſe of abjuration for felony by the Common Law: and ſo when our books, or any Record ſpeak of exile, or baniſhment, other then in caſe of abjuration, it is to be intended to be done by authority of Parliament:* as Belknap and other Judges, &c. baniſhed into Ireland. Rot.Parliam. 19.E.1.Rot.12. Boilands caſe. 31.E1. Cui in vita 31. 18.E.3.54. Matravers caſe. Parliam.15.E 2. Exilium Hugonis

This is a beneficially Law, and is conſtrued benignly, and therefore the King cannot ſend any Subject of England againſt his will to ſerve him out of this Realme, for that ſhould be an exile, and he ſhould perdere patriam: no, he cannot be ſent againſt his will into Ireland, to ſerve the King as his Deputy there, becauſe it is out of the Realme of England: for if the King might ſend him out of this Realme to any place, then under pretence of ſervice, as Ambaſſadour, or the like, he might ſend him into the furtheſt part of the world, which being an exile, is prohibited by this Act. And albeit it was accorded in the Upper-houſe of Parliament, Anno 6.E.3. nu.6. that ſuch learned men in the Law, as ſhould be * Rot. Parliam. 13.R.2. nu 28. Stam.Pl.Cor.116 117. 35.E.1. cap. 1

bee ſent, as Juſtices, or otherwiſe, to ſerve in Ireland, ſhould have no excuſe, yet that being no Act of Parliament, it did not binde the Subject. And this notably appeareth by a Record, in 44. E. 3. Sir Richard Pembrughs Caſe, who was Warden of the Cinque Ports, and had divers offices, annuities, and lands graunted to him for life, or in fee by the King under the great Seale, Pro ſervitio impenſo, & impendendo, The King commanded Sir Richard to ſerve him in Ireland, as his Deputy there, which he abſolutely refuſed, whereupon the King by advice of his Councell, ſeiſed all things graunted to him, pro ſervitio impendendo, (in reſpect of that clauſe) but he was not upon that reſolution committed to priſon, as by that Record it appeareth: And the reaſon was becauſe his refuſall was lawfull, and if the refuſall was lawfull to ſerve in Ireland parcell of the Kings Dominions, à fortiori, a refuſall is lawfull to ſerve in any forein Country. And it ſeemeth to me, that the ſaid ſeiſure was unlawfull, for pro ſervitio impenſo & impendendo, muſt be intended lawfull ſervice within the Realme.

Rot. clauſ. Anno 44 E. 3. Sir Richard Pembrughs Caſe.

5. No man deſtroyed, &c.

That is, for-judged of life, or limbe, diſherited, or put to forfeture, or death.

5. E. 3. cap. 9. 28. E. 3 cap. 3. Fortеſcue cap. 22.

The Mirror writing of the auncient Laws of England, ſaith, Soloient les Roys faire droit a touts, per eux, ou per lour Chiefe Juſtices, et ore les faits les Royes per lour Juſtices Comiſſaries errants aſſignes a touts pleas: En aid de tiels eires ſont Tornes de Viſcounts neceſſaries, & views de frankpl. & quant que bones gents a tiels inqueſts inderent de peche mortel, ſoloient les Royes deſtruere ſans reſpons, &c. Accord eſt, que nul appelee, ne enditee ſoit deſtroy ſans reſpons.

Mirror cap. 2. § 3.

Paſc. 39. E. 3 Coram Rege, John of Gaunts caſe. Rot. Parl. 4. E. 3. nu. 13. Countee de Arund. caſe. Rot. Parl. 42. E. 3. nu. 23. Sir Jo. of Lees caſe.

Thomas Earle of Lancaſter was deſtroyed, that is, adjudged to die, as a Traitor, and put to death in 14. E. 2. and a Record thereof made: And Henry Earle of Lancaſter his brother, and heire was reſtored for two principall errors in the proceeding againſt the ſaid Thomas Earle, 1. Quod non fuit arraniatus, & ad reſponſionem poſitus tempore pacis, eo quod cancellaria, & aliæ curiæ Regis fuer' apertæ, in quibus lex fiebat unicuique, prout fieri conſuevit. 2. Quod contra cartam de libertatibus, cum dictus Thomas fuit unus parium, & magnatum Regni, in qua continetur. (and reciteth this Chapter of Magna Charta, and ſpecially, quod Dominus Rex non ſuper eum ibit, nec mittet, niſi per legale judicium parium ſuorum, tamen per recordum prædictum, tempore pacis abſq; arainamento, ſeu reſponſione, ſeu legali judicio parium ſuorum, contra legem, & contra tenorem Magnæ Chartæ.) he was put to death: More examples of this kinde might be ſhewed.

Lib. 10. fol 74. In the caſe of the Marſhalſea.

Every oppreſſion againſt Law, by colour of any uſurped authority, is a kinde of deſtruction, for, Quando aliquid prohibetur, prohibetur & omne, per quod devenitur ad illud: And it is the worſt oppreſſion, that is done by colour of Juſtice.

Regula.

It is to be noted, that to this Verb deſtruatur, are added aliquo modo, and to no other Verb in this Chapter, and therefore all things, by any manner of meanes tending to deſtruction, are prohibited: As if a man be accuſed, or indicted of treaſon, or felony, his lands, or goods cannot be graunted to any, no not ſo much as by promiſe, nor any of his lands, or goods ſeiſed into the Kings hands, before attainder: For when a Subject obtaineth a promiſe of the forfeiture, many times undue meanes and more violent proſecution is uſed for private lucre, tending to deſtruction, then the quiet and juſt proceeding of Law would permit, and the party ought to live of his own untill attainder.

Rot. Parl. 15. E. 3. nu. 6. &c.

¶ Per judicium parium ſuorum.] By judgement of his Peers. Onely a Lord of Parliament of England ſhall be tried by his Peers being Lords of Parliament: and neither Noblemen of any other Country, nor others that are called Lords, and are no Lords of Parliament, are accounted Pares, Peers within this Statute. Who ſhall be ſaid Pares, Peeres, or Equalls, ſee before Cap. 14. § per Pares.

11. E. 3. breve. 173. 6. R. 2. proces. Pl. ultimo. 20. E. 4. 6. 20. Eliz. Dier 360. Lib. 9 fol. 17. Seignior Zanchars caſe.

Here note, as is before ſaid, that this is to be underſtood of the Kings ſute for

for the words be, nec super eum ibimus, nec super eum mittemus, nisi per legale judicium parium suorum. Therefore, for example, if a Noble man be indicted for murder, he shall be tried by his Peeres, but if an appeale be brought against him, which is the suite of the party, there he shall not be tried by his Peeres, but by an ordinary jury of twelve men: and that for two reasons. First, for that the appeale cannot be brought before the Lord high Steward of England, who is the only Judge of Noble men, in case of Treason, or Felony. Secondly, this Statute extendeth only to the Kings suite. 1.H.4.1. 13.H.8.1. 10.E.4.6.

And it extendeth to the Kings suite in case of treason, or felony, or of misprision of treason, or felony, or being accessary to felony before, or after, and not to any other inferior offence. Also it extendeth to the triall it selfe, whereby he is to be convicted: but a Nobleman is to be indicted of treason, or felony, or of misprision, or being accessary to, in case of felony, by an inquest under the degree of Nobility: the number of the Noble men that are to be triers are, 12. or more.

And a Peer of the Realme may be indicted of treason, or felony, before commissioners of Oier & Terminer, or in the Kings bench, if the treason or felony be committed in the county where the Kings bench sit: he also may be indicted of murder, or manslaughter, before the Coroner, &c. But if he be indicted in the Kings bench, or the indictment removed thither, the Noble man may plead his pardon there before the Judges of the Kings bench, and they have power to allow it, but he cannot confesse the indictment, or plead not guilty before the Judges of the Kings bench, but before the Lord Steward; and the reason of this diversity, that the triall or judgement must be before or by the Lord Steward, but the allowance of the pardon may be by the Kings bench, is because that is not within this Statute. 19.H.7. Edm. de la Pole Earle of Suff. case. Hil. 13. Iacob. the Lord Norrice case coram Rege.

If a Noble man be indicted, and cannot be found, prices of Outlawrie shall be awarded against him per legem terræ, and he shall be Outlawed per judicium Coronatorum, but he shall be tried per judicium parium suorum, when he appeares and pleads to issue. Stamf. pl. cor. 130.

¶ Per legale judicium.] By this word legale, amongst others, three things are implied. 1. That this manner of triall was by Law, before this Statute. 2. That their verdict must be legally given, wherein principally it is to be observed. 1. That the Lords ought to heare no evidence, but in the presence, and hearing of the prisoner. 2. After the Lords be gone together to consider of the evidence, they cannot send to the high Steward to aske the Judges any question of Law, but in the hearing of the prisoner, that he may heare, whether the case be rightly put, for de facto jus oritur; neither can the Lords, when they are gone together, send for the Judges to know any opinion in Law, but the high Steward ought to demand it in Court in the hearing of the prisoner. 3. When all the evidence is given by the Kings learned Councell, the high Steward cannot collect the evidence against the prisoner, or in any sort conferre with the Lords touching their evidence, in the absence of the prisoner, but he ought to be called to it; and all this is implied in this word, legale. And therefore it shall be necessary for all such prisoners, after evidence given against him, and before he depart from the Barre, to require Justice of the Lord Steward, and of the other Lords, that no question be demanded by the Lords, or speech or conference had by any with the Lords, but in open Court in his presence, and hearing, or else he shall not take any advantage thereof after verdict, and judgement given: but the handling thereof at large and of other things concerning this matter, belongs to another treatise, as before I have shewed, only this may suffice for the exposition of this Statute. See the 3. part of the Institutes, cap. Treason. Pasch. 26.H.8. in the case of the L. Dacres of the north, resolved by all the Iudges of England as Iustice Spelman report. See the 3. part of the Institutes cap. treason

And it is here called Judicium parium, and not veredictum, because the Noble men returned, and charged, are not sworne, but give their judgement upon their Honour, and ligeance to the King, for so are all the entries of record, separately beginning at the puisne Lord, and so ascending upward.

Rot. Parliam. 4.E.3.nu.6.

And though of ancient time the Lords, and Peeres of the Realme used in Parliament to give judgement, in case of treason and felony, against those, that were no Lords of Parliament, yet at the suite of the Lords it was enacted, that albeit the Lords and Peeres of the Realme, as judges of the Parliament, in the presence of the King, had taken upon them to give judgement, in case of treason and felony, of such as were no Peeres of the Realme, that hereafter no Peeres shall be driven to give judgement on any others, then on their Peeres according to the law.

Nota

Anno 8. Will. conq.

Trial by Peers

This triall by Peeres was very auncient, for I reade, that William the Conqueror, in the beginning of his raigne, created William Fitzosberne (who was Earle of Bretevil in Normandy) Earle of Hereford in England, his sonne Roger succeeded him, and was Earle of Hereford, who under colour of his sisters marriage at Ermnige, neare Newmarket in Cambridge shire, whereat many of the Nobility, and others were assembled, conspired with them to receive the Danes into England, and to depose William the Conqueror, (who then was in Normandy) from his Kingdome of England: and to bring the same to effect, he with others rose. This treason was revealed by one of the conspirators, viz. Walter Earle of Huntingdon an English man, sonne of that great Syward Earle of Northumberland: for which treason this Roger Earle of Hereford was apprehended, by Urse Tiptoft then Sheriffe of Worcester shire, and after was tried by his Peeres, and found guilty of the treason per judicium Parium suorum, but he lived in prison all the daies of his life. You have heard in the exposition of the 14. Chapter, who are to be said Pèers, somewhat is necessary to be added thereunto. It is provided by the Statute of 20.H.6. That Dutchesses, Countesses, and Baronesses, shall be tried by such Peeres as a Noble man, being a Pèere of the Realme ought to be; which Act was made in declaration, and affirmance of the Common law: for Marquesses, and Vicecountesses not named in the Act shall be also tried by their Peeres, and the Queene being the Kings consort, or dowager, shall also be tried, in case of treason, per Pares, as Queene Anne, the Wife of King Henry the eight was Termino Pasch. anno 28. H.8. in the Tower of London before the Duke of Norff. then high Steward.

Anno 8.W.1.

20.H.6.cap.9.

Pasch. 28.H.8. Spelmans report.

If a Woman that is Noble by birth, doth marry under the degree of Nobility, yet shee shall be tried by her Peeres, but if shee be noble by marriage, and marry under the degree of Nobility shee loseth her Dignity, for as by marriage it was gained, so by marriage it is lost, and shee shall not be tried by her Pèers. If a Dutchesse by marriage doe marry a Baron, shee loseth not her dignity, for all degrees of Nobility, as hath been said, are Pares. If a Queene Dowager marry any of the Nobility, or under that degree, yet loseth shee not her Dignity, as Katherine Queene Dowager of England, married Owen ap Meredith ap Theodore Esquire, and yet shee by the name of Katherine Queene of England, maintained an Action of Dettinew, against the Bishop of Carlile.

22.H.6.47. 11.H.6.54.

Rot. Parliam. 26.E.1. Rot.1.

And the Queene of Navarra marrying with Edmund the brother of E. 1. sued for her Dower by the name of Queene of Navarra and recovered.

¶ Nisi per Legem terræ.] But by the Law of the Land. For the true sense and exposition of these words, see the Statute of 37.E.3.cap.8. where the words, by the law of the Land, are rendred, without due proces of Law, for there it is said, though it be contained in the great Charter, that no man be taken, imprisoned, or put out of his free-hold without proces of the Law; that is, by indictment or presentment of good and lawfull men, where such deeds be done in due manner, or by writ originall of the Common law.

25.E.3.cap.4.

28.E.3.cap.3. 37.E.3.cap.8. 42.E.3.cap.3.

Without being brought in to answere but by due Proces of the Common law. No man be put to answer without presentment before Justices, or thing of record, or by due proces, or by writ originall, according to the old law of the land.

Wherein it is to be observed, that this Chapter is but declaratory of the old law of England. Rot. Parliament 42. E. 3. nu. 22.23. the case of Sir Iohn a Lee, the Steward of the Kings house.

Per

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

And aptly it is said in this Act, per legem terræ, that is, by the Law of England: For into those places, where the law of England runneth not, other lawes are allowed in many cases, and not prohibited by this Act. For example: If any injury, robbery, felony, or other offence be done upon the high sea, Lex terræ extendeth not to it, therefore the Admirall hath conusance thereof, and may proceed, according to the marine law, by imprisonment of the body, and other proceedings, as have been allowed by the lawes of the Realme. 19.H.6.7.

And so if two English men doe goe into a forreine Kingdome, and fight there, and the one murder the other, lex terræ extendeth not hereunto, but this offence shall be heard, and determined before the Constable, and Marshall, and such proceedings shall be there, by attaching of the body, and otherwise, as the Law, and custome of that court have beene allowed by the lawes of the Realme. 13.H.4.5.

Against this ancient, and fundamentall Law, and in the face thereof, I finde an Act of Parliament made, that as well Justices of Assise, as Justices of peace (without any finding or presentment by the verdict of twelve men) upon a bare information for the King tofore them made, should have full power, and authority by their discretions to heare, and determine all offences, and contempts committed, or done by any person, or persons against the forme, ordinance, and effect of any Statute made, and not repealed &c. By colour of which Act, shaking this fundamentall Law, it is not credible what horrible oppressions, and exactions, to the undoing of infinite numbers of people, were committed by Sir Richard Empson knight, and Edm. Dudley being Justices of peace, throughout England; and upon this unjust and injurious Act (as commonly in like cases it falleth out) a new office was erected, and they made Packers of the Kings forfeitures. 11.H.7.cap.3.

But at the Parliament, holden in the first yeare of H.8. this Act of 11. H. 7. is recited, and made voide, and repealed, and the reason thereof is yeelded, for that by force of the said Act, it was manifestly known, that many sinister, and crafty, feigned, and forged informations, had been pursued against divers of the Kings subjects, to their great dammage, and wrongfull vexation: And the ill successe hereof, and the fearefull ends of these two oppressors, should deterre others from committing the like, and should admonish Parliaments, that in stead of this ordinary, and pretious triall Per legem terræ, they bring not in absolute, and partiall trialls by discretion. 1.H.8.cap.6.

If one be suspected for any crime, be it treason, felony &c. And the party is to be examined upon certaine interrogatories, he may heare the interrogatories, and take a reasonable time to answer the same with deliberation (as there the time of deliberation was tenne houres) and the examinate, if he will, may put his answere in writing, and keepe a Copie thereof: and so it was resolved in Parliament by the Lords Spirituall, and Temporall in the case of Justice Richill. See the Record at large. Rot.pl.1.H.4. memb.2.nu.1.

And the Lord Carew being examined, for being privy to the plot, for the escape of Sir Walter Rawleigh attainted of treason, desired to have a copy of his examination, and had it, as Per legem terræ he ought. Anno 16.Iacobi Regis.

Now here it is to be knowne, in what cases a man by the Law of the land, may be taken, arrested, attached, or imprisoned in case of treason or felony, before presentment, indictment, &c. Wherein it is to be understood, that Proces of law is two fold, viz. By the Kings Writ, or by due proceeding, and warrant, either in deed, or in law without Writ.

As first, where there is any witnesse against the offendor, he may be taken and arrested by lawfull warrant, and committed to prison.

7.E.4.20. 8.E.4.3 9.E.4.27. 11.E.4.2. 2.H.7.15.b. 4. 4.H.7.18. 5.H.7.5.2. 26.H.8.9. 27.H.8.23.

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

[a] This fame Bracton describeth well, Fama quæ suspicionem inducit, oriri debet apud bonos, & graves, non quidem malevolos, & maledicos, sed providas & fide dignas personas, non semel, sed sæpius, quia clamor minuit, & defamatio manifestat.

[a] Bracton.fo.143.

[b] 29.E.3.9. 39.E.3.39. 26.E.3.71. W.1.cap.9.

[b] So it is of Hue and Cry, and that is by the Statute of Winchester, which is but an affirmance of the Common Law: Likewise if A. be suspected, and he fleeth, or hideth himselfe, it is a good cause to arrest him.

[c] 11.H.4.4.b. 20.E.4.6.b. 14.H.8.16. 27.H.8.23.

[c] If treason or felony be done, and one hath just cause of suspition, this is a good cause, and warrant in Law, for him to arrest any man, but he must shew in certainty the cause of his suspition: and whether the suspition be just, or lawfull, shall be determined by the Justices in an action of false imprisonment brought by the party grieved, or upon a Habeas corpus, &c.

29.E.3.39.

A felony is done, and one is pursued upon Hue and Cry, that is not of ill fame, suspicious, unknown, nor indicted; he may be by a warrant in Law, attached and imprisoned by the Law of the Land.

4.H.7.2. 5.H.7.5

A Watchman may arrest a night-walker by a warrant in Law.

10.H.7.20.

If a man woundeth another dangerously, any man may arrest him by a warrant in Law, untill it may be known, whether the party wounded shall die thereof, or no.

Vide 26.E.3.71.a.

If a man kéep the company of a notorious theefe, whereby he is suspected, &c. it is a good cause, and a warrant in Law to arrest him.

38.H.8. faux imprisonment. Br.6.

If an affray be made to the breach of the Kings peace, any man may by a warrant in Law restrain any of the offenders, to the end the Kings peace may be kept, but after the affray ended, they cannot be arrested without an expresse warrant.

Sée now the Statutes of 1. & 2. Phil. & Mar. cap. 13. & 2. & 3. Phil. & Mar. cap. 10.

Now séeing that no man can be taken, arrested, attached, or imprisoned but by due processe of Law, and according to the Law of the Land, these conclusions hereupon doe follow.

First, that a commitment by lawfull warrant, either in déed or in Law, is accounted in Law due processe or procéeding of Law, and by the Law of the Land, as well as by processe by force of the Kings Writ.

2. That he or they, which doe commit them, have lawfull authority.

3. That his warrant, or Mittimus be lawfull, and that must be in writing under his hand and seale.

4. The cause must be contained in the warrant, as for treason, felony, &c. or for suspition of treason or felony, &c. otherwise if the Mittimus contain no cause at all, if the Prisoner escape, it is no offence at all, whereas if the Mittimus contained the cause, the escape were treason, or felony, though he were not guilty of the offence; and therefore for the Kings benefit, and that the Prisoner may be the more safely kept, the Mittimus ought to contain the cause.

13.H.7.Kelway 34.b. See more before hereof in the Exposition upon the Statute of 1.E.2. De frangentibus prisonam. Out of the Kings Bench, though there be not any priviledge, &c.

5. The Warrant or Mittimus containing a lawfull cause, ought to have a lawfull conclusion, viz. and him safely to kéep, untill he be delivered by Law, &c. and not untill the party committing doth further order. And this doth evidently appeare by the Writs of Habeas corpus, both in the Kings Bench, and Common Pleas, Eschequer, and Chancery.

Rex Vicecom̃ Londoñ salutem. Præcipimus vobis, quod corpus A.B. in custodia vestra detent̃, ut dicitur, una cum causa detentionis suæ, quocunq; nomine prad. A.B. censeatur in eisdem, habeatis coram nobis apud Westm̃ die Jovis prox' post Octabis S. Martini, ad subjiciend̃, & recipiend̃ ea, quæ curia nostra de eo adtunc, & ibidem ordinar̃ contigerit in hac parte, & hoc nullatenus omittatis, periculo incumbente, & habeatis ibi hoc breve, Teste Edw. Coke 20. Nov. anno Regni nostri 10.

This is the usuall forme of the Writ of Habeas corpus in the Kings Bench, vide

Vide Mich. 5. E. 4. Rot. 143. Coram Rege, Kesars Case, under the Teste of Sir John Markham.

Rex Vicecom̃ London̄ ſalutem. Præcipimus vobis, quod habeatis coram Juſticiariis noſtris, apud Weſtm̃ die Jovis prox' poſt quinque ſeptiman. Paſche, corpus A. B. quocunque nomine cenſeatur, in priſona veſtra, ſub cuſtodia veſtra detenᵗ, ut dicitur, una cum die, & cauſa captionis & detentionis ejuſdem, ut iidem Juſticiaᵛ noſtri, viſa cauſa illa, ulterius fieri facᵃ, quod de jure, & ſecundum legem, & conſuetudinem Regni noſtri Angliæ foret faciendᵘᵐ, & habeatis ibi hoc breve, Teſte, &c.

In the Common Pleas, for any man privileged in that Court, and the like in the Eſchequer.

The like Writ is to be graunted out of the Chancery, either in the time of the Terme, (as in the Kings Bench) or in the Vacation; for the Court of Chancery is officina juſtitiæ, and is ever open, and never adjourned, ſo as the Subject being wrongfully impriſoned, may have juſtice for the liberty of his perſon as well in the Vacation time, as in the Terme.

Out of the Chancery generally, though there be not any priviledge, &c. 4. E. 4.

By theſe Writs it manifeſtly appeareth, that no man ought to be impriſoned, but for ſome certain cauſe: and theſe words, Ad ſubjiciendᵘᵐ, & recipiendᵘᵐ, &c. prove that cauſe muſt be ſhewed: for otherwiſe how can the Court take order therein according to Law?

And this doth agrée with that which is ſaid in the holy Hiſtory, Sine ratione mihi videtur, mittere vinctum in carcerem, & cauſas ejus non ſignificare. But ſince we wrote theſe things, and paſſed over to many other Acts of Parliament; ſée now the Petition of Right, Anno Tertio Caroli Regis, reſolved in full Parliament by the King, the Lords Spirituall, and Temporall, and the Commons, which hath made an end of this queſtion, if any were.

Act. Apoſt ca. 25. ver. ult.

Impriſonment doth not onely extend to falſe impriſonment, and unjuſt, but for detaining of the Priſoner longer then he ought, where he was at the firſt lawfully impriſoned.

If the Kings Writ come to the Sheriffe, to deliver the Priſoner, if he detain him, this detaining is an impriſonment againſt the Law of the Land: If a man be in Priſon, a warrant cannot be made to the Gaoler to deliver the Priſoner to the cuſtody of any perſon unknown to the Gaoler, for two cauſes; Firſt, for that thereby the Kings Writ of Habeas corpus, or delivery, might be prevented. 2. The Mittimus ought to bee, as hath béene ſaid, till hee bee delivered by Law.

Hil. 32. E. 1. Coram Rege. Rot. 71 & 79.

So it was holden Paſch. 34. Eliz. by all the Juſtices. 8. H. 4. 18. 20. E. 4. 6.

If the Sheriffe, or Gaoler detain a Priſoner in the Gaole after his acquittall, unleſſe it be for his fées, this is falſe impriſonment.

In many cafes a man may be by the Law of the Land taken, and impriſoned, by force of the Kings Writ upon a ſuggeſtion made.

Againſt thoſe that attempt to ſubvert, and enervate the Kings Lawes, there lieth a Writ to the Sheriffe in nature of a commiſſion, Ad capiendum impugnatores juris Regis, & ad ducendum eos ad Gaolam de Newgate; which you may reade in the Regiſter at large. Ubi ſupra. And this is lex terræ, by Proceſſe of Law, to take a man without anſwer, or ſummons in this caſe: and the reaſon is, Merito beneficium legis amittit, qui legem ipſam ſubvertere intendit.

Regiſt. 64. Rot. Pat. 21. E. 3. pt 1. impugnatores juris Regis.

If a Souldier after wages received, or preſt money taken, doth abſent himſelf, or depart from the Kings ſervice; upon the certificate thereof of the Captain into the Chancery, there lieth a Writ to the Kings ſerjeants at Armes, if the party be vagrant, and hideth himſelfe, Ad capiendum conductos proficiſcendᵘᵐ in obſequium noſtrum, &c. qui ad dictum obſequium noſtrum venire non curaverint. And this is lex terræ, by proceſſe of Law, pro defenſione Regis, & Regni, or for the ſame cauſe, a Writ may be directed to the Sheriffe, De arreſtando ipſum, qui pecuniam recepit ad proficiſcendum in obſequium Regis, & non eſt profectus.

Regiſt. 24. & 194.

If a man had entred into Religion, and was profeſſed, and after he departed from his houſe, and became vagrant in the Country againſt the rules of his Religion, upon the Certificate of the Abbot, or Priour thereof into the Chancery, a Writ ſhould be directed to the Sheriffe, De apoſtata capiendo, whereby he was commanded

Regiſt. fol. 267. F. N. B. 233, 234. 20 E. 2. Cor. 233. 6. E. 3. 17. 22. E. 3. 2.

commanded in theſe words; Præcipimus tibi quod præfatum, &c. Sine dilatione arreſtes, & præfat Abbat, &c. liberes ſecundum regulam ordinis ſui caſtigand; And this was Lex terræ, by Proceſſe of Law, in honorem religionis.

Regiſtr. 59, 69. F.N.B. 54. 15.R.2.ca.2.

If any lay men with force and ſtrong hand, doe enter upon, or keep the poſſeſſion either of the Church, or of any of the houſes, or glebe, &c. belonging thereunto, the Incumbent upon certificate thereof of the Biſhop, or without certificate upon his own ſurmiſe may have a Writ to the Sheriffe, De vi laica amovenda, by which the Sheriffe is commanded in theſe words; Præcipimus tibi quod omnem vim laicam ſeu armatam, quæ ſe tenet in dicta Eccleſia, ſeu domibus eidem annexis, ad pacem noſtram in Com tuo perturband, ſine dilatione amoveas, & ſi quos in hac parte reſiſtentes inveneris, eos per corpora ſua attachias, & in priſona noſtra ſalvo cuſtodias, &c. and this is lex terræ, by Proceſſe of Law, pro pace Eccleſiæ.

Vide Regiſt. 284. 289, 290. for the arreſting of Purveyors, which make purveyance of the men of the Church.

Regiſtr. 89. F.N.B. 85. 31.H.8. Dier 43. 1.Mar.92. 1.Eliz.165.

Alſo a Writ of Ne exeas Regnum may be awarded to the Sheriffe, or Juſtices of Peace, or to both, that a man of the Church ſhall not depart the Realme; the effect whereof is; Quia datum eſt nobis intelligere, quod A.B. clericus verſus partes exteras, ad quamplurima nobis, & quamplurima de populo noſtro præjudicialia, & damnoſa, ibidem proſequend, tranſire proponit, &c. tibi præcipimus, quod prædict' A.B. coram te corporaliter venire facias, & ipſum ad ſufficientes manucaptores, inveniend, &c. Et ſi hoc coram te facere recuſaverit, tunc ipſum A.B. proximæ gaolæ committas ſalvo cuſtodiend, quouſque hoc gratis facere voluerit. And there is another Writ in the Regiſter directed to the party, either of the Clergy or Laity. And this is lex terræ, by Proceſſe of Law, Pro bono publico Regis et Regni; Whereof you may reade more at large in the third part of the Inſtitutes, Cap. Fugitives.

Regiſt. 267. F.N.B. 234. Bract.li.5.fo.421. Brit. fo. 39. 88. Fleta li.6. ca.39. Hil.7.H.5. coram Rege. Rot.7. Rot.clauſ.22.E.3 in dorſ.20. pte. m.14.

Upon a ſurmiſe that a man is a Leper, one that hath morbum elephantiacum, ſo called, becauſe he hath a skin like to an Elephant, there may be a Writ directed to the Sheriffe, Quia accepimus quod I. de N. leproſus exiſtit, & inter homines Comitatus tui communiter converſatur, &c. ad grave dammum homin' præd, & propter contagionem morbi præd periculm manifeſtum, &c. tibi præcipimus quod aſſumptis tecum aliquibus diſcretis & legalibus hominibus de Comitat præd non ſuſpect', &c. ad ipſum I. accedas, &c. & examines, &c. & ſi ipſum leproſum inveneris, ut prædict' eſt, tunc ipſum honeſtiori modo, quo poteris à communione hominum prædict' amoveri, & ſe ad locum ſolitarium ad habitand ibidem, prout moris eſt, tranſferre facias indilate, &c. And this is lex terræ, by Proceſſe of Law, for ſaving of the people from contagion and infection.

Lib.10.fo.74. in the caſe of the Marſhalſea. Rot.Parl. 42.E.3. nu.23. Sir John a Lees Caſe. Lib.5.fol.64. Clarks caſe.

But if any man by colour of any authority, where he hath not any in that particular caſe, arreſt, or impriſon any man, or cauſe him to be arreſted, or impriſoned, this is againſt this Act, and it is moſt hatefull, when it is done by countenance of Juſtice.

King Edw.6. did incorporate the Town of S. Albons, and granted to them to make ordinances, &c. they made an ordinance upon paine of impriſonment, and it was adjudged to be againſt this Statute of Magna Charta; So it is, if ſuch an ordinance had been contained in the patent it ſelfe.

All Commiſſions that are conſonant to this Act, are, as hath been ſaid, Secundum legem, & conſuetudinem Angliæ.

42.Aſſ.pl.5. Rot. Parliam. 17.R.2.nu.37.

A Commiſſion was made under the great Seale to take I. N. (a notorious felon) and to ſeiſe his lands, and goods: This was reſolved to be againſt the Law of the Land, unleſſe he had been endicted, or appealed by the party, or by other due Proceſſe of Law.

Rot. Parliam. 2.H.4. nu.60.

It is enacted, if any man be arreſted, or impriſoned againſt the forme of this great Charter, that he bee brought to his anſwer, and have right.

No man to be arreſted, or impriſoned contrary to the forme of the great Charter.

See more of the ſeverall Lawes allowed within this Land, in the firſt part of the Inſtitutes Sect.3.

The Philoſophicall Poet doth notably deſcribe the damnable, and damned

ned proceedings of the Judge of hell,

Gnosius hic Radamanthus habet durissima regna,
Castigatq́, audítq́, dolos, subigitq́, fateri. Virgil

And in another place,

------ leges sixit precio atq́, resixit.

First he punisheth, and then he heareth: and lastly, compelleth to confesse, and make and marre lawes at his pleasure; like as the Centurion in the holy history, did to S. Paul: For the text saith, Centurio apprehendi Paulum jussit, & se catenis ligari & tunc interrogabat, quis fuisset, & quid feciſſet; but good Judges and Iustices abhorre these courses. Act. Apost.c.22 v.24.27.

Now it may be demanded, if a man be taken, or committed to prison contra legem terræ, against the law of the land, what remedy hath the party grieved? To this it is answered: First, that every Act of Parliament made against any injury, mischiefe, or grievance doth either expresly, or implicitly give a remedy to the party wronged, or grieved: as in many of the Chapters of this great Charter appeareth; and therefore he may have an action grounded upon this great Charter. As taking one example for many, and that in a powerfull, and a late time. Pasch.2.H.8. coram Rege rot. 538. against the Prior of S. Oswin in Northumberland. And it is provided, and declared by the Statute of 36.E.3. that if any man feeleth himselfe grieved, contrary to any article in any Statute, he shall have present remedy in Chancery (that is, by originall Writ) by force of the said Articles and Statutes. 36.E.3.cap.9.

2 He may cause him to be indicted upon this Statute at the Kings suite, whereof you may see a Precedent Pasch.3.H.8. Rott.71.coram Rege. Rob. Shefields case.

3 [a] He may have an habeas corpus out of the Kings Bench or Chancery, though there be no privilege, &c. or in the Court of Common pleas, or Exchequer, for any officer or privileged person there; upon which Writ the gaoler must retourne, by whom he was committed, and the cause of his imprisonment, and if it appeareth that his imprisonment be just, and lawfull, he shall be remanded to the former Gaoler, but if it shall appeare to the Court, that he was imprisoned against the law of the land, they ought by force of this Statute to deliver him: if it be doubtfull and under consideration, he may be bailed.

In 5.E.4. coram Rege Rot.143. John Keasars case, a notable Record and too long here to be recited.

10.Eliz. Rot. Leas case.

In 1.& 2. Eliz. Dier. 175. Scrogs case.

In 18. Eliz. Dier. 175. Roland Hynds case in margine.

4. He may have an Action of false imprisonment 10. H.7. fol. 17. but if it entred in the Court of Common pleas Mich. 11.H. 7. Rot. 327. Hilarie Warners case, and it appeareth by the Record, that Judgement was given for the plaintife: a Record worthy of observation.

5. [b] He may have a Writ de homine replegiando.

Vide Marlebridge Cap. 8.

6 [c] He might by the Common-law have had a Writ De odio, & atia, as you may see before. Cap. 26. but that was taken away by Statute, but now is revived againe by the Statute of 42.E.3.cap.1. as there it also appeareth. It is said in [d] W. 2. Sed ne hujusmodi appellati, vel indictati diu detineantur in prisona, habeat breve De odio & atia, sicut in Magna Charta, & aliis Statutis dicit: est: and by the said Act of 42.E.3. all Statutes made against Magna Charta are repealed.

[a] See the resolution of all the Iudges of Englād in the answere to the articles of the Clergy hereafter at large in the exposition of the statute of artic. Cler. to the 21. and 22.artic. Of the Writ of *Habeas corpus* see more in the exposition upon the stat. of W.1. cap.15.

[b] Regist. 77. F.N.B.66. Bract.l.3 f.185.

[c] Regist.83.268. F.N.B.249.258. Bract. l.3.f.154.

[d] W.2.c.29.Glocc cap.9.

[e] Mirror.c. 1.§.5. cap.2.§ 13.cap.5. § 1.2. Fleta.l.2.c 12. Ocham cap. quid sponte offerentibus F.N.B.96.

Rot.Parliam. 8.E.3.nu.78 38.E.3.n.23 45.E.3.n.19 51.E.3.n.58 5.H.4.nu.32 20.R.2.fines 134 34.H.6.38. 2.E.3.c.10. 1.E.4.cap.1. 26.H.8.cap.3. 27.H.8.cap.15.

¶ Nulli vendemus, &c.] [e] This is spoken in the person of the King, who in judgement of Law, in all his Courts of Justice is present, and repeating these words, Nulli vendemus &c.

And therefore, every Subject of this Realme, for injury done to him in bonis, terris, vel persona, by any other Subject, be he Ecclesiasticall, or Temporall, Free,

Free, or Bond, Man, or Woman, Old, or Young, or be he outlawed, excommunicated, or any other without exception, may take his remedy by the course of the Law, and have Justice, and right for the injury done to him, freely without sale, fully without any denial, and speedily without delay.

Hereby it appeareth, that Justice must have three qualities, it must be Libera, quia nihil iniquius venali Justitia; Plena, quia Justitia non debet claudicare; & Celeris, quia dilatio est quædam negatio; and then it is both Justice and Right.

2.E.3.c.8.14.E.3 c.14. 20.E.3.1.2. 11.R.2.cap.11. Rot.Parl. 2.R.2. nu.51. Rot.Parl.2. H.4. nu.64. Regist. 186. 1.E.3.f.25. 2.E.3.3. 14 E.3. tit.Iour.24. 18.E.3.47. 29 E. 3. 7. L.5 E 4.132. Pasch 3.H.4. coram Rege. Rot 16 Warwik. Rot.Parl. 5. H.4. nu.33. 22.ass.pl.9. 9.H.6.50.b. Forteſc. cap.51. F.N.B. 237.240. 11.H.4.76. 31.E.3.quare Imp.161. Mich.11.H.7 Rot 124.in com.banc. Pasch.7.H.8. Rot. 66. in com. banc. Mich. 13. & 14. Eliz.in com. banc. Hitchcocks case. 11.H.4.57. 39.H.638. *Pas.22.E.1.Rot 39.coram Rege Essex. W.1.cap.1. 1.E.3.cap.14. 2.E.3.cap.8. 7.H.4.cap.14. 1.H.4.cap.1. 2.H.4. cap.1. 4 H.4.cap. 1. 7.H.4. cap.1. See the 1.part of the Institut. sect. 234. Injuria est in re, seu contra jus.

¶ Nulli negabimus, aut differemus, &c.] These words have beene excellently expounded by latter Acts of Parliament, that by no meanes common right, or Common law should be disturbed, or delayed, no, though it be commanded under the Great seale, or Privie seale, order, writ, letters, message, or commandement whatsoever, either from the King, or any other, and that the Justices shall procede, as if no such Writs, letters, order, message, or other commandement were come to them. Judicium redditum per defaltum affirmatur, non obstante breve Regis de prorogatione judicii.

That the Common lawes of the Realme should by no meanes be delayed, for the law is the surest sanctuary, that a man can take, and the strongest fortresse to protect the weakest of all; lex est tutissima cassis, and sub clypeo legis nemo decipitur: but the King may stay his owne suite, as a capias pro fine, for the King may respit his fine and the like.

All Protections that are not legall, which appeare not in the Register, nor warranted by our books, are expressly against this branch, nulli differemus: As a Protection under the Great seale granted to any man, directed to the Sheriffes, &c. and commanding them, that they shall not arrest him, during a certaine time at any other mans suite, which hath words in it, per prærogativam nostram, quam nolumus esse arguendam; yet such Protections have beene argued by the Judges, according to their oath and duty, and adjudged to be void: As Mich.11. H.7. Rot. 124. a Protection graunted to Holmes a Vintner of London, his factors, servants and deputies, &c. resolved to be against Law. Pasch. 7. H. 8. Rot. 66. such a Protection disallowed, and the Sheriffe amerced for not executing the Writ. Mich. 13. & 14. Eliz. in Hitchcocks case, and many other of latter time: and there is a notable * Record of ancient time in 21.E. 1. Iohn de Mershalls case, non pertinet ad vicecomitem de protectione Regis judicare, imo ad curiam.

¶ Justitiam vel rectum.] Wee shall not sell deny, or delay Justice and right. Justitiam vel rectum, neither the end, which is Justice, nor the meane, whereby we may attaine to the end, and that is the law.

Rectum, right, is taken here for law, in the same sense that jus, often is so called. 1. Because it is the right line, whereby Justice distributative is guided, and directed, and therefore all the Commissions of Oier, and Terminer, of goale delivery, of the peace &c. have this clause, Facturi quod ad justitiam pertinet, secundum legem, and consuetudinem Angliæ, that is, to doe Justice and Right, according to the rule of the law and custome of England; and that which is called common right in 2.E.3. is called Common law, in 14.E. 3. &c. ¶ In this sense it is taken, where it is said, ita qd stet recto in curia, i. legi in curia. 2. The law is called rectum, because it discovereth, that which is tort, crooked, or wrong, for as right signifieth law, so tort, crooked or wrong, signifieth injurie, and injuria est contra jus, against right; recta linea est index sui, & obliqui, hereby the crooked cord of that, which is called discretion, appeareth to be unlawfull, unlesse you take it, as it ought to be, Discretio est discernere per legem, quid sit justum. 3 It is called Right, because it is the best birth-right the Subject hath, for thereby his goods, lands, wife, children, his body, life, honor, and estimation are protected from injury, and wrong; major hæreditas venit unicuiq; nostrum à jure, & legibus, quam à parentibus.

Cicero.

4. Lastly, rectum is sometime taken for the right it selfe, that a man hath by law

law to land: As when wee say there lieth Breve de recto, in so much that some old readers have supposed, that rectum in this Chapter, should be understood of a writ of right, for which at this day no fine in the hamper is paid. As the goldsmer will not cast of the dust, threds, or shreds of gold, let passe the least crum, in respect of the excellency of the metall: so ought not the learned reader to let passe any syllable of this Law, in respect of the excellency of the matter.

CAP. XXX.

OMnes Mercatores, nisi publice antea prohibiti fuerint, habeant salvum & securum conductum, exire de Anglia, & venire in Angliam, & morari, & ire per Angliam, tam per terram, quam per aquam, ad emendum, vel vendendum, sine omnibus malis tolnetis per antiquas & rectas consuetudines, præterquam in tempore guerræ. Et si sint de terra contra nos guerrina, & tales inveniantur in terra nostra in principio guerræ, attachientur sine dampno corporum suorum, vel rerum, donec sciatur à nobis, vel à capitali Iustitiario nostro, quomodo Mercatores terræ nostræ tractantur, qui tunc inveniantur in terra illa contra nos guerrina. Et si nostri salvi sint ibi, alii salvi sint in terra nostra.

¶ Omnes Mercatores.] This Chapter concerneth Merchant strangers.

First it is to be considered, what the auncient Lawes, before this Statute, were concerning this matter.

By the auncient Kings (amongst whom King Alfred was one) defendu fuit que nul merchant Aliē ne hantast Angleterre forsque aux 4 foires, ne que nul demurrast in la terre ouster 40. jours. Mercatorū navigia, vel inimicorum quidem, quæcunq; ex alto (nullis jactata tempestatibus) in portum aliquem invehentur, tranquilla pace fruuntor; quin etiam si maris acta fluctibus ad domicilium aliquod illustre, ac paris beneficio donatum navis appulerit inimica, atq; illuc nautæ confugerint, ipsi & res illorum omnes augusta pace potiuntor. Mirror. cap. 1. § 3. Int. leges Ethel. cap. 2.

2. It is to be seene what this Statute hath provided.

1. That before this Statute, merchant strangers might be publiquely prohibited, Publice prohibeantur. And this prohibition is intendable of Merchant strangers in amitie, for this Act provideth afterward for Merchant strangers enemies; and therefore the prohibition intended by this Act, must be by the common or publique Councell of the Realme, that is, by Act of Parliament, for that it concerneth the whole Realme, and is implyed by this word (publice.)

2 That all Merchant strangers in amity (except such as be so publiquely prohibited) shall have safe and sure conduct in 7. things. 1. To depart out of England. 2. To come into England. 3. To tarry here. 4. To goe in and through England, as well by land as by water. 5. To buy and to sell. 6. Without any manner of evill tolles. 7. By the old and rightfull customes.

Now touching Merchant strangers, whose Soveraigne is in warre with the King of England.

There is an exception, and prouision for such, as be found in the Realme at the beginning of the warre, they shall be attached with a priuiledge, and limitation, viz. without harme of body, or goods, with this limitation. Untill it be knowne to us, or our chiefe Iustice, (that is our guardien, or keeper of the Realme in our absence) how our Merchants there in the land in warre with us shall be intreated, and if our Merchants be well intreated there, theirs shall be likewise with us, and this is jus belli. Et in republica maxime conservanda sunt jura belli.

Regist. 129. de arest. fact. super bonis mercator. alienig. Rot. Parliam. Mich. 18. E. 1. coram Rege fol. 7. reprisel. Tr. 33. E. 1. corã Rege rot. 127. 27. E. 3. Stat. 2. cap. 17. lawe of marke. Rot. Parl. 11. H. 4 nu. 66. 4. H. 5. c. 7. 14. H. 6 c. 7. 18. H. 6. c. 9. Mat. Par. 966.

But for such Merchant strangers as come into the Realme after the warre beginne, they may be dealt withall as open enemies; and yet of auncient time three men had priuiledge granted them in time of warre. Clericus, Agricola, & Mercator, tempore belli, Ut oretq; colat, commuret, pace fruuntur.

[a] The end of this Chapter was for advancement of trade, and traffique; the meanes for the well using, and intreating of Merchant strangers in all the particulars aforesaid, is a matter of great moment, as appeareth by many other Acts of Parliament, for as they be used here, so our Merchants shall be dealt withall in other Countries.

a 2. E. 3. c. 5. 9. E. 3 c. 1. 14. E. 3. c. 2. 25. E. 3. cap. 2. 11. R. 2. c. 7. 14. R. 2. cap. 9. 16. R. 2. cap. 1.

¶ Mala tolneta.] [b] Evill tolles.

This word tolnetum, and telonium, and theolonium are all ons, and doe signify in a generall sense, any manner of Custome, Subsidie, Prestation, Imposition, or summe of money demanded for exporting, or importing of any wares, or merchandizes, to be taken of the buyer. In both these senses it is here taken of severall kinds of tolles: More shall be said hereof, in the exposition of the Statutes of W. 1. and W. 2. In the meane time see Iohn Webbes case lib. 8. fol. 46.

b Lib. 8. fol. 46. Iohn Webbs case. See the exposition of W. 1. c. 31. 46. E. 3. barre 215 39 E. 3. 13. b. F. N. B. 227. d. West. 1. c. 30. W. 2. cap. 25.

[c] They are called mala tolneta, when the thing demanded for wares or merchandizes, doe so burden the commodity, as the merchant cannot have a convenient gaine by trading therewith, and thereby the trade it selfe is lost or hindered. And in divers Statutes maletout for maletor, or maletout is a French word, and signifieth an unjust exaction.

c See Rot. Parlia. 17. E. 3. nu. 27. 28 and 21. E. 3. nu. 29. Maletot taken in good part.

Now this Act after it hath dealt privatively, sine omnibus malis tolnetis, it goeth on for more surety affirmatively.

¶ Per antiquas & rectas consuetudines.] That is, by auncient and right duties, due by auncient and lawfull custome, which hath been the auncient policy of the Realme to encourage merchant strangers, they have a speedy recovery for their debts and other duties, &c. Per legem Mercator; which is a part of the Common law.

See the expositiõ of W. 1. cap. 31.

This word consuetudo, hath in Law divers significations. 1. For the Common law, as consuetudo Angliæ. 2. For Statute law, as contra consuetudinem communi concilio regni edit. 3. For particular customes, as Gavelkind, Borough English, and the like. 4. For rents services, &c. due to the Lord, as consuetudines & servitia. 5. For customes, tributes, or impositions, as de novis consuetudinibus levatis in regno, sive in terra, sive in aqua. 6. Subsidies, or customes graunted by common consent, that is, by authority of Parliament, pro bono publico, and these be antiquæ & rectæ consuetudines intended by this Act, this agreeth with that, which hath been said before in the end of the exposition upon the eight Chapter.

Glanvil. lib. 9. c. 7. lib. 12. cap. 9. 10. Regist. 4. 159. F. N. B. 10. 151. cap. Itineris. cap. Escheatre. See before c. 4. Cap. Itineris.

Hereby it appeareth that the King cannot set any new impost upon the Merchant, and therefore this Act provideth not only affirmatively, viz. per antiquas, & rectas consuetudines, but privatively also, sine omnibus malis tolnetis, within which words new impositions are included, and are here called mala tolneta, as opposite to ancient and right full customes, or subsidies graunted by authority of Parliament.

See the Statute of Carlile 35. E. 1. for this word Imposition, and from whom it came.

And where some have supposed, that there was a custome due to the King by the Common Law, as well of the Stranger, as of the English, called Antiqua custuma, viz. for wools, woll-fells, and leather, that is to say, for every sack of woll containing 26. stone, and every stone 14. pound, vj. s. viij. d. and for a last

Dier. 31. H. 8. 43. 1. Mar. 92. 1. Eliz. Dier. 165

of

of leather, xiij.s. iiij.d. Certain it is, that those customes had their beginning by common consent by Act of Parliament, for King E.1. by his Letters Patents reciteth, Cum Prælati, Magnates, & tota communitas quandam novam consuetudinem nobis & hæredibus nostris de lanis, pellibus, & coriis, viz. de sacco lanæ dimid' Marc', de 300. pellibus dimid Marc', & de lasto corii xiii. s. iiii. d. &c. Herein foure things are to be observed. 1. That these customes had their creation by authority of Parliament, and were not by the Common Law, appearing by these words, Quandam novam consuetudinem, so as it was new, and not old. 2. That this new custome was graunted to King Edw. 1. proved by this word nobis. 3. That it was graunted at the Parliament holden 3. E. 1. commonly called W. 1. (though the Record thereof cannot be found) for the said Patent bears date 10. Nov. Anno 3 E. 1. which was neare the ending of that peare, and the Parliament was holden in Clauso Pasch. before. 4. That here consuetudo signifieth a custome, or Subsidie graunted by common consent by Parliament, and in that sense it is here taken, and likewise in the Statute of 51 H. 3. Statutum de Scaccario, for in 48 H. 3. Proclamation was made, Contra suggerentes, &c. Regem velle exigere tallagia inconsueta, & introducere extraneos.

Rot. Pat. 3 E. 1. m. 1. Rot. fininm. 3 E. 1. m. 24. Mich. 26 E. 1. Int' retorn. brevium. Ex pte. Remem. Thesaur. in Scac.

Rot. Pat. anno 48 H. 3. à tergo.

And herewith agreeth the Act of Parliament commonly called confirmationes cartarum, (which is but an explanation of this branch of Magna Charta) wherein it is enacted, that for no occasion any aide, tasks, or takings shall be taken by the King, or his heires, but by the common assent of the Realme, saving the auncient gides, and takings due and accustomed.

Anno 25 E. 1. See more in the Exposition of that Statute.

And whereas the most of the whole Comminalty of the Realme finde themselves hardly grieved of the maletout (or ill toll) of wolls, that is to say, of every sack of woll 40. s. and prayed the said King to release the same, thereupon the said King did release the same, and graunted further for him and his heires, that no such thing should be taken without their common assent, and their good will: and in that Act there is a saving, Sauve a nous, & nous heires la custume de laynes, pealx, & quiures avant grante per la Commina'tie avandit; So as this Act of Parliament proveth that the said custome of vj. s. viij. d. for woll, and xiij. s. iiij. d. for leather was graunted by Parliament.

Rot. Parliam. 13 H. 4. nu. 18. A new Office graunted with a fee in charge of the Subject, is against this Act of 25 E. 1. and of 34 E. 1. hereafter following.

By the Statute De tallagio non concedendo, (which is but an explanation of this branch of the Statute of Magna Charta) it is provided: Nullum tallagium vel auxilium per nos vel hæredes nostros in Regno nostro ponatur, seu levetur sine voluntate & assensu Archiepiscoporum, Episcoporum, Comitum, Baronum, militum, burgensium, & aliorum liberorum Comit' de Regno nostro; So as E. 1. in conclusion added the effect of the clause concerning this matter, which in his explification he had omitted out of Magna Charta.

Anno 34 E. 1. See more in the exposition of this Statute.

See Cap. itineris de novis consuetudinibus levatis in regno, sive in terra, sive in aqua, &c. where consuetudines are taken for customes.

Cap. itineris.

Upon grant to Merchant Strangers of divers privileges, liberties, and immunities they graunted to the King and his heires. De quolibet sacco lanæ 40. d. de incremento ultra custumam antiquam dimid' Marc', quæ prius fuerit persoluta & sic pro lasto coriorum dimid' Marc', & de trescentis pellibus lanatis 40. d. ultra certum illud, quod & antiqua custuma fuerit prius datum. Note here the Custome which was graunted 3 E. 1. is here called antiqua Custuma, and this new Custome is called nova Custuma, and sometime the one is called magna Custuma, and the other parva Custuma.

Rot. Chartarum. 31 E. 1. nu. 44. Charta Mercatoria

2. Here it appeareth that Merchants Strangers paid the former Custome.

Moreover by that Charter, poundage of three pence upon the pound was graunted to the King, and his heires by the Merchant Strangers, Et de quolibet vini nomine Custumæ duos solidos, &c. And this at this day is called Butlerage, and is paid onely by Merchant Strangers; but prisage is paid by the English onely, except the Citizens of London, and this is an auncient duty: for I finde it accounted for in the raigne of H. 3. by the Kings Butler, and is

Rot. Pat. Anno 40 H. 3.

called Certa prisa, which at the first was graunted in lieu and satisfaction of purveyance for wines. And lastly, by that Charter it is graunted, Quod nulla exactio, prisa, vel præstatio, aut aliquod aliud onus super personas Mercatorum alienorum prædict', seu bona eorundem aliquatenus imponatur contra formam expressam superius concessam: So as no imposition can be set without assent of Parliament upon any stranger.

Fleta lib. 2. ca. 21.

Rot. ordinationū. Anno 5 E. 2. in Scaccario.

It was ordered and resolved by divers Prelates, Earles, and Barons, by force of the Kings Commission, that no new customes could be ledied, nor auncient increased, without authority of Parliament, for that should be against the great Charter. Anno 6. E. 3. Rot. Parliament, nu. 4. that no tallage shall be assessed but in such manner as it hath been in time of his auncestors, and as it ought to be, and disannull all others.

11 E. 3. cap. 1.

Rot. Parl. 13 E. 3. nu. 12. licence, &c. & 14 E. 3. nu. 3. licence.

In Anno 11. E. 3. it was made felony to carry woll out of the Realme, the end whereof was, that our wool should bee draped into cloth. But the King wanting made this use of this Act: In the 12. and 13. years of his raigne he made dispensations of that Statute in consideration of money paid: but that Statute lived not long. In 13. E. 3. a great imposition was set upon wolls, and it is called a great wrong, Cum populus Regni nostri variis oneribus, tallagiis & impositionibus hactenus prægravetur, quod dolentes referimus, and there doth excuse himselfe.

Rot. alinance. 12 E. 3. memb. 22 in dorso.

Note here is the word impositiones first used, imposed by any King, in any Record that I have observed, and doe remember.

14 E. 3. cap. 21.

Anno 14. E. 3. cap. 21. A Subsidie graunted to the King of woll, wolfells, and leather, &c. by Parliament, for a certain time in respect of the warres, for which the King graunteth, that after that time, he nor his heires would take more then the old customs.

Rot. Parliam. 17 E. 3. nu. 28. 25 E. 3. nu. 22. 36 E. 3. nu. 26.

After this time ended, the King entred into a new device to get money, viz. that by agréement and consent of the Merchants, the King was to have 40. s. of a sack of woll, &c. but hereof the Commons (that in troth were to beare the burden, for the Merchant will not be the loser) complained in Parliament, for that the graunt of the Merchants did not binde the Commons, and that the Customs might be taken according to the old order, which in the end was graunted, and that no graunt should be made but by Parliament.

Rot. Parliam. 21 E. 3. nu. 16.

No charge shall be levied of the people, if it were not graunted in Parliament.

Rot. Parliam. 21 E. 3. Dier 1 E. lix. 165. Int' origin. Scac. 24 E. 3. Rot. 13.

In 21. E. 3. by authority of Parliament, a Custome was graunted of cloth, for that the woll was for the most part converted into cloth, which you may see in Orig. Scaccar. 24. E. 3. Rot. 13.

27 E. 3. cap. 4.

By the Statute of 27. E. 3. cap. 4. in print, a Subsidie of every cloth to take of the seller (over the Customes thereof due, that is, such as then endured for a time, and were graunted by Parliament) that is to say, of every cloth of assise, wherein there is no grain, 4. d. &c.

And here it is worthy of observation, that there were two causes of the making of this Statute. 1. For that for cloth no custome was due other then by the Act of 21. E. 3. 2. For that woll being converted to a manufacture, and made into cloth, the ancient custome of Dimid. mark for a sack of wool was not by Law payable, because the woll was turned into another kinde, albeit the cloth was made of the woll; And this doth notably appeare by the Records of the Exchequer, one of them in the same yeare that the Act of 27. E. 3. was made.

Int. original. de Scaccar. anno 24 E. 3. Rot. 4. Vide simile. ibid. 24 E. 3. Rot. 13.

Ac jam magna pars lanæ dicti Regni nostri eodem regno pannificetur, de qua custuma aliqua nobis non est soluta; And there it appeareth that that was the cause of giving to the King a Subsidie for cloth by the said Act of Parliament, of 27. E. 3. And yet if in any case the King by his prerogative might have set any imposition, hee might have set in that case, because, as it appeareth by the Record, by making of cloth hee lost the custome of woll.

See the first part of the Institutes, fol. 49. b.

Rot.

Rot.Parliam 45.E.3. No impoſition or charge, &c. ſhall be ſet without aſſent of Parliament. Rot.Parliam. 45 E.3. nu.42.

50. E. 3. Richard Lions, a Merchant of London puniſhed for procuring new impoſitions, and ſo was the Lord Latimer, the Kings Chamberlaine. And in the ſame Parliament,nu.163.upon complaint that new impoſitions were ſet, the King in Parliament aſſented that the ancient cuſtome ſhould be holden, and no new impoſition ſet. Rot.Parliam. 50 E.3.nu.17,28. Nu.163. & vide ibidem 191.

In the raigne of E.3. the black Prince of Wales having Aquitaine granted to him, did lay an impoſition of ſuage or ſocage, à ſoco, upon the Subjects of that Dukedome, viz. a ſhilling for every fire called harth ſilver, which was of ſo great diſcontentment, and odious to them, as it made them to rebell. Rot. Pat. anno 25 E.3. Created Duke of Aquitaine.

And no King ſince this time impoſed by pretext of any prerogative,any charge upon Marchandiſes imported into, or exported out of this Realme,until Queen Maries time. See the Statute of 11.R. 2. cap.9. & Rot. Parliament. 8.H.6. num. 29. Rot. Parl 8 H.6. nu. 29. & Rot. Par.28 H.6.nu.35

And in 3.H.5.the Subſidie of Tunnage and Poundage was graunted to King H 5. during his life, in reſpect of the recovery of his right in France, (which was the firſt graunt for life of that kinde) yet therein was a proviſo. that the King ſhould not make a graunt thereof to any perſon, nor that it ſhould be any precedent for the like to be done to other Kings afterwards;but yet all the Kings after him have had it for life,ſo forcible is once a precedent grown in the Crown, adde what proviſo you will. Rot. Parl. 3 H.5. nu 50. Stat 2. See in the fourth part of the Inſtitutes. Cap. of the high Court of Parliament. more of the Subſidy of Tunnage.

And this graunt by Parliament of the Subſidy of Tunnage and Poundage to the King is an argument, that the King taking it of the gift of the Subject, had no power to impoſe it himſelfe.

The Lords and Commons cannot be charged with any thing for the defence of the Realme, for the ſafeguard of the Sea, &c. unleſſe it be by their will in Parliament, that is, in the graunt of a Subſidy, whereunto the King aſſented. Rot. Parliam. 13 H.4. nu 10.

Non poteſt Rex ſubditum remitentem onerare impoſitionibus. Forteſc.c. 9.& 18.

King Philip and Queen Mary, graunted by Letters Patents to the Maior, Baylifes, and Burgeſſes of Southampton, and their Succeſſors, that no Wines called Malmeſeyes to be imported into this Realme by any Denizen, or Alien, ſhould be diſcharged or landed at any other place within this Realme, but onely at the ſaid town and Port of Southampton, with a prohibition, that none ſhould doe to the contrary upon pain to pay treble Cuſtome to the King and Queen, &c. And for that Anthony Donate,Thomas Frederico, and other Merchant Strangers bought divers Buts of Malmeſey,&c. and landed them at Goore, and in Kent, Gilbert Gerard the Attourney Generall, informed in the Exchequer, againſt the ſaid Merchant Strangers for the ſaid treble cuſtome, &c. Upon which information, as to the ſaid treble Cuſtome, the ſaid Anthony Donat demurred in Law,&c. And this caſe was argued in the Exchequer Chamber by Counſell learned on both ſides, and upon conference had, two points were reſolved by all the Judges. 1. That the graunt made in reſtraint of landing of the ſaid Wines was a reſtraint of the Liberty of the Subject, againſt the Lawes and Statutes of the Realme. 2. That the aſſeſſement of treble cuſtome was meerly void, and againſt the Law. As it appeareth by the report of the Lord Dier under his hand (which I have in my cuſtody.) But after by Act of Parliament, in Anno 5 Eliz. the ſaid Charter is eſtabliſhed as to Merchant Strangers onely, but not againſt Subjects. Int' communia de Termino S. Trin. anno 1 Eliz. Rot. 73. Mag Chart.ca.30 9 E.3 c.1. 14 E.3 25 E.3. cap.2. 27 & 28 E.3. of the Staple. 2 R.2. cap.1.

And where impoſts, or impoſitions, be generally named in divers Acts of Parliament, the ſame are to be intended of lawfull impoſitions,as of Tunnage, and Poundage, or other Subſidies impoſed by Parliament, but none of thoſe Acts or any other doe give the King power at his pleaſure to impoſe. See the firſt part of the Inſtitutes, Sect.97. 23 H.8. cap.18. 14 H.8.ca.4. 13 El. c.4. 1 Jac. ca.13. 3 Jac.ca.6.

It is then demaunded, by what Law Cuſtome is paid for Kerſeyes, whites, plaine, ſtraits, and other new draperies, made of wooll; for it appeareth by Acts of Int' decreta in camera Scac. Mich. 3 & 4 Eliz. Mich. 32 & 33. Eliz. Mic.39.& 40 Eliz.

of Parliament, and common experience, that all theſe pay Cuſtome to the King. To this it is anſwered, That a proportionable Subſidy, or Cuſtome is paid for them within the equity of the ſaid Statute of 27 E. 3. cap. 4. and likewiſe a proportionable Alnage is alſo due for them by that Act.

Hil. & Paſch. anno 2 Jacobi Regis, great queſtions were moved, Whether Friſadoes, Bayes, Northern Dozens, Northern Cottons, Cloth-rath, Durances, Perpetuanoes, Taft-mocadoes, Sackcloth, Fuſtians, Worſteds, Stuffes made of Worſted yarne, &c. were within the ſaid Act of 27 E. 3. as concerning the Subſidy, and Alnage: and if they were not, whether the King by his prerogative might not impoſe a reaſonable Subſidy, or Cuſtome upon them proportionably to the cloth mentioned in the Statute of 27 E. 3. And this being queſtioned before the Lords of the Councell, they wrote to the Judges to be certified what the Law was in theſe caſes, who upon mature deliberation, the 24 of June 1605. reſolved, and ſo certified the Lords by their Letters under all their hands, That all Friſadoes, Bayes, Northern Dozens, Northern Cottons, Cloth-rath, and other new Drapery made wholly of wooll, of what new name ſoever made, as new Drapery for the uſe of mans body, are to yeld Subſidy, and Alnage according to the Statute of 27 E. 3. and within the office of the auncient Alnager, as may appeare by ſeverall Decrées in that behalfe in the Exchequer, in the time of the late Quéen: but as touching fuſtians, canvas, and ſuch like made méerly of other ſtuffe then wooll, or being but mixed with wooll, it was reſolved by all the Judges, that no charge could be impoſed for the ſearch or meaſuring thereof, but that all ſuch Letters Patents ſo made are voyd, as may appeare by a Record of 11 H. 4. wherein the reaſon of the judgement is particularly recited, which the Judges thought good in their Letters to ſet downe as followeth.

Note this.

King H. 4. graunted the meaſuring of woollen cloth, and canvas, that ſhould be brought to London, to be ſold by any Stranger, or Denizen (except he were free of London) taking an ob. of every whole peece of cloth ſo meaſured of the ſeller, and one other ob. of the buyer, and ſo after that rate for a greater or leſſer quantity, and one penny for the meaſuring of an C. ells of canvas of the ſeller, and ſo much more of the buyer; and though it were averred that two other had enjoyed the ſame office before with the like fées, viz. one Shearing by the ſame Kings graunt, and one Clithew before by the graunt of R. 2. (and the truth was, Robert Pooley in 5. E. 3. and John Mareis, in 25 E. 3. had likewiſe enjoyed the ſame) yet amongſt other reaſons of the ſaid judgement, it was ſet downe, and adjudged that the former poſſeſſion was by extortion, coertion, and without right, and that the ſaid Letters Patents were in onerationem, oppreſſionem, & depauperationem ſubditorum Domini Regis, &c. & non in emendationem ejuſdem populi; and therefore the ſaid Letters Patents were voyd. And as touching the narrow new ſtuffe made in Norwich, and other places of Worſted yarn, it was reſolved that it was not graintable, nor fit to be graunted, for there was never any Alnage of Norwich Worſteds, and for theſe ſtuffes, if after they be made, and tucked up for ſale by the makers thereof, they ſhould be again opened to be viewed, and meaſured, they will not well fall into their old plights, &c. as by the ſaid Letters it more at large appeareth. Theſe Letters were openly read at the Councell Table, and well approved by the whole Councell, and the Lords commanded the ſame to be kept in the Councell Cheſt to be a direction for them to anſwer ſuitors in theſe caſes.

13 E. 3. ex pte Remem. Theſaurar. Rot. Parliam. 25 E. 3. Enacted according to this reſolution. 30 E. 3. Compot. Forinſeco. in Scaccar. compot. Joh: Mareis.

But theſe judgements in the Exchequer have béene cited for proofe, that the King hath power to ſet impoſitions upon Merchandizes exported, and imported.

Paſch. 1 Eliz. in Scacc. ex pte Remem. Regis.

1. A judgement given in the Exchequer in an information againſt Germane Cioll for 40. s. ſet by Quéen Mary upon every Tun of wine, of the growth of France, to be brought into the Realme. But the caſe there was this, the Attourney generall informed, that where King Philip, and Quéen Mary by their Proclamation, 30 Martii, in the 4. and 5. yeares of their raigne, did will and ſtraitly command, that no wines of the growth of France, ſhould be brought into this Realme,

Realme, without ſpeciall licence of the ſaid King and Queene, under paine of forfeiture of ſuch Wine to the King & Queene, Cumq; etiã dict' nuper Rex & Regina de adviſamento Concilii ſui ad tunc ordinaver' & decreverunt, quod quælibet perſona, quæ in hoc Regnum Angliæ induceret hujuſmodi vina contra formam proclamationis prædict', ſolveret pro quolibet dolio hujuſmodi vini 40 s. vocat impoſt. &c. and that German Ciol, againſt the forme and effect of the ſaid Proclamation, had brought into the Realme 338. tunnes of Wines of the growth of France, and had not paid 40 s. for each and every tunne: the Defendant pleaded a licence from the ſaid King and Quéene, dated the 9. of Decemb. anno 1. & 2. to bring into the Realme 1500. tunnes of wine, of the growth of France, in Strangers bottoms, with a non obſtante of any Law, Statute, or Proclamation made or to be made to the contrary, whereupon the demurrer was joyned.

In this Record theſe things are to be obſerved, firſt that a Proclamation prohibiting importation of wines upon paine of forfeiture, was againſt Law: for it appeareth not, that any warre was betweene the Realmes. 2. The Proclamation was made of purpoſe to ſet an impoſition, for the 40 s. is impoſed upon them only, and upon ſuch as ſhould bring in Wines againſt the ſaid Proclamation, ſo as the Proclamation was the ground of this information. 3. The King and Queene by advice of their Councell, did order, and decree, &c. and whether not how, or by what meanes this order and decree was made: the pleading of ſuch a former licence ſo inſufficiently whether, that it was by agreement and conſent.

2. The executors of Cuſtomer Smith, were charged in a ſpeciall information for receiving an impoſition of iii. s. iiii. d. ſet by Queene Elizabeth, under her priby ſignet, upon every hundred weight of allome made within the dominions of the Pope, and judgement in the Exchequer was given againſt them: the reaſon of this judgement was, for that Cuſtomer Smith received the ſame as due to the Queene, and the iſſue was joyned, quod prædicti executores non tenebantur ad compotum, &c. and the validity of the impoſition was never queſtioned. Mich. 38. & 39. Eliz. in Scaccario Rot. 319.

3. A judgement was given in the Exchequer, for an impoſition ſet upon Currants, but the common opinion was, that that judgement was againſt Law, and divers expreſſe acts of Parliament; and ſo by that which hath been ſaid, it doth manifeſtly appeare. In mem. Scaccar. int. com. Paſc. 4. Iacob. Rot. 32. in inform. verſ. John Bate de London mercat. Pl. com. 236. in the B. Barkleys caſe. Forteſc. ſepe.

To conclude this point, with two of the maximes of the Common law. 1. Le common ley ad tielment admeaſure les prerogatives le Roy, que ilz ne tolleront, ne prejudicieront le inheritance daſcun, the Common law hath ſo admeaſured the prerogatives of the King, that they ſhould not take away, nor prejudice the inheritance of any: and the beſt inheritance that the Subject hath, is the Law of the Realme. 2. Nihil tam proprium eſt imperii, quam legibus vivere.

Upon this Chapter, as by the ſaid particulars may appeare, this concluſion is neceſſarily gathered, that all Monopolies concerning trade and traffique, are againſt the liberty and freedome, declared and graunted by this great Charter, and againſt divers other Acts of Parliament, which are good commentaries upon this Chapter. 2. E. 3. c. 9. 9. E. 3. c. 1. 25. E. 3. c. 2. 2. R. 2. c. 1. 11. R. 2. cap. 7. 6. R. 2. cap. 1. 12. H. 7. cap. 6.

Le point del conge del demurrer des merchants aliens eſt iſſint interpretable, que ceo ne ſoit in prejudice des villes, ne des merchants dangleterre, & il ſoient ſereinements al Roy & plevyes filz demurront plus que 40 jours. Mirror. c. 5. §. 41. 4. E. 4. c. 15. 5. H. 4. c. 9.

For the well intreating and ordering of Merchant ſtrangers and denizens, and for * due imployment of their money upon the native commodities of this Realme, many Statutes have beene made ſince this great Charter, and have been excellently expounded in the raigne of Queene Elizabeth, but that matter belongs not to this place. 27. H. 6. cap. 3. 17. E. 4 cap. 1. 3. H. 7. cap. 8. * See hereafter the expoſition upon the Statutes of imployments.

CAP.

CAP. XXXI.

SI quis tenuerit de aliqua Eſcaeta, ſicut de honore Wallingford, Notting. Bolon. & de aliis eſcaetis quæ ſunt in manu noſtra, & ſint Baroniæ, & obierit hæres ejus, non det aliud relevium, nec faciet nobis aliud ſervitium, quam faceret Baroni, ſi Baronia eſſet in manu Baronis, & nos eodem modo eam tenebimus, quo Baro eam tenuit. Nec nos occaſione talis Baroniæ, vel eſcaetæ habebimus aliquam eſcaetam, vel cuſtodiam aliquorum noſtrorum hominum, niſi de nobis alibi tenuerit in capite ille qui tenuit Baroniam, vel eſcaetam illam.

By this Chapter it is declared, and enacted, that if any man holds of any eſcheate, as of any honour, or of other eſcheats, which are Baronies, and were in the Kings hands; Firſt, if he die, his heire being of full age, his heire ſhall give no other reliefe to the King then he did to the Baron. 2. Nor doe none other ſervice to the King, then he ſhould have done to the Baron. 3. That the King ſhall hold the honour or Baronie as the Baron held it, that is, of ſuch eſtate, and in ſuch manner and forme, as the Baron held it. 4. The King ſhall not have by occaſion of any Barony, or eſcheate, any eſcheate but of lands holden of ſuch Baronie. 5. Nor any wardſhip of any other lands then are holden by Knights ſervice of ſuch Baronie, unleſſe he, which held of the Baronie, held alſo of the King by Knights ſervice in capite.

All this is meerely declaratory of the Common law, and here it appeareth that he that holdeth of the King, muſt hold of the perſon of the King, and not of any honor, Barony, Manor or ſeigniory: and it appeareth farther in our books, that he that holdeth of the King in cheife, muſt not only hold of the perſon of the King, but the tenure muſt be created by the King, or ſome one of the progenitors, or predeceſſors Kings of this Realme, to defend his perſon and Crowne, otherwiſe he ſhall have no prerogative by reaſon of it, for no prerogative can be annexed to a tenure created by a Subject. Note here is not named the honour of Lanc. which was an auncient honour ever ſince the conqueſt, which E. 3. raiſed to a Count Palatine, as in the 4. part of the Inſtitutes, cap. Duch. of Lancaſtre appeareth. See 28. H. 6. 11. per touts les juſtices. 1. E. 6. Bro. trav. 53. Stamford Prerog. 29. b.

See the firſt part of the Inſtitutes ſect. 103. 47. E. 3. 21. F. N. B. 5.

47. E. 3. 21. Riparaves caſe.

¶ De aliis eſcheatis.] Some queſtion hath been made of theſe words, for ſome have ſaid that theſe words are to be underſtood of common eſtheats, as where the Lord dieth without heire, or where he is attainted of felony: But where the Lord is attainted of high Treaſon, there the King hath the land by forfeiture of whomſoever the land is held, and not in reſpect of any eſcheate by reaſon of any ſeigniorie: and therefore where William Riparave a Norman, held lands in fee of the King, as of the honour of Peverell, and Riparave forfeited his ſaid land for Treaſon, and the King ſeiſed it as his eſcheate of Normandy, in this caſe the land ſo forfeited was no part of the honour, as it ſhould have been, if it had come to the King, as a common eſcheate, for it cometh to the King by reaſon of his Perſon, and Crowne, and therefore if he graunt it over &c. the Patentee

patentee shall hold it of the King in chiefe, and not of the honour. And all this is to be agreed, but yet the tenants that held before of the honour by Knights service, cannot hold of the King in chiefe. 1. For that they hold not of the person of the King, but of the Honour. 2. Because the tenure was not created by the King, or any of his progenitors, as hath been said.

And so doth Bracton, who wrote some after the Statute, expound this great Charter to extend to forfeiture of Baronies for treason, as of the Normans. Bracton. l. 2. fol. 87. b. 30. H. 8. tenures. Br. 44. 29. H. 8. livery. 28. Br. 36. H. 8. dier. 58.

And yet to make an end of all ambiguities and questions, the Statute of 1 E. 6. was made, which is, as the words be, a plain declaration and resolution of the Common Law. Likewise the Statute of 1. E. 3. which provideth, that where the land, that is holden of the King, as of an honour, is alienated without licence, no man shall be thereby grieved, is also a declaration of the Common law. 1. E. 6. cap. 4. 1. E. 3. cap. 13.

By this Chapter it appeareth, that a subject may have an honour. See the 1. part of the Institutes sect. 1.

CAP. XXXII.

NUllus liber homo det de cætero amplius alicui, vel vendat [alicui] de terra sua, quam ut de residuo terræ suæ possit sufficienter fieri domino feodi servitium ei debitum, quod pertinet ad feodum illud. Tr. 1. E. 1. coram Rege. Nor. & Derb. a declaration made of this Act. Bract. l. 1. Britton. fol. 88. Fleta l. 3. cap. 3. mirror. c. 5. §. 2. Custumier de Norm. cap. 116.

1 First it is to be seene, what the Common law was before this Statute.
2 What is wrought by this Statute, where the lands are holden of the King.
3 What this Statute hath provided in case where lands are holden of a Subject. 10. H. 7. 11.

Before this Statute, in case where the tenure was of a common person, the tenant might have made a feoffment of a parcell of his tenancy to hold of him, for the seigniory remained intire as it was, and the Lord might distreine in the tenancy paravaile for his rent, and service; but at the Common law, he could not have given a part of his tenancy to be holden of the Lord, for the tenant by this Act could not divide the seigniory of the Lord which was intire, for at the beginning the Lord reserved his seigniory out of the whole tenancy, and might distreine in every part thereof for his seigniory, but if the tenant might have made a feoffment of part to hold of the Lord, then had he secluded the Lord of his liberty to distreine for the whole seigniory in every part thereof. [a] 29. Ass. p. 19. 20. Ass. p. 17. 26. Ass. p. 37. 20. E. 3. avowry. Rot. Parl. 29. E. 3. nu. 18. [b] Rot. Par. 18. E. 1. [c] 34 E. 3. c. 15. See the Stat. of W. 3. de quia emptores terr. an. 18. E. 1.

At the Common law the tenant might have made a feoffment of the whole tenancy to be holden of the Lord, for that was no prejudice at all to the Lord. F. N. B. 143. b. & 235. c. 13. Eliz. Dier. 299. b.

[a] But in the Kings case it was doubted, whether his tenant might have given part of the tenancy to hold of himselfe, because the Land, and the profit that might come to the King thereby, was removed farther off from him, and the mesnalty was ever of lesse value, then the land, and for that cause the tenancy was called paravaile: [b] and in 18. E. 1. the King answered to a petition in Parliament, Rex non vult aliquem medium, &c. and this question remained after this Statute, about the space of 133. years, viz. till the [c] Statute of 34. E. 3. was made, whereby it is provided, that alienations of Lands made by tenants, which held of H. 3. or of other Kings before him, to hold of themselves, that the alienations should stand in force, saving to the King his prerogative of the time of his great Grandfather, his Father, and his own, whereby it appeareth that this prerogative to have a fine for alienation, [d] began in the raign of H. 3. which was by this Act, and therefore he beginneth with H. 3. his great Grandfather. [d] Rot. pat. an. 21. H. 3. m. 4. H. 3. confirmed this Chart. made 9. H. 3. [e] 20. Ass. p. 17. 26. Ass. p. 37. 14. H. 4. 2. 3. 15. E. 4. 13. Stamf. prer. cap. 6. fo. 27. 28. 9. E. 3. 6.

[c] To the second point by this Act, where lands are holden of the King, as King, in Capite, be it by Knights service, or in socage in Capite, [e] alienated without licence, Hil. 13. E. 3. coram Rege Norff. in Turri.

there groweth, as hath been ſaid, to the King a fine: For by the Common law it was againſt the nature and purity of a fee-ſimple, for the tenant to be reſtrained from alienation.

But ſome did hold, that upon this Act the land ſo alienes without licence was forfeite to the King, by reaſon of theſe words, nullus liber homo det.&c. and others did hold the contrary, that upon theſe words, the land was not forfeited, but that it ſhould be ſeiſed in the name of a diſtreſſe, and a fine to be paid for the treſpaſſe, which I take to be the better opinion; and the reaſon why our books ſpeake, that no fine was due before 20.H.3. is, for that about that yeare H.3. being of full age (as hath been ſaid) did eſtabliſh and confirme this great Charter, but in truth it was in 21.H.3. as by the Charter it ſelfe appeareth.

1.E.3.c. 12. See the Statute of quia emptores terrarum.ubi ſup. Hill.2.E.3.coram Rege wilteſ. Prerog.Regis c 6. F.N.B.175. 14. E. 3. quare Imp.54. Br.Alienation ſans licence 34. Hill.43. Eliz.l.2. fol.80.81.Seign. Cromwels caſe.

But this queſtion depended about the ſpace of 100. yeares &c. And was not determined untill the Statute made in 1.E.3. whereby it is enacted, that the King ſhall not hold them as forfeite in ſuch caſe, but that of lands ſo alienes there ſhall be from thenceforth, a reaſonable fine taken in the Chauncery, by due proces, which Act was but an expoſition of this Chapter of Magna Charta as to lands holden of the King in Capite alienes without licence, and extendeth to lands holden of the King by grand Serjantie alienes without licence.

To the 3. the great doubt upon this Act was, that in as much as this Act was a prohibition generall, and impoſed no paine or penalty, what paine the tenant, or his feoffee ſhould incurre, if he did the contrary; and by the common opinion this Act was thus interpreted: that when a tenant of a common perſon did alien parcell contrary to this Act, the feoffor himſelfe during his life ſhould not avoide it, quia nemo contra factum ſuum proprium venire poteſt, but that his heire after his deceaſe might avoid it by the intendment of this Act, to the end that men ſhould not purchaſe ſuch parcell, for feare of loſing the ſame after the death of the feoffor: but if the heire apparant had joyned with his anceſtor in the feoffment, or after had confirmed it, and thereby had given his aſſent thereunto, he or his heires ſhould never have avoided it, whether he ſurviued his Father or no; and if the heire entred upon this Statute, the alienee of part might plead that the ſervice, whereby the land was holden, might be ſufficiently done of the reſidue, and thereuppon iſſue might be taken. And I have ſeene divers ſuch Precedents betweene this Act of Magna Charta, and 18. E.1.

18.E.1. de quia emptores terrarum.

Then came the Statute of 18.E.1. which enacteth quod de cætero liceat unicuiq; libero homini terras ſuas, ſeu tenemẽta ſua, ſeu partẽ inde ad voluntatem ſuam vendere, ita tamen quod feoffatus teneat terram illam ſeu tenementum illud de capitali Domino per eadem ſervitia, & conſuetudines, per quæ feoffator ſuus illa prius de eo tenuit, & ſi partem aliquam earundem terrarum, ſeu tenementorum alicui vendiderit, feoffatus ille partem illam immediate teneat de Domino.

Many excellent things are enacted by this Statute, and all the doubts upon this Chapter of Magna Charta were cleered, both Statutes having both one end, (that is to ſay) for the upholding and preſervation of the tenures, whereby the lands were holden; this Act of 18.E.1. being enacted ad inſtanciam magnatum Regni.

1 Firſt this Statute of 18.E.1. doth begin with a de cætero liceat, which proveth that before it was not lawfull to alien part, unles ſufficient were left, and this approveth the aforeſaid common opinion, that in that caſe, the heire might enter, otherwiſe this Chapter of Magna Charta, had been in vaine and this de cætero liceat, had not needed.

2 That by this Statute of 18. E. 1. the prohibition and penalty by this Chapter of Magna Charta, to avoide the ſtate of the feoffee is taken away; de cætero liceat, &c.

3 The point aforeſaid of the Common law, that the tenant could not alien parcell to hold of the Lord, is by this Act of 18. E.1. altered.

4 Another point of the Common law is by this Act altered, that where by the Common law, he hath alienes parcell to hold of himſelfe, this is taken away, and the alienee ſhall hold of the Lord pro particula.

5 Where

5. Where the Tenant had liberty, and election by the common Law to make a feoffement of the whole, to hold either of himselfe, or of the Lord, now this liberty and election is taken away, for by this Act the Land must be immediately holden of the Lord.

6. That the King is bound by this Act, and this appeareth by the Register, that the King [illegible]charge the feoffée of part with the entire Rent, but there lieth a Writ De [illegible]do pro rata portione; But the King may graunt Lands to hold of himselfe, for he is not restrained by this Act, for hereby no man is restrained, but he which holds over of some Lord, and the King holdeth of none. Registr. 268. F.N.B. 234.

But then here riseth a question, If by this Chapter of Magna Charta, a fine for alienation accrued to the King upon an alienation of the Kings Tenant in Capite, and now this restraint (as hath bèen said) being taken away; how can that prerogative stand when the foundation, whereupon it is built faileth?

But hereunto it is answered. 1. The restraint of Magna Charta, secundum quid, as to the avoydance of the state of the feoffée by the heire, is taken away, as hath bèen said, but not simpliciter, for in respect of the King, the fine for alienation remains due, and herewith agréeth constant and continuall usage. 2. The Statute of 1 E. 3. enacteth, Que desormes de tielz terres & tenements alien soit reasonable fine prise in le Chauncery, and though it saith (desormes) from henceforth, that was not, that any fine was due before, but, as hath bèen said, to take away the question of the forfeiture. 17 E. 2 ca. 7. 1 E. 3. ubi supra.

After this Act out of the Office of the Remembrancer of the Exchequer, Writs of Quo titulo ingressus est, to help the King to his reasonable fine, issued out of the Exchequer, to know how the feoffée came to the whole, or part of the Land, and of what estate, whereupon the feoffée was driven to plead to his great charge and trouble, and therefore upon conference had with the Kings Officers, and the Judges, it was ordained, that séeing the Kings Tenant could not alien without licence, for if he did, he should pay a fine, that for a licence to be obtained, the King should have the third part of the value of the Land, which was holden reasonable, and the feoffée should pay the same because his Land was otherwise to be charged, and be rid of the trouble and charge by the Writ of Quo titulo ingressus est; and if the alienation was without licence, then a reasonable fine by the Statute, was to be paid by the alienée, which they resolved to be one yeares value, which ever since constantly and continually hath bèene observed and paid.

This fine was to be paid by the alienée, as hath bèen said, or by those that claimed by or under him, and if the fine be not paid, the Land shall be seised into the Kings hands; and the intent of a Parliament is alwayes intended full, and reasonable; and therefore if a disseisor of Lands in Capite make an alienation without licence, and the disseisée enter, the Land shall not be seised for the fine, for the disseisée is in by a title before the alienation, and so in other like cases. If he in the reversion levy a fine of Lands holden in Capite without licence, the lessée for life shall not bé charged with the fine, because that estate was before the alienation, but yet in a Quid juris clamat, the lessée shall not be compelled to attorne, because the Court will not suffer a prejudice to the King in like manner, as if the reversion had bèen alienen in Mortmain without the Kings licence. 45 E. 3. ca. 6. 17 E. 3. 6.

I have bèen the longer in explaining this Chapter, because it séemed so obscure to some Readers in former times, that they passed it over without any explanation.

CAP. XXXIII.

OMnes Patroni Abbatiarum, qui habent Chartas Regum Angliæ de advocatione, vel antiquam tenuram, vel poſſeſsionem, habeant earum cuſtodiam cum [vacaverint] ſicut habere debent, ſicut ſuperius declaratum eſt, *Cap.* 5.

Mirror ca. 5. § 2. F.N.B. 34. 44 E. 3. 24. 38 Aſſ. 22. 50 Aſſ. p. 6.

This Statute is intended where the Patron, or Founder of Abbeyes, or Priories by ſpeciall reſervation, tenure or cuſtome, ought to have the cuſtody of the Temporalties of the ſame, during the vacation, as many Patrons and Founders in times paſt had. But if the King be Founder, he ought to have the Temporalties during the Vacation, of common Right by his Prerogative.

44 E. 3. 24.

If the King and a common perſon joyn in a foundation, the King is the Founder, becauſe it is an entire thing.

If a common perſon found an Abbey, or Priory, with poſſeſſions of ſmall value, and the King after endow it with great poſſeſſions, yet the common perſon is Founder. If a common perſon found a Chauntery, and after the King tranſlate it, and make it a Monaſtery, and endow it with poſſeſſions, yet the common perſon is in Law the Founder, becauſe he gave the firſt living; ſo if the tranſlation be from regular to ſecular, vel è contra.

CAP. XXXIV.

NVllus capiatur, aut impriſonetur propter appellum fœminæ de morte alterius quam viri ſui.

See the firſt part of the Inſtitutes, ſect. 500. Glanv. lib. 14. c. 3. 15 E. 2. Coron. 385 17 E. 4. 1. 20 H. 6. 43. Stamf. Pl. Cor. 58, 59. Bract. li. 4. fol. 148. Brit. fo. 55. Flet. l. 1 ca. 33. See the firſt part of the Inſtitutes, ſect. 24.

For this word, Appeale, ſee the firſt part of the Inſtitutes. At the Common Law before this Statute, a woman, as well as a man might have had an appeale of death of any of her anceſtors, and therefore the ſon of a woman ſhall at this day have an appeale, if he be heire at the death of the anceſtor, for the ſon is not diſabled, but the mother onely, for the Statute ſaith, Propter appellum fœminæ. Vide more of this in the firſt part of the Inſtitutes.

* Fleta ubi ſupra. Mirror ca. 5 § 2. & ca. 2. § 7. 50 E. 3. 24. 28 E. 3. 91. 3 E. 3. Coron. 357 20 H. 6. 46.

* Fleta ſaith, Fœmina autem de morte viri ſui inter brachia ſua interfecti, & non aliter poterit appellare; And therewith agreeth the Mirror, Britton, and Bracton.

By inter brachia in theſe auncient Authors, is underſtood the wife, which the dead had lawfully in poſſeſſion at his death, for ſhe muſt be his wife both of right and in poſſeſſion, for in an appeale, Unques accouple in loiall Matrimony, is a good plea.

A woman at this day may have an appeale of robbery, &c. for ſhe is not reſtrained thereof.

This Writ of appeale of the death of her husband, is annexed to her Widowhood, as her Quarentine is.

If the wife of the dead marry again, her appeale is gone, albeit the ſecond husband die within the yeare; for ſhe muſt before any appeale brought, continue

nue fœmina viri ſui, upon whoſe death ſhe brings the appeale.

So if ſhe bring the appeale during her Widow-hood, and take husband, the appeale ſhall abate, and is gone for ever. 11 H. 446.

So likewiſe, if in her appeale ſhe hath iudgement of death againſt the Defendant, if after ſhe take husband, ſhe can never have execution of death againſt him.

Albeit the husband be attainted of high Treaſon, or felony, yet if he be ſlain, his wife ſhall have an appeale, for notwithſtanding the attainder he was vir ſuus, but the heire cannot have an appeale, for the blood is corrupted betweene them. 35 H. 6. 63.

¶ Appellum fœminæ.] Hermophrodite, if the male ſex be prædominant, ſhall have an appeale of death as heire, but if the female ſexe doth excéd the other, no appeale doth lie for her as heire.

CAP. XXXV.

NVllus Comitatus de cætero teneatur niſi de menſe in menſem, & ubi major terminus eſſe ſolebat, major ſit. Vide 2 Ed. 6. cap. 25. Nec aliquis Vicecomes, vel balivus ſuus faciat Turnum ſuum per hundredum, niſi bis in anno, & non niſi in loco debito & conſueto, viz. ſemel poſt Paſch', & iterum poſt feſtum S. Michaelis, et Viſus francipleg' tunc fiat ad illum Terminum Sancti Michaelis ſine occaſione. Ita ſcilicet quod quilibet habeat libertates ſuas quas habuit, vel habere conſuevit tempore Regis Henrici avi noſtri, vel quas poſtea perquiſivit. Fiat autem viſus de frankpleg' ſic: videlicet, quod pax noſtra teneatur, & quod Tithinga teneatur integra ſicut eſſe conſuevit, & quod Vicecomes non quærat occaſiones, & contentus ſit de eo, quod Vicecomes habere conſuevit de viſu ſuo faciendo, tempore H. Reg. avi noſtri. Vide Marlb. cap. 10.

¶ Comitatus.] Quod modo vocatur Comitatus, olim apud Britones temporibus Romanorum in Regno iſto Britanniæ vocabatur Conſulatus; & qui modo vocantur Vicecomites, tunc temporis Vice-conſules vocabantur; ille vero dicebatur Vice-conſul, qui Conſule abſente ipſius vices ſupplebat in Juris foro. Inter leges R. Ed. Lamb. 129. n. b. Idem verbo Conventus.

Curia Comitatus, in Saxon, Scýpegemote, i. Comitatus conventus. 12 H. 7. 18.

Ejus duo ſunt genera, quorum alterum hodie le Countie Court, alterum le Tourne del Viſcount, olim Folkmote, vulgo nuncupatur; So as many times Turn' Vicecomitis is expreſſed under the name of Curia Comitatus, becauſe it extended through the whole County: and therefore in the red Book of the Exchequer, amongſt the Laws of King H. 1. cap. 8. De generalibus placitis Comitatum, it is thus contained, viz. Lamb. 135. Britton ca. 27. Flet. l. 2. ca. 36, 37. In libro rubro, in Scaccario. ca. 8.

Sicut antiqua fuerat inſtitutione formatum, ſalutari Regis imperio vera eſt recordatione

datione firmatum, gereralia * Comitatuum placita certis locis, & vicibus, & definito tempore per ſingulas anni provincias convenire debere, nec ullis ultra fatigationibus agitari, niſi propria Regis neceſſitas, vel commune Regni commodum ſæpius adjiciant. Interſint autem Epiſcopi, Comites, Vicedomini, Vicarii, Centenarii, Aldermanni, Præfecti, Præpoſiti, Barones, Vavaſſores, Tingrevii, & cæteri terrarum Domini diligenter intendentes, ne malorum impunitas, aut gravionum pravitas, vel judicum ſubverſio ſolita miſeros laceratione confiniant: Agantur itaque primo, debita veræ Chriſtianitatis jura, ſecundo, Regis placita, poſtremo, cauſæ ſingulorum, &c. debet enim Shcryſmote, (i. **the Sheriffes Tourne**) bis; Hundreda, & Wapentachia, (i. **the County Courts**) duodecies in anno congregari.

* i. Turnorum placita.

Regis placita. i. The Pleas of the Crown holden in the Sheriffes Tourn alſo.

And truly did H. 1. **ſay,** Sicut antiquâ fuerat inſtitutione formatum: **For theſe Courts of the Tourn, and of the County, and of the Lète or View of frankpledge mentioned hereafter in this Chapter were very auncient: for of the Tourn you ſhall reade amongſt the Lawes of King** Edw. Statutum eſt quod ibi (ſcilicet apud le folkmote) debent populi omnes, &c. convenire, & ſe fide & ſacramento non fracto ibi in unum & ſimul confederare, &c. ad defendendum Regnum, &c. una cum Domino ſuo Rege, & terras ſuas, & honores illius omni fidelitate cum eo ſervare, & quod illi, ut Domino ſuo Regi intra & extra Regnum univerſum Britanniæ fideles eſſe velint, &c. Hanc legem invenit Arthurus (qui quondam fuit inclytiſſimus Rex Britonum) & ita conſolidavit & confederavit Regnum Britanniæ univerſum ſemper in unum, hujus legis authoritate expulit Arthurus prædictus Saracenos, & inimicos à Regno, lex enim iſta diu ſopita fuit, donec Edgarus Rex Anglorum, qui fuit avus Edwardi Regis, illam excitavit, & erexit in lucem & per totum Regnum firmiter obſervari præcepit: & hujus legis authoritate Rex Etheldred ſubito uno & eodem die per univerſum Regnum Danos occidit.

Lamb. fol 135. The oath of Allegeance in the Tourn or Leet.

By the Lawes of King Edward, **before the Conqueſt the firſt, which ſucceeded King** Alured, **it is thus enacted:**

Præpoſitus quiſque. i. Vicecomes, Saxonice Gereſa, Anglice Sheriffe, ad quartam circiter ſeptimanam frequentem populi concionem celebrato, cuique jus dicito æquabile, liteſque ſingulas cum dies condicti adveniant dirimito.

Inter leges Edw. Regis, ante conq. 1 cap. 11. fol. 51.

Hereby it appeareth that Common Pleas betwen party and party were holden in the County Court every month, which agréeth with Magna Charta, **and other Statutes and continuall uſage to this day.**

And amongſt the Laws of King Edgar **it is thus concerning the Sheriffes Tourn provided.**

Inter leges Edgari Regis. ca. 5. fo. 80.

Celeberrimus ex omni Satrapia bis quotannis conventus agitor, cui quidem illius Diœceſis Epiſcopus, & Senator interſunto, quorum alter jura Divina, alter humana populum edoceto; **which alſo agréeth with** Magna Charta, **and other Statutes and continuall uſage.**

By that which hath béen ſaid, it appeareth that the Law made by King H. 1. **was (after the great heat of the Conqueſt was paſt) but a reſtitution of the auncient Law of** England: **And foraſmuch as the Biſhop with the Sheriffe did goe in Circuit twice every yeare, by every hundred within the County (which alſo appeareth by this Chapter of** Magna Charta **in theſe words,** Turnum ſuum per hundreda, &c.) **it was called** Tour, **or** Tourn, **which ſignifieth a circuit, or perambulation.**

Britton cap. 29. Fleta lib. 2. cap. 45 Marlebr. ca. 10. 31 H. 6. Leet 11. F. N. B. 169. a.

Now let us peruſe the ſeverall branches of this Chapter.

¶ Nullus Comitatus de cætero teneatur niſi de menſe in menſem, & ubi major terminus eſſe ſolebat, major ſit.]

This (as hath béen ſaid) is an affirmance of the Common Law, and Cuſtome of the Realme.

¶ Comitatus.] **Here** Comitatus **is taken in the common ſenſe for the County Court.**

That

That the Realme was divided into Counties, long before the raigne of King Alured, viz. in the time of the auncient Britons. See the first part of the Institutes, Sect. 248.

¶ Et ubi major terminus, &c.] This is altered by the Statute of 2 E. 6. whereby it is provided that no County Court shall be longer deferred, but one month from Court to Court, and so the said Court shall be kept every month, and none otherwise. 2 E. 6. cap. 25.

By which Act every County of England, concerning the time of the keeping of the County Court is governed by one and the same Law.

And there is to be accounted 28. dayes to the legall month in this case, and not according to the month of the Kalender.

¶ Nec aliquis Vicecomes, vel balivus suus faciat Turnum suum per Hundredum, nisi bis in anno, & non nisi in loco debito & consueto, viz. semel post Pasch. & iterum post festum S. Michaelis.] Where this branch saith, Semel post Pasch. &c. The Statute of 31 E. 3. explaineth it, viz. one time within the month after Easter, and another time within the month after S. Michael, and if they hold them in any other manner, then they should lose their Tourn for that time, which is as much to say, as the Court so holden for that time, shall be utterly void, and the Sheriffe shall lose the profits thereof. 31 E. 3. ca. 15. 38 H. 6. fol. 7. 6 H. 7. 2. Stamf. pl. Cor. 84.

¶ Nisi in loco consueto.] This remaineth to this day. 42 E. 3. 4. & 5. Dier 4. & 5. Phil. & Mar. 151.

¶ Per hundreda.] How Hundreds, and the Courts of the Hundreds first came, see hereafter in this Chapter.

¶ Et Visus franciplegii tunc fiat ad illum Terminum Sancti Michaelis, &c.] It hath appeared before, that of auncient time the Sheriffe had two great Courts, viz. the Tourne, and the County Court: Afterwards for the ease of the people, and specially of the Husbandman, that each of them might the better follow their business in their severall degrees, this Court here spoken of, viz. view of frankpledge, or Leet was by the King divided, and derived from the Tourn, and graunted to the Lords to have the view of the Tenants, and Resants within their Mannors, &c. So as the Tenants, and Resiants should have the same Justice, that they had before in the Tourn, done unto them at their own dores without any charge or losse of time, and for that cause came the duty in many Leets to the Lord De certo Lete, towards the charge of obtaining the graunt of the said Leet. 11 H. 4. 89. 13 H. 4. 9. lib. 11. fo. 45. Godfreyes case.

So likewise, and for the same reason were Hundreds, and Hundred Courts, divided and derived from the County Courts, and this the King might doe, for the Tourn and Leet both are the Kings Courts of Record: And as the King may graunt a man to have power Tenere placita within a certain precinct, &c. before certain Judges, and in a manner exempt it from the jurisdiction of his higher Courts of Justice, so might he doe in case of the Tourne, and Hundred Courts: so as the Courts and Judges may be changed, but the Lawes and Customes, whereby the Courts proceed, cannot be altered. And as the County Court, and Hundred Court are of one Jurisdiction, so the Tourne, and Leet be also of one and the same jurisdiction; for Derivativa potestas est ejusdem jurisdictionis cum primitiva. *Regula.*

The style of the Tourn is Curia franc. plegii Domini Regis tent apud L. coram Vicecomite in Turno suo tali die, &c. And therefore in some books it is called the Leete of the Tourn. And therefore where the Sheriffe styled his Court, Turn Vicecom tent tali die apud L. &c. it was resolved that it was insufficient for that 31 H. 6. Lect 11. 8 H. 7. 11. 6 H. 7. 2. 8 H. 7. 1.

Mirror ca.1.§.16. that this word Tourn is but the perambulation of the Sheriffe, but by the right ſtyle of the Tourn, it appeareth that the Tourn and Leet have but one ſtyle, and the ſame juriſdiction.

18 H. 6. abbr. by F. Leet.1. But for want of the knowledge of antiquity it was obiter, in 18 H.6. denied that the Tourn, and the Leet were of one juriſdiction, and two inſtances are there put, viz. that the Leet hath conuſance of bread and ale, that is, of the aſſiſe of bread and ale, and the Tourn hath not conuſance thereof; and the other is, that in the Leet they have authority de preſenter ceux quetix ne ſont lies, abridged by Fitzh. a preſenter ceux, que ne ſont miſes in le decennarie.

To the firſt it is cleare, That the breach of the aſſiſe of bread and Ale is preſentable in the Tourn, as a common nuſance, and therewith agreeth conſtant and continuall experience, and reaſon proveth, that the derivative cannot have conuſance of that which the primitive had not, unleſſe it be given by ſome Act of Parliament; and herewith agreeth the ſtyle of the Tourn, and the authority of later Books.

4 E.4 31. 22 E.4.23. 12 H.7.18. 28 H.8.Dier 13.b As to the ſecond, it is ill reported in the Book it ſelfe; but if it be intended as Fitzh. abridgeth it, then it is cleare that in the Tourn they that be not put into the decennary may be inquired of, for, as hath been often ſaid, the ſtyle of the Tourn is, Curia viſus frank pleg'; and the derivative cannot of common right have more then the primitive.

But both of the Tourn and the Leete, this may be truly ſaid,

Tempora mutantur, & nos mutamur in illis;

Paſch. 5. Jac. lib. fo.78. Bulleins caſe. Cicero. Quodque vera inſtitutio illius curiæ evanuit, & velut umbra ejuſdem ad hunc remanet: habemus quidem Senatus conſultum, ſed in tabulis repoſitum, & tanquam gladium in vagina reconditum.

But now let us return to our Magna Charta.

Mirror ca.1.§.17. & ca.5.§.2. ¶ Viſus de franc' plegio tunc fiat ad illum Terminum Sancti Michaelis, &c.] It is to be obſerved that the precedent branch is, That Vicecomes non faciat Turnum per Hundredum niſi bis in anno, as hath been ſaid, viz. Semel poſt Paſch' & iterum poſt feſtum Sancti Michaelis; This clauſe extendeth to the enquiry of felonies, common nuſances and other miſdeeds, the view of frankpledges, and to all things inquirable in the Tourn. Now by this clauſe it is provided that the Article of the Tourn concerning the view of frankpledge, being here underſtood in a particular ſenſe, ſhall be dealt withall by the Sheriffe in his Tourn but once in the year, viz. at the Tourn holden after Eaſter, and ſo it hath been formerly expounded; and therefore it was well reſolved in 24 H.8. that this clauſe of the Statute of Magna Charta, is to be underſtood of the Leet of the Tourn, and not of other Leets, and ſo without queſtion is the Law holden at this day, That he that claimes a Leet by Charter, muſt hold it at the ſame dayes which are contained in the Charter, and he that claimes it by preſcription may claime to hold it once or twice every yeare, at any ſuch dayes as ſhall upon reaſonable warning be appointed, if the uſage hath been ſo, ſo that if hath been kept at uncertain times, or elſe it ought to be kept at ſuch certain dayes and times, as by preſcription hath been certainly uſed; and the next words to this clauſe bee, Ita ſcilicet quod quilibet habeat libertates ſuas, quas habuit, &c. doe explaine the meaning of this Chapter, that it extended not to the Leets of the Subjects, but they ſhould have their liberties, as before they had; and this alſo appeareth by the concluſion of this Chapter, Et quod Vicecomes, &c. contentus ſit de eo quod Vicecomes habere conſuevit de Viſu ſuo faciendo; So as it muſt be Viſus ſuus, the Sheriffes View, which of neceſſity muſt be parcell of the Tourn; and it is ſaid in the Mirror, that this view of frankpledge (parcell of the Tourn) ſhould be made once every yeare.

30 H.6. Leet 11. 24 H.8. Br. Leet 23. 22 H.6.14. 8 H 7.4. 12 H.7.15. 38 H.6.7. Dier 7 Eliz.233, 234.

¶ Fiat autem Viſus de franc' pleg' ſic, &c.] Here it appeareth that the view of frankpledge ſhould have two ends. 1. Quod pax noſtra

noſtra teneatur. 2. Quod Trithinga teneatur integra.

For the firſt, that the Kings peace might be kept; the right inſtitution of the view of Franke pledge, and whereon the name came is to be conſidered, which is as followeth.

Franci plegii. i. Liberi fidejuſſores, free ſureties or pledges; and here it is ſaid fiat viſus de Francis plegiis, ita ſcilicet quod pax noſtra teneatur, that is, let the view of pledges or ſureties for free-men be made, ſo that our peace may be holden: Now the inſtitution hereof, for the keeping of the Kings peace, was, that every free-man, at his age of 12. years, ſhould in the Leet (if he were in any) or in the Tourne, (if he were not in any Leet) take the oath of alleageance to the King, and that pledges or ſureties ſhould be found in manner hereafter expreſſed for his truth to the King, and to all his people, or elſe to be kept in priſon: This Franke pledge conſiſted moſt commonly of ten houſholds, which the Saxons called Theothung, in the North parts they call them Tenmentale. in other places of England Tithing, here in this chapter Trithinga. i. Decemvirale collegium, whereof the maſters of the nine families (who were bound) were of the Saxons called Freoborgh, which in ſome places is to this day called free Barrowe. i. Free ſurety, or Franke pledge, and the Maſter of the tenth houſhould was by the Saxon called by divers names, viz. Theothungmon, to this day in the Weſt called Tythingman, and Tihenheofod and Freoborher. i. Capitalis plegius, chiefe pledge: and theſe ten maſters of families, were bound one for anothers family, that each man of their ſeverall families ſhould ſtand to the Law, or if he were not forth coming, that they ſhould anſwere for the injury or offence by him committed, De eo autem qui fugam ceperit, diligenter inquirend' ſi fuerit in franco plegio, & decenna, tunc erit decenna in miſericordia coram Juſtitiariis noſtris, quia non habent ipſum malefactorem ad rectum.

Bract. lib. 3. f. 124. Int. leges Canuti fol. 108 19. Int. leges Edw. regis fol. 132. cap. de friborgis. Bract. ubi ſup. Lamb. verbo centuria & decuria. Bract. fol. 19. b. Brit. ubi ſup. Bract. l. 3. f. 124.

Hereby it appeareth, that the precinct of this frank pledge was called decenna, becauſe it conſiſted moſt commonly, as hath been ſaid, of tenne houſholds, and every man of theſe ſeverall houſholds, for whom the pledge or ſurety was taken were called decennarii, becauſe every particular perſon in the Kingdome was of one decenna or other, which names are continued as ſhadowes of antiquity to this day. Ordeine fuit anciennment, que nul ne demurraſt en le realme, ſil ne fuit en dizein & plevye de frank homes, appent aux viſc' de viewer un fois per an' franke pledges & les plevys, &c.

Brit. cap. 12. Fleta lib. 1. cap. 27. acc. Mirror. cap. 1. §. 17.

By the due execution of this Law, ſuch peace (whereof this chapter ſpeaketh) was univerſally holden within this Realme, as no injuries, homicides, robberies, theſts, riots, tumults, or other offences were committed; ſo as a man mony about him, without any weapon throughout England; and one ſaith truely, conjectura eſt, eaq; non levis, haud ita multis ſtatuiſſe priſca tempora ſceleribus, quippe quibus rapinæ, furto, cædi, plurimiſq; aliis ſceleribus mulctæ imponebantur pecuniariæ, cum hiis hac noſtra tempeſtate, nos omnibus merito capitis pœnam irrogamus, &c.

Lamb. verb. Æſtimatio capitis

¶ Et quod trithinga teneatur integra.] Trithinga or Tithinga is expounded for Theothinga, which ſignifieth the Frankpledge of tenne houſholds, as hath been ſaid, and it is notably expounded by Fleta, which there you may read at large, the ſenſe hereof is, quod Trithinga, five Theothinga. i. Decemvirale collegium teneatur integrum. i. that no man be not within ſome decenna or other, ſo as he may be brought forth to ſtand to right if he ſhall offend: Olim Trithinga ſignificabat tria vel quatuor hundreda, quod autem in Trithinga definiri non poterat, ferebatur in ſcyram.

Fleta lib. 2. c. 54. § de Trithingis. Lamb. Int. leges Sanct. Edw. nu. 34. Merton. c. 10.

What perſons ſhall come to the Tourne and Leete, &c. and who be exempted, ſee the Statute of Marlebridge, and the ancient authors.

Marlebridg c. 10. Mirror c. 1. § 16. Bract. lib. 3. fol. 124. Brit. 19. b. Fleta lib. 1. c. 29. lib. 2. cap. 45.

¶ Tempore Regis Henrici avi.] Twice repeated in this Chapter: vid. before Cap. 15. 16.

See the expoſition of this Statute Rot. Clauſ. anno 18. H.3. m.10.

¶ Et quod Vicecomes non quærat occaſiones, & contentus ſit de eo quod Vicecomes habere conſuevit de viſu ſuo faciend', tempore Henrici Regis avi noſtri.] By the Common law, to avoid all extortion and grievance of the Subject, no Sheriſe, Coroner, Gaoler, or other of the Kings Miniſters ought to take any reward for doing of his office, but only of the King; and this appeareth by our books, and is ſo declared and enacted by act of *Parliament in the 3.E.1. And a penalty added to the prohibition of the Common law by that Act: And Forteſcue cap.24. ſaith, Vicecomes jurabit ſuper ſancta Dei Evangelia, inter articulos alios, quod non aliquid recipiet colore, aut cauſa officii ſui, ab aliquo alio, quam à Rege.

Mirror.c.2.§.5. Britton. fol. 3. b. 6.a. 18.b. 37. b. Fleta.lib.1.c. 18. §. Item ſi officium. & lib.2.c.39. 27. Aſſ. p.14. 42.E.3.5. 23.H.6 cap.10.17. 1.H.8.c.7. 33.H. 8.cap.22. 21.H.7 fol.17. * W.1.cap. 26.

But after that this rule of the Common law was altered, and that the Sheriſe, Coroner, Gaoler, and other the Kings miniſters, might in ſome caſe take of the ſubject, it is not credible what extortions, & oppreſſions have thereupon enſued. So dangerous a thing it is, to ſhake or alter any of the rules or fundamentall points of the Common law, which in truth are the maine pillars, and ſupporters of the fabrick of the Common-wealth, as elſewhere I have noted more at large, and yet not ſo largely, as the weight of the matter deſerveth.

See the preface to the 4. part of my reports.

¶ Contentus ſit de eo quod Vicecomes habere conſuevit, &c.] Theſe words are not to be intended of any reward, &c. (for the Sheriſe by Law, as hath been ſaid, could take no reward for doing of his office) but of the profits of the Court of the Tourn, and ſuch only as were accuſtomed in the raigne of H.2. So they muſt be very auncient, for the which the Sheriſe ſhould (by an auncient law) pay a certaine ſumme de proficuis comitatus, and ſhould be charged in the Exchequer for this certain ſumme.

42.E.3.5.38.H.6 7. 6.H.7.2.3.

Regiſt.16. 174. 175. F.N.B. 161.d. Marleb. cap.10.

And it is to be obſerved, that if any man be grieved contrary to the purview of this Act, he may, as hath been ſaid, for his reliefe therein, have an action upon this Statute, albeit no action be expreſſly given, which in this, and many other like caſes upon the branches of Magna Charta, is worthy of obſervation.

CAP. XXXVI.

Mirror.c.5.§.2. Glanv.l.6.c.7.

NEc liceat de cætero alicui, dare terram ſuam alicui domui Religioſæ, ita quod illam reſumat de eadem domo tenend'. Nec liceat alicui domui Religioſæ terram alicujus ſic accipere, quod tradat illam illi, à quo eam accepit tenend'. Si quis autem de cætero terram ſuam alicui domui Religioſæ ſic dederit, & ſuper hoc convincatur, donum ſuum penitus caſſetur, & terra illa domino illius feodi incurratur. Vide ſtatutum de Religioſis, An.7.E.1.

3.E.4.12. See the 1. part of the Inſtitutes ſect. 133.157. Stat. de 7.E.1. de religioſis. 23.H.3. Aſſ. 436. Britton.fol.32.b. Fleta.lib.3.cap.5.

This Chapter is excellently abridged, according to the effect thereof, and notably expounded by a Parliament holden by King Edw. 1. ſonne of H.3. the words whereof are theſe. Of late (viz.anno 9.H.3. cap.36.) it was provided that religious men ſhould not enter into the fees of any without licence, and will of the chiefe Lords, of whom ſuch fees been holden immediately: whereby it appeareth, that by this Chapter of Magna Charta, a gift of lands to any religious

gious house was prohibited, notwithstanding the Religious house gave not the same back again to hold of the same house, &c. but kept the Lands so given unto themselves in their own hands: and in that case, that the Land should incurre to the Lord of the fee, consider well the words; and the interpretation is worthy of observation for the interpretation of other Statutes in like cases.

For the word Mortmain, see the first part of the Institutes. First part of the Institutes. Cap. Frankalmoigne.

There were two causes of making of this Statute: one that the services that were due out of such fees, and which in the beginning were created for the defence of the Realme, were unduly withdrawn. 2. The chiefe Lords did lose their Escheats, Wardships, Reliefes, and the like; for which causes, divers provident Lords at the Creation of the Seigniory had a clause in the deed of feoffement, Quod licitum sit donatori rem datam dare, vel vendere cui voluerit, exceptis viris religiosis, & Judæis. Vide Bracton, libro 1. fol. 13. Many of these deeds I have seene. Bract. li. 1. fol. 13.

But the Ecclesiasticall persons (who in this were to be commended, that they had ever the best learned men in the Law, that they could get, of their Councell) found many wayes to crèep out of this Statute, viz. religious men; as Abbots, Priors, and other Ecclesiasticall persons regular, to purchase Lands holden of themselves, or take leases for long term for years, and many other devices they had to escape out of this Statute; and Bishops, Parsons, and other Ecclesiasticall persons secular took themselves to be out of this Statute. Fleta lib. 3. cap. 5.

The said Statute of 7 E. 1. intended to provide against these devices, in these words, Quod nullus religiosus, aut alius quicunque (i. other whatsoever of like quality of being, a body politique, or corporate, Ecclesiasticall, or Lay, sole, or aggregate of many) terras aut tenementa aliqua emere, vel vendere sub colore donationis aut termini; And to prevent all other inventions and evasions added these generall words, Aut ratione alterius tituli cujuscunq; terras aut tenementa ab aliquo recipere aut alio quovis modo arte vel ingenio sibi appropriare præsumat, sub forisfactura eorundem. 15 R. 2. cap. 5. 29 Ass. p. 17. Br. 29 H. 8. Mortmain 39. * These words are notably explained. 15 R. 2. ca. 5. 19 H. 6. 56. 41 E. 3. 16. 41 E. 3. 21. 29 H. 8. Br. Mortmain 39.

A man would have thought that this should have prevented all new devices, but they found also an evasion out of this Statute, for this Statute of 7 E. 1. extended but to gifts, alienations, and other conveyances made between them and others, Arte vel ingenio, &c. and therefore they gave over them; And they pretending a title to the land (that they meant to get) brought a Præcipe quod reddat, against the Tenant of the land, and he by consent and collusion should make default, and thereupon they should recover the land, and enter by judgement of Law, Et sic fieret fraus Statuto. 17 E. 3. 59. 21. E. 3. 46. Rot. Parliam. 5 R. 2. nu. 92. Quant le terre est per covin convey al Roy.

When this new invention was provided for, and taken away by the Statute of W. 2. yet found they out an evasion out of all these Statutes, for now they would neither get any Land by purchase, gift, lease, or recovery, but they caused the Lands to be conveyed by feoffement, or in other manner to divers persons, and their heires, to the use of them and their successors, by reason whereof they took the profits; but this was enacted by the Statute of 15 R. 2. to be mortmain within the forfeiture of the said Statute of 7 E. 1. W. 2. cap. 32. Fleta lib. 3. cap. 5. 45 E. 3. 19. 15 R. 2. cap. 5. 8 H. 4. 16.

But the foundation of all these Statutes, was this Chapter of Magna Charta.

CAP. XXXVII.

Fleta lib. 2. c. 60. SCutagium de cætero capiatur ſicut capi conſuevit tempore Henrici Regis avi noſtri.

¶ Scutagium.] Vide for this the firſt part of the Inſtitutes, lib. 2. Cap. Eſcuage, ſect. 95.

¶ Tempore Henrici Regis avi noſtri.] There is another reference to the raigne of King Henry the ſecond. See for this before, Cap. 15. &c.

CAP. XXXVIII.

SAlvæ ſint Archiepiſcopis, Epiſcopis, Abbatibus, Prioribus, Templariis, Hoſpitalariis, Comitibus, Baronibus, & omnibus aliis, tam Eccleſiaſticis perſonis, quam ſecularibus, omnes libertates & liberæ conſuetudines, quas prius habuerunt. Omnes autem iſtas conſuetudines & libertates prædictas, quas conceſsimus in Regno noſtro tenend' (quantum ad nos pertinent) erga nos & hæred' noſtros obſervemus, & omnes de Regno noſtro, tam Clerici quam Laici obſervent (quantum ad ſe pertinent) erga ſuos. Pro hac autem donatione & conceſsione libertatum iſtarum, & aliarum libertatum contentarum in Charta noſtra de libertatibus Foreſtæ, Archiepiſcopi, Epiſcopi, Abbates, Priores, Comites, Barones, Milites, liberi Tenentes, & omnes de Regno noſtro dederunt nobis quinto-decimam partem omnium mobilium ſuorum. Vide Stat. 7. Anno 25 E. 3. Conceſsimus etiam eiſdem pro nobis & hæredibus noſtris, quod nec nos, nec hæredes noſtri, aliquid perquiremus, per quod libertates in hac Charta contentæ infringantur vel infirmentur. Et ſi ab aliquo contra hoc aliquid perquiſit' fuerit, nihil valeat, & pro nullo habeatur. Hiis teſtibus Bonefacio Cantuar' Archiep', E. Londonenſi Epiſcopo, & aliis. Datum apud Weſtm' decimo die Februarii, Anno Regni noſtri nono.

This Chapter doth conſiſt of five parts.
Firſt it is enacted, That all the Liberties, and Free-Cuſtomes, which any Arch-

Archbiſhop, Biſhop, Abbot, Priour, Templar, Hoſpitaller, Earle, Baron, or any perſon either Eccleſiaſticall or ſecular, have had, his ſafe, that is, whole without preiudice unto them, for the words be Salvæ fint omnibus Archiepiſcopis, &c. omnes libertates, &c. all the liberties, &c. be ſafe to all Archbiſhops, &c. ſo as this is no ſaving to them, but in effect, an Act that they ſhould enjoy them: for regularly a ſaving in an Act of Parliament enlargeth not, nor extendeth to any new thing, but preſerveth a right or intereſt, that is former to things contained in the Act, which by the words of the Act might have been given away. But this clauſe doth enlarge, and extendeth to all other liberties, and free cuſtomes, which any Subject Eccleſiaſticall, or Temporall ought to have; and therefore the Engliſh Tranſlation, both in this and many other places of this great Charter, is very vicious. But it is principally to be obſerved, that here is not any ſaving at all for the King, his heires, or Succeſſors, to the end that the King, his heirs, and Succeſſors, againſt all pretences of evaſions, ſhould be bound by all the branches of both theſe Charters.

The ſecond is, that all the Cuſtomes, and Liberties, which the King had graunted to be holden within his Realme, for him and his heires, the King himſelfe and his heires, as much as appertained to him or them, ſhould obſerve and kepe.

The third is, that all the men of this Realme, as well of the Clergy as of the Laity, the ſaid Cuſtomes and Liberties for themſelves and their heirs, as much as to them appertained, ſhould obſerve and kepe.

This is the chiefe felicity of a Kingdome, when good Lawes are reciprocally of Prince and people (as is here undertaken) duly obſerved.

The fourth is, that for this gift and graunt by the King, of the Liberties contained in this great Charter, and of others contained in the Kings Charter of Liberties of the Foreſt, the Archbiſhops, Biſhops, Abbots, Priors, Earles, Barons, Knights, Free-holders, and other the Kings Subjects, Citizens, and Burgeſſes, (aſſembled in Parliament) gave unto the King one fifteenth; which proveth, that as the fifteenth was graunted by Parliament, ſo was this great Charter alſo graunted by authority of the ſame. But ſince this time the manner of the fifteenth is altered; for now the fifteenth, which is alſo called the Taxe, is not originally ſet upon the polles, as at this time it was, but now the fifteenth is certainly rated upon every Towne. And this was by vertue of the Kings Commiſſions into every County of England in 8 E. 3. taxations were made of all the Cities, Boroughes, and Townes in England, and recorded in the Exchequer, and that rate was at that time the fifteenth part of the value of every Town, and therefore retaineth the name of the fifteenth ſtill.

Hil. 3. Jacobi. lib. 8. The Princes Caſe.

Rot pat. 6 E. 3. 2. part. nu. 16.

And after the fifteenth is graunted by Parliament, then the inhabitants rate themſelves for payment thereof, and if one towne bee joyned with another in the rate of the totall, and ſubdivided on each a certain rate in that Commiſſion, and the one is rated too low, and the other too high, there lieth a Writ called, Ad æqualiter taxand' to be taken out of the Exchequer to rate the Townes equally. The Subſidie is uncertaine, becauſe it is ſet upon the perſon, in reſpect of his Lands, or goods, which commonly doe ebb and flow.

The fift is, that the King did graunt for him, and his heires, that neither he, nor his heires, ſhall take out any thing, whereby the liberties in this Charter contained may be broken, or weakned: And if by any man againſt this Charter any thing ſhould be ſought out, it ſhould be of no value, and holden for nought. And all theſe doe evidently appeare in this Chapter.

The laſt and laſt is Hiis teſtibus.

It is true, that of auncient time nothing paſſed from the King of Franchiſes, Liberties, Priviledges, Mannors, Lands, Tenements, and Hereditaments of any eſtate of inheritance, but it was by the advice of his Councell expreſſed under Hiis teſtibus, as it was then, and continues to this day in the creation of any to any degree of Nobility, for thereto Hiis teſtibus is ſtill uſed.

This concluſion of the Kings graunts with Hiis teſtibus was uſed by King H. 3.

H. 3. and his Progenitors Kings of this Realme before him, and by his ſon E. 1. and by E. 2. and E. 3. after him: Afterwards, in the beginning of the raigne of R. 2. I finde the clauſe of Hiis teſtibus was left out, and in ſtead thereof came in Teſte me ipſo in this manner, In cujus rei teſtimonium has literas noſtras fieri fecimus patentes: Teſte me ipſo, which ſince by all his Succeſſors Kings and Queens of this Realme (except in Creations) hath bin uſed.

Thoſe that had Hiis teſtibus, were called Chartæ, as this Charter is called Magna Charta, and ſo is Charta de Foreſta, &c. and thoſe other that be Teſte me ipſo, are called Letters Patents, being ſo named in the clauſe of In cujus rei teſtimonium has literas noſtras fieri fecimus patentes.

See the firſt part part of the Inſtitutes. ſect. 1.

And this was the auncient forme alſo of the Deeds of ſubjects, concluding with Hiis teſtibus, which continued untill, and in the raigne of H. 8. but now is wholly omitted, and now the witneſſes are ſubſcribed under the Deed, or endorſed thereupon.

Now upon this occaſion to treat how theſe clauſes, Datum per manum noſtram, per manum Cancellarii noſtri, per ipſum Cuſtodem, & Concilium, &c. entred in, and went out: when theſe clauſes, De gratia ſpeciali, and Ex certa ſcientia, & mero motu began, (which continue to this day) and the cauſe and reaſon of the inſerting of the ſame; and when and wherefore theſe clauſes were ſubſcribed under the Letters Patents, Per ipſum Regem, Per breve de privato ſigillo, Authoritate Parliamenti, &c. came in, (which ſtill doe continue) would aske a ſeverall Treatiſe of it ſelfe, and not pertinent to our purpoſe for the underſtanding of this Charter of Magna Charta, and therefore purpoſely I ſpeake not of them.

There be Witneſſes to this great Charter, a great number of Reverend, and Honourable perſonages, in all 63. of which there were of the Clergy 31. whereof there were 12. Biſhops, and 19. Abbots, and Hugh de Burgo Chiefe Juſtice, and 31 Earles and Barons, as hath been ſaid before.

Hil. 3. Jac. in Cancellaria. The Princes Caſe. Lib. 8. fol. 19.

Beſides, it was eſtabliſhed by Authority of Parliament, which was holden at Weſtminſter, in forme of a Charter, as many others have bin, for which, as hath been ſaid likewiſe, by Parliament the Lords and Commons gave a fifteenth. Of Acts of Parliament in form of a Charter, you may reade at large in the Princes Caſe, and therefore need not to be recited.

STATUTUM

STATVTVM de MERTON

Editum Anno 20. H. 3.

Bracton li. 2. c. 96. saith it was in anno 18 H. 3.

IT is called the Statute of Merton, becauſe the Parliament was holden at the Monaſtery of the Canons regular of Merton, ſeaven miles diſtant from the City of London, which Monaſtery was founded by Giſlebert a noble Norman, that came in with the Conquerour. And this is that Monaſtery of Merton, the Prior whereof had a great caſe in Law, which long depended between him and the Prior of Bingham.

18 E. 4. 22.
19 E. 4. 2, 7.
20 E. 4. 16.
21 E. 4. 60.

PRoviſum eſt in Curia domini Regis apud Merton, die Mercurii, in craſtino Sancti Vincentii, anno regni Regis Henrici filii Regis Iohannis viceſimo, coram W. Cantuarienſi Archiepiſcopo, & Coepiſcopis ſuffraganeis ſuis, & coram majore parte Comitum & Baronum Angliæ ibidem exiſtentium, pro coronatione ipſius domini Regis & Elianoræ Reginæ, pro qua omnes vocati fuerunt, cum tractatum eſſet de communi utilitate Regni ſuper articulis ſubſcriptis, ita proviſum fuit & conceſſum, tam à prædict' Archiepiſcopis, Epiſcopis, Comitibus, Baronibus, quam ab ipſo Rege, & aliis.

¶ Coram Cant. Archiepiſcopo, et Coepiſcopis ſuffraganeis ſuis.] Suffraganeus properly is a vicegerent of a Biſhop, inſtituted to aſs and aſſiſt him in his ſpirituall office, and is ſo called à ſuffragiis: Of theſe you may read in the Statutes of 26. H. 8. 1. & 2. Phil. & Mariæ. 1. Eliz. And where ſome copies have Coram Cantuar' Archiepiſcopo, & Coepiſcopis & ſuffraganeis; this latter conjunction (&) is more then ought to be; for ſuffraganeis ſuis muſt referre to Coepiſcopis, that is, that the Biſhops ſhould aide and aſſiſt the Archbiſhop with their ſuffrages: for other Suffragans, which were Vicegerents of Biſhops, never had voyce in Parliament, becauſe they held not per Baroniam, as all Biſhops doe, and many Abbots and Priors, as hath béene ſaid, did, in reſpect whereof they were Lords of Parliament.

26 H. 8. cap. 14.
1 & 2 Ph. & Mar. ca. 8. 1 Eliz. ca. 1.

See the firſt part of the Inſtitutes. Cap. Frankalmoigne.

¶ Pro Coronatione ipſius Domini Regis.] The King was formerly Crowned at Glouceſter on the 18. of October, in the beginning of the firſt yeare of his raigne, then being about nine yeares old: And here it appeareth that in the twentieth yeare of his raigne, he was Crowned again, then being about 29. yeares old, twice Crowned, as King Henry the ſecond, and King John before him had béen, and as King R. 2. after him was.

¶ Et Elianoræ Reginæ.] This Elianor was daughter, and one of the heires of Raymond Berengary Earle of Provence, ſhe was ſiſter to the Earle of Provence, and to Boniface, Archbiſhop of Canterbury, and ſhe was Crowned at Weſtminſter.

The

She survived the King, and of a Crowned Queen became a professed Nun in Ambresbury, and died a Nun there, in the nineteenth year of her Widowhood.

The Statutes enacted at this Parliament are divided into eleven Chapters.

CAP. I.

DE Viduis primo, quæ post mortem virorum suorum expelluntur de dotibus suis, & dotes suas, vel quarentenam suam habere non possunt sine placito, videlicet, quod quicunque deforciaverit eis dotes suas, vel quarentenam suam, de tenementis quibus viri sui obierunt seisiti, & ipsæ viduæ postea per placitum recuperaverint, si ipsi deforc' de injusto deforciamento convicti fuerint, reddant eisdem viduis damna sua, scilicet valorem totius dotis eis contingentis, à tempore mortis virorum suorum, usque ad diem quo ipsæ viduæ per judicium Curiæ seisinam suam inde recuperaverint. Et nihilominus ipsi deforciatores sint in misericordia Domini Regis.

First part of the Institutes. sect. 36.

Hil. 9. E. 2. fo. 62. b in libro meo, un fem. &c.

This Chapter is explained in the first part of the Institutes, in all the points thereof, which you may see there at large; whereunto you may adde (upon this word recuperaverint) a case in 9 E. 2, that in a Writ of Dower, the Tenant plead that the Husband is alive, &c. and the triall awarded by prowes, and a day thereupon given, &c. at which day the Demandant came with her prowes, and the Tenant made default, the Demandant had judgement to recover, but if the Demandant had not had her prowes there, then she should have had but a Petit Cape.

CAP. II.

ITem omnes Viduæ de cætero possint legare blada sua de terra sua, tam de dotibus suis, quam de aliis terris, & tenementis suis: salvis consuetudinibus, & servitiis dominorum de feodo, quæ de dotibus, & aliis tenementis suis debentur.

Before the making of this Statute, it was a question, Whether Tenant in Dower might devise the corn, which she had sowen, or whether he in the reversion should have them. Some held that she could not devise them; or if she devised them not, that her Executors should not have them, but he in the reversion, for that

that her eſtate was freely created by Act in law; and as ſhe, when her dower was aſſigned to her, ſhould have the land ſowen, or unſowen for her dower, ſo at the time of her death, he in the reverſion ſhould have the land ſowen, or unſowen. And of this opinion is Bracton who ſaith, Antiquitus ſolet obſervari, quod ſicut uxor dotem ſuam recipit poſt mortem viri ſui cultam ſive incultam, ita poſt mortem uxoris ſolet reſtitui hæredi culta ſeu inculta, quia de bladis et fructibus à tenemento non ſeparatis non habuit uxor teſtamenti factionem, ſed nova ſuperveniente gratia, et proviſione, ſicut patet de proviſione apud Merton. Bracton. lib. 2. fol. 96.

And true it is, that if the Huſband ſow the ground and die, the property of the corne is in the Executors, but ſubject to this condition, that if the heire aſſigne unto her the land ſowen for her dower, ſhee ſhall have the corne, for ſhe ſhall be in de optima poſſeſſione viri, above the title of the Executor. 15. El. Dier. 316.

And Fleta ſaith, vidua per ſtatutum de Merton poterit diſponere de rebus ſuis, & fructibus in dote ſua exiſtentibus, ſive ſeparati ſint a ſolo, ſive non, quod quidem olim facere non potuit. Fleta lib. 2. c. 59.

And they that held this opinion, relied much upon theſe words, de cætero, which imply, as they ſay, a new law. Now others held the contrary, and that, for advancement of tillage, and incouragement thereunto, which is ſo profitable for the Common wealth, and by reaſon of the incertainty of her eſtate for life, they held opinion, that the Executors or Adminiſtrators of the wife ſhould have, or ſhe her ſelfe by her Will might diſpoſe them, as well as any other tenant for life might doe, and they vouch authority before this ſtatute in 4. H. 3. where it is ſaid, Note that tenant in dower may deviſe her corne growing upon the land at the time of her death. Now to cleare this doubt, was this ſtatute made, and de cætero may aſwell be applied to the clearing of a doubt from thenceforth, as for making of a new law, and ſo of neceſſity it muſt be taken in this Chapter for ſuch lands and tenements, as the Widow hath of inheritance, &c. quam de aliis terris & tenementis ſuis. 4. H. 3. deviſe 26. 19. E. 3. bar. 249. 12. H. 7. 25. paſch 38. El. lib. 5. fo. 85.

¶ Omnes viduæ, &c.] Qui omne dicit, nihil excludit. Regula.
Generale dictum generaliter eſt intelligendum. Regula.

And therefore where there are five kindes of Dowers, viz. Dower at the Common Law: Dower by the Cuſtome: Dower ad Oſtium Eccleſiæ: Dower ex aſſenſu patris: and Dower de la pluis beale: this Chapter doth extend to them all. But if the wife be by Cuſtome endowed durante viduitate ſua, and ſhe ſowe the ground with corne, and after take husband, ſhe in the Reverſion ſhall have the corne, becauſe though her eſtate was incertaine, yet ſhe hath determined it by her owne act. 1 part of the Inſtitutes ſect. 51. Cuſtumier de Norm. cap. 102. Hil. 44. El. lib. 5. fol. 116. Olands caſe.

¶ Legare.] This word is appropriated to a laſt Will, and ſignifieth to bequeath Goods, Chattels, and in ſome caſes Lands and Tenements. Legatum à Lege dicitur, quia lege tenetur ille, cui intereſt perimplere.

¶ Blada ſignifieth Corne or Graine while it groweth: It properly ſignifieth Corne or Graine while it is in herba, dum ſeges in herba: but it is taken for all manner of Corne or Graine, or things annuall comming by the induſtry of man, as Hemp, Flax, &c. Bracton l. 4. 235. Kelw. 125.

And of this word Blada, an Ingroſſer of Corne or Graine is called Bladier, but this word Blada extendeth not by this Act to Graſſe, or to any thing that groweth ſinapte natura, albeit it groweth by ſowing of hay-ſeed, or the like.

¶ Quam de aliis terris & tenementis ſuis.] This is manifeſtly in affirmance of the Common law, and extendeth to the lands, which ſhee hath in Franck-mariage, or of any other eſtate of inheritance, the corne or graine growing thereupon ſhe may lawfully diſpoſe.

¶ Salvis, &c.] Here is a ſaving to the Lords, of whom the lands in

dower, or other lands bén holden, such customes and services, as are due unto them, so as they shall not be barred, or prejudiced by this Act for or concerning such Customes, and services, as they had before, but they shall be saved to them, as if this Statute had not bén made: for that is the nature of a saving, as hath bén said, to save a former right, and to create no new, and by this saving the Lord may distreine the corne after it be reaped and put into a cart, for his rents and services, but the Corne in sheafes cannot be distreined.

7.H.7.10.Kelw. 125.

See the first part of the Institutes sect. 68.

CAP. III.

SI quis fuerit disseisitus de libero tenemento suo, & coram Justic' itinerantibus seisinam suam recuperavit per Assisam novæ disseisinæ, vel per recognitonem eorum qui fecerint disseisinam: & ipse disseisitus per vic' seisinam suam habuerit, si iidem disseisitores postea, post iter Justic', vel infra de eodem tenement' iterum eundem conquerentem disseisiverint, & inde convicti fuerint, statim capiantur, & in prisona domini Regis detineantur, quousque per dominum regem per redemptionem, vel aliquo alio modo deliberentur. *Vide Marlb. cap.* 8. Et hæc est forma qualiter tales convicti puniri debeant, videlicet, Cum conquerentes ad Curiam veniant, habeant breve domini Regis. Vic' directum, in quo contineatur eorũ narratio de disseisina facta super disseisinã. Et ideo mandetur Vic. quod assumptis secũ custodibus placitorũ coronæ domini Regis, & aliis legalibus Militibus in propria persona sua accedat ad tenementũ illud, vel ad pasturã illã de quibus facta fuerit querela, & corã eis per primos juratores, & per alios vicinos, & legales homines *de vicineto illo*, diligentem inde faciat inquisitionẽ. Et si ipsũ iterũ invenerint disseisitũ (sicut prædictũ est) tunc faciat secundũ provisionẽ prædictã, sin autem, tunc sit conquerens in misericordia domini regis, et alius quietus recedat. Nec debet Vic' (sine speciali præcepto Domini regis) hujusmodi loquelã prosequi. Eodẽ modo fiat de illis, qui seisinã recuperaverint per Assisã mortis antecessoris, & similiter de omnibus terris et tenementis recuperatis per Jurat' in curia domini regis, si postea disseisiti fuerint à prioribus deforciatoribus, versus quos recuperaverint per jurat' quoquomodo. *Vide. W. 2. cap.* 26.

See the statute of Marlbridge c. 8. W.2.cap.26. See the 1. part of the Institutes 233.

℄ De libero tenemneto suo, &c.] That is, of Land, rent, common, or

or such like, whereof if a man be disseised he may have an assise de novel disseisin.

By this Chapter the Writs of Redisseisin and post disseisin, are given for the causes hereafter expressed, which lay not at the Common Law, and both these Writs are Micountels, and not returnable, but the Sheriffes shall hold the plea and give the iudgement.

¶ Et coram Justic' itinerantibus seisinam suam recuperaverit.] Here Justices in Eyre are named, but for example, and because Assises were taken most commonly before them, for though the Assise be taken in the Kings Bench, or Court of Common Pleas, or before Justices of Assise, yet is it within this Statute: for though the words be speciall, yet the reason of the Law is generall; Et quando lex est specialis, ratio autem generalis, generaliter lex est intelligenda. 23 Ass. p. 7. 30 Ass. Pl. 35. Bract. li. 4. fo. 236, 237. *Regula.*

¶ Per assisam novæ disseisinæ.] This branch extends not to an Assise of Mordaunceſter, or Darrein presentment, or of Utrum; But if a man recover in a Writ of Redisseisin, upon that recovery he shall have a Redisseisin, and the like, as often as he is redisseised. F.N.B. 189. d. 23 Ass. tit. redisseisin 3. 30 ass. 35

Upon a plaint in the nature of a freshforce, according to the custome of a City, or Borough, and a recovery thereupon had, a Redisseisin doth not lie, for no Redisseisin doth lie, but where the first Plea began by Writ. 14 E. 3. redisseisin 8. 14 E. 2. ibid. 9.

¶ Per assisam novæ disseisinæ, vel per recognitionem.] That is to say, by the Assise, i. the verdict of the Recognitors of the Assise, or by confession of the disseisor, &c. and yet a Redisseisin doth lie upon a recovery in an Assise, upon the pleading of a Record, and failer of it, or upon a demurrer, or by default, or the like; and so it is explained by a later Statute. See the first part of the Institutes. sect. 234. W. 2. ca. 26. Fleta lib. 4. ca. 29.

¶ Per Vicecomitem seisinam suam habuerit.] And so it is, if the Plaintife in the Assise doth enter and execute the recovery by Entrie. See the first part of the Institutes. ubi supra. F.N.B. 188.

¶ Iidem disseisitores postea, &c. de eodem tenemento iterum eundem conquerentem disseisiverunt.] For the exposition hereof see the first part of the Institutes, sect. 233. Bract. li. 2. fo. 294, 295.

¶ Et inde convicti fuerint.] For in the Writ of Redisseisin the Tenant may plead to the Writ as joyntenancy, or the like; or in barre, as a release, or the like; or give it in evidence. 33 E. 3. rediss. 71 40 Ass. 23.

¶ Statim capiantur & in prisona Regis detineantur quousque per dominum Regem, per redemptionem, vel alio modo deliberentur.] And Bracton hereupon saith this, Talis quidem qui ita convictus fuerit, dupliciter delinquit contra Regem, quia facit disseisinam, & roberiam contra pacem suam, & etiam ausu temerario irrita ea quæ in Cur' Domini Regis rite acta sunt: & propter duplex delictum merito sustinere debet pœnam duplicatam. Mirror ca. 5. § 2. Regist. 206. Marleb. ca. 8. W. 2. ca. 26. Bract. lib. 4. fol. 236. b. Fleta li. 4. ca. 29.

And Britton speaking of a Redisseisin, Pur ceo que il defuy de recover' per judgement chose, que il ad conquise per sa proper force in despisant la Ley. Brit. fol. 246.

And this reason holdeth in other cases, as after a judgement in an admeasurement of pasture, if there be a surcharge by the party, who was admeasured, a Writ De secunda superoneratione doth lie, and the like. West. 2. c. 8. 7 E. 3. 23. F.N.B. 126.

And it is to be noted, that whersoever a man did recover the seisin or pos-

ſeiſion of the land, and the Tenant or Defendant doth after diſſeiſe or eject him, this was a contempt at the Common Law, becauſe it is done againſt the judgement of the Court, and in deſpite of the Law, for the which the Court may commit him, for intereſt reipublicæ, ut judicia rata ſint: Et ea quæ in curia noſtra rite acta ſunt debite executioni demandari debent.

Regula.

Regula.

23 Aſſ. p.7. F.N.B.189.

¶ Aſſumptis ſecum Cuſtodibus placitorum.] This is ſpoken in the plurall number, therefore where there are two or more Coroners, he ought to take at leaſt two, but where there is but one, if he take him, it is ſufficient within the meaning of this Statute: though regularly the plurall number is not ſatisfied with one.

¶ Per primos juratores & alios.] This muſt bee underſtood where there were juratores in the Aſſiſe; for if there were none, then it muſt be tried onely per alios: As if the diſſeiſor plead a Record, and fail of it, or if he plead a bar, and confeſſe an immediate ouſter, upon which the Plaintife doth demur, and judgement is given for the Plaintife, and after the Plaintife is rediſſeiſed, the Plaintife ſhall have a Rediſſeiſin, and it ſhall be tried onely per alios, becauſe there were no Jurors at all in the former Aſſiſe; for the Statute, (albeit it be penal) ſhall not be ſo literally expounded, that if it cannot be tried per primos Juratores, that it ſhall not be tried at all, for verba intelligi debent cum effectu. But where there were any Jurors, it ſhall be tried by them and others, and where there were none, then by others alone; but if there were Jurors in the Aſſiſe, and they all die, and after he which recovered is rediſſeiſed, there (by the act of God) the Rediſſeiſin faileth. And ſo it is, if all the Jurors be dead ſaving one, becauſe the words of the Statute be, per primos juratores, & alios: and ſo note a diverſity where there were never any Juratores at all, for there the Statute could by no poſſibility have wrought, but upon others onely, but where there were once Juratores, and the party neglecteth his time, and by the Act of God they faile, there the Rediſſeiſin failes, becauſe it cannot be tried per primos Juratores, (which ſometimes were twelve) & alios, as the Statute ſpeaketh.

Regula.

8 H.5.1. F.N.B. 189.h.

Poſt diſſeiſin.

¶ Eodem modo fiat de illis, qui ſeiſinam recuperaverunt per aſſiſam mortis anteceſſoris, & ſimiliter de omnibus terris & tenementis recuperatis per Juratam, &c.] Here is the poſt diſſeiſin given, where the recovery in a Mordaunc', or in any other reall action is by verdict, and in this caſe the Recoveror ſhall have a poſt diſſeiſin againſt the former Tenant being defaycour, that diſſeiſed him after the recovery; But if the recovery be by rendition or default, &c. he ſhall have a poſt diſſeiſin upon the Statute of W.2. cap.26. Nota, here eodem modo are words of great operation, for they imply, that there muſt be idem conquerens de eodem tenemento, & idem tenens, againſt whom the recovery was had after the ſame manner, as is before ſaid in caſe of a Rediſſeiſin.

Marlebr. ca.8. W.2. ca.26. F.N.B.190. Regiſt.206.b.

CAP. IV.

Mirror c.5.§2. Bract.l.4.fol.222. Britton ca.58. Fleta li.4.ca.20.

ITem quia multi Magnates Angliæ, qui feoffaverunt Milites et alios libere tenentes ſuos de parvis tenementis in magnis maneriis ſuis, queſti fuerunt, quod commodum ſuum facere non potuerunt de reſiduo manerionum ſuorum,

rum, ſicut de vaſtis, boſcis, & paſturis *Communibus*, cum ipſi feoffati habeant ſufficientem paſturam, quantum pertinet ad tenementa ſua; *ita* proviſum eſt, & conceſſum, quod quicunque hujuſmodi feoffati aſsiſam novæ diſſeiſinæ deferant de cõmunia paſturæ ſuæ, & coram Juſtic' recognic' fuerit quod tantam paſturam habeant, quantum ſufficit ad tenementa ſua, & quod habeant liberũ ingreſſum, & egreſſum, de *liberis* tenementis ſuis, uſque ad paſturam ſuam: tunc inde ſint contenti, & illi de quibus conqueſti fuerint recedant quieti, de hoc quod commodũ ſuum de terris, vaſtis, boſcis, & paſturis fecerint. Si autem dixerint, quod ſufficientem paſturã non habeant, vel ſufficientem ingreſſum, *vel* egreſſum, quantum pertinet ad tenementa ſua: tunc inquiratur veritas per aſsiſam. Et ſi per aſsiſam recognitum fuerit, quod per eoſdem deforciatores, in aliqua fuerit impeditus eorum ingreſſus, vel egreſſus, vel quod non habeant ſufficientem paſturã, et ſufficientem ingreſſum, et egreſſum, ſicut prædictum eſt: tunc recuperent ſeiſinam ſuam, per viſum Juratorum, ita quod per diſcretionem et ſacramentum eorum habeant conquerentes ſufficientem paſturam, et ſufficientẽ ingreſſũ et egreſſũ in forma prædict', et diſſeiſitores ſint in miſericordia Domini Regis, et dampna reddant, ſicut reddi ſolent ante proviſionẽ iſtã. Si autẽ recognitũ fuerit per aſsiſam, quod querentes ſufficientẽ habeant paſturam, cum libero et ſufficienti ingreſſu et egreſſu, ſicut præd' eſt: tunc licitè *& libere* faciant *dom'* commodum ſuum de reſiduo, et recedant de ill' aſsiſa quieti. Weſt.2. cap.48.

¶ Quod commodum ſuum facere non potuerunt.] Hereby it appeareth, that the Lord could not approve by the order of the Common Law, becauſe the common iſſued out of the whole Manor, and of every part thereof, and yet ſee Tr 6 H.3. where the Lord approved two acres, and left ſufficient, the Tenant brought an Aſſiſe, and the ſpeciall matter being found, the Plaintife retraxit ſe. Tr 6H.3.tit.common 26.

¶ Libere tenentes.] The purview of this Statute extends onely for the Lord to make an approvement againſt his Tenant, and not againſt the ſtranger, nor where the Lord has common appendant in the Tenancy, as he may have; but the Statute of W.2. prohibeth, De cætero quod Statutum de Merton, proviſum inter Dominos & tenentes ſuos locum habeat de cætero inter Dominos vaſtorum boſcorum, & paſturarum, & vicinos, &c. W.2.ca.46.Brack. lib.4. fol.228. Fleta li.4.ca.20. 18 Aſſ.p.4. 18 E.3.43. 19 E.3.tit.Aſſ. 18 Aſſ p.4. F.N.B. 179. c.

¶ De reſiduo maneriorum.] By this reſtraint a point of the ancient Common Law appeareth, that when a Lord of a Manor (wherein ſome great W.2.ca.46. 18 Aſſ.p.4. 18 E.3.43. and above cited.

great Waſte grounds) did enfeoffe others of ſome parcells of arable land, the feoffées ad manutenend' ſervitium ſocæ, ſhould have common in the ſaid Waſts of the Lord for two cauſes. 1. As incident to the feoffement, for the feoffée could not plough, and manure his ground without beaſts, and they could not be ſuſtained without paſture, and by conſequence the Tenant ſhould have common in the Waſtes of the Lord for his beaſts, which doe plough, and manure his Tenancy, as appendant to his Tenancy, and this was the beginning of common appendant. The ſecond reaſon was for maintenance and advancement of Agriculture, and tillage, which was much favoured in Law; like as when a man gives the land to a Parſon and his Succeſſors, whereupon a Church is built for the ſervice of God, to hold of him in Frankalmoigne, the land is holden, and by conſequent, and operation of Law, the advowſon, which the Law doth give to the Founder, that is, the Giver of the land, is alſo holden, for that the advowſon doth in a manner adhere to the Church, and as the Tenant had made a feoffement before the Statute of Quia emptores terrarum, to hold of himſelfe by fealty, and xij.d. this Peſnalty by operation of Law had been holden of the Lord Paramount.

Temps E. 1. common 24. 17 E. 2. ibid. 23. 18 E. 3. 30 20 E. 3. Admeaſurement 8. Mich. 26 & 27 Eliz. lib. 4. fol. 37. Tirringhams caſe. Pl. Com. 498. b.

¶ Tantam paſturam habeant, quantum ſufficit ad tenementa ſua, & quod habeant liberum ingreſſum.] The Lord may approve againſt a Tenant that hath * common of paſture appendant, but if the the Lord graunt common of paſture within his waſts, there is no approvement by this act againſt a common in groſſe, for the words of the Statute be Quantum pertinet ad tenementa ſua, &c.

* See the firſt part of the Inſtitutes. ſect. 184.

And ſo was the Law taken and adjudged ſoon after the making of this Act, and latter authorities agrée with the ſame; and albeit the common appendant be without a certain number, as to have ſufficient paſture for beaſts, quantum pertinet ad tenementa ſua, which may be reduced to a certainty, for, Id certum eſt quod certum reddi poteſt, and therefore this act doth extend to it. And the Writ of Admeaſurement of paſture doth lie only for and againſt ſuch Commoners, as have common appendant, for the words of the Writ be, Et ad ipſos pertinet habendum ſecundum liberum tenementum ſuum, &c. ſo as common appendant, be it certain or incertain, is within this Statute; and ſo is common appurtenant certaine or incertaine, for pertinet extendeth as well to common appurtenant as appendant.

W. 2. cap. 46. 31 E. 1. Common 26. 32 E. 1. ibid. 29. 3 E. 2. ibid. 21. 10 E. 3. 56. 34 Aſſ. 11. 22 Aſſ. p. 65. 7 H. 4. 33. 11 H. 4. 26. a. F. N. B. 125. See Bracton li. 4. fol. 228.

Bracton ubi ſupra

Bracton treating of this Chapter, ſaith, Imprimis videndum eſt qualiter conſtitutio illa ſit intelligenda, ne male intellecta trahat utentes ad abuſum: and then expounded the ſame in this manner: 1. Si ſit alienus (& non proprie tenens) non ei imponit legem conſtitutio.

2. Si fuer' liberi tenentes proprii, tunc refert qualiter fuer' feoffati, &c. utrum feoffati fuer' large ſcilicet p totū, & ubiq;, & in omnibus locis, & ad omnimoda averia, & ſine numero, &c. So as by his opinion this Statute extendeth not to a common in groſſe, nor to a common ſans number; tales, ſaith he, non ligat conſtitutio memorata, quia feoffamentum, (i. conceſſionem communiæ) non tollit, licet tollat abuſum.

3. Si autem communia fuer' ſtricta cum numero averiorum certo, &c. (which he intendeth of common appendant) licet uſus ſe largius & latius habuerit quam neceſſe eſſet, tales ligat conſtitutio quod coarctentur ad certum locum, & infra certum locum, dum tamen locus inde ſufficiens ſit & competens cum libero ingreſſu, & egreſſu, & competenti, quod non ſit gravis nec difficilis: Competens autem debet eſſe locus ita quod non longius diſtet, ſed propinquius aſſignetur, &c. cum diſtantia inducit incommoditatem.

4. Item eodem modo ſi ita feoffatus fuerit quis, ſine expreſſione numeri vel generis, ſed ita, cum paſtura quantum pertinet ad tantum tenementum in eadem villa, talem ligat conſtitutio ſicut prius cum expreſſione; quia cum conſtet de quantitate tenementi, de facili perpendi poterit de numero averiorum, & etiam de genere ſecundum conſuetudinem locorum.

5. Item

5. Item tempus ſpectandum erit cum omnis nova conſtitutio, futuris formam imponere debeat & non præteritis. Tr. 18 E.1. in Banco Rot. 50. Cantabr.

*Walterus Bonde implacitat Aliciam de Bordeley, & vi. alios pro eo quod cum averiis ſuis blada ſua ad Madingle creſcentia noctanter depaſti ſunt, &c. Alic' & Nicholaus Ruſſell dic' quod placea ubi tranſgreſſio ſupponitur fieri vocatur Leylonfurlonge, quæ quidem placea ſemper fuit pratum uſque ad prædictum annum quod prædictus Walterus prædictum pratum aravit, & ſeminavit, & in quo prato ipſa Alicia habet communiam ſuam poſt fena levata: Et quia prædictus Walterus, ad auferendum ei communiam ſuam in prædicto prato, ſeminavit, ſicut prædictum eſt, dicunt quod quando fena in pratis adjacentibus levata fuerunt, ipſi cum averiis ſuis communiam ſuam in prædicta placea depaſti fuerunt, ſicut eis bene licuit. Et inde ponunt ſe ſuper patriam. Walterus dic' quod in electione ſua eſt ad dimittend' prædictam placeam jacere pratum, & illud falcare, vel placeam illam arare, & ſeminare pro voluntate ſua. Et de hoc ponit ſe ſuper patriam, &c. * Iur' dic' quod prædicta placea à tempore quo non extat memoria fuit pratum falcabile, uſq; ad prædictum annum quod prædictus Walterus illud aravit: dicunt etiam quod prædictus Walterus eſt parvus tenens ejuſdem villæ, & * non licet alicui tali parvo tenenti ſine licentia ipſius Aliciæ prata aliqua in eadem villa arare, & quod prædicta Alicia in eisdem pratis poſt fena aſportata communicare debet *: dic' etiam quod quando fena in pratis adjacentibus levata fuerint, ipſi cum averiis ſuis communiam ſuam in prædicta placea depaſti fuerunt, ſicut bene licitum eſt eis: Ideo conſideras' eſt quod * prædictus Walterus nihil capiat per breve ſuum, ſed ſit in miſericordia. Et affer' per Iur' ad dimid. Mare.*

* Verdict.

* Note this cuſtome.

Note this case for common, &c.

Note this, for feeding of corn, Vide 21 E.4.41.

* Judgement.

Vide Paſch. 15 E.1. in Banco Rot. 6. Buck. Lib. 5. fol. 78. common of paſture, ſub modo, or with limitation.

Throughout all this Statute, Paſtura & communia paſturæ, is named ſo as this Statute of Approvements doth not extend to common of piſcary, of turbary, of eſtovers, or the like.

¶ Quod commodum ſuum de terris vaſtis, &c. fecerint.] Now it is to be ſéene how this approvement muſt be. And it muſt be divided by ſome incloſure or defence, as it may be made ſeverall, for it is lawfull to the Tenant to put on his cattle into the reſidue of the common, and if they ſtray into that part, whereof the approvement is made, in default of incloſure, he is no treſpaſſer.

And if the Lord make a feoffement of certaine acres, the feoffée may incloſe, because the feoffement is an approvement in his nature. 31 E.1. Common 27. 16 E.2. garr. de Charters 31. 10 E.3.15

¶ Tunc inde ſint contenti, et illi de quibus conqueſti fuer' recedant quieti de hoc quod commodum ſuum de terris vaſtis, &c. fecerint.] By the approvement of part according to this Statute, that part by this Act is diſcharged of the common, in ſo much as if the Tenant which hath the common purchaſe that part, his common is not extinguiſhed in the reſidue. Dier. Mich. 16 & 17 Eliz. 339.

If the Lord, &c. doe make an approvement, hee may improve eft-ſoons as oft as hee will, ſo hee leave ſufficient common, and ſo it was done in 18 E.3. 18 Aſſ. p.4. 18 E.3.30.43.

If the Tenant at the time of the approvement have ſufficient common left unto him in the reſidue, with a competent way thereunto, according to this Act, and after the reſidue becommeth not ſufficient, yet the approvement remaineth good, 8 Aſſ. 18. 16 E.3. Common 9.

good, for the words of this Act be, Tantam paſturam habeant, quantum ſufficit ad tenementa ſua.

10 E.3.15. ¶ Coram Juſticiariis recognitum fuit,&c.] And yet it may bee tried in an action of Treſpaſſe: for many times he ſhall faile to have an Aſſiſe.

8 E.3.38. 16 E.3. Common 9. 22 Aſſ.42. 15 H.7.10. Bract.li.4. fo. 222.a.& 227. Or if the Lord doth incloſe any part, and leave not ſufficient Common in the reſidue, the Commoner may breake downe the whole incloſure, becauſe it ſtandeth upon the ground which is his Common.

Bracton reciteth a Writ deviſed upon this Statute by that ſage of the Law William de Ralegh, one of the Kings Juſtices, in caſe where the Lord was diſturbed to incloſe, or when hee had incloſed according to this Statute, and his incloſure broken downe, which you may reade there at large.

¶ Et per Aſsiſam recognitum fuit.] If by the Aſſiſe it ſhall be found, that the Plaintife had not ſufficient ingreſſe and egreſſe, or not ſufficient paſture, then the Plaintife ſhall recover ſeiſin by the view of the Jurors; ſo that by the diſcretion and oath of them, the Plaintife ſhall have ſufficient paſture, and ſufficient ingreſſe and egreſſe aſſigned to him, and that the diſſeiſors ſhall be amerced, and yéeld damages.

7 E.3. fol.67. Upon this branch of the Statute, we have a notable caſe in our Bookes, viz. A Commoner brought an Aſſiſe of Common of paſture belonging to his freehold, the Tenant ſaid, that he was Lord, &c. and approved part of his Waſte, and left the Plaintife ſufficient Common, &c. The Plaintife denied that he left ſufficient Common, and thereupon iſſue was taken, and Sir William Herle Chiefe Juſtice of the Court of Common Pleas tooke the Aſſiſe, and the Aſſiſe found, that the Plaintife had not ſufficient Common; whereupon the Court did award that the Plaintife ſhould recover his Common, &c. and the Recognitors of the Aſſiſe were going from the Barre; and albeit the iſſue was found againſt the Tenant, yet for his advantage the Recognitors of the Aſſiſe ought to come back again, and to ordaine by their diſcretion and oath ſufficient common to the Plaintife, ſo that the Defendant might approve of the remnant by this Statute of Merton, as Trewood affirmed: whereupon Sir William Herle peruſed this Statute (for no man can carry the words of a poſitive Law by Parliament in his head) and found the Statute as Trewood had ſaid, and therefore was in purpoſe to have cauſed the Jurors to come againe (the Record yet being in his breſt) to appoint ſufficient Common to the Plaintife according to the Statute, but it was prevented, for that the parties agréed.

CAP. V.

SImiliter proviſum eſt, et à Domino Rege conceſſum, quod de cætero non current uſuræ contra aliquem infra ætatem exiſten' à tempore mortis anteceſſoris ſui, cujus hæres ipſe eſt uſque ad legitimam ætatem ſuam, ita tamen quod propter hoc non remaneat ſolutio debiti principalis ſimul cum uſuris ante mortem anteceſſoris ſui, cujus hæres ipſe eſt inde provenientibus.

This

This ſtatute hath been diverſly expounded.

1, That this ſtatute extended to the uſurious Jewes, that then were in England: for at that time and before the Conqueſt alſo, it was not lawfull for Chriſtians to take any uſury, as it appeareth by the lawes of Saint Edward, &c. and Glanvile and other auncient authors and records. And by this Act it is manifeſt that the uſury intended by the ſtatute was not unlawfull, for the uſury due before the death of the aunceſtor is enacted to be paid, and after the full age of the heire alſo, and no uſury was then permitted but by the Jewes only. Inter leges Sancti Edw. Lamb Siquis de uſura convictus. Glanvill lib. 5. ca. 6. Ockham ca. qualiter non abſolvitur. Caltiteris de Chriſtianis uſuratiis. 15 E. 3. ca. 5. Rot. parl. 50 E. 3. nu. 58. 6. R. 2. nu. 57. 14 R. 2. nu. &c.

a But King Edward the firſt (that mirror of Princes) by authority of Parliament made this law, which is worthy to be written in letters of gold: For aſmuch as the King had ſéene that many of the evils and diſheriſons of the good men of his Realme had come to paſſe by the Uſuries which the Jewes had made in times paſt, and many other miſchiefes had riſen thereupon, albeit that the ſaid King and his Auncеſtors have had great profit of the Jewes: nevertheleſſe in honour of God, and for common weale of the people; it is ordeined and eſtabliſhed, that no Jewe from thenceforth ſhould take any uſury, &c. But yet provideth for the time paſt in ſuch manner, as by the Act appeareth. a Sta. de Judaiſmo ſee hereafter the expoſition of it

And true it is, that great was the profit (as in that Act is recited) that the Crowne had by the Jewes, b for betweene the 50. yeare of H. 3. and the 2. yeare of E. 1. the Crowne was anſwered de exitibus Judaiſmi foure hundred and twenty thouſand pounds, and then the ounce of ſilver was five groats. b Rot Pat. 3 E. 1. m. 14. 17. 26.

Others expound theſe words non-currant uſuræ contra aliquem infra ætatem exiſtentem in this manner, that the rent ſhall not be doubled during the nonage of the heire (which in a large ſenſe is called uſury, for dicitur uſura quia datur pro uſu æris) As if the King give land to another reſerving a rent payable at a feaſt certaine, and for default of payment, that he ſhall double the rent for every default, and after the grantée dieth his heire within age, he ſhall not double the rent to the King. Pl. com. 126. b. 35 H. 6. 61.

If a man by obligation bind himſelfe and his heires to pay 100. l. at ſuch a feaſt, and if he pay it not at that feaſt, that then he and his heires ſhall pay 10 l. for every quarter it ſhalbe behinde, the obligor dieth and leadeth aſſets in fée ſimple his heire within age, he ſhall have his age, and ſhall not pay this 10. l. incurred during his minority after his full age; and this agreeth with the words of the ſtatute Non remaneat ſolutio debiti principalis, and in this caſe there is a principale debitum, but debitum ſignifieth not only debt for the which an action of debt doth lie, but here in this ancient Act of Parliament it ſignifieth generally any duty to be yéelded or paid; for debitum is derived of the verb debeo, id enim eſt, quod vel lege naturæ, vel obligatione civili debetur, as rents and the like. 11 H. 7. 22. Mich. 26. & 27 El. lib. 3. fol. 13.

So if A. knowledge a recognizance to B. of 20. l. to be paid at a certain feaſt, and A. doth grant, that if the 20. l. be not paid at the day, then he ſhall pay 10. s. a weéke for every weéke it ſhalbe behinde, and before the feaſt A. dieth ſeaſed of fée ſimple lands, his heire within age; In a ſcire facias upon the recognizance the heire ſhall have his age, as in the next caſe before, by the Common law, and after his full age he ſhall be freed of the 10. s. a weéke by this ſtatute. 11 E. 3. age 4. 15 E. 3. ibidem 95. 29 aſſ. 37. 29 E. 3. 50. 42 aſſ. 4.

CAP. VI.

DE hæredibus per patentes, vel per alios, contra pacem vi abductis, vel detentis, ſeu maritatis, ita proviſum eſt, qd Bracton lib. 2. fo. 91. Fleta lib. 1. ca. 12. 3 E. 3. 3. 8 E. 3. 52. 21 E. 3. 52, 21 E. 3. 19. 29 aſſ. 35. 29 E. 3. 37.

quicunque laicus inde conuictus fuerit, quod puerũ aliquẽ ſic detinuerit, abduxerit, ſeu maritaverit, reddat perdenti valorẽ maritagii: & pro delicto corpus ejus capiatur, ut impriſonetur, donec perdenti emendaverit delictũ ſi puer maritetur: & præterea donec domino Regi ſatisfecerit pro transgreſsione ſua. Et hoc de hærede infra quatuordecim annos exiſten'. De hærede autẽ cum ſit quatuordecim annorum, vel ultra, uſque ad plenam ætatem, ſi ſe maritaverit ſine licentia domini ſui, ut ei auferat maritagiũ ſuum, & dominus ejus offerat ei rationabile maritagium, ubi non diſparagetur, dominus ſuus tunc teneat terrã ejus ultra terminũ ætatis ſuæ, ſcilicet xxj. annorũ, per tantũ tẽpus quod inde poſsit percipere duplicẽ valorẽ maritagii, ſecundũ æſtimationẽ legaliũ hominũ, vel ſecundũ quod ei pro eodẽ maritagio prius fuerit oblatum, ſine fraude & malitia, & ſecundũ quod probari poterit in curia domini regis.

Before the making of this ſtatute the law gave the Lord two ſeverall remedies, if his Ward were taken away, detained, or maried, viz. 1. An Action of treſpaſſe, wherein he ſhould recover damages only. 2. A writ of right of ward, wherein he ſhould recover the cuſtody of body, and lands, but if the Ward were maried, then was he driven to his Action of treſpaſſe Quare ſe intruſit maritagio non ſatisfact. The Lord had alſo his writ, but that lieth againſt the heire, when he entreth into the land before or after his full age: alſo the Lord may have his writ de valore maritagii at the common law, but that lay alſo againſt the heire himſelfe after his full age when he intruded not.

Tr. 9. El. lib. 9. fo. 72. Doct. Huſſeys caſe.

7. E. 3. 58. 40. E. 3. 6. 31. aſſ. 26. F. N. B. 141.

The writ of Raviſhment de gard is framed by the ſtatute of W. 2. cap. 35. whereof more ſhalbe ſaid hereafter in his proper place.

8. E. 3. 52.

This ſtatute giveth, that in the writ of right of ward the Plaintife ſhould recover Valorem maritagii, & pro delicto corpus ejus capiatur, ut impriſonetur donec perdenti emendaverit delictum, ſi puer maritetur; & præterea donec domino Regi ſatisfecerit pro tranſgreſſione ſua.

Regiſt. 161.

¶ Si laicus inde conuictus fuer'.] The Mirror ſaith that this point is reprovable, inſomuch as the Statute extends not to Clerks, car eſt mient plus droit que clerke peche ſans payne, que lay home.

Mirror ca. 5. § 3.

¶ Et hoc de hærede infra 14. annos exiſten'.] Upon theſe, and the words ſubſequent this ſtatute doth not extend to the heire female, for the age of conſent to mariage of a male is 14. and of a woman 12. and after 14. (at the making of this ſtatute) the female was to be out of ward.

35. H. 6. 53.

See the firſt part of the Inſtitutes § 104. Cuſtumier de Norm. cap. 33. & les comentaries ſuper inde

But note albeit the mariage within the age of conſent be voydable, yet the gardein ſhall recover the value, and albeit the heire at the age of conſent diſagree, ſo as the gardein ſhall have the mariage again, yet there is no remedy for the raviſher.

7. H. 6. 12. 21. E. 3. 19. 20. 27. H. 6. gard. 38. 1. part of the Inſtitutes § 103.

Now what alterations the ſtatute of W. 1. cap. 22. and W. 2. cap. 35. have made, doe at large appeare in Doctor Huſſeys caſe abovesaid, and in the firſt part of the Inſtitutes.

¶ Si ſe maritaverit ſine licentia domini, &c. Et dominus ejus offerat.] Here the ſtatute provideth remedy when the heire male after

ter the age of 14. yeares (when he may, as is aforesaid, consent to mariage) after tender made marieth himselfe without the licence of his Lord, and giveth a writ of forfeiture of mariage, so called, because the Lord shall thereby recover the double value of the mariage; as if the mariage were worth one hundred pounds, he shall recover two hundred pounds. But this forfeiture of mariage is not due by this statute, but where the gardein after 14. and before 21. had tendered a covenable mariage to him, and he refused her, and of himselfe maried (as it were in despite of him) another within age; and so is this statute to be construed, that the ward maried himselfe without licence, &c. after the Lord had tendered unto him a covenable mariage; for if the ward first marie himselfe after the age of 14. a tender of mariage to him that is so maried is void, and the statute must be intended of a lawfull tender. And this statute that only giveth the forfeiture of mariage not extending to an heire female, there is no forfeiture of mariage of an heire female.

18.E.3.18.14.E.3. Action sur lestatute 16.F.N.B.141.g.Regist.

1.part of the Institutes § 103. Bro. forfeiture de marriage 12. 4.Jacobi lib 6.fo. 70.71.Seigner Darcies case.19.E.3. Judgement 123.W.1.c.22. No forfeiture of marriage of an heire femal.

But if a Ward be taken away and maried infra annos nubiles, at the age of ten yeares, there, for that he may disagrée, the Lord may tender to him after his age of fourteen, which if he refuse, and after disagrée, and mary elsewhere within age, the gardein shall have the forfeiture.

¶ Ubi non disparagetur.] Vide Magna Charta cap.6. and see the next chapter following.

¶ Dominus suus tunc teneat terrã, &c.] The Lord shal have election either to waive the land, and to take his action of forfeiture of mariage, (for perhaps the land may be of small value, and the mariage of great value,) or to enter into the land, and take the profits, till of the same he be satisfied thereby of the double value: for the words of the statute be per tantum tempus quod inde posit percipere duplicem valorem, so as the taking of the profits in that case shall goe in satisfaction of the double value; but if the heire ouste the gardein before he be fully satisfied of the forfeiture, the gardein shall recover the whole forfeiture against him, because the heire shall not take advantage of his owne wrong, and the double value is casual.

18.E.3.18.2. action sur lestatute 23.16.E.3. ibidem 14.

43.E.3.20.13.H.7.7.40.E.3.6. 4. Jac. li.6.fo.70. Dies 9.El.260.b.

The King shall have the forfeiture of the mariage, albeit he be not particularly named, but then the King must pursue the statute, and make a tender, for in case of the forfeiture there must be a tender, but not for the single value.

The grauntée of the body only either by the King or a common person shall not retaine the land, but he may have upon a tender and mariage elsewhere within age a forfeiture of mariage.

If the Gardein entereth into the Land for the double value, he cannot have a writ of forfeiture of mariage, although he waive the possession of the land.

Temps E.1.action sur lestat. 36.

¶ Quod inde posit percipere, &c.] If the Gardein entereth into the Land, and after suffer others to take the profits, yet he shall hold it no longer then he might have levied the double value, and his negligence shall be his own damage.

mich.41.&42.El. li.4.82. Sir Andrew Corbets case 15.E.4.5.

Although the statute saith, Dominus teneat terram, yet if he die, his executors or Administrators shall hold the land, or have a writ of forfeiture of mariage, for this Act had vested an interest therein in the Lord, which after his death goeth to his Executors, or Administrators, as it doth to the Successors of an Abbot.

7.H.6.12.11.H.6 8.15.H.7.14.

See the 1.part of the Institutes § 110.

But if the heire in Ward dis either within age, or of full age before the value or the forfeiture (as the case require) be yelded or paid, there the Lord hath no remedy by action for this incertaine personall duty against his heires, Executors or Administrators, no more then an action of debt lyeth against Executors upon an escape made by the gardien upon the statute of W. 2. and yet Thirning Cheife Justice held opinion, that if I give lands in tayl to hold of me by Knights service, and the Donée devie son issue deins age, & ieo tender a luy mariage, & il ceo refuse, & luy marie sans ma volunt, uncore esteant deins age, & puis morust

27.H.8.3. 28.ass. 7. 11.H.4.82. Dier 14.El.306. 41.ass. p.15. 7.H.4.6.18.E.3. 18.Dier ubi supra.

in ceſt caſe ieo retiendra la terre pur la forfeiture del double value accordant al ſtatute de Merton, & le procheine heire in tayle navera remedy, wherby it appeareth that by his opinion the gardein after the death of the heire might hold the land by this ſtatute for the double value.

Wherein it is to be obſerved that the Lord, or donor ſhall have nothing but the land holden of him, and which moved from him, until he be ſatisfied with the profits of the land of the double value by the words and meaning of this ſtatute, the words whereof be, teneat terram per tantum tempus quod inde poſſit percipere dupliceꝫ valorem. But otherwiſe it is of the ſingle value, for there the profits taken by the Lord goe not in ſatisfaction of the value, as ſhalbe ſaid in the next Chapter.

14. El. Dier. 306. And the grantee of the body only is without remedy, if the heire dieth.

And albeit the ſtatute ſaith teneat terram, yet it extendeth to the holding of the meſnalty by the Lord Paramount, and in many caſes the meane ſhall be ſuppoſed to hold the land.

¶ Secundum æſtimationem legaliũ hominum.] That is, by a jury of twelve men in an action to be brought: concerning the forfeiture or value of the marriage conſideration muſt not only be had of that land that is holden, but of all other lands, leaſes, goods, and Chattels, and other perſonall eſtate which may advance the eſtimation of the Ward, and yet the value of the marriage ought to be ſo moderate, as the heire may well undergoe the ſame.

¶ Vel ſecundum quod ei pro eodẽ Maritagio prius fuerit oblatũ ſine fraude, &c.] And herein the Gardein hath the election either to have ſo much, as an indifferent jury will give him, or ſo much as for the marriage bona fide been offered unto him.

CAP. VII.

DE dominis qui maritaverint illos quos habent in cuſtod' villanis, vel aliis, ſicut burgenſ. ubi diſparagent': ſi talis hæres fuerit infra 14. annos, & talis ætatis quod conſentire non poſſit matrimonio: tunc ſi parentes conquerantur de illo domino, dominus ille amittat cuſtodiã uſque ad ætatem hæredis, & omne commodũ quod inde perceptũ fuerit, convertatur in cõmodũ ipſius hæredis, qui infra ætatem eſt, ſecundum diſpoſitionem & proviſionẽ parent' ſuorũ, propter dedecus ei factum. Si autẽ fuerit 14. annorũ & ultra, qd conſentire poterit, & tali maritagio conſenſerit, nulla ſequatur pœna. Si quis hæres, cujuſcunque fuerit ætatis, pro domino ſuo ſe noluerit maritare, non compellatur hoc facere, ſed cum ad ætatẽ pervenerit, det domino ſuo, & ſatisfaciat ei de tanto, quantum inde percipere poſſet ab aliquo pro maritagio ſuo, antequam terrã ſuã recipiat, & hoc ſive ſe voluerit maritare, ſive non: quia maritagiũ ejus, qui infra ætatem eſt, de mero jure pertinet ad dominum feodi.

Sicut

¶ Sicut burgenſibus, &c.] Hereof ſée the firſt part of the Inſtitutes: and albeit the Statute of 5 R.2. cap. 4. doth rank divers degrées that are to come to Parliament, as Dukes, Earles, Barons, Banerets, Knights of Shires, Citizens, and Burgeſſes; yet this Act of Merton doth extend alſo to Citizens, becauſe all Cities were firſt Burroughs, and both the Saxon and Germane Burgh ſignifieth a City. See the firſt part of the Inſtitutes. ſect. 107, 108.

This Statute concerning diſparagement doth not extend to heires females, but onely to heires males, therefore the forfeiture given by this Statute onely extends to the caſe of the heire male, but by other Statutes the diſparagement of the heire female is forbidden. Magna Charta cap. 6. W.1. c. 22. 1 pt Inſt. ſect. 107

¶ Det Domino, et ſatisfaciat ei de tanto quantum inde percipere poſsit de aliquo pro maritagio ſuo antequam terram ſuam recipiat.] Note the ſeverall pennings of this clauſe concerning the ſingle value, and the clauſe in the Chapter next before concerning the double value, and for the ſingle value the Guardein ſhall hold the land untill the heire ſatiſfie him of the value, ſo as in this caſe the taking of the profits ſhall not be accounted as parcell of the value, but as a penalty to cauſe the heire to pay it the ſooner. 43 E.3. 20. 31 Aſſ. 26. 27 H.8 4. Mich. 41 et 42 El. lib. 4. fol. 82. Sir Andrew Corbets Caſe. See the firſt part of the Inſtitutes. ſect. 110.

* But note, that neither in the Writ De valore maritagii, nor for forfeiture of marriage, the Lord ſhall not recover the land, but damages, for this act giveth no action for the land. Mich. 4 E.1. in Banco Rot. 118. Lincolne, a notable caſe for holding the land for the forfeit. of the marriage. * Keyl. 133, 134.

And the words of this branch are to be obſerved, Cum (hæres) ad ætatem pervenerit, det Domino ſuo, whereby it appeareth that the paiment of the ſingle value is perſonally appropriated to the heire, and therefore if he dieth, it is loſt, but the clauſe concerning the double value is otherwiſe penned, as hath been obſerved.

¶ De mero jure pertinet ad dominum feodi.] See for the Expoſition of this branch, and where a tender is requiſite, and concerning the differences between the caſe of the heire male, and of the heire female, the Lord Darcies Caſe, and Palmers Caſe, and the firſt part of the Inſtitutes, ſect. 107. Hereunto may be added a caſe, where the Lord cannot at any time ſeiſe the Ward, or tender a marriage to him, and yet he ſhall have the Wardſhip. Edward Hampden holding lands of the Queen by Knights ſervice in Capite had iſſue a daughter, who poſt annos nubiles (viz. at twelve yeares) contracted Patrimony with William Ditton, and after married with John Croke, and then the Father died ſeiſed in fee of the land in Capite, his daughter being of the age of thirteen yeares, and after the daughter had paſſed the age of fifteen yeares, her marriage with Croke was diſſolved by divorce, Cauſa præcontractus: and it was reſolved by both the Chiefe Juſtices upon hearing of Counſell learned on both ſides, that in this caſe (or the Lord in the like caſe) ſhall have the Wardſhip of the daughter, albeit never any ſeiſure could be made of her, nor tender of marriage to her, becauſe the marriage was never lawfull, and was after diſſolved by divorce, as it had never béene, and ſhe ſhall take no advantage of her owne wrong, to barre the Queene or other Lord of that which by Law is due to them, notwithſtanding the opinion of Laicon, 35 H.6. 40 b. that if one hold land of another by Knights ſervice, and the Tenant hath iſſue a daughter, which entreth into Religion, and is profeſſed, and after the Tenant dieth, his daughter being in Religion, and within fourteen yeares, and when ſhe is of the age of fourteen ſhe is deraigned, that ſhee ſhall not be in Ward. Nota, he ſheweth not for what cauſe ſhe was deraigned: But by the divorce, cauſa præcontractus, there is a nullity of the marriage, ab initio, and the children betwéen them are méere baſtards. Hil. 4. Jac. lib. 6. fol. 70, 71. Paſch. 3. Jac. li. 5. fol. 126, 127. Caſus in Cur. Wardarum. Tr. 29 Eliz. 35 H.6. 40. b.

CAP.

CAP. VIII.

DE narratione diſcenſus in brevi de Recto ab anteceſſore à tempore H. Regis ſenioris anno et die, Proviſum eſt, quod de cætero non fiat mentio de tam longinquo tempore, ſed à tempore H. Regis avi noſtri, & locum habeat iſta proviſio ad Pentecoſten, Anno Regni Domini Regis nunc 21. et non antea: et brevia prius impetrata procedant. Brevia mortis Anteceſſoris, de Nativis, et de Ingreſſu, non excedant ultimum redit' Domini Regis Johannis de Hibern' in Angliam, et locum habeat iſta proviſio,&c. ut ſupra. Brevia novæ diſſeiſinæ non excedant primam tranſfretationem Domini Regis qui nunc eſt in Vaſcon', et locum habeat iſta proviſio à tempore prædict', et brevia prius impetrata procedant. Vide Weſt.1. cap.38. et 32 H.8.cap.2.

Glanv.li.13.c.33. Cuſtumier de Norm.cap.22. 110,111,125.

¶ De narratione diſcenſus in breve de Recto.] It appeareth by Glanvill, that in the raigne of H.2. the limitation in an Aſſiſe of Novel diſſeiſin, was poſt ultimam tranſfretationem Regis in Normaniam, which was in the yeare of his raigne.

Idem eodem lib. cap.32.

But of this limitation he ſaith, Infra tempus à Domino Rege de conſilio procerum ad hoc conſtitutum, quod quandoque majus, quandoque minus cenſetur, &c.

Eodem libro.c.3.

The limitation in the Aſſiſe of Mordaunc', was poſt primam coronationem H.2. which was 20 Octob.1154.

The limitation in a Writ of Right before this Statute of Merton, was à tempore Regis H.1. and now by this Statute of Merton, à tempore Regis H.2. Note H.1. began his raigne the firſt of Auguſt 1100. and H.2. began his raigne 1154. ſo as this Statute of Merton did abridge the limitation in a Writ of Right 54 yeares, whereof Bracton ſpeaketh thus, Quia breve de recto ſicut alia brevia infra certũ tempus limitatur,non enim excedit tempus regis Henrici avi Domini Regis (1.H.2.) & eſt ratio,quia ultra tempus illud (quod inter initium Regni H.2. & Statutum de Merton, anno 20 H.3. eſt circiter nonaginta annos) non poterit quis aliquid probare,licet jus habeat in re:cum nullus aliquid probare poſſit ultra tempus illud,ex quo loqui non poterit de viſu ſuo proprio, vel de viſu patris ſui,qui ei injunxit quod teſtis eſſet ſi inde audiret loqui; Et unde ſi quis loqueretur de tempore Henrici Regis ſenis, (1.H.1. quod fuit circiter 125. annos) amittere poſſit propter defectum probationis.

Bract.li.4.fo.373.

Fleta lib.4. c.5. & lib.2. c.38.

¶ Brevia mortis anteceſſoris, de nativis, et de ingreſſu non excedant ultimum reditum Domini Regis Johannis de Hibernia in Angliam.] King John went firſt into Ireland in the ſecond yeare of his raigne, and returned in the third yeare: In the 12 yeare of his raigne he went into Ireland againe, and returned the ſame yeare into England, and this was ultimus reditus, that this Act ſpeaketh of, ſo as betweene the twelfth yeare of King John, and 20 H.3. were about twenty five yeares.

Brevia

¶ Brevia novæ diſſeiſinæ non excedant primam tranſfretationem Domini Regis qui nunc eſt, viz. H. 3. in Vaſconiam.]

King H. 3. firſt paſſage into Gaſconie, was in the fift peare of his raigne, ſo as there exceeded not the fiftéen peares betwéen that tranſfretation and this Statute.

It appeareth by Bracton that before this Statute of Merton, the limitation in a Writ of Aſſiſe, was Poſt ultimum reditum Domini Regis de Britannia in Angliam. Bract. l. 2. fol. 179

But theſe times of limitations were altered in the raigne of King Edw. 1. W. 1. c. 38. W. 2. c. 2. & 46.

And then the limitation in a Writ of Right was from the time of King R. 1. betweene the beginning of R. 1. and 3 E. 1. there had paſſed about eighty eight peares. Tr. 7. E. 1. in Banco Rot. 71. Hunt.

And that the Writ of Aſſiſe of Novel diſſeiſin, and the Writ of Purparty, which is called the Nuper obiit, ſhould have the terme of the firſt tranſfretation of H. 3. into Gaſcony, which as hath béen ſaid, was in Anno 5 H. 3. Mich. 7 E. 1. ibid. Rot. 50. Cantab.

And the Writs of Mordaunc', de Coſinage, de Aiel, de Entre, & bṽe de Nieſtie eyent le terme de Coronement meſme le Henry, 1 H. 3. which betwéen that & this Statute of W. 1. was about 58 years: Note (as hath béen ſaid) this King was twice Crowned, firſt the 28. day of October, in the firſt peare of his raigne, and the ſecond time on Whitſonday, in the fourth peare of his raigne: but this Statute of W. 1. ſpeaking indefinitely, is to be underſtood of the firſt Coronation, for quod prius eſt tempore potius eſt jure; And by the Statute of W. 2. cap. 2. in an abowry the like limitation for ſeiſin ſhall be accounted, as in the Aſſiſe, which, as is aforeſaid, is poſt primam tranſfretationem Regis Henrici 3. in Gaſconiam. *Regula.*

But albeit theſe times of limitations were reaſonable, when theſe Statutes were made, yet in proceſs of time (there being ſet times appointed in former Kings raignes) the times of neceſſity grew to large, whereupon many ſuits, troubles, and inconveniences did ariſe, and therefore the makers of the Statute of 32 H. 8. tooke another, and more direct courſe which might indure for ever, and that was to impoſe diligence and vigilancy in him that was to bring his Action, ſo that by one conſtant Law certaine limitations might ſerve both for the time preſent, and for all times to come, viz. That the Demandant ſhould alledge ſeiſin in a Writ of Right not above fifty peares next before the Teſte of his Writ. In Mordaunc' coſinage, aiel, entry ſur diſſeiſin, or other poſſeſſary Action upon the ſeiſin or poſſeſſion of any of his Auncеſtors or Predeceſſors, of a ſeiſin within fifty years: In any Action upon his or their owne poſſeſſion within thirty years; In an abowry, or conuſance for any rent, ſute, or ſervice within 40 years; In a Formedon in Reverſion or Remainder, or Scire facias upon fines within fifty peares; And yet this Statute preſixing a certain time extended not to divers caſes, which were within the auncient Statutes, as to accidentall ſervices, as hereafter ſhall appeare. See the firſt part of the Inſtitutes. ſect. 170. 32 H. 8. cap. 2. 1 Mar. cap. 5.

¶ Brevia prius impetrata procedant, &c.] For the rule is, Omnis nova conſtitutio futuris formam imponere debet & non præteritis. See a caſe upon this branch in 7 E. 1. Tho. de Redberwes Caſe: Bract. l. 4. fo. 228. Tr. 7 E. 1. Rot. 71. in Banco. Hunt.

And albeit Bracton ſaith, that omnes actiones in mundo infra certa tempora limitationem habent; And in another place he ſaith, Omnis querela & actio injuriarum limitata eſt infra certa tempora; Yet ſome actions were not limited by any Statute, as by divers Authorities quoted in the margent appeareth. Bract. l. 2. fo. 228. 1 pt Inſt. ſect. 170 Lib. 4. fol. 10, 11. lib. 7. fol. 40. lib. 8. fol. 65. & 126. lib. 9. fol. 36. li. 11. fol. 68. 17 E. 3. 11. 20 E. 4. 14. Fleta lib. 2. ca. 28. 7 E. 6. Br. avowry 96. gard 69.

But ſomewhat more is neceſſary to be added to the former Reports, and Booke Caſes before quoted in the margent, for the ſaid Act of 32 H. 8. extends only concerning abowries for rent, ſute, or ſervice, ſo as reliefe is not within the purview of the Law, for it is no ſervice but a duty, by reaſon of the tenure and ſervice: Bract. li. 2. fo. 52. & lib. 4. fol. 314.

ſervice, and albeit homage, fealty, and eſcuage, and other accidentall ſervices (being ſervices) are within the Letter of the Law, yet they and all other accidentall ſervices, as heriot ſervice, or to cover the Lords Hall, & the like, for that they may not happen within the times limited by that Act, are by conſtruction out of the meaning of this Statute of 32 H.8. as it appeareth by the caſes quoted before: but albeit reliefe be not within this Statute, yet in avowry for reliefe, the avowant must alledge a ſeiſin of the ſervices within the auncient Statute, viz. Poſt primam tranſfretat Regis Henrici in Gaſconiam, and the ſeiſin of the ſervices is traverſable.

13 H.4. fol. 6. Edw. Latimers Caſe adjudged.

And ſo it is of homage, and fealty, and eſcuage; albeit they be out of the Statute of 32 H.8. yet are they within the auncient Statute.

And it is to be noted, that where the tenure is by homage, fealty, and eſcuage incertain, and by ſuite of Court, or rent, or any other annuall ſervice, the ſeiſin of the ſute or rent, or any other annuall ſervice is a good ſeiſin of the homage, fealty, or eſcuage, or other accidentall ſervices, as Wardſhip, heriot ſervice, or the like: and hereby (if you ſhall heedfully peruſe over the Reports and Booke Caſes before quoted) you ſhall underſtand the ſame the better.

7 E.6. tit. gard. Br. 69. Avowr. 96. 31 E.3. gard. fol. 118.

By this Act it is declared, that the ſaid Act of 32 H. 8. ſhall not extend to Writs of Right, of Advowſon, Quare impedit, Aſſiſe of Darrein preſentment, or Jure Patronatus, nor to any Writ of Right of Ward, Writ of Raviſhment of Ward, for the body or land holden by Knights ſervice, but that theſe Actions may be maintained, as they might have bin before the making of the ſaid Act of 32 H.8.

1 Mar. cap. 5. 17 E.3. fol. 11. a. in Quare imped.

And ſeeing perſonall Actions are at this day more frequent, then they have bin in times paſt, it were to be wiſhed for eſtabliſhment of quiet, and avoiding of old ſuits, that Bractons rules by ſome new proviſion extended to them alſo, and that they were limited within ſome certain time.

Since we wrote this Commentary, there is a good Statute made concerning certain perſonall actions, in Anno 21 Iacobi Regis, ca. 16. and therein a limitation ſet down in the Formedon in Diſcender, Formedon in Remainder, and Formedon in Reverter.

CAP. IX.

See the firſt part of the Inſtitutes. ſect. 399, 400. & 188.

AD breve Regis de Baſtardia, utrum aliquis natus ante matrimonium habere poterit hæreditat', ſicut ille qui natus eſt poſt matrimonium, Reſponderunt omnes Epiſcopi, quod nolunt nec poſſunt ad iſtud breve reſpondere, quia hoc eſſet contra communem formam Eccleſiæ. Et rogaverunt omnes Epiſcopi Magnates, ut conſentirent, quod nati ante matrimonium eſſent legitimi, ſicut illi qui nati ſunt poſt matrimonium, quantum ad ſucceſsionem hæreditariam, quia Eccleſia tales habet pro legitimis. Et omnes Comites & Barones una voce reſponderunt, quod nolunt Leges Angliæ mutare, quæ hucuſque uſitatæ ſunt & approbatæ.

Vide Decret. Gregorii 9. fol. 260. col. 1.

¶ Contra communem formam Eccleſiæ, &c.] For the better underſtanding of this branch, it is to be known, that in the time

time of Pope Alexander the third, (who lived Anno Domini 1160. which was Anno 6 H. 2.) This constitution was made, that children borne before solemnization of Patrimony, where Patrimony followed, should be as legitimate to inherit unto their Auncestors, as those that were borne after Patrimony, and thereupon the Statute saith, Ecclesia tales habet pro legitimis.

Of this Canon, or constitution Glanvill writeth thus, Orta est quæstio, si quis antequam pater matrem suam desponsaverat fuerit genitus vel natus, utrum talis filius sit legitimus hæres, cum postea matrem suam desponsaverat: Et quidem licet secundum Canones & leges Romanas talis filius sit legitimus hæres, tamen secundum jus & consuetudinem Regni nullo modo tanquam hæres in hæreditate sustinetur, vel hæreditatem de jure Regni petere potest. Glanv. li. 7. c. 15.

And herewith doe agree not onely other auncient Authors, but the constant opinion of the Judges in all succession of ages ever since, of the auncient Law of England. Hereupon these two conclusions doe follow: Bract. li. 5. fo. 416, 417. Fleta lib. 6. c. 38. Fortescue c. 39. 11 Ass. p. 30

1. That any forein Canon or constitution made by authority of the Pope, being (as Glanvill saith) Contra jus & consuetudinem Regni, bindeth not untill it be allowed by Act of Parliament, which the Bishops here prayed it might have beene; for no Law, or Custome of England can be taken away, abrogated, or annulled, but by authority of Parliament. 4 E. 1. Stat. de Bigamis c. 9. simile.

2. That although the Bishops were Spirituall Persons, and in those dayes had a great dependency on the Pope, yet in case of generall bastardy, when the King wrote to them to certifie, who was lawfull heire to any lands, or other inheritance, they ought to certifie according to the Law, and custome of England, and not according to the Romane Canons, and constitutions, which were contrary to the Law, and customs of England, wherein the Bishops sought at this Parliament to be relieved. Glanv. ubi supra.

See the first part of the Institutes, sect. 399. & 400. and adde thereunto:

Assisa venit, &c. Si Nicholaus de Lewkenor Pat' Thom' de Lewkenor fuit seisitus, &c de manerio de Southmyms quod Rogerus de Lewkenor tenet, qui dicit quod ipse est frater ipsius Thomæ antenatus de eodem Patre, & eadem Matre, & est seisitus de prædictis tenementis, & clamat per eundem discensum, et petit Iudicium Thom' dic' quod Rogerus non potest clamare per eundē descensum, quia dicit quod idem Rogerus natus fuit extra Sponsalia, &c. Et quia idem Tho' non potest didicere, quin idem Rogerus sit frater ipsius Tho' antenatus de eodem Patre, & eadem Matre, & post mortem prædicti Nicholai Patris, &c intravit in eisdem tenementis ut filius ejus & hæres, * *Consideratum est quod prædictus Rogerus ind' sine die. Et Tho. nich. cap' per Assisam, set sit in misericordia, &c.* Pasch. 18 E. 1. in Banco Rot. 80. Mid. in Ass. de Mordaunc'. Vide Mic. 15 E. 1 in Banc. Rot. 129. Hertf. Tr. 15. E. 1. ibid. Rot. 60. Nor. * Judgement.

Note by this judgement that the bastard eigne to this intent is accounted heire, and of the blood with the Mulier puisne, as the Mulier puisne cannot have an Assise of Mordaunc' against him.

We remember not that we have read in any Book of the legitimation, or adoption of an heire, but onely in Bracton lib. 2. cap. 19. fol. 63. b. and that to no little purpose; but the surest adoption of an heire, is by learned advice, to make good assurance of the land, &c.

¶ Et omnes Comites, et Barones, una voce responderunt quod nolunt leges Angliæ mutare quæ hucusque usitatæ sunt et approbatæ.] The Nobility of England have ever had the Laws of England in great estimation and reverence, as their best birth-right, and so have the Kings of England as their principall royalty and right belonging to their Crown and dignity: This made King H. 1. that noble King surnamed Beauclerk, to write to Pope Pascall, Notum habeat sanctitas vestra, quod me vivente (auxiliante Deo) See the first part of the Institutes. sect. 400. Chart. Hen. 1.

Deo) dignitates & usus regni nostri Angliæ non imminuentur, & si ego (quod absit) in tanta me dejectione ponerem, optimates mei & totus Angliæ populus id nullo modo paterentur.

And it is worthy the observation, how dangerous it is (as elsewhere hath bin often noted) to change an ancient Parime of the Common Law.

William Malms. lib. 3. circa initiū Jngulphus lib. 6. cap. 19. See the Custumer de Nor. ca. 27. fo. 42 & 44.

Some have written, that William the Conquerour being borne out of matrimony, Robert his reputed father did after marry Arlot his mother, and that thereby he had right by the Civil and Canon Law, but that is contra legem Angliæ, as here it appeareth. And during this Parliament in the 20. peare of H. 3. it may be collected by the 23. and 24. Epistles of Robert Grostead then Bishop of Lincoln directed to William Rawleighe (Priest) then one of the Kings Justices, that this matter to bring the nati ante matrimonium to be made legitimate was vehemently laboured by the Clergie: And in the 26. Epistle to the Bishop of Canterbury, he findeth fault with the Arch-bishop, for that the King and his Councell had resolved that the Law and Custome of the Realme in this point should continue still: Whereby it appeareth, that not onely the Nobles, but the King himselfe was against it.

Rot. Par. 28 E. 1. apud Lincoln.

And in the Letters, which all the Nobilitie of England by assent of the whole communalty assembled in Parliament at Lincoln wrote to Pope Boniface, it is thus conteyned, Ad observationem & defensionem libertatum, consuetudinum, & legum paternarum ex debito præstiti iuramenti astringimur, quæ manutenebimus toto posse, totisque viribus cum dei auxilio defendemus, nec etiam permittimus aut aliquatenus permittemus, sicut nec possumus nec debemus præmissa tam insolita, indebita, præjudicialia, & alias inaudita dominum nostrum regem, etiam si vellet, facere, seu quomodolibet attemptare: (and there the inconveniences are set down,) præcipue cum præmissa cederent manifeste in exheredationem Juris coronæ Regis Angliæ & regiæ dignitatis, ac subversionem status ejusdem Regni notoriam, nec non in præjudicium libertatum, consuetudinum, & legum paternarum. Sealed by the severall seales of Armes of 104. Earles and Barons, and in the name of all the communalty of England. And to that effect King E. 1. wrote also to the Pope.

Jus coronæ.

¶ Leges Angliæ.] Here our common lawes are aptly and properly called the lawes of England, because they are appropriated to this Kingdome of England as most apt and fit for the government thereof, and have no dependancy upon any forreine law whatsoever, no not upon the civill or cannon law other then in cases allowed by the laws of England, as partly hath bin touched before: and therefore the Poet spake truly hereof, Et penitus toto divisos orbe Britannos: so as the law of England is proprium quarto modo to the Kingdome of England; therefore forrein precedents are not to be objected against us, because we are not subject to forrein lawes.

Virgil

And it is a note worthy of observation, that where at the holding of this Parliament in anno 20 H. 3. and before, and some time after, many of the Judges and Justices of this Realme were of the Clergy, as Bishops, Deanes, and Priests, and all the great officers of the Realme, as Lord Chancellor, Treasurer, Privyseale, President, &c. were for the most part of the Clergy; yet even in those times the Judges of the Realme, both of the Clergy and Laity, did constantly maintaine the lawes of England, so as no incroachment was made upon them or breach unto them by any forreine power, as partly hath bin shewed in Caudries case: and many more judgements and authorities in law might be produced for the manifestation thereof: See the first part of the Institutes, many of the Clergy Judges and Justices of the realme of ancient time.

Lib. 5. fo. 1. &c. Caudries case. 1 part of the Institutes § 534.

¶ Et rogarunt omnes Episcopi magnates ut consentirent, &c.] Here was the motion and request, But Bracton saith Rogarunt Regem & magnates: Et omnes comites & barones una voce responderunt, Nolumus leges Angliæ mutare &c; for so it is in ancient Manuscripts.

Bracton lib. 5. fo. 416. 417

This

This is the first of this kind, that we remember, that hath been printed, for it is to be understood that by the parliamentary order all motions and petitions made (as this was) though they were denied, and never proceeded to the establishment of a Statute, yet the same were entered into the Parliament roll together with the answers thereunto: but this is the first of this kinde (as hath been said) that hath been printed.

See the last Cha. of Merton the like. 12 ass. p. 20.

And yet in our books this is called a Statute, for Sir Galfred le Scrope chiefe Justice saith, before the statute of Merton the party pleaded not generall bastardy, but that he was borne out of espousals; and the Bishop ought to certifie whether he were borne before espousals or not, and according to that certificate to proceed to judgement according to the law of the land: And the prelates answered that they could not to this writ answer, and therefore ever since special bastardy (viz. that the defendant, &c. was borne before espousals) have been tried in the Kings Courts, and generall bastardy in court Christian; and herewith agreeth our old books and the constant opinion of the Judges ever since.

Bract. li. 5. fo. 416
Fleta li. 6. cap. 38
47 E. 3. 14.
21 E. 3. 49.
28 ass. 46.
46 E. 3. 3.

Now for that this point was resolved in Parliament, it is here in a large sense called a Statute.

CAP. X.

PRovisum est insuper, quod quilibet liber homo, qui sectam debet ad comitatum, trithingum, hundredum, & wapentagium, vel ad Curiam domini sui, libere possit facere Attornatum suum, ad sectas illas pro eo faciendas.

¶ Sectam debet.] Nota, There be two kinds of suits, viz. suit reall, that is, in respect of his reliance to a Leet or Tourne: and suit service, that is, by reason of a tenure of his land of the County, Hundred, Wapentake, or Mannor whereunto a Court Baron is incident: before this Act every one that held by suit service ought to appeare in person, because the suiters were Judges in those Courts, otherwise he should be amerced, which was mischievous, for it might be, that he had lands within divers of those Seigniories, and that the Courts might be kept in one day, and he could be but in one place at one time: But this Statute extends not to suit reall, because he cannot be within two Leets, &c.

41 E. 3. Avowry 77. Vid. Glo. c. 8 W. 2. cap. 10.

¶ Trithingum or Trithinge.] Here it signifieth a Court which consisteth on three or foure Hundreds, and doth not here signifie a Leet or view of frankpledge.

Lamb. int. leges Ed. regis, nu. 34. Magna Cart. c. 35 Temps E. 1. Attorn. 106. Regist. 172. 23 E. 3. cap. 4. F.N.B. 156.

¶ Wapentagium.] That, which in some Countries is called a Hundred Court, in some Countries is called a Wapentake. * Quod Angli vocant Hundredum supradicti Comitatus vocant Wapentagium. Now the reason of the name was this: When any on a certaine day and place took upon him the government of the Hundred, the free suiters met him with launces, and he descending from his horse, all rose up to him, and he holding his launce upright, all the rest, in signe of obedience, with their launces touched his launce or weapon: for the Saxon word wapen, is weapon, and tac, is tactus, or touching: and thereof this assemblie was called Wapentake, or touching of weapon.

*Lam. verbo centuria int. leges Ed. regis, nu. 33. Bract. lib. 3.

Mirror, ca. 5 §. 3.

Now albeit he that holdeth by suit service may make an Attorney, yet that

Attorney cannot sit as Judge, as the free suitor himself might doe, for he cannot depute another in his judiciall place; and the words of the Statute be, Liberè possit facere attornatum ad sectas illas pro eo faciendas.

Temps E. 1. Attorny 106.

¶ Liber homo.] This doth extend to Free-holders in ancient demesne, but not to Copie-holders.

F.N.B. 156. E. W. 1. cap. 33.

¶ Facere Attornatum.] He must make a Letter of Attorney under his seale, which the Steward ought to allow; and if he doe not, the suitor may have a Writ out of the Chancery for the allowance of him: or if he doubted that he should not be allowed, he might have a Writ before-hand to receive him as Attorney: and such a Writ shall serve during the life of the tenant, &c. for the words of another Writ be, Et quia virtus Brevium nostrorum de hujusmodi Attornato faciendo terminum non capit, nec terminus limitatur durantibus personis, &c.

F.N.B. 157.

W. 1. cap. 33. Custumier de Norm. cap. 65.

What such an Attorney may doe, and who cannot be Attorney, vide the Statute of W. 1.

¶ Ad sectas illas pro eo faciendas.] So as by force of this Act he may doe such suit, as the Free-holder ought to doe.

See the Register 19. This Act extendeth to Justices in Eire.

CAP. XI.

DE malefactoribus in parcis, & vivariis nondum est discussum, quia magnates petierunt propriam prisonam de illis, quos caperent in parcis, & vivariis suis. Quod quidem dominus Rex contradixit, & ideo differtur.

¶ Vivarium] Is a word of a large extent, and ex vi termini signifieth a place in land or water, where living things be kept. Now commonly in Law it signifieth Parks, Warrens, and Piscaries or Fishings; here it is taken for Warrens and Fishings, for that Parks were named before.

¶ Propriam prisonam.] This petition of the Lords in Parliament stood upon three branches: 1. That they might imprison such as they should take in their Parks or Vivaries, which seemed to be against the 29. Chapter of Magna Charta. 2. That they should have propriam prisonam, a prison of their owne, which no subject can have; for all prisons or gaoles are the Kings prisons or gaoles, but a subject may have the custodie or keeping of them. 3. That they should not be imprisoned in the common gaole. All which Dominus Rex contradixit.

See the like before, cap. 9.

STATUTUM

Statutum de Marlebridge,

Editum 52. H. 3. Annogratiæ 1267.

¶ Marlebridge] Now called Marleborough, a Towne in Wiltshire, the greatest fame whereof is the holding of this Parliament there. Henricus verò, &c. Concilium convocavit Marlebrigium, quod est pagus celebris comitatus Wilceriæ, qui in eo conventu primum leges ab se latas, & præsertim Magnæ chartæ de concilii sententia approbandas, deinde alias condendas curavit, quæ ad statum & commodum regni maximè conducerent. Polyd. Virg. p. 314. 10.

This Towne in our Books is called a Citie, and the Freemen thereof Citizens. 39 E. 3. fo. 15.

¶ 52 H. 3.] This King raigned longest of any King since the Conquest, or before, that we remember; for he raigned 56. yeares. But the great and famous Queene Elizabeth was of greater yeares then any of her progenitors, for she attained nére to 70. yeares. So King H. 3. raigned longest, and Quéen Eliz. lived longest. She raigned the yeares of the Emperour Augustus, and lived the yeares of King David.

ANno Gratiæ M.CC.LXVII. Regni autem domini Henrici filii Regis Johannis quinquagesimo secundo, in octabis S. Martini, providente ipso domino Rege, ad regni sui Angliæ meliorationem, & exhibitionem justitiæ (prout Regalis officii exposcit utilitas) pleniorem, convocatis discretioribus ejusdem Regni, tam majoribus quàm minoribus: Provisum est & statutum, ac concordatum & ordinatum, ut cum regnum Angliæ multis tribulationibus & dissentionum incommodis nuper *esset* depressum, reformatione legum et jurium (quibus pax et tranquillitas incolarum conservetur) indigeat, ad quod remedium salubre per ipsum Regem et suos fideles oportuit adhiberi: provisiones, ordinationes, et statuta subscripta, ab omnibus regni ipsius incolis, tam majoribus quàm minoribus, firmiter & inviolabiliter temporibus perpetuis statuerit observari.

This generall Preamble to all the Statutes of Marlebridge doth consist on foure parts.

1. The end wherefore these Statutes were made, for sapiens incipit à fine, and that is twofold; 1. Ad meliorationem regni Angliæ. 2. Ad exhibitionem justitiæ (prout regalis officii exposcit utilitas) pleniorem.

2. Of what members this Parliament consisted, Convocatis discretioribus ejusdem regni, tam majoribus, quàm minoribus.

3. What was the cause of calling this Parliament, Cum regni Angliæ multis tribulationibus & dissentionum incommodis nuper esset depressum, The many

many fearfull and dangerous troubles and dissentions betweén the King and his Barons, which I had rather you should reade in History, then I should relate, grew originally out of this root, that the King sometimes allowed, and sometimes disallowed Magna Charta, and Charta de Foresta.

4. What should be the remedy that peace and tranquillity might ensue. Ut cum regnum &c. reformatione legum & jurium quibus pax & tranquillitas incolarum conservetur indigeat, ad quod remedium salubre per ipsum regem & suos fideles provisiones, ordinationes, & statuta subscripta, ab omnibus regni suis incolis tam majoribus quàm minoribus firmiter & inviolabiliter temporibus perpetuis statuerit observari.

This remedy that should for ever in all future times be inviolably observed, consisted upon two parts.

1. For establishing of Magna Charta, and Charta de Foresta, whereof more shall be said when we come to the first Chapter. In the meane time, this is to be observed, that after this Parliament neither Magna Charta, nor Charta de Foresta, was ever attempted to be impugned or questioned; whereupon peace and tranquillity, whereof this Preamble speaketh, have ever since ensued.

2. For enacting of new Lawes, or declaring of old, with addition of great punishment.

CAP. I.

CUm autem tempore turbationis nuper in regno Angliæ subortæ, & deinceps multi magnates & alii justitiam indignati fuerint recipere per dominum Regem, & curiam suam, prout debuerunt, & consueverunt temporibus prædecessorum ipsius domini Regis, & etiam tempore suo: sed de vicinis suis, & aliis per seipsos graves ultiones fecerint, et districtiones, quousque redemptiones reciperent ad voluntatem suam. Et præterea quidam eorum, se per ministros domini Regis justiciari non permittant, nec sustineant quod per ipsos liberentur districtiones, quas authoritate propria fecerint ad voluntatem suam. Provisum est, concordatum & concessum, quod tam majores, quam minores, justitiam habeant et recipiant in curia domini Regis. Et nullus de cætero ultiones, aut districtiones faciat per voluntatem suam, absque consideratione curiæ domini Regis, si fortè dampnum vel injuria sibi fiat, unde emendas habere voluerit de *aliquo* vicino suo, sive majore sive minore. Super articulo autem supradicto provisum est & concessum, quod si quis de cætero ultiones hujusmodi capiat per voluntatem suam *propriam* absque consideratione curiæ domini regis (ut prædictum est) & inde convincatur, puniatur per redemptionem, & hoc secundum quantitatem delicti. Et simi-

similiter si vicinus super vicinum suum faciat districtionē sine consideratione curiæ domini regis, per quod dampnum habeat, puniatur eodem modo, & hoc secundum quantitatem delicti. Et nihilominus fiant emendæ plenè & sufficienter eis, qui dampna sustinuerunt per hujusmodi districtionem.

This first Chapter consisteth of a Preamble, and the body of the Act.

The Preamble shews the mischiefs, which were foure.

1. That in the time of the late troubles, great men and others refused to be justified by the King and his Court, as they ought, for here it is said, Multi magnates & alii indignati fuerint recipere justitiam per dominum Regem, & curiam suam.

2. Sed graves ultiones fecerint, That they (refusing the course of the Kings Lawes) take upon them to be their owne Judges in their owne causes, and to take such revenges as they thought fit, untill they had ransomes at their pleasures. Aliquis non debet esse judex in sua propria causa. *Regula.*

3. That some of them would not be justified by the Kings Officers.

4. Nor would suffer them to make delivery of such distresses, as they had taken of their owne authority at their pleasure. Here you may see the defects of a disordered and troubled State.

The body of the Act consisteth of divers branches.

First, a remedy in generall for all the said mischiefes.

¶ Provisum est, concordatum, & concessum, quod tam majores quam minores, justitiam habeant & recipiant in curia domini Regis.] This is the golden metwande, that the Law hath appointed to measure the cases of all and singular persons, high and low, to have and receive Justice in the Kings Courts; for the King hath distributed his judiciall power to severall Courts of Justice, and Courts of Justice ought to determine all Causes, and that all private revenges be avoided. 8 H.4.19.Case. 24 H.8. cap.12. 25 H.8. cap.21.

Upon this generall Law, foure conclusions doe follow.

1. That all men, high and low, must be justified, that is, have and receive Justice in the Kings Courts of Justice.

2. That no private revenge be taken, nor any man by his owne arme or power revenge himselfe: And this article is grounded upon the Law of God, Vindicta est mihi, & ego retribuam, saith Almighty God. All revenge must come from God, or from his Lieutenant the King, in some of his Courts of Justice. See cap. Itineris, Artic. ult.

3. That all the Subjects of the Realme ought to be justified, that is, submit themselves to the Kings Officers of Justice according to Law.

4. That they ought to suffer replevies to be made according to the Law, to the end that men may possesse their horses, beasts, and other cattle and goods in peace, whereof they have so great and continuall use. See hereafter Cap. 4.

¶ In curia domini Regis.] These words are of great importance, for all Causes ought to be heard, ordered, and determined before the Judges of the Kings Courts openly in the Kings Courts, whither all persons may resort; and in no chambers, or other private places: for the Judges are not Judges of chambers, but of Courts, and therefore in open Court, where the parties Councell and Attorneys attend, ought orders, rules, awards, and judgements to be made and given, and not in chambers or other

ther private places, where a man may lose his cause, or receive great prejudice, or delay in his absence for want of defence. Nay, that Judge that ordereth or ruleth a Cause in his chamber, though his order or rule be just, yet offendeth he the Law, (as here it appeareth) because he doth it not in Court. And the opinion is good, and agreeable to this Law, Qui aliquid statuerit parte inaudita altera, æquum licet statuerit, haud æquus fuerit: Neither are Causes to be heard upon petitions, or suggestions and references, but in curia domini Regis.

Seneca.

¶ Et nullus de cætero ultiones aut districtiones faciat per voluntatem suam absque consideratione curiæ domini Regis. The first clause was affirmative: This clause, for the more surety, is in the negative.

¶ Districtiones faciat per voluntatem suam.] That is, taking distresses not according to the Law, as for services, rents, or for damage feasant, or for other lawfull cause, but for revenge without cause, of his owne head and will, that is, to be his owne judge and carver, to satisfie himselfe without any lawfull meane or course of Law, and so it is to be understood through this whole Chapter: For this Chapter is to be understood de ultionibus, of revenges, which are of two natures, 1. Personall, as by combat, imprisonment, and the like: 2. By distresses, that is, revengefull taking of goods. Concerning takings in nature of distresses, provision is made in the next three Chapters.

¶ Puniatur per redemptionē.] For this word (redemptio) and the signification thereof, see the first part of the Institutes, sect. 194.

1. Part Institut. sect. 194. Here cap. 4.

CAP. II.

NUllus insuper major vel minor distringat aliquem ad veniendum ad curiam suam, qui non sit de feodo suo, aut super ipsum non habeat jurisdictionem per hundredum, *wapentagium*, vel balivam, *quæ sua sit* nec districtiones faciat extra feodum suum, seu locum ubi balivam habeat, vel jurisdictionem. Et qui contra hoc statutum fecerit, puniatur eodem modo, & hoc secundum delicti quantitatem, & etiam qualitatem.

¶ Nullus insuper major, &c.] This Chapter concerning Distresses enacteth three things: 1. That no man shall distreine any to come to his Court but such as be within his fee: This is intended of suit service in respect of a Seigniory, and not of suit reall in respect of reliance. 2. Or that he hath jurisdiction by Hundred, Wapentake, or Bayliwick. 3. That he shall not take distresses out of his fee or place where he hath a bayliwick or jurisdiction.

Fleta l. 2. cap. 40. W. 1. cap. 16. Here cap. 15. Artic. cler. c. 6. Artic. super cart. cap. 12.

This Chapter is a Declaration of the Common Law, saving for the penaltie hereby inflicted; and therefore if A. distreine B. and in a replevie A. avow as Lord for rent or service, B. plead hors de son fee, and it is found

41 E. 3. 26. 47 E. 3. 7.

found for B. A. shall not in this Replevy be punished by ransome, &c. according to this Act, but hee must have an Action upon this Statute. Et sic de similibus. Regist. 77. 4 E. 3. 1 19 E. 3. Barre 261 19 E. 2. breve 342 11 R. 2. Avow. 87 18 E. 2. Action sur le stat. 85. F.N.B. 89. 90.

¶ Infra balivam.] Here Baliva is well expounded by the Statute it selfe, for it signifieth here jurisdiction, and therefore it is here said, Infra balivam seu Jurisdictionem.

CAP. III.

SI quis autem major vel minor permittere noluerit liberari per ministros domini Regis, secundum legem & consuetudinem Regni, districtiones quas fecerit: aut etiam sustinere noluerit summonitiones, attachiamenta, executiones judiciorum curiæ domini Regis fieri *secundum legem & consuetudinem Regni ut prædict' est*, puniatur modo prædicto, tanquam se justiciari non permittens, et hoc secundum delicti quantitatem. Et si quis major vel minor districtiones faciat super tenentem suum pro servitiis et consuetudinibus, quæ sibi deberi dicat, vel pro re altera, unde ad dominum feodi pertineat districtiones facere, et postea convincat', quod tenens ea sibi non debeat: non ideo puniatur dominus per redemptionem, ut in supradictis casibus, si permittat districtiones deliberari secund' legem et consuetudin' regni, sed amercietur, velut hactenus consuetum est, et tenens dampna sua recuperet versus eum. W. 1. cap. 17.

This Chapter consisteth on three branches.

1. That all of what estate soever, shall suffer such Distresses as have been taken to be delivered by the Kings Officers after the Law and Custome of the Realme. But if any will not suffer them to be delivered, it is no good returne for the Sheriffe to say, that he was resisted, for he may take posse Comitatus. Regist. 97.

2. That all shall suffer summons, attachments, or executions of judgements in the Kings Court, &c.

3. If the Lord distrein his Tenant for customes, services, or any other duty, which the Lord alledged to be behinde, if it be found that it is not behinde, Non puniatur Dominus per redemptionem, &c. But at the Common Law an action of Trespasse Vi & armis in that case did lie. 44 E. 3. 20. li. 4. fol. 11. Bevils Case. li. 9. fo. 76. Combes Case.

This branch is interpreted that the Lord shall pay no fine, and therefore since this Act by a consequent no Action of Trespasse Quare vi & armis lieth against the Lord in this case, for then he should pay a fine.

The former Chapters inflict punishment, where the distresse is unlawfull, or that he that distrained had no seigniory or jurisdiction at all, or distrained out of his fee or jurisdiction, &c. But in this last branch, he which distrained had a lawfull seigniory, and distrained within his fee and seigniory, and so this case differeth from the other, (although in truth nothing was behinde.) But this 41 E. 3. 26. 44 E. 3. 13. 28 E. 3. 97. 8 E. 4. 15. 10 E. 4. 7. 20 E. 4. 3. 21 E. 4. 3.

2 H.4.4. 11 H.4. 78. 1 H.6.6. 9 H.7.14. Combes case. ubi supra. 9 H.6.26. 44 E.3. 13. 19 R.2. Herior 5.

this is to be intended where the Lord himselfe doth distrain; for if his Baylie take a Distresse, where nothing is behinde, there an Action of Trespasse, Quare vi & armis lieth against him, because the Baylie is not Dominus; and so it is against a Guardien in socage. And if the Lord himselfe doth cut any wood, or breake the house, or tred the ground of his Tenant, or the like, which he doth not in respect of his Seigniory, there an Action of Trespasse, Quare vi & armis lieth against him, for he doth not these things as Dominus.

48 E.3.5,6. 28 E.3.97. 38 E.3.33. 5 H.7.10.

And (Dominus) in this Act is extended to the Lessor upon a lease for life, or for yeares made, for the Lessee for yeares shall doe fealty also; but if the Lessor put out the Lessee for yeares, or disseise the Tenant for life, or doe any Act, not as Dominus, the Lessee shall have an Action of Trespasse against him, Vi & armis.

CAP. IV.

W.1.cap.19.

NUllus de cætero faciat ducere districtiones quas fecerit extra Comitatum in quo captæ fuerint. Et si vicinus hoc fecerit super vicinum suum, & per voluntatem suam, & sine judicio, puniatur per redemptionem ut supra, veluti de re *facta* contra pacem. Veruntamen si Dominus hoc super tenentem suum facere præsumpserit, castigetur per gravem misericordiam. Districtiones insuper sint rationabiles, & non nimis graves. Et qui districtiones fecerint irrationabiles, et indebitas, graviter amercientur propter excessum districtionum ipsarum. *Vide Statut. Anno* 1. *&* 2. *Phil. & Mar. Cap.* 13.

This Chapter emptieth it selfe into five parts, viz.

1. That none shall drive any Distresse out of the County, where he hath taken it.

22 E.4.11.

2. If one neighbour doe so to another, (as for damage feasant, or rent charge) of his owne authority, he shall make ransome, that is, a fine, as of a thing done against the peace.

3. If the Lord presume to doe it against his Tenant, he shall be punished by a great amerciament.

At the Common Law a man might have driven the Distresse to what County he would, which was mischievous for two causes: 1. Because the Tenant was bound to give the beasts being impounded in an open pound sustenance, and being carried into another County, by common intendment he could have no knowledge where they were. Another cause, he could not know where to have a Replevy, but the party was before this Statute driven to his Action upon his case; And albeit this Statute be in the negative, yet if the Tenancy be in one County, and the Mannor in another County, the Lord may drive the Distresse which he taketh in the Tenancy to his Mannor in the other County, for that the Tenant is out of both the suits mischieles; for the Tenant by doing of suits and service to the Mannor, by common intendment may know what is done there, and therefore may give his beasts sustenance; and to know where to have his Replevy, the Baylifs of the Mannor usually drive the

6 H.3.Avow.243 Temps E.1.ibid. 192. 30 Ass.38. 29 E.3.13. 1 H.6.9. 22 E.4. Barre 120. F.N.B. 89. Pl. Com. 9.b.

Cattle

Cattell diſtrained to the pound of the Pannor: And this Act extends as well to goods as to beaſts: Note hereby a caſe out of the miſchiefe is out of the meaning of the Law, though it be within the Letter.

4. That Diſtreſſes be reaſonable, and not too great; Vide the firſt part of the Inſtitutes, what ſhall be ſaid reaſonable, and by whom it ſhall be tried in this and in all other caſes: ſome ſay that for homage, or fealty, for the expences of the Knights of the Parliament an exceſſive diſtreſſe cannot be taken; but this Statute is generall, and extendeth unto all. Regiſtr. 97. 1.pt Inſt.ſect.69. 29 E.3.23. 42 E.3.26. 11 H.4.2. 8 H.4.16. 29 E.3.23.

5. He that takes unreaſonable and undue Diſtreſſes, ſhall be grievouſly amerced for the exceſſe of thoſe Diſtreſſes.

It is worthy of obſervation, how prudent the Makers of theſe and other Statutes be, that mens beaſts, cattell, or other goods be not unjuſtly or exceſſively diſtrained; and if they be, that deliverance be ſpeedily made of them by Replevy, otherwiſe the husbandry of the Realme, and mens other trades might be overthrowne or hindred: and this agreeth with the reaſon of the Common Law. Stat. 51 H.3. W.1.c.16. 28 E.1. c.12. 1 & 2 Phil. & Mar. c.12.

And therefore if the Lord or his Bayliffe come to diſtraine the beaſts or goods of his Tenant for his rent behinde, before the Diſtreſſe the Tenant (that he may keep and uſe his beaſts or other goods) may upon the land tender the arrerages, and if after that a Diſtreſſe be taken, it is wrongfull; And if the Lord have diſtrained, if the Tenant before the impounding of them tender the arrerages, the Lord ought to deliver the Diſtreſſe, and if he doth not, the detainer is unlawfull: Even ſo it is in caſe of a Diſtreſſe for damage feaſant, the tender of amends before the Diſtreſſe, maketh the Diſtreſſe unlawfull, and after the Diſtreſſe, and before the impounding, the detainer unlawfull. But if a man bring an Action of Treſpaſſe for taking away his beaſts or other goods, there tender of ſuch ſufficient amends before the Action brought is no barre, becauſe he that tendred the amends is not the owner of the goods; as in the other caſes, but a Treſpaſſer, whom the Law favoureth not: And further, if the Avowant hath returned irreplegiable, yet if the owner of the beaſts or goods tender to him all that is due upon the judgement in the Avowry (whereby the certainty doth appeare) he may have an Action of Detinue for the detainer afterward, or upon ſatisfaction made in Court, have a Writ for their delivery. 7 E.3.8.b. 20 Aſſ. 38. 13 H.4.17. 14 H.4.4. Lib.8.fol.147. le 6. Carpenters Caſe. li.5.fo.76. Pilkingtons caſe. 21 H.7.30.2. But this is now holpen by the Statute of 21 Jac. Cap. 13H.4.4.2.33H.6 27.a. 45 E.3.9.

¶ Diſtrictiones ſunt inſuper rationabiles et non minus graves, &c. propter exceſſum, &c.] Quicquid in exceſſu actum eſt, lege prohibetur. 51 H.3 diſtr. de Scaccar. acc.

For example, if the Lord diſtraine two or three Oxen for vij. d. or the like ſmall ſumme, and the owner bring a Replevy of the Oxen, and the Lord avow the taking of them for the twelve pence, &c. of his owne ſhewing hee ſhall make fine, &c. or the party may have his Action upon the Statute. Regiſt.97.22 E.4. 26. 11 H.4.2. 8 H.4.16. F.N.B.89.

If the Lord diſtrain an Oxe, or Horſe for a penny, if there were no other Diſtreſſe upon the land holden, the Diſtreſſe is not exceſſive, but if there were a Sheepe or Swine, &c. then the taking of the Oxe or Horſe is exceſſive, becauſe he might have taken a beaſt of leſſe value.

CAP. V.

MAgna Charta in ſingulis ſuis articulis teneatur, tam in his quæ ad Regem pertinent, quam quæ ad alios, et hoc coram Juſticiariis itinerantibus in ſuis itineribus, et Vicecomes in comitatibus ſuis, cum opus fuerit demandetur, et brevia verſus eos qui contravenerint gratis concedantur coram Rege, vel coram Juſticiariis de Banco, vel coram Juſticiariis itinerantibus, cum in partes illas venerint. Similiter Charta de Foreſta in ſingulis ſuis articulis teneatur, et contravenientes per dominum Regem, cum convicti fuerint graviter puniantur modo ſupradicto.

This, as hath béene ſaid, was one of the principall cauſes of the ſummons of this Parliament, and after this enſued great and conſtant peace and tranquility.

Magna Charta c. 32, 38. And where ſome have thought, that Magna Charta had not the ſtrength of a Parliament before this Act, how they miſtake it, you may reade before in Magna Charta, Cap. 32. and 38.

¶ Magna Charta.] By this time this Charter had got the name of Magna Charta, and by that name onely is here confirmed.

¶ Tam in hiis quæ ad regem pertinent quam ad alios.] Theſe be ſhort and effectuall words, and to avoid all ſcruples, the King is expreſſly named, and it hath not words of confirmation, but words of eſtabliſhment, Quod Magna Charta in ſingulis ſuis articulis teneatur, which is the ſureſt way.

Cap. Itineris. Vet. Mag. Cart. 150. b. ¶ Coram Juſticiariis itinerantibus.] Vide Cap. itineris, the Articles of Magna Charta eſpecially given in charge, and enquired of, &c. by Juſtices in Eyre, and by this Act they had their authority therein.

Mag. Cart. c. 29. ¶ Brevia gratis concedantur.] Writs againſt the breakers of Magna Charta ſhall be freely graunted, to encourage ſuch as would purſue againſt them.

¶ Coram Rege.] That is, in the Kings Bench.

¶ Coram Juſticiariis de Banco.] That is, in the Court of Common Pleas.

¶ Similiter Charta de Foreſta, in ſingulis ſuis articulis teneatur, &c.] This was another of the principall cauſes of the ſummons of this Parliament, as hath béen ſaid.

CAP.

CAP. VI.

DE his autem qui primogenitos, & hæredes ſuos infrà ætatem exiſtentes feoffare ſolent de hæreditate ſua, ut per hoc amitterent domini feodorum cuſtodias ſuas, Proviſum eſt, concordatum, & conceſſum, quod occaſione hujuſmodi *falſi* feoffamenti, nullus capitalis dominus amittat cuſtodiam ſuam. De his inſuper qui de terris ſuis, quas tradere voluerint ad terminum annorum, ut per hoc domini feodorum amittant cuſtodias ſuas, falſa ſingunt feoffamenta continentia, quod eis ſatisfactum eſt de ſumma ſervitii in illis contenti uſque ad terminum aliquem: ita quod ſi ad dictum terminum ſolvere tenentur hujuſmodi feoffati ſummã aliquam ad valorem terrarum illarum, vel in multo excedentem, ut ſic poſt terminum illum terra eorum revertatur ad ipſos vel ad hæredes ſuos, eo quod nemo eam pro tanto tenere curaret: Proviſum eſt, concordatum, & conceſſum, ut per hujuſmodi fraudem nullus capitalis dominus amittat cuſtodiam ſuam: Veruntamen non licebit eis hujuſmodi feoffatos ſine judicio diſſeiſire: ſed breve habeant de hujuſmodi cuſtodia ſibi reddenda, & per teſtes in chartis de hujuſmodi feoffamento contentos, una cum aliis liberis & legalibus hominibus de patria, & per quantitatem & valorem tenement', & per quantitatem ſummæ, quæ inde reddi debeant poſt terminum *prædictum* attingatur, utrum hujuſmodi feoffamenta bona fide facta ſint, an in fraudem, ad auferendum capitalibus dominis feodorum cuſtodiam ſuam. Si vero capitales domini per judicium curiæ in hujuſmodi caſibus recuperaverint cuſtodiam ſuam, ſalva ſit nihilominus hujuſmodi feoffatis actio ſua, quo ad terminum, ſeu ad feodum recuperandum, quam inde habuerint cum hæredes ad legitimam ætatem pervenerint. Et ſi aliqui capitales domini feoffatos aliquos malitioſè implacitaverint, fingentes caſum iſtum, maximè ubi feoffamenta legitimè & bona fide facta fuerint, tunc adjudicentur feoffatis dampna ſua, & miſæ ſuæ, quas fecerint occaſione præd' placiti, & ipſi actores per miſericordiam graviter puniantur.

Robert Walrand penned and preferred this Act, and by aid and common aſſent of the great Lords of the Realme, obtained to paſſe it for a Statute.

This

Brit.c.36.fo.95.b This Robert Walrand was learned in the Lawes of the Realme, and soone after this statute, died: His son and heire conveyed his lands holden by Knights service to his son and heire apparent, being within the age of 21. yeares, rather trusting his land in his son within age, then in himselfe, and died, his son being still within age; and this statute which Robert Walrand the grandfather had penned and preferred, took first effect in the heire of his heire, as Britton reporteth.

9 H.4.6. 33 H.6.15.b. Lib.6.fo.76. Sir Geo: Cursons case. 17 E.3. relief 3. The mischiefe before this first branch of this statute was, that such a feoffment as well in the Kings case, as in the case of a common person, did take away the wardship of the heire, as it appeareth by the Preamble, and our Books, because by the Common Law the heire could not be in ward, unlesse he were in by descent, and tenaunt by Knights service to prevent the Lord of the wardship, would enfeoffe him or her to whom the land should descend by the Common Law. And upon this statute collusion of this kind was divided into two branches; The first was called collusion apparent, upon this first branch, qui primogenitos feoffare solent; the second was called collusion averrable, that is to be proved upon issue thereupon to be taken upon the second branch, De hiis insuper qui de terris suis, &c.

33 H.6.16. Pl.com.82. ¶ Qui primogenitos & hæredes.] Albeit the heire be not primogenitus, but an heire female, or male lineall or collaterall, yet every of them is within the same mischiefe; and therefore the auncient Sages of the Law, (that I may say it once for all) did ever apply the remedy to the mischief; and therefore here this (&) a conjunctive, was by construction taken for a disjunctive, viz. qui primogenitos vel hæredes, &c.

Rot.claus.an.2. E.1. m.14. Pl.com.ubi sup. Hil.16. E.1. in Banco. Rot. 51. Norf. Johannes de Brampton. If tenant by Knights service of land of the nature of Borough-english infeoffe his youngest sonne, he is within this statute; for hæres dicitur ab hæreditate, & sic de similibus.

9 H.4.6. See the Stat. of 34 H.8.c.15. versus finem. 13 Eliz. cap.5. 17 E.3.63. relief 3. 31 E.3.tit.collusion 29. 7 E.3.tit. rel.11. 4 E.3.22. ¶ Infra ætatem existentes.] This branch extends not to give remedy for reliefes which is due when the tenant dieth, his heire of full age; but by divers statutes of later time provision is made for relieve. And thus much concerning the person to be infeoffed within this first branch.

[a] 1.Part Instit.1. sect.1. for this word *feoffare*. 33 H.6.14. 27 H.8.10. [b] 31 E.1.collu.29 33 H.6.14. [c] 33 H.6.ubi sup. ¶ Feoffare solent de hæreditate sua.] 1. [a]This word feoffare implyeth a fee-simple, and therefore if the auncester had made a lease for life, or a gift in taile to his heire apparent with a remainder or without a remainder over of the estate in taile, it was out of this statute.

2. [b]This Act speaketh of a feoffement made solely to the heire; and therefore if a feoffement had beene made to the heire and an estranger, though the fee-simple were limited to the heires of the heire, yet it was out of this Act.

3. [c]And this is to be understood of an immediate gift to the heire apparent; for if a lease for life be made, the remainder to the heire apparent in fee, this is no collusion.

4. Though it was not a feoffment, but inured by way of graunt; As if the mesne had graunted his mesnaltie to his heire, or if the tenant or mesne had levied a fine, or suffered a recovery by consent, or had made a lease and release, or confirmation, or the like, such conveyances had beene in equall mischiefe, and therefore within the remedy.

27 H.8.8.b. 5. This Act extended not to a feoffment to the use of his heire, or to the use of himselfe and his heires; for at the Common Law the Lord should not have the wardship but of the heire of his tenant, that died in his homage, and therefore the statute of 4 H.7.cap.17. was made to remedy this mischiefe.

33 H.6.16. Lib. fo. Ham: Stranges Case, and Porriges Case. 6. If the eldest son within age purchase of his father the lands holden by Knights service for valuable consideration, bona fide, by feoffment or other conveyance, this is within the letter, but not within the meaning of this Statute,

Statute, no more then if he had sold the land to any other.

7. If cestuy que use after the Statute of 4 H. 7. cap. 17. and before the Statute of 17 H. 8. cap. 10. of uses, had enfeoffed his eldest son, this was taken within the equitie of this ancient Act. 13 H. 7. 7. 27 H. 8. 9.

8. When shall this feoffment be upon this Act deemed to be by collusion? The answer is, after the decease of the ancestor, for then the title of wardship accrues, and not in his life time. 33 H. 6. 16.

9. If the Lord accept homage of the heire apparant (after the feoffment made to him by his ancestor) in the life of the ancestor, he shall not have the wardship, because he allowed him to be his tenant. 33 E. 3. gar. 12. 31 E. 1. ibid. 154. 32 E. 3. ibid. 33.

10. But at this day, albeit the father infeoffe his eldest son, or any of his children, though it be found to be made upon collusion, to defeat the king or other Lord of wardship, yet the King or other Lord shall not have but a third part by the Statutes of 32. and 34 H. 8. of Wills. So note this Statute altered in part. And thus much of the manner of the feoffment. 35 H. 6. 16. Tr. 7 Jac. li. 8. fo. 164. Mighes case.

¶ De hiis insuper qui de terris suis, &c.] This is the second branch of this Act concerning collusion averrable, when feoffments are made to strangers, whereof here is an example set downe in this Act.

¶ Qui tradere voluerint ad terminum annorum.] This is to be understood of a feoffment in fee reserving no rent, for that they suppose they are satisfied for a certaine terme, which should end when the heire should come to full age, and then it was conditioned that the feoffee should pay more then the land was worth, and thereupon the heire entred, for that none would give so great a price. Briton 95. b. 32 E. 3. gard. 33. 4 E. 2. gard. 119.

¶ Per hujusmodi fraudē nullus capitalis dominus amittat custodiam.] By such fraud, that is, such in mischiefe, or such in inconvenience, and therefore all other fraudulent feoffments tending to the same end are within this Statute, whatsoever colourable pretext they have, and so is this word [such] oftentimes taken in other Statutes. It is the opinion of Huls Justice, and of Gascoine chiefe Justice of England, that by the words and purview of this Statute, it holdeth only betweene Lord and tenant; and therefore if a man hold land by knights service in capite of the King, and other land of a subject by knights service, and maketh a feoffment by collusion of the land holden of the subject, and dieth, his heire within age, the King shall not take advantage of this Stat. for he is not dominus of this land; But in this case the King is relieved by the Stat. of 34 H. 8. c. 5. versus finem ejusd. Actus. 47 E. 3. 19. 32 E. 3. gard. 33. 8 R. 2. collus. 47. 9 H. 4. 6.

¶ Veruntamen non liceat hujusmodi feoffatos sine judicio disseisire.] Hujusmodi feoffatos, such feoffees. And yet the feoffees of the feoffees upon the same collusion are taken to be within this Statute; but if the feoffees in the life of the ancestor make a feoffment in fee bona fide, and then the tenant dieth, his heire within age, the Lord shall not have any action upon this Statute, for that the collusion continued not untill the death of the tenant; But if the tenant had died, his heire within age, and then the feoffees had infeoffed others bona fide, yet the Lord shall recover the wardship, because the Lord by the death of his tenant was once intitled to his action; but yet in some cases the Lord shall enter upon the feoffee. 33 H. 6. 16. 31 E. 3. gard. 29.

If the tenant infeoffe a stranger upon collusion, and that stranger infeoffe the heire in the life of the tenant, and then the tenant dieth, the Lord may enter upon the heire, because no Writ of right of ward lyeth against the heire; and therefore the Lord shall enter upon the heire, being feoffee: for otherwise he should be without remedy, the words of the Writ of ward being Præcipe A. quod reddat B. custodiam terræ & hæredis C. quæ ad ipsum B. pertinet, &c. so as this Writ is ever brought against a stranger. 33 H. 6. 16. F. N. B. 139.

If the tenant infeoffe the villein of the Lord upon collusion, and dieth, his heire within age, the Lord shall enter upon this feoffee; for if the Lord should be driven to his action against the villein, it should amount to an enfranchisement; and Statutes must be so construed, as no collaterall prejudice grow thereby.

28E.3.covenāt7. Also the heire of the feoffee is within this Statute; and if the feoffee dieth, his heire within age, the Lord shall have his writ of ward against the heire, who shall not have his age, but the Lord shall recover against him by this Act.

7 H.4.15. 12 H.4.16. The Statute saith, feoffatos, and yet comisées of fines, and all other conveyances are within this Statute.

1. Part Instit. sect.472. And here it appeareth, that the ancient Law did ever favour him that came by title, and put him that right had to his action.

33 H.6.14. Dier 10 El. 260. 3 Eliz. 193. 20 Eliz.361. 19 Eliz.276. 5 Mar.158. Lib.6.fo.76. Sir Geo: Cursons Case. If the father had made a feoffment for the maintenance and livelihood of his wife, preferment of his daughters, or of his younger sons, or for the payment of his debts, and after had infeoffed his heire apparent, this was holden no collusion; for every man by the Law of God and nature, ought to provide for his wife and children, and he is worse then an infidell that doth not provide for his family: and by the Law of God and of Nations debts ought to be paid: Nemini quicquam debeatis, nisi quod invicem diligatis.

* See Sir Geo: Cursons Case *ubi supra.* * Now by the said Statutes of 32. and 34H.8. where the tenant by Knights service doth infeoffe others to any of these three intents, viz. for the livelihood of his wife, preferment of his children, or payment of his debts, the heir shall be in ward for his body, and for the third part of his lands so conveyed, whereby the Common Law was changed in that behalfe.

27 H.8.10. 4 H.7.c.10. Of lands holden by Knights service deviseable by custome, no collusion could have been averred upon a devise by Will; the same Law, if cestuy que use had devised the use by Will; but now that is altered by the Statute of 34 H.8.c.5.

¶ Breve habeat de hujusmodi custodia reddenda.] This

39 E.3. 33,34. Writ is a Writ of right of ward, and when the Lord hath recovered the wardship against the feoffee, the freehold and inheritance is left in the feoffee, and not restored to the heire, and therefore if the gardein commit waste, the same is dispunishable, for the feoffee cannot have an action of waste against the gardein in this case. And the Lord upon this Statute could not seise the body of the heire, or have a ravishment of ward, before he had recovered the land in a Writ of right of ward, for therein ought the collusion be first tryed, because unless that were found according to this Statute, there is no cause of wardship by this Act.

4 E.2. gard.119. 32 E.3.ibid. 33. 12 H.4. 13.b. 4 H.7.10. F.N.B.143. k.

34H.8.c.5.versus finem. 13 El.c.5.

¶ Et per testes in cartis.] Note, the Déed is not here denyed, and yet Proces to be awarded against the witnesses. For this is the first part of the Institutes. Vide postea cap.14.

12 E.2.c.2. 1. Part Instit. sect.1.

¶ Adjudicentur feoffatis damna sua & misæ suæ.] This is the first Statute that gave the defendant damages and costs if it were found for him, and the Lord to be grievously amerced, and many other Statutes have followed this example: And where this Statute saith (malitiosè) implacitaverint, if the matter be fained, and without just ground, the Law implyeth malice in this case.

¶ Fingentes casum istum maximè ubi feoffamenta legitima & bona facta fuer'.] There is no greater injustice, then when under colour of justice injury is done.

Regula. Multi litigant in foro, non ut aliquid lucrentur, sed ut vexent alios. Therefore justly did this Act, which gave an action in a new case, give damnages and costs to the defendant, if he were maliciously vexed thereby without good cause.

CAP.

CAP. VII.

IN placito vero communi de cuſtodiis, ſi ad magnam diſtrictionem non venerint deforciatores, tunc bis vel ter iteretur breve prædictum ad terminos quibus fieri poterit, infra medietatem anni ſequentis, ita quod ſingulis vicibus legat' breve in pleno comitatu *niſi al' ubi* prius inventus fuerit deforciator. Et ibi publicè denuncietur, ut veniat ad diem ſibi præfixum. Quod ſi ipſe extunc ſe ſubtraxerit, ita quod infra medietatem anni prædict' reſponſurus non venerit, nec Vicecomes eum invenire poſsit, per quod corpus ſuum habere non poſsit coram Juſticiariis, ad reſpondendum ſecundum legem & conſuetudinem Regni, tunc (tanquam rebellis, & ſe juſticiari non permittens) amittat ſeiſinam hujuſmodi cuſtodiæ, ſalva ſibi alias actione ſua, ſi fortè jus habeat ad eandem. In caſibus autem ubi cuſtodiæ pertinent ad cuſtodes hæredum infra ætatem exiſtentium verſus cuſtodes ill' *petatur cuſtodia quæ accidit hæredibus illis* tanquam pertinens ad eorum hæreditates: & non amittant hujuſmodi hæredes infra ætatem exiſtentes, hæreditatem ſuam per negligentiam, vel rebellionem ſuorum cuſtodum, ſicut in caſu prædicto, ſed currat lex communis eodem modo quo prius currere conſuevit.

¶ In placito communi de cuſtodiis.] In the Common Plea of Ward, that is, in a Writ of Right of Ward, or in an Ejectment de gard. 30 E.3.10.24 E.3 33. 2 H.4.1.

In the Chapter going before, remedy was given to the Lord for Wardſhip, where there was none due to him by the Common Law: In this Chapter more ſpeedy remedy is given to the Lord, as well when the Lord hath right by the Common Law, as by the next precedent Chapter.

Before the making of this Statute, the Proces in the Writ of Ward was Summons, Attachment, and Diſtreſſe infinite, and the Sheriffs would many times returne ſmall iſſues, and ſo the Lord was greatly delayed, and if the heire came to full age, hanging the Writ, the Writ abated, which was miſchievous. 9 E.4.50. 18 E.3 ſcire fac.10.

Now this Statute provideth, that if the Deforceours come not at the grand diſtreſſe, that after the returne thereof a Diſtreſſe with Proclamation ſhall be made in the County by ſixe moneths, and if hee appeare not, judgement ſhall be given againſt him, ſaving to him his right at another time, ſi inde loqui voluerit: Weſtminſt. 2. Cap. 35. preſcribeth but three moneths. 9 E.3.15. 3 H.4. 45. 16 E.3.Proclam.4 30 E.3.10 14 E.3.Procl.8. 16 E.3.gard 138 2 H.4.1.

In a reſummons of Gard upon the Statute of W.2. a Proclamation ſhall be awarded upon this Statute, for it is in equall miſchiefe, but in a Re- 30 E.3.10. 22 E.3.8. 14 E.3. Proclam.7.

biſhment of Gard, no Proclamation ſhall be awarded, for that Action is formed, and given by the Statute of W.2. cap.35. which was but Treſpaſſe at the Common Law.

¶ Amittet ſeiſinam hujuſmodi cuſtodiæ.] If the Defendant in a Writ of Ward make default at the returne of the Diſtreſſe with a Proclamation, judgement ſhall be given for the Plaintife againſt the defaycrour to recover the Ward and damages, and have a Writ to enquire of the damages; And yet this Act ſaith, that he ſhall loſe the ſeiſin of cuſtody, and ſpeaketh not of damages, but in this Action the Plaintife ſhould recover damages at the Common Law.

7 E.3.22. 5 E.3. Damages 115. 13 E.3. Judgement 138.24 E.3 damages 5. 24 E.3.33. 4 E.3.26.

In a Writ of Ward againſt two, at the grand diſtreſſe one of them appeared, and the other made default, the Plaintife prayed a Diſtreſſe with a Proclamation, and it was denied, for the body is not ſeverable, and therefore the Plaintife cannot have judgement to recover the moity of the body, otherwiſe it is of the land, for that is ſeverable.

17 E.3.70. 14 H.4.37. 19 E.3. Proclam.5. & 10.

¶ Non venerint deforciatores.] If in a Writ of Ward, the Defendant vouch, no Proclamation ſhall be awarded againſt the Vouchée for two cauſes. 1. The Statute extendeth onely to the ſuite of the Plaintife, and this is the ſuite of the Defendant againſt the Vouchée. 2. The Statute provideth that Proclamation ſhall be awarded againſt the defaycrours, and the Vouchée is not defaycrour.

29 E.3.38.13 E.3 Proclam.9. 33 E.3. ibid.19.

¶ Quod corpus ſuum habere non poſsit.] This is to be underſtood, that there is no default in the Sheriffe in returning of good ſhires, ſo as by that meanes he might have his body to appeare, for the Sheriffe cannot arreſt him.

¶ Nec Vicecomes eum invenire non poterit.] This muſt be underſtood of the Sheriffe in that County, where the originall is brought, for no other Sheriffe in another County upon a Teſtatum, &c. ſhall make Proclamation, but there Proceſſe lieth, as it was at the Common Law.

27 E.3.70,71.

¶ Coram Juſticiariis.] This is before the Juſtices of the Court of Common Pleas, and that Court being particularly named, this Act extended not to Juſtices in Eyre, as it is ſaid in our Books.

3 E.3.Procl.17.

¶ In caſibus ubi cuſtodiæ pertinent ad cuſtodes.] If one demand a Ward againſt me, which I claime by cauſe of Ward, he ſhall not have Proceſſe upon this Statute, leſt by negligence or colluſion of the Gardein, the heire within age may be preſjudiced, but therein the Proceſſe ſhall be at the Common Law.

CAP. VIII.

ILli autem qui pro iterata diſſeiſina capti fuerint et detenti, non deliberentur ſine ſpeciali præcepto Domini Regis, et hoc per finem cum Domino Rege inde faciend' pro hujuſmodi tranſgreſsione ſua. Et ſi compertum fuerit quod Vicecomes aliter eos deliberaverit, propter hoc graviter

ter amercietur, et nihilominus illi qui per Vicecomitem ſine præcepto Domini Regis, ſic deliberantur, pro ſua tranſgreſsione graviter puniantur. Merton Cap. 3. Weſtminſt. 2. Cap. 26.

The Statute of Merton cap. 3. as hath been ſaid, gave the Rediſſeiſin, and Poſt diſſeiſin, the words of which Statute being, In priſona Domini Regis detineantur, quouſque per Dominum Regem, vel aliquo alio modo deliberentur. Upon theſe words, Vel aliquo alio modo deliberentur; they were delivered by the Common Writ De homine replegiando, for the liberty of a free-man is ſo much favoured in Law, as there is ever a benigne interpretation made for the benefit thereof. Now this Statute doth enact that they ſhall not be delivered ſine ſpeciali præcepto Domini Regis, that is, by the Kings Writ reciting the ſpeciall matter, and for a fine with the King therefore to be made. And he that is attainted in a Rediſſeiſin, & in priſon, this fine that this Act ſpeaketh of, as ſome have ſaid, ought to be aſſeſſed in the Chancery, to which end he muſt have a Certiorari to remove the Record thither, and out of the Chancery to have his Writ to diſcharge him, for Sine ſpeciali præcepto Domini Regis, is intendable by Writ (ſay they) in the Chancery.

Merton cap. 3. Regiſt. 206. Mirror ca. 5. § 3. Bracton lib. 3. fo. 154. F.N.B. 66 Dier 36 H. 8. 60, 61.

And therefore if one be attainted in a Rediſſeiſin, and is at large, the party may have a Certiorari to remove the Record into the Court of Common Pleas, and by Capias out of that Court he may be taken; and ſome doe hold, that this Court cannot aſſeſſe the fine, nor make the ſpeciall Writ.

18 H. 8. 1.

But certain it is, if a man be attainted before the Sheriffe in a Rediſſeiſin, and taken in execution, becauſe he cannot be delivered by this Act without a ſpeciall Commandement of the King, he may ſue a Certiorari to remove the Record before the King in his Bench, in which Court after he hath made fine, he is thereupon to have a Writ for his delivery, reciting the ſpeciall matter, which is the ſpeciall Commandement that this Act ſpeaketh of, which appeareth in the Regiſter, and F. N. B.

18 H. 8. ubi ſupra.

Regiſt. F.N.B. 190. f. & 242. b.

¶ Pro iterata diſſieſina.] This doth extend as well to the Poſt diſſeiſin, as Rediſſeiſin.

¶ Et ſi compertum fuerit, &c.] That is, by way of indictment and conviction of the Sheriffe, and ſo it is of the party, that procureth himſelfe to bee delivered in that manner alſo: But no Action can be grounded upon this Act.

CAP. IX.

DE ſectis vero faciendis ad curiam Magnatum, vel ad curiam aliorum dominorum ipſarum curiarum, de cætero ſic obſervandum eſt, quod nullus qui per Chartam feoffatus eſt, diſtringatur de cætero ad hujuſmodi ſectam faciendam ad curiam Domini ſui, niſi per formam *feoffamenti ſui* ſpecialiter teneatur ad ſectam illam faciendam. His autem exceptis quorum anteceſſores, vel ipſimet, hujuſmodi ſectam facere conſueverunt ante primam tranſfretationem prædicti

Court Baron &c.

Regiſt. 176. F.N.B. 159. 45 E. 3 23.

Domini Regis Henrici in Britanniam, à tempore cujus transfretationis elapſi ſunt xxxix. anni & medietas unius anni *ad tempus* quo hujuſmodi conſtitutiones fuerunt ſtatutæ. Similiter nullus feoffatus à tempore conqueſtus *ſine Charta* vel aliquo alio antiquo feoffamento diſtringatur ad hujuſmodi ſectam faciendam; niſi ipſemet, vel anteceſſores ſui eam facere conſueverunt ante primam transfretationem prædictam: Qui autem per Chartam pro certo ſervitio, veluti pro libero ſervitio tot ſolidorum annuatim pro omni ſervitio ſolvend' feoffati ſunt, ad hujuſmodi ſectam, vel ad aliud, contra formam feoffamenti ſui, de cætero non teneantur. Et ſi hæreditas aliqua, de qua tantum unica ſecta debeatur, ad plures hæredes participes ejuſdem hæreditatis devolvatur, ille vero qui habet enitiam partem hæreditatis illius, unicam faciet ſectam pro ſe & participibus ſuis, & alii participes ſui pro portione ſua, contribuant ad ſectam illam faciendam. Et ſi plures feoffati fuerint de hæreditate aliqua, de qua tamen unica ſecta debeatur, dominus illius feodi unicam ſectam inde habeat, nec poſſit de prædicta hæreditate niſi unicam ſectam exigere, ſicut prius inde fieri conſuevit. Et ſi feoffati warrantum, vel medium non habeant, qui *inde* eos acquietare debeat, tunc omnes illi feoffati, contribuant *pro portione ſua* ad ſectam illam pro eis faciendam. Si autem contingat, quod Domini curiarum tenentes ſuos contra hanc conſtitutionem, pro hujuſmodi ſecta diſtringant, tunc ad querimoniam tenentium illorum attachientur eorum Domini, quod ad curiam Regis veniant ad brevem diem, inde reſponſuri, & unicum inde habeant eſſonium ſi fuerint in Regno, & incontinenter deliberentur conquerenti averia ſua, ſive aliæ diſtrictiones, hac occaſione factæ, & deliberatæ, remaneant, donec placitum inde inter eos terminetur. Et ſi Domini curiarum, qui hujuſmodi diſtrictiones fecerint, ad diem, ad quem attachiati fuerint, non venerint, vel diem per eſſonium ſibi datum non obſervaverint, tunc mandetur Vicecomiti, quod eos ad alium diem venire faciat, ad quem diem ſi non venerint, tunc mandetur Vicecomiti, quod diſtringat eos per omnia catalla, quæ habent in baliva ſua, ita quod Vicecomes reſpondeat Domino Regi de exitibus dicti hæredis, & quod habeat corpora eorum ad certum diem ſibi præfigendum

dum coram Juſtitiariis. Ita quod ſi ad diem illum non venerint, eat pars conquerens inde ſine die, & averia ſua, ſive aliæ diſtrictiones hac occaſione factæ, deliberata remaneant, donec ipſi domini ſectam illam recuperaverint per conſiderationem curiæ regis, & ceſſent interim hujuſmodi diſtrictiones, ſalvo dominis curiarum jure ſuo de ſectis illis recuperandis in forma juris, cum inde loqui voluerint.

Et cum domini curiarum inde venerint reſponſuri conquerentibus de hujuſmodi diſtrictionibus, & ſuper hoc convincantur, tunc per conſiderationem curiæ domini regis recuperent verſus ipſos conquerentes dampna ſua quæ ſuſtinuerunt occaſione diſtrictionis prædictæ. Simili autem modo ſi tenentes, poſt hanc conſtitutionem, ſubtrahunt dominis [feodorum] ſectas quas facere [debeant] & quas ante tempus prædictum transfretationis, & hactenus facere conſueverunt, tunc per eandem juſtitiam, & celeritatem quo ad dies præfigend', & diſtrictiones adjudicand', conſequantur domini curiarum juſtitiam de ſectis illis perquirendis, una cum dampnis ſuis quemadmodum tenentes dampna ſua recuperarent. Et hoc ſcilicet de dampnis recuperandis, intelligatur de ſubtractionibus ſibi factis, & non de ſubtractionibus factis prædeceſſoribus ſuis. Veruntamen domini curiarum verſus tenentes ſuos ſeiſinam de hujuſmodi ſectis recuperare non poterunt per defaltam, ſicut prius fieri conſuevit. De ſectis autem quæ ante tempus ſupradictum ſubtractæ fuerunt, currat Lex communis, ſicut prius currere conſuevit.

This Chapter hath nine branches. The firſt is, 1 Branch

¶ De ſectis.] This is underſtood of ſuit ſervice to Courts Baron, Hundreds, and the like, and not to ſuit reall in reſpect of reſiance, nor to ſuit to the mill, for the words be, de ſectis fac' ad curiam, &c. Regiſt. 176. F.N.B. 159. 45 E. 3. 23.

¶ Nullus qui per cartam feoffatus eſt, diſtringatur de cætero ad hujuſmodi ſectam faciendam ad curiam domini ſui niſi per formam feoffamenti ſui ſpecialiter teneatur ad ſectam illam faciendam.] There is another clauſe in this Chapter concerning this matter, Qui autem per cartam pro certo ſervitio, veluti pro libero ſervitio tot ſolidor' annuatim pro omni ſervitio ſolvend' feoffati ſunt ad hujuſmodi ſectam, vel ad aliud, contra formam feoffamenti ſui, de cætero non teneantur. Mag. cart. c. 10.

At the Common Law, before the making of this Statute, if the Lord had made a feoffment by deed, and reſerved certaine ſervices, as for example, fealtie, and 2. s. rent, or 2. s. rent generally, which had implyed fealtie; in this caſe if the Lord had diſtreined for homage, or ſuit, or any other rent or ſervice, then was reſerved in the deed, not onely the tenant and his heires, but his 3 E. 2. acc' ſur ſtat. 23. 24. 4 E. 3. avow. 202. 6 E. 2. avow. 210. 3 E. 3. 27, 28. 22 E. 3. 18. b.

19 E.3.avow.122
28 ass.33.
32 E.3.avow.114
14 H.4.5.
30 H.6.7.
10 H.7.11.
Dier 25 H. 8.51.
F.N.B.163.d.
* Fleta l. 3. c.14.
F.N.B. 162,163.

his assignes also, or any other tenant of the land might have rebutted the Lord, his heires, or assignes, by the deed, and this doth hold betweene partie and partie, privis and privie, privie and estranger, and estranger and estranger. *But this Act giveth the tenant or his heires a more speedy remedy, for hereby is given to the tenant against the Lord and his heires a Writ of contra formam feoffamenti, wherein six things are worthy of observation.

Regist.
F.N.B. 163. b.

1. When any Act doth prohibit any wrong or vexation, though no action be particularly named in the Act, yet the party grieved shall have an action grounded upon this Statute, which in this case is a prohibition to the Lord or his Bailiffes, and reciteth this Act, the forme whereof you may reade in the Register, and F.N.B.

16 H.3.avow.243

Now where it may be objected, that in Mich. 16. H. 3. reported by F. titavowrie, 243. that upon a confirmation a Writ of contra formam feoffamenti doth lie, and by that book it should seeme, that a Writ of contra formam feoffamenti did lie at the Common Law before this Statute, which was made in 52 H. 3. To this it is answered, that the said case is mis-printed, for where it is Mich. 16. H. 3. it should be 56 H. 3. when the Case was so resolved, and in which Terme, viz. the 16. day of Novemb. Hen. 3. died, so as that opinion was after our Statute: and that the Writ was given by this Statute, the Writ (as hath been said) doth recite it. And where in this clause the Statute saith (distringatur) all this Chapter is to be understood of suit service, because for suit reall no distresse can be taken, but for the amerciament in default thereof.

Regist.
F.N.B.163.b.

8 H.4.16.
12 H.7.15.

46 H.3.avow.243
11 E.3. ibid.100.
30 E.3 13.
27 E.3.92.
4 E.3.avow.201.
15 E.3. confir.8.
F.N.B. 163.g.
P.10 E.3.per Parning.
F.N.B.163.f.

2. Where the Statute saith, contra formam feoffamenti, yet if the Lord confirme the estate of the Tenant to hold by certaine services, upon this confirmation he shall have a contra formam feoffamenti, for that it is within one and the same reason.

3. Pro certo servitio. Upon these words if one give land in frankalmoigne, or in frank-marriage, he cannot have a Writ of contra formam feoffamenti, because there is no certaine service contained in the feoffment or gift, and therefore out of this Act, but he may rebut.

4. If the Lord distreine either for suit, or for any other service, or rent not contained in the deed, the tenant shall have this Writ of contra formam feoffamenti, for the words of this Act be, ad hujusmodi sectam, vel ad aliud, &c.

14 H.4.5.
22 H.6.50.
30 H.6.7.
10 H.7.11.
F.N.B.163.c.
Li.4.fo.121. Bustards Case.
Ibid.fo.11.Bevils Case.
Li.9.fo.34.Bucknals Case.
*Mag. Car. c.10.
2. *Branch.

5. The Statute saith, contra formam feoffamenti; hereupon exposition hath been made, that this Writ lyeth onely betweene privies, viz. by the tenant and his heires, against the Lord and his heires, for they be included in privitie of the feoffment, but so are not the assignes on either side.

*If the feoffment be without deed, the feoffee is driven to his Writ of Ne injuste vexes.

Wood's Instit. 547

¶ Hiis autem exceptis quorum antecessores vel ipsi hujusmodi sectam facere consueverunt ante primam transfretationem prædicti domini regis Henrici in Britanniam, &c.] The Law doth ever favour possession as an argument of right, and doth incline rather to long possession without shewing any deed, then to an ancient deed without possession; and therefore this Act doth except long possession: but in respect of the great troubles that did arise in this Realm after the cancellation, which H. 3. made of the Charters of Magna Charta, and Charta de Foresta in the 11. yeare of his raigne, this Act doth give relefe against any seisin since his first going over into Britaine, which was in the 14. yeare of his raigne, but the seisin before that time, when the times were regular and peaceable, this Act doth except.

Li.4.fo.11.Bevils Case.
Lib.9. fo.34. Bucknals Case.

How, and in what manner seisins by incroachments shall be avoided, you may reade in Bevills Case, in Bucknalls Case, ubi supra, and in the first part of the Institutes, sect.

¶ Similiter

¶ Similiter nullus feoffatus à tempore conqueſtus ſine carta vel aliquo alio antiquo feoffamento diſtringatur ad hujuſmodi ſectam faciend', niſi ipſemet ſeu anteceſſores ſui eam facere conſueverunt ante primam transfretationem prædictam. 3. *Branch.* Flet. li. 2. cap. 60.

Here he beginneth with feoffments without déed; in the next branch with feoffments by déed, wherein is to be obſerved the great antiquity of feoffments by déed or without déed of ancient time before the Conqueſt. (Antiq. of Feoffm.)

Secondly, the reaſon in thoſe troubleſome times, ſince the firſt going over of the King (as hath béen ſaid) is not allowed of, but a ſeiſin is required before that time, when times were regular and peaceable.

¶ Qui autem per cartam pro certo ſervitio, &c.] This branch is repeated before, and couples with the firſt, being both to one effect. 4. *Branch.*

¶ Et ſi hæreditas aliqua, &c.] For parceners, ſée the firſt part of the Inſtitutes, ſect. 241. & le Cuſtumier de Norm. cap. 30. fol. 46. tenure per para[illegible] i. per coparcenarie, & cap. 36. fo. 55. 5. *Branch.*

¶ Ille qui habet enitiam partem.] This is to be underſtood after partition, for before that the eldeſt hath not enitiam partem, and therefore before partition this Act extends not to it, and before partition there can be no contribution, as hereafter ſhall be ſaid, but in the Kings caſe all the coparceners ſhall doe ſuit as well after partition as before, and ſo ſhall their ſeverall feoffées, for this Act extendeth not to the King, for the words be, ad curiam magnatum, &c. 24 E. 3. 34, 73. 14 H. 3. Stat. de Hibernia. Vet. mag. Char. fo. 110. F.N.B. 159.

If the eldeſt after partition will not doe the ſuit, in the caſe of a common perſon the Lord may diſtreine the other parceners, as well as the eldeſt for the ſuit, and the other parceners may have upon this Act a Writ againſt the eldeſt to compell her to doe the ſuit, and if the eldeſt doth the ſuit, and the reſtone refuſe to contribute to her charge, ſhe ſhal have upon this Act a Writ De contributione facienda to compell them to contribute. Regiſt. 174. F.N.B. 160.

¶ Qui habet enitiam.] And yet this Act extendeth to the feoffée of him that hath enitiam partem, and ſo it is of the tenant by the curteſie. F.N.B. 159.

Note, a woman may be a frée ſuiter to the Courts of the Lord, but though it be generally ſaid, that the frée ſuiters be Judges in theſe Courts, it is intended of men, and not of women.

¶ Et ſi plures feoffati fuerint de hæreditate aliqua de qua unica ſecta debeatur, dominus unicam ſectam habeat.] This is to be underſtood, either when the tenant holdeth by ſuit, and enfeoffeth others ſeverally, one of one part, and another of another part, &c. in certaine; there the Lord ſhall have but one ſuit, and he that doth the ſuit ſhall have a Writ De contributione facienda againſt the others: or where the tenant that holdeth by one ſuit enfeoffeth many joyntly, they ſhall make but one ſuit; as they ſhall deliver but one hawke, or other intire ſervice; and if one of them doth the ſuit, he ſhall not have a Writ De contributione facienda by this Act, for when the poſſeſſion is individed, and intire, there can be no contribution; but if one of the joynt feoffées make a feoffment in fée, the feoffée ſhall doe a ſeverall ſuit, and the reſt of the joynt feoffées ſhall doe but one. And if one of the ſeverall feoffées doth the ſuit, if the other feoffées be diſtrained for the ſuit, they ſhall have a Writ againſt the Lord to diſcharge them of the ſuit, wherein it is to be noted, (as before hath béene obſerved) what actions are grounded upon this and other the like Statutes, though no mention be made of them in the Acts, all which appeare in the Regiſter. 6. *Branch.* F.N.B. 159. Regiſt. 174, 176, 177. Li. 6. fo. 1. Bruertons Caſe. F.N.B. 162. d. Bruertons caſe ubi ſup. Regiſt. 174, 176, 177.

40 E.3.5. 34 aſſ. 15. 24 E.3.73. Bruertons Caſe *ubi ſupra.*

If parcell of the land holden by ſuit come to the hands of the Lord, all the ſuit is gone, for he neither can receive, nor make contribution.

¶ Et ſi feoffati illi warrantum, vel medium non habeant.] That is to ſay, if they have neither one to warrant by ſpeciall graunt, nor any meſne by tenure which ought to acquit them, tunc omnes illi feoffati pro portione ſua contribuant &c. This clauſe is to be underſtood of ſeverall tenants, as hath been ſaid before: And no proviſion is made by this Act concerning contribution, where the parties are provided for by graunt or tenure.

7. Branch. For warranty & acquitall, ſee the 1. Part of the Inſtit. ſect. 142.

8. Branch.

¶ Si autem contingat quod domini, &c.] Here is a remedy given to the tenant againſt the Lord, if he diſtraine contrary to this Statute.

7 E.4.14. 9 H.7. 12 H.7.15.

¶ Donec domini ſectam ſuam recuperaverint, &c.] Nota, the ſuit that is paſt cannot be recovered, but damages for the ſame.

9. Branch.

¶ Simili autem modo ſi tenentes poſt hanc conſtitutionem ſubtrahant, &c.] Here is remedy given to the Lord againſt his tenant that ſhall withdraw his ſuit.

¶ Currat lex communis.] See before, Cap. 7.

CAP. X.

DE Tournis Vicec' proviſum eſt, quod neceſſe non habeant ibi venire Archiepiſcopi, Epiſcopi, Abbates, Priores, Comites, Barones, nec aliqui viri religioſi, ſeu mulieres, niſi eorum præſentia ob aliquam cauſam ſpecialiter exigatur, ſed teneatur Tournus, ſicut temporibus prædeceſſorum domini Regis teneri conſuevit. Et qui in [diverſis] hund' habeant tenementa, non habeant neceſſe ad hujuſmodi Tournos venire, niſi in balivis ubi fuerint converſantes. Et teneantur Tourni ſecundum formam Magnæ Chartæ, & ſicut temporibus Regum Richardi & Johannis teneri conſueverunt. Vide Mag. Char. cap. 35.

Mirror, c. 1. §. 16. F.N.B. 160. c. Mag. Cart. c. 35. & hic ca. 18, 24.

¶ De Tournis Vicecomitis proviſum eſt quod neceſſe non habent ibi venire Archiepiſcopi, Epiſcopi, Abbates, Priores, Comites, Barones, nec aliqui viri religioſi, ſeu Mulieres, niſi eorum præſentia ob aliquam cauſam ſpecialiter exigatur.]

This is the firſt branch of this Chapter.

Before the making of this Statute, the Sheriffe in his Tourne, and the Lords of Léets did uſe to amerce Archbiſhops, Biſhops, Priors, Earles, Barons, religious men, and women, if they came not to the Tournes, or to the Léets of others, becauſe for ſuit reall no diſtreſſe can be taken, but for the amerciaments for default of ſuit, which this Act doth remedy; for now, ſeeing it is hereby provided that the perſons above named ſhall not need

8 H.4.15. 12 H.7.15.

to

to come to Tournes, &c. therefore for their not comming they cannot be amerced.

First, heare what the Mirror saith of this matter: Abusion est de suffer ascun deins le Realme ouster 40. jours, que il soit del age de xij. ans, insuis Anglois ou Alien, sil ne soit jure al Roy per serement del fealti & pleviſe, & in decenne; Abusion est que Clerks & fems sont exempt de faire al Roy le dit serement, de sicome le Roy prent lour homage, & lour fealty pur terre. Mirror cap. 5 §1

Now this oath is well expressed in Britton, Voillons nous que trestouts ceux de xij. ans, desouth nous facent le serement que ilz serr' foiall & loiall, & que ilz ne serr' felons ne aux felonies assentants. Brit.ca.12. fo.19. Lib.7.fo. Calvins case.

And it is worthy of observation, that by the Common Law, Parsons of Churches, that had Curam animarum, the better to performe their function, were not compellable to come to Tournes, or Leets; and if they were distrained to come thither, they might have a Writ, Cum secundum consuetudinem Regni nostri personæ Ecclesiasticæ ratione terrarum & tenementorum suorum Ecclesiis suis annexorum ad veniend ad visum franc' pleg' in Cur nostra, vel aliorum quorumcunque, &c. Whereby it appeareth that this Writ is grounded upon the Common Law, being the generall custome of the Realme; But other Clerks (that be no Parsons of Churches with Cure) under which name all Ecclesiasticall Parsons regular and secular are contained, if they be distrained to come to Tourne or Leet, they shall have a Writ reciting this Statute to be discharged thereof. Which Writ beginneth, Cum de communi consilio provisum sit quod viri religiosi non habeant necesse venire ad Tournum Vicecom, &c. Regist.175,176. F.N.B.160. Regist.ubi supra.

So likewise women shall have the like Writ, Cum de communi consilio, &c. Provisum sit quod mulieres non habeant necesse venire ad Tournum, &c. Regist.ubi supra. F.N.B. 161.

And it is a rule of Law, that whensoever a Writ doth recite a Statute, there the Statute doth introduce a new Law. 3 H.5.tit.ulagar. Statham.

Now albeit the aboveſaid persons be exempted from their personall comming to the Tourn and Leet, and many other persons never take the said oath of Allegiance, yet are all Subjects of what quality, profession, or sex soever, as firmly bounden to their allegiance, as if they had taken the oath, because it is written by the finger of the Law in every one of their hearts, and the taking of the corporall oath, is but an outward declaration of the same.

In the Chapter next before, provision was made for doing of suite service, now in this Chapter a Law is made concerning suite reall, by reason of reſtancie.

¶ De Tournis Vicecom'.] This [illegible]rms of the Sheriffe is Curia Vicecom' Franci plegii (as it hath been [illegible]nd therefore this Act extendeth to all Leets and Viewes of Frankp[illegible]s of all other Lords and persons. Mag. Charr. c.35. F.N.B.159. 160,161. Regist. 175,176.

¶ Necesse non habeant.] That is, they are not compellable to come, but left to their owne liberty, Nisi eorum præsentia ob aliquam causam specialiter exigatur, as to be a witnesse or the like.

¶ Nec aliqui viri religiosi.] Religiosi in the proper sense are taken for those that be regulars; but Ecclesiasticall persons, that be seculars are also within this Act, and that doth notably appeare by a Writ in the Register, Cum personæ Ecclesiasticæ non habeant necesse venire ad Tournum Vicecom, vel ad visum franci plegii, &c. juxta formam provisionis de communi consilio Regni nostri in consimili casu pro viris religiosis factæ, &c. Whereby it appeareth, that Ecclesiasticall persons secular, are in consimili casu with them that be Religiosi, and consequently within this Act. See the first part of the Institutes. sect.133. In consimili casu.

Mag.Chart.c.35. ¶ Sed teneatur Tournus ſicut in Temporibus prædeceſſorum Domini Regis teneri conſueverunt, & teneantur Tourni ſecundum formam Magnæ Chartæ, & ſicut temporibus Regis Richardi & Johannis teneri conſueverunt.] In this 52. yeare of H.3. ſo long it was by effluxion of time ſince the raigne of H.2. mentioned in Magna Charta, that this Act had juſt cauſe to have reference to the times of R.1. and King John.

¶ Et qui in diverſis Hundredis habeant tenementa, non habeant neceſſe ad hujuſmodi Tournos venire niſi in balivis ubi fuerint converſantes.] Here Hundredum is taken Pro viſu franci plegii: ſo as the ſenſe is, that he which hath Tenements in the Tourn, and in ſome other view of frankpledge of ſome other Lord, or in divers views of frankpledge, he ſhall not need to come to any other but where he is converſant, and Hundreds here are named, becauſe Sheriffes (as hath been ſaid) kept their Tournes in every Hundred.

F.N.B.160. Mag.Chart.c.35.

¶ Ad hujuſmodi Tournos.] Here Tournus is taken not onely for the Kings view of frankpledge, but for the views of frankpledge of other Lords.

¶ In balivis.] Here Baliva is taken for the Tourn or Léete where he is converſant.

If a man hath a houſe within two Léets, he ſhall be taken to be converſant where his bed is, for in that part of the houſe he is moſt converſant, and here converſant ſhall be taken for moſt converſant.

33 H.6.fol.9. 19 H.6.fol.1.a. If a man hath a houſe and family in two Hundreds, ſo as he is in Law converſant or commorant in both Hundreds, yet he ſhall doe his ſuite to the Tourne or Léete where his perſon is commorant.

Mag.Chart.c.35. & hic cap.9. Regiſt.174,175. F.N.B.160,161.d 36 E.3.cap. Laſtly, if any man be grieved in any thing contrary to the purview of this Statute, he ſhall have an Action grounded upon this Statute (as often in other caſes hath been obſerved) for his remedy, and relief therein, which actions appear in the Regiſter.

CAP. XI.

W.1.ca.8. 1 E.3. cap.8. Stat.2. Britton fol.32. Fleta li.2.ca.60. PRoviſum eſt etiam, quod nec in Itinere Juſtic', nec in Comitat', in Hundred', nec in Curia Baron' de cæterò capientur fines ab aliquibus pro pulchre placitand', neque [pro eo] quod non occaſionentur. Et ſciendum eſt, quod per iſtam conſtitutionem non tolluntur fines certi, ſeu præſtationes arrentatæ à tempore quo Dominus Rex primum transfretavit in Britanniam uſque nunc.

Before the making of this Statute, Juſtices in Eyre, the Suitors in the Courts of the County, Hundred, and Court Baron did uſe to ſet fines at their pleaſure upon the Defendant or Plaintife, Tenant or Demandant, and not upon the Councell learned for vicious pleading; and the reaſon thereof was, for that it was in delay of Juſtice, and ſo a contempt to the

the Court, and then he had leave to amend it, and to make it perfect, which is called Beaupleder. This Act consisteth upon two branches: By the first all fines incertain for vicious pleading, and for amendment thereof, are wholly taken away.

By the second, fines certain for vicious pleading, and amendment thereof assessed since the first going of H. 3. into Britain, which was in the 14. yeare of his raigne, are not taken away by this Statute.

¶ Pro pulchre placitando.] In truth it was, as hath been said, as well in respect of the vicious pleading, as of the faire pleading by way of amendment.

This extended to pleadings, and not unto Counts, and pleints, neither doth it extend to the Kings higher Courts of Justice, but to these foure here named, for in the higher Courts there were faire and good pleadings; whereof the English Poet (speaking of the Serjant at Law) saith,

Thereto he could indite and make a thing,
There was no wight could pinch at his writing. Chaucer.

¶ Neque pro eo quod non occasionentur.] That is, that for that cause they should not be occasioned or troubled.

If any man be grieved contrary to the purview of this Statute, he may have an Action in nature of a prohibition upon this Statute. Regist. 179. F.N.B. 270. 13 E. 1. Attachment 8.

¶ Non tolluntur fines certi.] And the reason of this was, for that fines certaine grew by consent, and therefore this Act toke them not away, for Omnis consensus tollit errorem, and I have seene and doe know in divers Court Barons, &c. fines certaine for Beaupleder paid to this day. *Regula*

CAP. XII.

IN placito vero dotis, quod dicitur unde nihil habet, dentur de cætero quatuor dies per annum ad minus, & plures si commodè fieri poterit, ita quod habeant quinque vel sex dies ad minus per annum. In assisis [autem] ultimæ præsentationis, & in placito Quare impedit de Ecclesiis vacantibus, dentur dies de quinden' in quinden', vel de tribus septimanis in tres septimanas, prout locus fuerit propinquus, vel remotus. Et in placito Quare impedit, si ad primum diem ad quem summonitus fuerit, non venerit, nec essonium miserit impeditor, tunc attachietur ad alium diem, quo die si non venerit, nec essonium miserit, distringatur per magnam districtionem superius datam. Et si tunc non venerit, per ejus defaltam scribatur Episcopo illius loci quod reclamatio impeditoris illa vice conquerenti non obsistat, salvo impeditori alias jure suo, cum inde loqui voluerit. Eadem

Vide 51 H. 3. Dies Communes in Banco, in placito dotis.

lex de attachiamentis faciendis in omnibus brevibus ubi attachiamenta jacent de cætero (quoad districtiones faciendas) firmiter obſervetur: ita tamen quod ſecundum attachiamentum fiat per meliores plegios, & poſtmodum ultima diſtrictio. [Vide Artic' ſuper Chartas cap. 15.]

The miſchiefe before this Act was, That in a Writ of Dower, Unde nihil habet, there were dayes of common retourn, as in other reall actions, which was miſchievous to the woman, in reſpect of the long delay, ſhe claiming but an eſtate for her life, which miſchiefe this Statute, as by the letter thereof appeareth, doth remedy.

And this Statute in favour of Dower is alſo extended againſt the Vouchée, for this Act ſaith, In placito dotis, and the Voucher is in Placito dotis.

32 H.8.cap.21. ¶ Unde nihil habet.] This Act extends not to a Writ of Right of Dower, but the Statute of 32 H.8. extends to it, neither doth this Act extend to a Writ of Dower ad hoſtium Eccleſiæ, or ex aſſenſu Patris, unleſſe it be Unde nihil habet, but the ſaid Act of 32 H. 8. extends to every Writ of Dower.

26 E.3.75. 17 E.3.21, 18 E.3. jour 19. ¶ In Aſsiſis ultimæ præſentat' & in placito Quare impedit.] This Act extendeth not to a Writ of Quare non admiſit, nor to an Incumbravit, but onely to the Aſſiſe of Darrein preſentment, and Quare impedit, and the reaſon thereof is, for feare of the laps.

11 H.6.23. ¶ Dentur dies de quindena in quinden'.] By aſſent of parties a longer day may be given then is preſcribed by this Act, but that aſſent muſt be entred of Record.

44 E.3.5. 39 H.6.40. Artic. ſuper Chartas.cap.15. And it is to be obſerved, That by the Common Law great delayes bee diſallowed in foure kindes of Actions, viz. in all Writs of Dower, Quare impedit, Aſſiſe of Darrein preſentment, and Aſſiſe of Novel diſſeiſin, and thereſore no protection ſhall be allowed, or eſſoine de ſervitio Regis ſhall be caſt in any of them.

Bract.l.4.fo.246, 247. Fleta lib.5. c.16. Brit.233. 11 H.6.4. ¶ In placito Quare impedit ſi ad primum diem ad quem ſummonitus fuerit non venerit, &c.] At the Common Law in a Quare impedit, the Proces was ſummons, attachment, and diſtreſſe infinite, which was miſchievous in reſpect of the laps, now it is provided that if he appeare not at the graund diſtreſſe, judgement ſhall be given for the Plaintife, and a Writ to the Biſhop awarded.

14 E.3. Default 17. 11 H.6.4,5. 21 H.6. 56. Lib.5. fol.41. * *Regula.* ¶ Summonitus fuerit.] Put the caſe that upon the ſummons, the Defendant is returned nihil, and at the attachment and diſtreſſe, nihil alſo, this caſe is out of the Letter of the Statute, for the Defendant was never ſummoned, but it is ſaid, * That when there be two miſchiefes at the Common Law, & the leſſer is provided for by expreſſe words, the greater ſhall be included within the ſame remedy; This caſe when nihil is returned is the greater miſchiefe, for he by his default ſhall loſe nothing, but in the caſe provided, the Defendant by his default ſhall loſe iſſues, and the Law intends that he will rather appeare then loſe iſſues.

7 E.3.4. A Quare impedit is brought againſt two, upon the diſtreſſe one doth appeare, and the other makes default; in 7 E.3. it was reſolved that the Plaintife ſhould not preſently have a Writ to the Biſhop againſt him that makes default, for

for that it might be, that the other that appeares shall have against the Plaintife a Writ to the Bishop; and it was there said, that it was not reasonable, that upon one originall the Plaintife should have one Writ to the Bishop for him, and another against him; but this notwithstanding the Plaintife by this Act ought to have against him that makes default a Writ to the Bishop; and it is not against reason, if the other Defendant can barre the Plaintife, for him to have a Writ to the Bishop against the Plaintife by the Common Law, and so hee the later Bookes, and common experience at this day. 14 H.7.19.b. F.N.B.39.b. 13 E.3.brē al Eveſque 21. 8 H.4.2.10 H.6.4

¶ Tunc attachietur ad alium diem, quo die ſi non venerit nec eſſonium miſerit.] Eſſonium, or Exonium is derived of the French verb Eſſonier, or Exonier, which ſignifieth to excuſe, ſo as an Eſſoine in legall underſtanding is an excuſe of a default by reaſon of ſome impediment, or diſturbance, & is as well for the Plaintife as the Defendant, and is all one with that which the Civilians call Excuſatio. * Of Eſſoines, there have been (as we reade in our Bookes) five kindes, viz. 1. De ſervitio Regis. 2. In terram ſanctam. 3. Ultra mare. 4. De malo Lecti, in our old Bookes called Eſſonium de reſidentia. 5. Et de malo veniendi, and this laſt is the common Eſſoine, which is intended in this Act. Vide hic c.2. & 13. Glanv. li.1.c.10, 11, &c. Bra. & l.5. fo.334, 335, &c. Brit. cap.122, 123, &c. Fleta lib.6. ca.7,8, &c. Mirror c.2. § 20. De Eſſoines, & cap.5. § 1. *27 H.6.1.26 H.6 Eſſoine 107. 10 H.4.6. 8 H.3. Eſſoine 195. W.2. cap.17.

In a Quare impedit, or Darrein preſentment, an Eſſoine de ſervice le Roy, ad terram ſanctam, or ultra mare lyeth not for doubt of the laps, but a common Eſſoine lieth, and of Eſſoines the Mirror ſaith well, Abuſion eſt que faux cauſes de Eſſoines ſont reſceivable de cy que droit ne allowe fauxime in nul caſe, & abuſion eſt dallower Eſſoine in perſonel Action; For the ſame Author treating De Articles per viels Roys ordein, ſaith, Ordein fueront Eſſoines in mixt Actions, & reals, & ne in perſonels; And I finde not in Glanvill any Eſſoines, but in reall and mixt Actions, but before the making of this Act, Eſſoines were allowed in perſonall Actions. Mirror ubi ſupra Mirror ubi ſupra

Non jacet Eſſonium, quia ſummonitio teſtificata non eſt, vel pars non attachiatur, eo quod Vicecomes mandavit quod non eſt inventus. Vide 12 E.1. Stat. de eſſonio calumniando. 34 H.6.28

¶ Per ejus defaltam ſcribatur Epiſcopo quod reclamatio impeditoris illa vice conquerenti non obſiſtat.] Upon theſe words of this Act the Plaintife ſhall have a Writ to the Biſhop without making of any title. 2 H.4.1.b. 22 H.6.45. 33 H.6.1.a. F.N.B.38.n.

The Statute ſaith only, Scribatur Epiſcopo, and yet the Plaintife ſhall have both a Writ to the Biſhop, and beſides a Writ to enquire of damages; if the Biſhop be out of the Realme, a Writ to the Biſhop may be awarded to his Vicar generall, for he is in place of the Biſhop. 2 H.4.1.24 E.3. 37. 38 E.3.12.

If the Defendant appeare at the grand diſtreſſe, and take a day by preces partium, and after make default, no Writ ſhall be awarded to the Biſhop, for this caſe in reſpect of his appearance is out of the Statute, but a new diſtreſſe ſhall be awarded. 13 E.3. brē al Eveſque 19.

¶ Conquerenti.] The King ſhall take the benefit of this Statute. 24 E.3.

¶ Eadem lex de attachiamentis, &c.] This is the laſt clauſe of this Chapter, and is to be underſtood according to the letter, and needeth not any expoſition.

CAP.

CAP. XIII.

Dier 5 Eli. 224. 15 Eliz. 324.

ET ſciendum eſt [quod] poſtquam aliquis poſuerit ſe in inquiſitionem aliquam, quæ emerſerit, vel emergere poterit in hujuſmodi brevibus, non habebit niſi unicum eſſonium, vel unicam defaltam, ita quod ſi ad diem ſibi datum per eſſonium ſuum non venerit, aut ſecundo die defaltam fecerit, tunc inquiſitio illa per ejus defaltam capiatur, ſecundum inquiſitionem illam ad judicium procedatur. Si vero inquiſitio illa capta fuerit in comitatu coram Vicecom' vel Coronatore, ad Juſticiarios domini Regis ad certum diem eſt remittend'. Et ſi pars rea non venerit ad diem illum, tunc propter defaltam ipſius aſſignetur & alius dies, ſecundum diſcretionem Juſticiariorum, & mandetur Vicecomiti, quod ad diem illum faciat eum venire ad audiendum judicium (ſi velit) ſecundum inquiſitionem illam. Ad quem diem ſi non venerit, propter defaltam ſuam procedatur ad judicium. Eodem modo fiat, ſi non veniat ad diem ſibi datum per eſſonium ſuum.

2 R. 2. Eſſo. 159. The miſchiefe before this Statute was for the great delay that might come to the plaintife in any perſonall action.

¶ In inquiſitionem aliquam.] That is, when iſſue is joyned, and the defendant ponit ſe ſuper patriam, & prædict' querens ſimiliter.

This Statute extendeth not to a demurrer in Law.

21 E. 4. 74, 78. In an action of debt un cuſtome de London fuit alledge & denie per le pl': This iſſue ſhall not be tryed by Inqueſt, but by the certificate of the Maior by the mouth of the Recorder, Proces iſſuiſt al Maior a certifier a quel jour le def. pria deſtre eſſoine, and was eſſoined by the opinion of the whole Court, for this tryall was not per patriam.

19 E. 3. eſſoine 21 19 H. 6. 51. ¶ Niſi unicum eſſonium.] Here eſſonium is taken for a common eſſoine, and extendeth not to the eſſoine de ſervitio regis, &c.

25 E. 3. 8. This is to be underſtood where an eſſoine doth lie, for this Act reſtraineth delaies, and giveth not any, where none was before. And therefore after iſſue in a ſcire fac', the defendant ſhall not be eſſoined, becauſe no eſſoine lyeth in that caſe, & ſic de ſimilibus.

2 E. 4. 19. But if there be divers tenants in a præcipe, or divers defendants in a perſonall action, albeit in Law they be but one tenant, or one defendant, yet each of them ſhall have one eſſoine; and ſo hath this Act been expounded.

20 E. 3. Eſſo. 30. 22 E. 3. 4, 7. 2 R. 2. eſſoine 159 14 H. 6. 1. Dier, 5 Eliz. 224. 15 Eliz. 324. ¶ Vel unicam defaltam, &c.] Upon conſideration of theſe words, and of theſe words ſubſequent, tunc inquiſitio illa per defaltam capiatur, two concluſions are collected. 1. That this Act extendeth to the defendant, and not to the plaintife, becauſe the defendant maketh default, and on the plaintifes ſide it is called a Non-ſuit: alſo the enqueſt is awarded by the default

fault of the defendant. And laſtly, the miſchiefe was for the delay of the plaintife by the defendant, and therefore the delay which the plaintife maketh himſelfe is out of the miſchiefe, and remains at the Common Law.

The ſecond concluſion is, that this Act is to be underſtood in an action perſonall, for that no enqueſt in any action reall can be taken by default. 14 H.6.19. 9 H.5. 12,13. Dier, ubi ſup.

¶ Si verò inquiſitio capta fuerit in comitatu, &c.] The meaning of this clauſe is, that if after iſſue joyned in a baſe Court, the defendant hath had his eſſoine, yet if the plea be removed before the Kings Juſtices, he ſhall have another eſſoine before the Juſtices, for the proceeding in the baſe Court is not of record above.

CAP. XIV.

DE chartis vero exemptionis, & libertatis, ne ponantur impetrantes in aſsiſis, juratis, vel recognitionibus aliquibus: Proviſum eſt, quod ſi adeo neceſſarium ſit eorum juramentum, quod ſine eis juſtitia exhiberi non poterit (veluti in magnis aſsiſis, & in perambulationibus, & in chartis vel ſcriptis conventionum, uti fuerunt teſtes nominati, aut in attinctis, vel aliis conſimilibus) jurar' cogantur, ſalva ſibi aliàs libertate, & exemptione ſua prædicta. W.2.cap.28. 29 H.6.c.3.

¶ De chartis vero exemptionis & libertatis, &c.] Hereby it appeareth that this Act is in affirmance of the Common Law, for every Charter of any Franchiſe or liberty whatſoever, by reaſon whereof there ſhould be a failer of Juſtice, is void and of none effect in Law, as in the caſe of conuſans, and this caſe of exemption. 34 H.6.25. per Moyle. 21 E.4.47.b.

In this Act there be foure examples ſet downe, viz. the grand Aſſiſe in the Writ of Right, in the Writ of Rationabilibus diviſis, here called in perambulationibus, in Deeds where witneſſes be named, and in Attaints. 39 E.3.15. 12 E.4. 17. 35 H.6.42. Broke exempt.6.

¶ Rationabilibus diviſis.]

Magna aſsiſa inter Priorem de Tynemuwe petentem, & Simonem de Ruceſtre tenentem, de eo quod idem Simon permittet rationabiles diviſas fieri inter terras ipſius Prioris in Weiham, & terras ipſius Simonis in Ruceſtre, ſicut eſſe debet & ſolet. Et unde idem Simon qui tenens eſt poſuit ſe in magnam aſsiſam illam, & petit recogn' fieri, utrum ipſe majus jus habet in quindecim acris terræ, & quindecim acris more, cum pertin' in Ruteſtre per metas & diviſas ſubſcriptas, ſcil. incipiendo apud altam viam quæ extendit ſe ultra Swalnſpotleche, & ſic deſcendendo per Swalnſpotleche verſus Auſtrum uſq; Ryſdenburne, ubi Swalnſpotleche & Ryſdenburne conjungunt, & ſic aſcendendo in Ryſdenburne verſus Boream uſque Aldewylumway, & ſic adhuc per Ryſdenburne verſus Boream uſque le Redeford, ubi alta via tranſit verſus novum Caſtrum ſuper Tynam ſicut illas tenet, An prædictus Prior per metas & diviſas ſubſcriptas, viz. incipiendo apud Redeford, & ſic per altam viam verſus Occidentem uſq; Mun-*

Paſch.18.E.1.rot. 65.in Banc.Northumb. de rationabilibus diviſis.

Magna Aſſiſa utrum ipſe majus jus, &.

* Per metas & diviſas.

Vide Mich.3.E.1 in Banc.rot.26. Sur' Int' Priorem de Berm. & Priorem de Hidawint'.

Pasch. 6. E. 1. in Banc. rot. 57. Salop. Int. Episc. Hereford. & Petr. Corbet. perambulatio.: Vide Pasc. 8. E. 1. in banc. rot. 58.

Manleshened, & sic versus Occidentem per altam viam usq; Swalnspotleche, & sic de Swalnspotleche versus Austrum usque Ryfdenburne, & sic de Ryfdenburne versus Boream ascendendo usq; Redeford prædict' sicut illas exigit: ven' recogn' in forma prædict' per Willielmum de Haulton, Robertum de Insula, Nicholaum de Punchardon, Iohannem de Oggeill, Iohannem de Eslington, Richardum de Horsele, Hugonem Gobion, Walterum de Egloytheneham, David de Coupland, Franconem Tyeys, Henricum de Dytheend, & Robertum du Maner, & modo veniunt prædict' Simon & Prior per Attorn' suos: Et prædicti milites super sacramentum suum dicunt, quod prædictus Simon majus jus habet in prædictis tenementis per prædictas divisas per quas illa tenet, quàm prædictus Prior per divisas per quas illa exigit. Ideo consideratum est, quod prædictus Simon eat inde sine die, & teneat prædictum tenementum sibi & haeredibus suis per prædictas divisas, scil. incipiendo apud Swalnespotleche ubi alta via extendit se ultra Swalnespotleche, & sic descendendo per Swalnespotleche versus Austrum usq; Ryfdenburne ubi Swalnespotleche & Ryfdenburne conjungunt, & sic ascendendo per Ryfdenburne versus Boream usq; Aldewylummwey, & sic adhuc per Ryfdenburne versus Boream usque le Redeford ubi alta via transit versus novum Castrum super Tynam, quietè de prædicto Priore & successoribus suis, & Ecclesia sua de Tynemuwe imperpetuum, & Prior in misericordia, &c.

Veredictum.

Judicium.

Finale.

Pasch. 18 E. 1. in Banco. rot. 72. Northumb. Mich. 18 E. 1. in Banc. rot. 76. Northumb.

Magna assisa inter Priorem de Tynemuwe petentem, & Richardum Turpin tenentem de eo, quod idem Richardus permittet rationabiles divisas fieri inter terras ipsius Prioris in Wylum, & terras ipsius Richardi in Hoghton, sicut esse debent & solent, et unde idem Richardus, qui tenens est posuit se in magnã assisam illam, et petit recogn' fieri, utrum ipse majus jus habet in medietate decem acrarum moræ, viginti acrarum terræ, et sexaginta acrarum bosci, cum pertin' in Hoghton, per metas et divisas subscriptas, videl. incipiendo ex parte Boreali de le Thwertonerdike, et sic versus Boream usq; ad cursum aquæ quæ currit inter le Strother de Hoghton, et le Strother de Ruceſtre, et sic sicut cursus illius aquæ se extendit versus Occidentem usque Redeford, et sic descendendo versus Austrum usq; le Holleford, et sic del Holleford descendendo versus Austrum usq; Ryfdenburne, usque ad terram arabilem de Wylum, et sic per fossatum ejusdem terræ usque lel Longhing quod venit de bosco de Wylum, et sic descendendo versus Austrum sicut Sygpethway se extendit inter boscum de Hoghton, et boscum de Wylum, et usq; Wylum Halugh, et sic per fossatum quod se extendit versus Orientem inter Wylum Halugh et boscum de Hoghton usq; Alberystrother in parte Occidentali, et sic per partem Occidentalem de Alberystrother versus Austrum usque les Pullys per partem Occidentalem, et sic de les Pullys versus Occidentem per quoddam fossatum usq; quoddam Run quod se extendit usque aquam de Tyne salva communia pasturæ eidem Priori et successoribus suis in prædicta mora de Hoghton usque le Thwertonerdike per partem Occidentalem, et sic per partem Occidentalem de le Br-hill, et de Hyndeshawe, et sic versus Austrum descendendo per le Greneleghe, et sic usque Sygpethway sicut ea tenet, an prædictus Prior per metas et divisas subscriptas, videlicet incipiendo in parte Boreali in Wylummore descendendo versus Austrum per le Thwertonerdike usque Thornrawe, et sic de Thornrawe usque Martinpol versus Austrum, et sic de Martinpol usque Aldehewey et sic descendendo per

per le Haldeheyway verſus Auſtrum ultrà Raveneſburne, et ſic de Raveneſburne verſus Auſtrum et iterum ultra Raveneſburne, et ſic de Raveneſburne verſus Auſtrum uſq; Standandeſtan, et ſic de Standandeſtan verſus Auſtrum uſq; le Fiſherewey uſq; aquam de Tyne ſicut illam exigit. Venit recogn' in forma prædicta per Willielmum de Hauleton Robertum de Inſula, Nichol' de Punchardon, Iohannem de Oggill, Iohannem de Eſlington, Robertum de Glantingdon, Richardum de Horſlee, Hugonem Gobyon, Walterum de Egleyntham, David de Coupeland, Francione Tyeis, & Henric' de Dycheend. Et modo veniunt prædict' Richardus, & Prior per Atturnatos ſuos, & prædicti Milites ſuper ſacrum ſuum dicunt quod prædictus Richardus majus jus habet tenendi medietat' prædictorum ten' per eaſdem metas & diviſas, per quas idem Richardus ſuperius clam', quam prædictus Prior. Ideo conſiderat' eſt quod prædictus Richardus eat inde ſine die, & teneat medietat' prædictorum ten' cum pertinen' per prædictas metas & diviſas, per quas illam clam' ſibi & hæred' ſuis quiete de prædicto Priore & ſucceſſoribus ſuis, & Eccleſia ſua de Tynemuve imperpetuum. Et Prior in miſericordia.

Veredictum.

Judicium finale.

Vide Mich. 18 E.1. in Banco Rot. 76. Northumb. a notable Record. For this Writ De rationabilibus diviſis, and the Writ De perambulatione fac', vide Regiſt. 157. b. Glanvill lib. 9. cap. 14. Bracton lib. 4. fol. 207. a. 211. b. De perambulatione fac', lib. 5. 372. a. & 444. De rationabilibus diviſis. Fleta lib. 4. cap. 15. lib. 5. cap. 9, 19. 31 E.1. Droit 70. 5 E.3. fol. 12. 28 E.3. fo. 43. 14 E.3. tit. Aid 23. 29 E.3. 45. 45 E.3. 4. 3 E.4. 10. F.N.B. 128. m. &c. 133. d. &c. Vet. 73, 74. Coke lib. intr. 565, 566. lib. intrat. Raſt. 541, 495.

Upon all theſe Records and Books, the learning of theſe two Writs ſtandeth thus:

1. This Writ of Rationabilibus diviſis is a Writ of Right in his nature, wherein Battaile, and the graund Aſſize lieth, and judgement finall ſhall be given: In this Writ the view and Voucher is to be graunted, and eſples are to be laid, and this Writ Eſt breve adverſarium.

2. The Writ De perambulatione facienda, is no Writ of Right in his nature, and is Breve amicabile, and had by conſent of parties.

3. The perambulation may be made as well by commiſſion to certain perſons as by Writ; but the proceeding, De rationabilibus diviſis, is by Writ onely.

4. This is common to them both for a diviſion to be made betwéen ſeverall Townes or Hamlets.

5. If it be for a diviſion betwéen two Counties, for the better directions of Sheriffes, Coroners, and other the Kings Officers, and Miniſters, it muſt be done by the Kings Commiſſion under the great Seale, but the diviſion hereby made ſhall not eſtoppe or conclude the parties intereſted in the land.

Upon the verdict in any of the four examples before mentioned, no writ of attaint doth lie; then followeth theſe words, Et in aliis caſibus conſimilibus: Theſe by the Letter of this Statute, muſt be ſuch, as thereupon no attaint doth lie; as in the Partitione fac', & other inqueſts of office, as hath béen ſaid: But all Charters tending to the faller of Juſtice, are void by the Common Law, without any aide of this Act: As if there be not ſufficient Hundreders, beſides thoſe that have Charters of exemption, for triall of an iſſue in an Action, wherein an attaint doth lie, there Charters ſhall be diſallowed, becauſe ſine eis juſtitia exhiberi non poteſt, and ſo in all other like caſes: So if the King graunt an exemption to all the Freeholders in one County, and to all the Citizens in a City, this is void.

¶ In Chartis, &c. ubi teſtes fuerint nominati.] Hereby it appeareth, that by the Common Law, the Witneſſes named in the

1 Part of the Inſtitutes. ſect. 1.

Dead ſhould ioyne with the Enqueſt, or elſe the Charter of Exemption De aſſiſis juratis & recognitionibus aliquibus, ſhould not have freed them. Vide the firſt part of the Inſtitutes, and ſee before Cap. 6.

¶ In attinctis.] Hereby appeareth that the Writ of Attaint, which by our old Bookes and auncient Records is called Breve de convictione, was given by the Common Law, and the forme of the Writ is ſet downe in our auncient Authors at the ſuite of the party grieved: and it appeareth by the Regiſter that no Writ of Attaint reciteth any Statute, and the Iudgement in the Writ of Attaint is fearfull and penall, and given by no Statute, and this is proved by this Act, which nameth Attaints, and is before any Act of Parliament in print made concerning Attaints.

And it ſeemeth by our old Bookes and auncient Records, that by the Common Law, it lay as well in plea reall as perſonall. Vide Regiſt. 122. Mirror cap. 3. De Attaints. & cap. 2. § 4. De Loiers. Glanv. lib. 2. cap. 19. Bracton lib. 4. fol. 289. Fleta lib. 5. cap. 21, 34. Britton cap. 97. fol. 237. 6 H. 3. tit. Attaint 72. & 73. 15 H. 3. ib. 74. Temps E. 1. ibid. 70. 12 E. 1. lib. 71. 30 Aſſ. 24. 28 E. 3. 91. 44 E. 3. 2. b. Temps R. 2. Conuſans 88. 3 H. 4. 15. Forteſcue ca. 26. F.N.B. 107. k W. 1. cap. 38, 47. 1 E 3. cap. 6. 5 E. 3. cap. 6, 7. 28 E. 3. cap. 8. 34 E. 3. cap. 7. 23 H. 8 cap. 3. See the firſt part of the Inſtitutes. Sect. 514. Verb. en Attaint.

But ſome ſay the Writ could not be obtained without difficulty (becauſe he had other remedy to try it in an Action of higher nature) & therefore the Statutes were made. See the Statute of W. 1. cap. 38. and the expoſition thereupon, and a Iudgement given Mich. 5 E. 1. Of an Attaint heare what the Mirror ſaith. En temps le Roy Henry le primer eſtoit ordein & communement aſſentu que Jurors in Enqueſts, &c. in Attaints, et tiels autres ne prendront rien de loiers, &c. See the other ancient Authors and books above cited; by them it appeareth how neceſſary the reading of auncient Authors and Records be for the knowledge of the Common Law, and how the Statutes concerning Attaints are but in affirmance of the Common Law, for the Plaintife may have upon them the penall and ſeuere Iudgement given by the Common Law. Vide 40. Aſſ. 23.

See W. 1. cap. 38.

40 Aſſ. 23.

F.N.B. 165, 166. Acct D. 39 E. 3. 15 40 E. 3. 30. 18 H. 8. 5.

If a man have a Charter of exemption, and ſheweth it to the Sheriffe, yet notwithſtanding he may retourne him, for the Sheriffe is not to iudge of his Charter, nor to allow, or diſallow thereof; but if he will have the effect of his Charter, he muſt ſue out a Writ of allowance of his Charter, and deliver the Writ to the Sheriffe, and ſhew his Charter to him, and then if the Sheriffe retourne him, he may have his Action upon his caſe againſt the Sheriffe, and ſo muſt our old and other Bookes be intended.

18 H. 8. 5.

After the Sheriffe hath retourned him, if a full Jury doe appeare, then he may ſhew forth his Charter, and if the Plaintiffe confeſſe it, he ſhall be diſcharged, but if the Plaintiffe ſaith that he is not the ſame perſon, it ſhall be preſently tried, and ſo in the like caſe; but he cannot plead his Charter for his diſcharge before a full Jury doe appeare, for if any anſwer bee made thereunto the Jury muſt try it.

41 E. 3. exemption 4. 42 Aſſ. 25. 25 H. 6. exemption 5.

Such generall Charters of exemption in Aſſiſis, Juratis, & Recognitionibus, as in this Act are mentioned, ſhall not be allowed where the King is either ſole party, or where the ſuite is Tam pro Domino Rege quam pro ſeipſo, without theſe or the like words. Licet tangat nos.

18 E. 3. 20. 3 H. 6. 14. 36 H. 6. 32.

¶ Salva ſemper alias libertate & exemptione prædict'.] And ſo it is in caſe of conuſance, and of a Protection, the party may waive the benefit of it in one Action, and yet take the advantage of it in another: And ſo if a Non omittas be awarded within a franchiſe that hath retourn of Writs, yet he ſhall in other ſuits enjoy it.

Cap.

CAP. XV.

NUlli de cætero liceat ex quacunque cauſa diſtrictiones facere extra feodum ſuum, nec in via regia, aut in communi ſtrata niſi Domino Regi & miniſtris ſuis ſpecialem authoritatem ad hoc habentibus. *see Wood 198.*

Fleta lib.2.ca.41. W.1.c.16.Artic. Cleri cap.9. Artic.ſuper Cart ca.12. 51 H.3. Diſt.de Scaccar.

The miſchiefe before this Statute was, that whereas the King by his prerogative might diſtrein for his rent in any other lands of his Tenant, being in his owne actuall poſſeſſion, though they were out of his fée, and ſeigniory, divers Lords toke upon them alſo to diſtrein out of their fée, which was wrong and oppreſſion: And whereas all the Kings Subjects ought to have frée paſſage in via regia, & communi ſtrata, as well to Faires and Markets, as about their other affairs, the Lords uſed to diſtrein in the high-wayes, both which miſchiefs this Statute doth remedy.

13 E.4.6.

¶ Non liceat.] This is divided into three branches: The firſt branch is, Non liceat ex quacunque cauſa diſtrictiones facere extra feodum.

1. This is to be underſtood of diſtreſſes, by reaſon of a ſeigniory, and not for diſtreſſes for rent charges, &c. or by reaſon of a Léet.

34 E.1. Avowry 232. 41 E.3.26. 2 H.4.24.

2. This branch is but in affirmance of the Common Law, for regularly no Subject can diſtrein out of his fée and ſeigniory, and therefore if the Lord doe diſtrein out of his fée, the Tenant may either have an Action of Treſpaſſe at the Common Law, or an Action upon this Statute, but in ſome ſpeciall caſe the Lord by the Common Law may diſtrein out of his fée and ſeigniory, as if the Lord come to diſtrein, and the Tenant, or any other ſeeing the Lord come to diſtreine them, drive them to a place out of the fée of the Lord, yet in this caſe the Lord may diſtrein them out of his fée, becauſe the Lord had a view of them within his owne fée, by reaſon whereof the Lord ſhall be adjudged in a kinde of poſſeſſion of them; but if the beaſts goe out of the Tenancy of themſelves without enchaſement before the Lord can diſtrein them, there the Lord cannot diſtrein them, though he had the view of them within his fée, and ſeigniory.

2 E.2.Avow.184. 44 E.3.20,21. 6R.2.Reſcous.11 33 H.6.51. 2 E.4.6. 9 E.4.35 16 E.4.10.

The ſecond branch is,

¶ Nec in via regia, aut in communi ſtrata.] See what ſhall be ſaid regia via, and what communis ſtrata, in the firſt part of the Inſtitutes, ſect.69.

First part of the Inſtitutes.ſect.69. F.N.B.173.174.

This Law had the foundation of the auncient Law of England before the Conqueſt, Alia, s. immunitas, quam habent quatuor chemini, (i. viæ regiæ) Watling-ſtreet, Foſſe, Hilkenild-ſtreet, & Erminſtreet, quorum duo in longitudinem, alii duo in latitudinem deſcendunt.

Inter leges Edw. Regis. Lamb.fol. 129. Fleta lib.2. cap.42. Artic. Cler. cap.42.

In this branch, non liceat ſhall be taken not ſimpliciter, to make it utterly unlawfull, as to take advantage thereof in barre to an Avowry, but ſecundum quid, that is to this purpoſe, that if the Lord diſtrein in the high ſtreet, or in the Common way, the Tenant may have an Action againſt the Lord upon this Statute: and the reaſon hereof is, that whenſoever any thing is prohibited by a Statute, the party grieved ſhall have his Action upon the Statute, and the offender ſhall be for his contempt fined and impriſoned; and ſo it is declared by Act of Parliament, as hath been often obſerved. Now if the Tenant ſhould plead it in barre of the Avowry, the King ſhould loſe his fine; for in that nature of ſuite hee cannot bee fined, and therefore the Tenant is to take

Regiſt.fol.97. 19 E.2. brc. 842. 21 E.3.11.30 E.3 20. 41 E.3.6. 43 E.3.30.11R.2 Avowry 87. 36 E.3.c.9. 19 H.6.4. 35 H.6.6. 9 E.4. 26. F.N.B.90. 173. Lib.8.fol.60. Bechers caſe. 11 R.2.Avow.87.

take his remedy by Action upon the Statute, wherein the King shall have his fine, &c.

¶ Districtiones facere.] A Heriot Custome the Lord may seise in the high-way, for that is no distresse but a seisure, but he cannot distrein for a Heriot service there.

If the Lord come to distrein, and see the beasts within his fee, and before he can distrein them, the Tenant enchase them into the high-way, the Lord may, as hath beene said, distrein them there, for the cause above expressed.

17 E 3.1. The Writ upon this Statute shall be contra pacem, and not Vi & armis.

The third branch:

44 Ass.32.5E.3,6 13 E.4.6. ¶ Nisi Domino Regi & ministris suis, &c.] Here is an exception of the Kings prerogative (which by this Act appears to be auncient) as well to distreine for his rent, or service out of his fee, and seignory, as in the high-way, or common street. But where it is said that the King may distrein out of his fee, that is, in the other lands of his Tenant; it must be understood in such other lands as his Tenant hath in his owne actuall possession, and manured with his own beasts, and not in the possession of his lessee for life, yeares, or at will, for these beasts are not subject to such distresse.

Artic. super Cart cap. 12. There was a Statute made in a Parliament holden at Westminster in 51 H.3. the yeare next before this Parliament holden at Marlebridge, concerning distresses, consisting on two branches.

1. Que nul home de Religion ne auter soit distreine per ses beasts, queux gainont son terre, ne per ses barbits pur la det le Roy, ne pur la det de auter home, ne pur auter encheson per les Bailiffes le Roy, ne per autres, tanque come ils trove auters chateux sufficient dont ilz poient lever le det, ou que suffist la demaund, (forspris emparkement des beasts queux homes trove feasants damage solonque le ley, usage, & le manner de la terre.)

Artic. super Cart ca. 12. 27 l. Ass. 52 28 Ass. p. 50. 29 E. 3. 23. 8 H. 4. 16. 11 H. 4. 2. Lib. 11. fo. 44. Godfreyes case. 2. Et que distresses soient reasonable a la mountaince de la det, ou de la demaunde solonq; bone value, & per estimation ne pas outragious des vicines, & nemi per estrangers. Of both these shall be spoken together, because divers of the authorities extend to both.

Beasts queux gainont son terre & ses berbits.

This Law had his foundation of the auncient Law before the Conquest, Flores Histor. Polyd. Virg. 22. b Regist. Lucubr. Ockham Dunvallo Mulmutius prohibited that the beasts of the plough should be distreined, &c. and gave privileges to Temples and Ploughs: And Ockam that wrote before this Statute of the Kings Debts, saith, Bobus tamen arantibus, per quos agricultura solet exerceri, quantum poterint parcant, ne ipsa deficiente debito amplius in futurum egere cogatur, quod si nec sicquidem summa quæ requiritur exurgit, nec arantibus parcendum est.

Bract. l. 4. fo. 217. Fleta li. 2. ca. 42. Bracton treateth of both these branches notably, and hee dividеth animalia into laboriosa & otiosa, and saith, Fit districtio injuriosa ordine non observat', si fiat districtio per oves, & sunt quæ ad minus damnum distringantur animalia otiosa; Item ordine non observat si fiat districtio per boves, ut culturam auferat vel impediant, cum sint aliæ res & animalia otiosa quæ sufficiant ad districtionem; Item si subsit causa & observetur ordo, adhuc potest esse injuriosa, si fuerit nimia, & districtio modum excedat in qualibet specie.

Lib. 2. cap. 42. And Fleta saith, Quod pro communi utilitate Cõmunitatis Regni inhibitum fuer' ne quis distringeret alium per oves suas vel per averia sua carucarum, quamdiu alia sufficiens districtio inveniri possit.

Districtiones sint rationabiles & non nimis graves. See before Chapter 4.

And

And Britton saith, Ou si aſcun Viſcount eit pur malice fait prendre plus des avers pur noſtre det, ou pur autre, que a la vaillance de le det, en ſil eit priſt beaſts des carues, ou motons, ou berbis, ou veſſel, ou mounture, ou robes, ou deins meſon la ou auter diſtres poet trover ſufficientment et hors de meaſon. And in another place he ſaith, Si aſcun diſtreine auter per que gainage eſt diſturbe, &c. Brit. fo. 35. & 133. b. 29 aſſ. pl. 49.

And this agreeth with the Civill Law, Executio fieri non poteſt in boves, aratra, aliáve inſtrumenta ruſticorum quatenus alia bona habent. Lege Executores & Auten:

The Statute of W. 2. which giveth the Elegit, doth abſolutely except the beaſts of the plough in theſe words, Exceptis bobus & aſris caruæ. W. 2. cap. 18. Fleta, li. 2. c. 55.

This Statute doth not extend onely to diſtreſſes betweene Lord and tenant, but alſo to all other diſtreſſes whatſoever, as well at the Kings ſuit, as at the ſuit of the Subject, ſo there be other goods ſufficient; alſo to all manner of executions, as well at the ſuit of the King, as of the ſubject, with the like caution as is aforeſaid. Regiſt. 97. temps E. 1. avowry 230. 18 E. 2. acc' ſur leſtat. 35. 4 E. 3. 1 29 E. 3. 16, 17. P. 17. H. 6. Rot. 93. in com. banco.

And an action upon this Statute doth lie, as well after deliverance, as before, for the cauſe of the diſtreining may be lawfull, and yet notwithſtanding if he take the beaſts of the plough where he might find others, the diſtreſſe is wrongfull. And albeit the tenant after ſuch a diſtres taken pay the rent, and thereby affirme the cauſe of diſtres lawfull, notwithſtanding this doth not purge the offence againſt this Statute. F. N. B. 174. b. 14 El. Dy. 312.

And the Statute is to be conſtrued, that at the time of the diſtres, &c. there muſt be other cattell ſufficient, and it is not materiall what was before or after. 29 E. 3. 17. 4 H. 7. 8. b.

The Writ upon this Statute alſo ſhall be Contra pacem, & non vi & armis. 17 E. 3. 1.

Now where the Statute ſpeaks of the beaſts of the plough, and not of the plough it ſelfe: by the Common Law always uſed the plough or any thing belonging to it was not diſtreinable, ſo long as any other diſtres might be taken.

This Statute of 51 H. 3. being of record and in print, I thought to touch ſpecially ſo much thereof as concerne diſtreſſes, whereof our Statute of Marlebridge hath treated both in the fourth, and this fifteenth Chapter. See Art. ſuper cart. cap. 12.

And it appeareth by the Mirrour, that many other beaſts and living things, and other goods were not diſtreinable by the Common Law, if there were other goods ſufficient. As for moſt goods, a convenable diſtreſſe is not of armour, or veſſell, or apparell, or jewels, ſo long as there are other ſufficient or convenable; nor of ſheep, ſaddle horſe, beaſts of the plough, poultry, fiſh, or ſalvagine, ut ſupra. Mirr. c. 2. §. 16. Vee de Name.

CAP. XVI.

SI hæres aliquis poſt mortem anteceſſoris ſui infra ætatem extiterit, & dominus ſuus cuſtodiam terrarum, & tenementorum ſuorum habuerit, ſi dominus ille dicto hæredi, cum ad legitimam ætatem pervenerit, terram ſuam ſine placito reddere noluerit, hæres ille terram ſuam per aſsiſam mortis anteceſſoris recuperabit, una cum dampnis ſuis, quæ ſuſtinuerit propter detentionem illam à tempore quo fuit legitimæ ætatis. Et ſi hæres aliquis tempore mortis anteceſſoris ſui plenæ ætatis fuerit, & ille hæres apparens, & pro hærede cognitus & inventus ſit in hæreditate illa, capitalis dominus

dominus eum non ejiciat, nec aliquid ſibi capiat, vel amoveat, ſed tamen inde ſimplicem ſeiſinam habeat pro recognitione dominii ſui ut pro domino cognoſcatur. Et ſi capitalis dominus hujuſmodi hæredem extra ſeiſinam malitiosè teneat, propter quod breve mortis anteceſſoris, vel conſanguinitatis oporteat ipſum impetrare, tunc dampna ſua recuperet ſicut in aſsiſa novæ diſſeiſinæ. De hæredibus autem, qui de domino Rege tenent in capite, ſi obſervandum eſt, ut dominus Rex primam inde habeat ſeiſinam, ſicut prius inde habere conſuevit. Nec hæres nec aliquis alius in hæreditatem illam ſe intrudat, priuſquam illam de manibus domini regis recipiat, prout hujuſmodi hæreditas de manibus ipſius & anteceſſorum ſuorum recipi conſueverit temporibus elapſis. Et hoc intelligatur de terris & feodis, quæ ratione ſervitii militaris, vel ſerjantiæ, ſive juris patronatus in manibus domini Regis eſſe conſueverunt. *Vide Prærogativa cap. 3. Et Glanvil. lib. 7. cap. 9. fol. 4.*

¶ Si hæres aliquis poſt mortem anteceſſoris, &c.] This Act is but a declaration of the Common Law, for in this caſe when a gardein in chivalrie holdeth over, he is an abator, which is manifeſtly proved by this Act, whereby it is declared that the Aſſiſe de mord' doth lie againſt him. Alſo it is ſo reſolved in our books, wherein this diverſitie is to be obſerved, that where a man commeth to a particular eſtate by the act of the partie, there if he hold over, he is a tenant at ſufferance; but where he commeth to the particular eſtate by act in Law, as the gardein in our caſe doth, there he is no tenant at ſufferance, but an abator. Vide 1. part of the Inſtit. ſect. 461.

Abridg. aſſ. 120, b F.N.B. 196. f. Glanvil. li. 7. c. 9. Bract. li. 4. fo. 252 253. Brit. fo. 178. b Fleta, li. 5. ca. 1. 10 E. 4. 9, 10. per Curiam. 8 E. 3. 63. 10 E. 3. 41. 11 E. 3. aſſ. 87 12 E. 3. aſſ. 86, 12 aſſ. p. 21. 13 E. 3. tit. Aſſiſe 92. 28 aſſ. p. 11. 34 aſſ. p. 10. 39 E. 3. 28. 2 E. 4. 38 18 E. 4. 25. Teps H. 8. Br. tit. ten' à volunt. 15. * 46 E. 3. fo. 20.

And yet for the benefit of the heire to ſome purpoſe, the poſſeſſion of the gardein is the actuall ſeiſin of the heire, for if the gardein be ouſted, and he diſſeiſed, he ſhall have an Aſſiſe, as it is holden in 2 E. 4. 5. b.

*If a woman bring a Writ of Dower againſt a gardein, and recover without title, the heire ſhall have an Aſſiſe of Mord' at his full age at the Common Law, notwithſtanding the poſſeſſion of the gardein.

¶ Et ſi hæres aliquis tempore mortis anteceſſoris plenæ ætatis fuerit.] This is the ſecond clauſe of this Chapter, and is alſo a rehearſall of the Common Law.

Glanvil, Bracton, Britton, Fleta } ubi ſupra.

¶ Simplicem ſeiſinam habeat pro recognitione dominii ſui, ut pro domino cognoſcatur.] This is underſtood of the payment of reliefe, whereby he putteth the Lord in ſeiſin, and doth acknowledge him for his Lord, ſo as of ancient time, and in ancient books, reliefe is called ſimplex ſeiſina.

¶ Et ſi capitalis dominus hujuſmodi hæredis.] This is the third clauſe, and is evident.

¶ De hæreditatibus autem quæ de domino Rege tenentur

tur in cap. &c.] This is the fourth clause of this Chapter, and is also a rehearsall of the Common Law, in which clause are these words, Sicut prius inde habere consuevit, and these words, prout hujusmodi hæreditas de manibus ipsius & antecessorum suorum recipi consueverit.

¶ Ut dominus Rex primam inde habeat seisinam, sicut prius habere consuevit.] Note, in the former clause concerning the tenure of subjects, the Lord should have simplicem seisinam, i. relevium: But in this clause where the tenure is of the King in capite, and his tenant dieth, his heire of full age, he saith not that he shall have simplicem seisinam, but primam liberam seisinam, whereof you may reade at large in Stamford Prerog. 11. b.

¶ Priusquam illam de manibus domini Regis recipiat.] That is, before he taketh his livery out of the Kings hands, albeit he be of full age at the death of his ancestor, whereof you may reade at large in Stamford, ubi supra.

¶ Et hoc intelligatur de terris & feodis quæ ratione servitii militaris, &c.] i. Servitii militaris in capite, *serjantia*. i. magnæ serjantiæ, *sive penes patronatus*. i. fundationis Episcopatuum, Monasteriorum, &c. Prerog. regis, c. 3

CAP. XVII.

PRovisum est insuper, quod si terra quæ tenetur in Socagio, sit in custodia parent' hæred', eo quod hæres infra ætatem exiterit, custod' illi vastum facere non possunt, nec venditionem nec aliquam destructionem de hæreditate illa, sed salvo eam custodiant ad opus dicti hæredis, ita quod cum ad legitimam ætatem pervenerit, sibi respondeant de exit' dictæ hæreditatis, per legalem computationem, salvis ipsis custodibus rationabilibus misis suis. Nec etiam possunt dicti custodes maritagium dicti hæredis dare vel vendere, nisi ad commodum dicti hæredis: sed parentes dicti hæredis propinquiores, qui hujusmodi custodiam habuerint, à toto tempore illo à quo brevia non conceduntur implacitandi, hujusmodi custodias habeant ad commodum hæredum, ut prædictum est, sine vasto, vel exilio, vel destructione faciendæ.

¶ Vastum facere non possunt.] The heire within age shall have an action of Waste against the gardein in socage, but he shall not be punished for waste made by strangers. 2 E. 2. Waste 1. 16 E. 3. Waste 100 28 H. 6. Waste 9. F. N. B. 59. g. Vide Mag. Ch. c. 4 & Glouc. c. 5.

¶ Cum ad legitimam ætatem pervenerit, sibi respondeat.] This second clause is a declaration of the Common Law: The lawfull age of See the 1. Part of the Inst. §. 124

of the heire of a tenant in ſocage is the age of 14. yeares, and at that age he ſhall have an action of Account againſt his garvein; all which you may reade at large in the firſt part of the Inſtitutes, ſect.104. See alſo there the ſeverall ages of men and women.

¶ Nec etiam poſſunt dicti cuſtodes maritagium dicti hæredis dare, &c.] This is the third clauſe of this Act, in affirmance alſo of the Common Law. Vide the firſt part of the Inſtitutes for this clauſe, ſect. 124.

CAP. XVIII.

Glanv.li.9. c.10. Fleta li.1.cap.43

NUllus Eſcaetor, vel Inquiſitor, aut Juſticiar' ad aſſiſas aliquas ſpecialiter capiendas aſsignatus, vel ad querelas aliquas audiendum & terminandum, de cætero habeant poteſtatem aliquam amerciandi pro defalta communis ſummonitionis, niſi capitales Juſticiarii, vel Juſtic' itinerantes in itineribus ſuis.

¶ Inquiſitor] Enquirors, that is to ſay, Sheriffs, Coroner ſuper viſum corporis, or the like, that have power to enquire in certaine caſes.

Britton,fo.4. The miſchiefe before this Statute was, that the Eſchaetor, Sheriffe, Coroner, ſpeciall Juſtices of Aſſiſe, and Juſtices of Oier and Terminer, in ſpeciall caſes (whom Britton calls ſimple Enquirors) would upon the common ſummons amerce ſuch as made default. Now this Statute takes away their power to amerce, Nullus, &c. habeant poteſtatem amerciandi pro defalta.

Vide hic c. 24. Brit. fo.4. Glanv.li.9. c.11. 10 E.3.fol.9. 2 H.4.24. 8 H.4. 16. 11 H.4.8. But this extendeth not to Sheriffes in their Tournes, nor to Stewards in Leets, notwithſtanding that they be Inquirors, for that they deale with common nuſances, or matters concerning the publique, and not in private cauſes, and therefore are not reſtrained by this Statute.

¶ Niſi capitales Juſticiarii, vel Juſticiarii itinerantes.] That is, Juſtices of generall Aſſiſes, whoſe authority increaſing by divers Acts of Parliament, and comming twice every yeare where the Juſtices in Eire came but from ſeaven yeares to ſeaven yeares, the authority of Juſtices in Eire by little and little vaniſhed.

So as if any amerciament is to be made for default upon common ſummons, upon due certificate made thereof to the Juſtices of Aſſiſe (here called Capitales Juſticiarii, in reſpect that ſpeciall Juſtices of Aſſiſe were named before) they may amerce upon ſuch defaults, but the Eſcheator dealing virtute officii, did after this Statute certifie the defaults into the Exchequer, and there was the amerciament impoſed; which is worthy of obſervation.

Britt.fo.1.cap. 4. Fleta li.1.cap.43 And this expoſition agreeth with Britton, who wrote ſoone after this Statute, (& contemporanea expoſitio eſt fortiſſima in lege) and ſaith, Et ceux que avoient eſtre ſummons, & ne viendront a cels enqueſts des coroners, volons q̃ ils ſoient in noſtre mercie, a la venue de nous Juſtices as primiers aſſiſes en cel countie, ſi tielz defaults trovant entres en rol de Coroner. Iſſint que nous Coroners, ne nous Eſcheators, ne ſimples Enquirors, ne eient poer de nulluy amercier pur nul defaute.

CAP.

CAP. XIX.

DE Eſſoniis autem proviſum eſt, quod in Comitatu, Hundred', aut iu curia Baronis, vel aliis curiis, nullus habeat neceſſe jurare pro eſſonio ſuo Warrantizando. *Vide Glanv. lib.1. cap.12. fol.4.*

Fleta lib.6.ca.10.

By the order of the Common Law, for that Eſſoines which were firſt inſtituted upon juſt and neceſſary cauſe, ſhould not be uſed upon feigned cauſes for delay, he that caſt the eſſoine ought to be ſworne, that the cauſe thereof was juſt and true, and this held in all the five Eſſoines before mentioned Cap. 12. and this appeareth in Glanvill, Eſſoniator probabit quodlibet eſſonium jure jurando propria & unica manu, &c. But yet at the Common Law an oath was not alwayes required in that caſe; Non autem omnes eſſoniatores ad diem recipiend affidabunt, ſed illi tantum qui ſunt Baronibus inferiores, Barones vero & Baroniſſæ & eorum ſuperiores, ſicut Comites & eorum Attornat non affidabunt, ſed plegios invenient, &c. Ratio vero hujus diverſitatis talis eſſe poteſt, quod ita nobiles & dignæ perſonæ in Warrantizatione eſſonii non per ſe jurabunt, ſed per procuratores, ſcilicet plegios ſuos, &c. And herewith agreeth other auncient Authors.

8

Vide hic. .ca.21 & 13. Glanv.l.1. ca.12. Bract.li.5. fol.351,352. Fleta li.6.cap.10. Britton fol.282. cap.122.

See the third part of the Inſtitutes, Cap. Perjury.

¶ De eſſoniis.] This Act ſpeaketh generally of eſſoines, and yet it is particularly to be underſtood of one of the five eſſoines, and that is, of the common eſſoine De malo veniendi; ſo as in the eſſoine De ſervice le Roy, and the reſt, he that caſt the eſſoine muſt be ſtill ſworne; and this Law hath beene thus interpreted for two reaſons. 1. For that in the eſſoine De ſervice le Roy, and the reſt, the delay is great, viz. a peare and a day, &c. and therefore thoſe eſſoines ought to be more preciſely proved. 2. Ad ea quæ frequentius accidunt jura adaptantur: In thoſe dayes thoſe other eſſoines were very rare, and therefore the Judges of the Law, that ever hated delayes, interpreted this Act to extend to common eſſoines onely, that had the leaſt delay in it.

12 H.4.14. 2 E.4.16.l.5.E.4. 70. Vide Gloc. cap.8.

¶ Vel in aliis curiis.] Theſe generall words are interpreted to extend to the Kings Courts of Record at Weſtminſter, and other Courts of Record, although the Act beginneth with inferiour Courts, as it is manifeſt by common experience; And the cauſe is, for that otherwiſe theſe generall words ſhould be void, for it cannot according to the generall rule extend to inferiour Courts; for none be more inferiour or lower then theſe, that be particularly named, and ſo note a juſt exception out of the generall rule.

12 H.4.24. per Hankford. Fleta lib.6. cap.10.

Lib.2.fol.46. Leveſque de Cant. caſe. Vide hic cap.28.W.1.ca.3. 15,26.

¶ Warrantizando.] Eſt autem Warrantizare, jurare quod ita detentus fuit ægritudine in veniendo verſus curiam quod venire non potuit. This was the Oath of him that caſt the eſſoine at the Common Law before this Act.

Bract.l.4.fo.352. 12 H.4.15,24.

CAP. XX.

NUllus de cætero (excepto Domino Rege) teneat placitum in curia ſua de falſo judicio facto in Curia tenentium ſuorum; quia hujuſmodi placita ſpecialiter ſpectant ad Coronam & dignitatem Domini Regis.

Before the making of this Statute, if a falſe judgement had been given in a Court Baron, this ſhould have been redreſſed in the Court Baron of the Lord next above him, and ſo upward of the Lords Paramount, which both was an occaſion of long delayes, and the King had alſo many times prejudice thereby, for that thoſe baſe Courts could aſſeſſe no fine or amerciament to the King: which is ſo to be underſtood, that if the next immediate Peſne had no Court Baron, the falſe Judgement could not be redreſſed in the Court of the Lord next above,
Regiſt. fol. 15. for default of prſivity, but then the falſe judgement was to be redreſſed in the Court of Common Pleas, or before the Juſtices in Eyre: Hereby ſhall appeare, how neceſſary it is to know what the Common Law was before the making of any, and eſpecially of this Statute, for without that this Act could not be underſtood.

This Act conſiſteth on two branches, the firſt is negative, the other affirmative.

1. That none from henceforth (except the King) ſhall hold plea in his Court of falſe judgement in the Court of his Tenants.

Hereby is implied that by the Common Law, the falſe judgement in a Court Baron was to be redreſſed in the Courts of the Lords above.

2. The affirmative is, becauſe ſuch pleas (of falſe judgement) ſpecially belong to the Crowne and dignity of our Lord the King; this is a reaſon of the taking away of the juriſdiction of the ſuperiour Lords: And the effect of the reaſon is this, that in ſuch proceedings, many times fines and amerciaments to the King were to be impoſed, which did belong to the Kings Crowne and Dignity, that
Dier 9 Eliz. 263. is, to the Kings Courts of Record, and not to inferiour Courts of Lords, that were not of Record: And beſides, if the judgment were reverſed in the Lords Court, the ſuitors that gave the falſe judgement were to be amerced to the King, which the inferiour Court could not doe.

And for that at the Common Law, for default of Courts of ſuperiour Lords, the falſe judgement was to be redreſſed in the Court of Common Pleas, therefore though the words be excepto Domino Rege, and hujuſmodi placita ſpectant ad Coronam & Dignitatem Domini Regis, which might give a countenance to the Kings Court, Coram Rege, yet this Statute taketh away no juriſdiction from the Court of Common Pleas, that it had before this Statute. And this doth Britton, who wrote ſome after this Statute, grounding himſelfe upon this Act, notably expreſſe in theſe words:

Britton fol. 59. Et ſi faux Judgement, ou faux Proces ſoit trove in le Record, & la parol ſoit in Counte, de ceo ne voilons nous my que le viſc' ne les ſuiters eient conuſans: mes plein ſoy, que greve ſe ſentira, & face vener le Proces & le Record devant nous Juſtices in Banke, & illonques ſoit redreſſe le error ſi poient iſſint trove.

Regiſt. fol. 15. And the Rule in the Regiſter is,

Si faux Judgement ſoit done en County, Court Baron, ou auter Court nient enfranchiſe, (i. nient de Record) que ont conuſans de plea, celuy contre que Judgement eſt done poet aver bre de recorder la parole devant Juſtices in Banke on in

in Eire. Et ceſt rule extend auxi bien in autre bꝛe, come in bꝛe de droit, & la ou la parole eſt per bꝛe, ou ſans bꝛe.

And now the Juſtices in Eyre being (as hath been ſaid) worn out, the originall Writ of falſe Judgement is retournable Coram Juſticiariis noſtris apud Weſtm': which are the Juſtices of the Court of Common Pleas. Regiſt. ubi ſupra.

CAP. XXI.

PRoviſum eſt etiam, quod ſi averia alicujus capiantur, & injuſte detineantur, Vicecomes poſt querimoniam inde ſibi factam, ea ſine impedimento vel contradictione ejus qui dicta averia ceperit, deliberare poſsit, ſi extra libertates capta fuerint. Et ſi infra libertates capta fuerint hujuſmodi averia, & balivi libertatis ea deliberare noluerint, tunc Vicecom' pro defectu ipſorum balivorum ea faciat deliberari. Glanv. li. 12. c. 14. 15. Mirror c. 2. § 16. Fleta lib. 2. ca. 39. 1 E. 3. 11. b. Vide W. 1. c. 17.

The miſchiefes before this Statute were firſt when a mans beaſts or other goods were diſtreined and impounded, the owner of the goods had no remedy but a Writ of Replevin, by which delay the beaſts or other goods were long detained from the owner to his great loſſe and damage. 21 H. 6. tit. retorn del Viſc. 17. Dier Mich. 7 & 8. Eliz. 246.

Secondly, when the beaſts or other goods were diſtreined and impounded within any liberty that had retourn of Writs, the Sheriffe was driven to make a Warrant to the Baylie of the Liberty to make deliverance, and that wrought a longer delay, for at the Common Law he could not enter into the liberty in that caſe. 29 E. 3. 23. F. N. B. 58. b.

A third miſchiefe was when the diſtreſſe was taken out of the liberty and impounded within: Now this Statute doth apply cures to all theſe three miſchiefes.

¶ Poſt querimoniam inde ſibi fact', &c.] That is, the Sheriffe upon a pleint made unto him without Writ may either by paroll, or by precept, command his Bayly to deliver them, that is to make Replevin of them, and by theſe words poſt querimoniam ſibi fact', the Sheriffe may take a pleint out of the *County Court, and make Replevin preſently (which he ought to enter in the County Court) for it ſhould be inconvenient, and againſt the ſcope of this Statute, that the owner for whoſe benefit the Statute was made, ſhould tarry for his beaſts till the next County Court, which is holden from moneth to moneth. Mirror c. 2. § 16. 8 E. 4. 14. 9 E. 4. 48. 14 H. 7. 9. 16 H. 7. 16. 21 H. 7. 23. F. N. B. 69. Firſt part of the Inſtitutes. ſect. 219. & 237. *21 E. 4. 66.

And in a Replevin by pleint, the Sheriffe may hold plea in his County Court although the value be of 20. l. or above, by force of this Statute, but in other Actions he ſhall hold plea under 40. s.

The uſage of the County of Northampton is, that in the abſence of the Sheriffes Baylie the Frankpledge may make deliverance; Note this. 30 E. 3. 23.

If J. S. be Sheriffe, and the diſtreſſe was taken by him, the Writ or pleint ſhall be in common forme, naming the Sheriffe by his chriſten name and ſirname, quæ J. S. cepit, and not quæ tu ipſe cepiſti, and the Sheriffe in that caſe ought to make deliverance. Regiſt. 81. b.

¶ Et ſi infra libertates, &c. balivi libertatis ea deliberare noluerint.] Hereby it appeareth that when the diſtreſſe is taken and impounded within a Liberty that hath retourne of Writs, whether the matter be before the Sheriffe by Writ or by pleint, the Sheriffe ought to make a Warrant to the Bayliffe of the liberty to make deliverance; whereunto if he make no anſwer, or retourn that he will make no deliverance, or the like, the Sheriffe may by force of this Statute, and the Statute of W. 1. enter into the liberty, and make deliverance; and herewith agréeth Fleta.

W. 1. cap. 17. F.N.B. 68. f.

Fleta li. 2. c. 39. §. ſi balivus Regiſt. 82. Et ſi balivus alicujus habentis libertatem retorn' brevium poſtque Vicecom' ſibi præcept' Reg', vel aliud mandatum ex officio ſuo dependens averia, ut prædictum eſt, detenta non deliberet, Vicecom' extunc habet ingreſſum, & faciat quod ſuum eſt, &c. Et eodem modo fiat deliberatio licet ſine brevi ſuſcepta ſecuritate de proſequendo, &c.

And if the diſtreſſe be taken without the franchiſe, and impounded within, the Sheriffe may upon pleint made, preſently enter and make deliverance (without any precept to the Bayly of the Liberty) for the Statute prohibeth that he ſhall replevy, Si extra libertates capta fuer', & ſi infra libertates capta fuerint hujuſmodi averia, &c. So as there is no precept to be directed to the Bayly of the Liberty, but where the diſtreſſe was taken within the Liberty; and where the diſtreſſe was taken out of the Liberty, there by the expreſſe words of the Statute the Sheriffe may enter and make deliverance preſently.

¶ Sine impedimento, &c.] A man by Déed makes a leaſe for years, reſerving a rent with a clauſe of diſtreſſe, and to detaine the diſtreſſe againſt gages and pledges untill grée be made, yet the Sheriffe, or Bayly of the Liberty, as the caſe requires, ought to make deliverance of ſuch a diſtreſſe.

21 E. 3. gager deliverance. 15.

Note the originall Writ of Repleg' is in nature of a Juſticies, and is not retournable; and in a Juſticies no conuſance can be demanded, becauſe none can demand conuſance, but he that hath a Court of Record, and of a plea in a Court of Record; but the County Court, though the plea be holden therein by a Juſticies the Kings Writ, yet is it no Court of Record, for of a judgement therein there lieth a Writ of falſe Judgement, and not a Writ of Error: Alſo if the Sheriffe ſhould graunt the conuſance, he could not award a reſummons, and the Lord of the Franchiſe can demand no conuſance in a Replevin.

34 H. 6. 48.

F.N.B. 73. b. Reg. Orig. 12 H. 7. 8, 9.

And yet divers Lords of Hundreds, and Court Barons have power to hold plea, De vetito namio, in old Bwks called De vee: for the better underſtanding of this Act, and of divers auncient Acts of Parliament, Books, and Records, it is good to know what the genuine ſenſe of vetitum namium is, wherein many have erred. Namium ſignifieth a taking, or diſtreſſe, and vetitum is forbidden, and properly it ſignifieth when the Bayly of the Lord diſtreineth beaſts or goods, and the Lord forbiddeth his Bayly to deliver them when the Sheriffe comes to replevy them, and to that end to drive them to places unknowne, or to take ſuch a courſe as they ſhould not be replevied: But it is alſo called a diſtreſſe, that is forbidden vetitum namiũ, when without any words they are eloigned, or ſo handled by a forbidden courſe, as they cannot be replevied, for then they are forbidden in Law to be replevied.

See W. 2. cap. 2. F.N.B. 73.

Now by this it appeareth how they erre, that take it, that beaſts or goods taken in Withernam ſhould be beaſts or goods taken in vetito namio, for vetitum namium, or vetitum namii is unlawfull, for whether the diſtreſſe were lawfully taken or no, yet the forbidding of them againſt gages and pledges to be replevied, out of queſtion is unlawfull. But the beaſts in Withernam are lawfully taken by authority of Law, in lieu of thoſe that were diſtreined and forbidden to be replevied, and the Writ or precept of Withernam reciteth, Quod poſtquam prædict' B. averia prædict' A. cepit, & in Comit' tuo ea fugavit. &c. per quod ea eidem A. replegiari non potuiſti, nos malitiæ ipſius B. obviare volentes in

Bracton lib. 3. fol. 155. b.

Regiſt. 82, 83. 79. 80. F.N.B. 73.

hac

hac parte tibi præcipimus quod averia prædict' B. in baliva tua cap' in Withernam, & ea detineas donec eidem A. averia ſua prædict' ſecundum legem & conſuetudinem Regni noſtri replegiar' poſſis, &c. **So as the taking in** Withernam **is a lawfull taking by authority of Law, and therefore cannot be termed a taking forbidden, for that it is expreſly commanded to be done, and this agreeth with our old Bookes.** Hereof Bracton ſaith, Si autem averia capiantur per ſervientem Domini (ſine judicio curiæ) & poſtea petita fuerint ab ipſo Domino, cum præſens fuerit, & ipſe ea venerit per vadium & plegium, uterque tenebitur, ut videtur, unus de captione, & alter de vetito namio; & licet Dominus ipſe advocaverit captionem ſervientis, ſervientem non liberat ſed onerat ſeipſum, & uterque tenetur de facto ſervientis, ſerviens quia cepit, & Dominus dupliciter, quia advocat factum ſervientis, & quia vetat: Item ſunt qui dicunt, quod non tenetur quis reſpondere de vetito, antequam convincatur captio injuſta, ad quod dico, quamvis captio juſta, vel injuſta, tamen vetitum ſemper erit injuſtum. Bract. li. 3. 158. 155. b. 157. a. ſect. 6. Withernã.

And in W. 2. Placita de vetito namio, **is intended a power to hold plea of taking of diſtreſſes, and forbidding of them to be replevied, as clearly appeareth by the words of that Act, and cannot be intended of pleas of** Withernam. W. 2. cap. 2.

De vee ſont 2. manners, hun quant un vee vive naam, &c. contre gages, & pledges ſuffiant, lauter quant lun ne ſuffer my ſoy eſtre diſtrein a droit, & lun & lauter ſont perſonel treſpaſſes contre la peace. Mirror ca. 2. §. 16 De vee de naam.

Vee **is an old** French **word, and is as much to ſay, as** vetitus, **or forbidden.**

Naam neſt autre choſe que reaſonable diſtreſſe; **It commeth of the Saxon word** nemmen, **or** nammen, **to take hold on, or diſtrein, whereof comes** namium, i. captio, **and ſo** vetitum namium **ſignifieth in Law a diſtreſſe, or taking forbidden to be replevied.**

Now ſeeing Withernam **hath been mentioned, you ſhall finde that the true ſenſe of the word is a plaine at the aforeſaid matter, for it is compounded of two old Saxon words, viz.** Weder, **which common ſpeech hath turned to** Oder, **or other; and** Naam, **that ſignifieth, as hath been ſaid, a caption, or taking, and therefore is as much as a taking, or a repriſall of other goods in lieu of them that were formerly taken and eloigned or withholden, and this is Capere in Withernam', whereof the Regiſter ſpeaketh and well expoundeth, which note you ſee clearly is juſt and lawfull.**

And therefore one ſpeaking of Withernam, **and condemning the aforeſaid error ſaith,** Verum maximam mihi admirationem movet introducta nominis depravatio, quæ Withernam veritum (cum potius iteratum ſonat) naminum dicit. Lambard verbo Withernam.

And albeit the diſtreſſe were lawfull, yet by matter, Ex poſt facto, **it may be called** Vetitum namium, **a wrongfull taking: for when (for example) he that diſtreineth them eloigneth them, ſo as they cannot be replevied, the owner ſhall have an Action of** Treſpaſſe, Quare vi & armis averia ipſius A. cepit & ea ad loca ignota fugavit ita quod averia illa eidem A. ſecundum legem & conſuetudinem Regni noſtri replegiand' invenire non poterit: **whereby it appeareth, that by the matter ſubſequent, the firſt diſtreſſe is in this ſenſe, and to this effect, termed unlawfull.** F. N. B. 89. a. Regiſt. Vide Bract. ubi ſupra.

CAP.

CAP. XXII.

15 R.2.cap.2. 16 R.2.cap.2.

NUllus de cætero posſit diſtringere libere tenentes ſuos ad reſpondendum de libero tenemento ſuo, nec de aliquibus ad liberum tenementum ſuum ſpectantibus, nec jurare faciat libere tenentes ſuos contra voluntatem ſuam, quia hoc nullus facere poteſt ſine præcepto domini Regis.

This Act is confirmed and enlarged by the Statute of 15 and 16 R.2.

Rot.clauſ.18 H.3 m.10. in Havering.

Before this Statute, Lords would diſtraine their frée tenants to come and ſhew the Déeds, ſpecially the originall Déed, whereby they might know by what rent and ſervices the tenancie was holden of them, and obliquely many times peruſing the Déeds, (which are the ſecrets and ſinews of a mans land) brought in queſtion the title of the frée-hold it ſelfe. Another miſchiefe was, that the Lords of Court Barons, Hundreds, &c. where the ſuitors were Judges, would conſtraine them to ſweare betwéene partie and partie, both which miſchiefes are taken away by two ſeverall branches of this Act.

¶ Ad liberum tenementum ſuum ſpectantibus.] By theſe words are intended the Charters or tenure of their Lands, for they doe properly belong to the frée-hold; and if the freeholder be diſtrained contrary to the purview of this Statute, he ſhall have a Writ of Prohibition grounded upon this Act, Cum de communi conſilio regni noſtri Angliæ ſtatutum ſit, quod nullus diſtringere poſſit libere tenentes ſuos ad reſpondendum de libero tenemento ſuo, nec de aliquibus ad liberum tenementum ſuum ſpectantibus, &c. Tibi præcipimus quod non diſtringas ad reſpondendum, &c.

Regiſt. 171.

And it appeareth by the Regiſter, that this Act doth bind the King, for there is a Writ directed to the Kings Bailiffes of his Manor of N. the words whereof be, Vobis præcipimus, quod non diſtringatis A. ad reſpondendum coram vobis in curia noſtra prædict' de libero tenem' ſuo, nec de aliquibus ad liberum tenementum ſuum ſpectantibus. And if the Kings Bailiffe doth not obey this Writ, the tenant ſhall have an attachment againſt him, which alſo appeares in the Regiſter.

27 aſſ.p.6.20. 39 E.3.20.12H 4. 8.b.F.N.B. 75.c.

¶ Nec jurare facit libere tenentes.] This is to be underſtood betwéene partie and partie; but to enquire for the Lord of all the articles belonging to the Court Baron or Hundred, they may be ſworne, and ſo are the books to be underſtood. Hereof you may reade a notable Record in 14 E. 1. in Banco, &c.

M.14.E.1.rot.19 Lincoln.

Gilbertus de Pincebek & Richardus filius Guilielmi de Spalding implacitaver' Priorem de Spalding pro eo quod cum ſint liberi homines, & terras & tenementa ſua tenent liberè, ipſe Prior diſtringit eos ad corporale ſacramentum præſtand' ſibi ſine præcepto Regis, contra legem & conſuet' regni Regis, & contra prohibitionem, *&c. Prior dicit quod habet libertatem & regalitatem, quod ſi quis captus fuerit cum latrocinio, quod ipſe per Balivos ſuos in Curia ſua inde habet cogn'. Et quod ſuper captionem furis cum manuopere dictum fuit dictis Gilberto & Richardo, quod ad rei veritatem inde inquirend' præſtarent ſacramentum, qui illud facere recuſarunt, unde dic' quod per conſiderationem curiæ prædict' fuerunt ipſi diſtricti propter contemptum prædict' Iudic'. Et quia in caſu hujuſmodi liber*

* That is this Statute.

A freeholder refuſe to preſent for the Lord.

liber homo in curia domini ſui corporale debet ſacramentum præſtare, ſi per conſuetudinem ejuſdem curiæ ad hoc electus fuerit, & idem Gilbertus & Richardus non poſſunt dedicere, quin per conſuetud' ejuſdem curiæ ad hujuſmodi corporale ſacramentum electi fuerunt. Conſiderat' eſt, quod Prior ſine die, & hab' return' averiorum, & ipſi Guilielmi & Richardi in miſericordia.

The cuſtome of the Court.

But in the Léet or Tourne, the ſuitors may be compelled to be ſworne as well for the King, as betweene partie and partie; for they are not liberè tenentes, as this Statute ſpeaketh, in reſpect of tenure, but doe their ſuit in reſpect of reſiance; Alſo the Léets and Tournes are the Courts of the King and of Record; and the Court Baron and Hundred Court of other Lords are not Courts of Record.

39 E.3.35. 44 E.3.19. F.N.B.75.E.

The rule of Law is, that whenſoever any man hath any thing of common right and by courſe of Law, the ſame may well be enlarged by cuſtome and preſcription; as the Lord of a Manour that hath a Court Baron, of common right and by courſe of Law all pleas therein are determinable by wager of Law, and yet by preſcription the Lord may preſcribe to determine them by Jurie. And this branch doth binde the King in his Court Baron, Hundred or Countie Court.

12 H.7.8,9. Regiſt. 171.b.

Of both theſe articles Bracton ſaith thus, Non poteſt aliquis Baro, Vicecomes, vel alius de liberis tenementis cognoſcere, nec tenens tenetur reſpondere ſine præcepto vel warranto domini Regis, nec etiam poſſunt aliquem ad ſacramentum ſine warranto compellere.

Bract.li.3.fo.106

In a Writ of Right patent directed to the Lord of the Manour, plea ſhall be holden of freehold, and the Court in that caſe may give an oath, for there is the Kings Writ of Præcipe quod reddat, which is præceptum domini Regis. Of this you ſhall reade plentifully in our old Books, and it properly belongeth to another Treatiſe. And note theſe words in our Act, Sine præcepto domini Regis, doe refer to both clauſes.

Glanv.li.12.c.2, 3, &c. Bract.li.5. fo.328. Brit.cap. 120. Fleta li.6. c.3. Regiſt.fo.1. F.N.B.fo.1.

CAP. XXIII.

PRoviſum eſt etiam, quod ſi balivi, qui compotum ſuum dominis ſuis reddere tenentur, ſe ſubtraxerint, & terras vel tenementa non habuerint, per quæ diſtringi poſſunt, tunc per eorum corpora attachientur, ita quod vicecomes in cujus baliva inveniantur, eos venire faciat ad compotum ſuum reddend'.

The miſchiefe before this Statute was, as it appeareth by the letter thereof, that the laſt Proces in an Action of Accompt was Diſtres infinite, and the accomptants ſeeking ſubterfuges did withdraw themſelves and become vagrant, flying to ſecret places, ſometimes in ſeverall Counties, and had no lands or tenements whereby they might be diſtrained, ſo as the Lords were in a manner remedileſſe.

This Act doth give to the Lord a Writ of Account, founded upon this Statute, which of the words of the Writ is called a Monſtravit de compoto, and begimneth thus: Monſtravit nobis A. quod cum B. balivus ſuus, &c. Of which Writ you may reade in the Regiſter, in Fleta, and other ancient Books and Records, and lyeth in any County where the accountant may be found.

Regiſt.72.136. F.N.B.117.b. Fleta li.2 c.64. Brit.fo.163.b. Mirr.c.2.§.17.de contracts, & c.5. § 3.

¶ Ba: vi.

Britton ubi ſup. 17 E.2.Proc.263 18 E.2.avow.220 17 E.3.59. Regiſt.137.

¶ Balivi.] This Statute extends not onely to Bailiffes according to the letter, but to gardeins in ſocage, receivers, and other accountants: But the Statute of W.2.c.11. extends onely to Bailifes and receivers, and not to a gardein in ſocage; for a Capias lyeth againſt him by this Statute, but no Exigent by the Statute of W.2.

W.2.cap.11. Regiſt.136. F.N.B.118.

And where ſome have ſuppoſed, that the Statute of W.2. which giveth Voices of Utlagary in an Action of Account, hath taken away either the effect or the uſe of this Act, the contrary appeareth in that caſe, and in other caſes in our Books, as hereafter ſhall appeare.

¶ Et terras & tenementa non habuerint.] If the accomptants have any lands or tenements, whereby they might be diſtrained, though it be not to the value of the account, yet it ſufficeth to exempt them out of this Statute, but they muſt have lands and tenements for terme of life at the leaſt, and ſo is this Act to bee underſtood.

4 E.2.breve 791. For proof whereof; After this Statute, and after the ſaid Statute of W.2. cap. 11. viz. in 4 E.2. one brought a Writ of Monſtravit de compoto upon this Statute, and counted that he was his receiver of C. l. &c. In which Action foure points were reſolved. 1. That our Statute extendeth to a receiver as well as to a Bailife. 2. That if the Accountant hath any lands or tenements, though they be not ſufficient to render the account, yet he is exempted out of the Statute. 3. By theſe words [Lands and Tenements] is intended an eſtate of freehold; and therefore where it was there found that the accountant had a houſe of the yearly value of vi.s. in the right of his wife, who had the inheritance thereof, but for that it was the freehold of his wife, and not his freehold, it was adjudged no ſufficiencie within the Statute. 4. Laſtly, it was reſolved, that if the husband had iſſue by his wife, ſo as he had a franktenement for his life, he had beene exempted out of the Statute. And the like caſe was in 6 E.2. in caſe of a receiver, and many other authorities and records there be to that effect, whereby it appeareth that both this Act hath ſtill his effect, and that it was in uſe after the Stat. of W.2.cap.11. And herewith agreeth Fleta, which wrote ſome after the Statute of W.2. and that Statute doth confirme this Act, Et ſi diffugerit, & gratis compotum reddere noluerit, ſicut in aliis ſtatutis alibi continetur: by which words this Statute is meant.

6 E.2.breve 806. 17 E.2.Proc.203 17 E.3.59. F.N.B.118. Fleta, li.2. ca.64. Britton ubi ſup. F.N.B.118. Regiſt. 136,137.

And good uſe may be made of this Writ of Monſtravit de compoto, if the plaintife can learne in what place or Countie he lurketh, but he cannot have this Writ ſed per fidem, quam præſtare debet in Cancellaria, &c.

But if any ſue out this Writ of Monſtravit de compoto, and attache the accountants body, where he hath lands and tenements, contrary to this Act, in deceptionem curiæ contra formam ſtatuti, &c. the party grieved ſhall have a Writ for his reliefe, which appeareth in the Regiſter.

Regiſt.137.

CAP. XXIV.

See the Statute of Glouc' c.8.

ITem firmarii tempore firmarum ſuarum vaſtum, venditionem, vel exilium non facient de domibus, boſcis, vel hominibus, nec de aliquibus ad tenementa quæ ad firmam habent ſpectantibus, niſi ſpecialem inde habuerint conceſsionem, per ſcriptum conventionis mentionem faciens quod hoc facere poſſunt. Quod ſi fecerint, & ſuper hoc convincantur,

cantur, dampna plena reſtituant, & per miſericordiam graviter puniantur.

The miſchiefe before this Statute was, that againſt Leſſees for life or years; there lay no prohibition of Waſte at the Common Law, becauſe they came in by the Act of the Leſſor, and he might have provided upon the making of the leaſe, againſt Waſte to be done, and he that might and would not provide for himſelf, the Common Law would not provide for: Otherwiſe it is of eſtates created by Law, as Tenant in Dower, and the Gardien; but ſeeing waſte and deſtruction is hurtfull to the Common-wealth, this Act provideth remedy for Waſte done by Leſſee for life, or Leſſee for yeares, and it is the firſt Statute that gave remedy in thoſe caſes: for the rule of the Regiſter is, that there are five manner of Writs of Waſtes, viz. two at the Common Law, as for Waſte done by Tenant in Dower, or by the Gardien; and three by Statute, or ſpeciall Law, as againſt Tenant for life, Tenant for yeares, and Tenant by the courteſie. Regiſt. 72. Brack. li. 4. fo. 355 356, 357.

¶ Firmarii.] For the word firma, whereof firmarius commeth, ſee the firſt part of the Inſtitutes, ſect. 1.

Here firmarii doe comprehend all ſuch as hold by leaſe for life, or lives, or for yeares, by deed or without deed: Large ſe habet hæc dictio firmarius ad terminum vitæ, & ad terminum annorum; and ſo much Fleta ſaith, de termino. Fleta lib. 5. ca. 34.

Albeit the Regiſter ſaith, Sciend', that per Statutum de Marlebridge, cap 23. data fuit quædam prohibitio vaſti verſus tenentem annorum, which is true, though the Statute doth extend to Farmers for life alſo, but this Act extended not to Tenant by the courteſie, for he is not a Farmer, but if a leaſe be made for life or yeares, he is a Farmer, though no rent be reſerved. Regiſt. 72.

¶ Vaſtum, venditionem, vel exilium.] Of theſe you ſhall reade in the firſt part of the Inſtitutes. But a reaſon is required, that ſeeing as well the eſtate of the Tenant by the courteſie, as the Tenant in Dower are created by Act in Law, wherefore the prohibition of Waſt did not lie as well againſt the Tenant by the courteſie, as the Tenant in Dower at the Common Law; and the reaſon is this, for that by having of iſſue the ſtate of Tenant by the courteſie is originally created, and yet after that he ſhall doe homage alone in the life of his Wife, which proveth a larger eſtate; and ſeeing at the creation of his eſtate he might doe Waſte, the prohibition of Waſte lay not againſt him after his Wives deceaſe, but in the caſe of Tenant in Dower, ſhe is puniſhable of Waſte at the firſt creation of her eſtate: the prohibition of Waſte lay not againſt Tenant in taile apres poſſib. (whoſe ſtate was created by Act in Law) becauſe the originall eſtate was not puniſhable of Waſte. First par. of the Inſt. ſect. 67.

¶ Non faciant.] To doe or make Waſte, in legall underſtanding in this place, includes as well permiſſive Waſte, which is Waſte by reaſon of omiſſion, or not doing, as for want of reparation, as Waſte by reaſon of commiſſion, as to cut downe timber trées, or proſtrate houſes, or the like; and the ſame word hath the Statute of Glouc. cap. 5. Que aver fait Waſte, and yet is underſtood as well of paſſive, as active Waſte, for he that ſuffereth a houſe to decay, which he ought to repaire, doth the Waſte: and therefore if a man maketh a leaſe for yeares by Indenture of a houſe and lands, upon condition, that if it happen the Leſſée to doe any Waſte, that the Leſſor ſhall reenter, in this caſe if the Leſſée ſuffer the houſes to be waſted, the Leſſor ſhall re-enter, for as this word facere, hath not onely this ſignification in a penall Statute, but in a condition alſo. Wood. 319. Dier 11 Eliz. 281. b.

This Act prohibiteth that Farmers ſhall not doe Waſte, and yet if they ſuffer a ſtranger to doe Waſte, they ſhall be charged with it, for it is preſa- 21 H. 7. 37. a.

med in Law, that the Farmer may withstand it, Et qui non obstat quod obstare potest, facere videtur. Secondly, the Law doth give to every man his proper Action, so as none of them be without due remedy: and therefore in this case the Lessor shall have his Action of Waste against the Lessee, and the Lessee his Action of Trespasse against him that did the Waste, and so the losse, as reason requireth, in the end shall lie upon the wrong doer, and if the Lessor should not have his Action of Waste, hee should bee without remedy.

First part Inst. sect. 67.

¶ Nec de aliquibus ad tenementa quæ habent ad firmam spectantibus.] There were before particularly named De domibus, boscis, & hominibus; These words doe comprehend lands and meadowes belonging to the Farme.

Also these generall words have a further signification, and therefore if there had been a Farmer for life, or yeares of a Mannor, and a Tenancy had escheated, this Tenancy so escheated did belong to the Tenements that he held in farm, and therefore this Act extended to it, and the Lessor shall have generally a Writ, and suppose a lease made of the lands escheated by the Lessor, and maintain it by the speciall matter.

3 E.3. fol.34. 24 E.3.37.

¶ Nisi habeant specialem concessionem.] This graunt ought to be by Deed, for all Waste tendeth to the disinheritance of the Lessor, and therefore no man can claime to be dispunishable of Waste without Deed.

[a] Lib.11.fo.82,83 Vide lib.4. fo.63. lib.9. fol.9.

[a] In Lewis Bowles case you may reade plentifully of this matter. This speciall graunt is intended to be absque impetitione Vasti, without impeachment of Waste. Impeachment commeth of the French word empeschement: [b] The sages of the Law have used the word impetitio, derived of in and peto, and that Sine impetitione Vasti, is as much to say, as without impeachment, that is, without any demand or challenge for doing of Waste; but if the clause be either Sine impedimento, or impeditione vasti, it amounteth in judgement of Law to as much as Sine impetitione vasti.

[b] vide l.11.fo.82.b Lewys Bowls case. See the first part of the Inst. sect. 354 verb. sans impeachment de Waste. Adjudg. Tr.6 Jac. in Com. Banco. Lib. intrat. Co. 664,665.

¶ [c] Damna plena restituant & per misericordiam graviter puniantur.] [d] And this must be understood in such a prohibition of Waste upon this Statute, as lay against Tenant in Dower at the Common Law, and single damages was given by this Statute against Lessee for life, and Lessee for yeares.

[c] Fleta li.1.ca.11.

[d] Regist.72.

The Statute of Glouc'. Cap.5. gave treble damages, and the place lyeth against Lessee for life, Lessee for yeares, and Tenant by the courtesie, &c.

W.2.cap.14.

But after this Statute, and the Statute of Glouc'. Consuevit fieri breve de prohibitione vasti, per quod breve multi fuerunt in errore, credentes quod illi qui vastum fecerint non habuerunt necesse respondere nisi tantum de vasto facto post prohibitionem eis directam; Dominus Rex (ut hujusmodi error de cætero tollatur) statuit quod de vasto quocunque, &c. non fiat de cætero breve de prohibitione sed breve de summonitione, quod ille, de quo queritur, respondeat de vasto facto quocunque tempore, &c.

Regist.fol.72.

Whereupon the prohibition of Waste was abrogated, and the Action of Waste framed upon the Act of Westm. 2. as in the Register appeareth.

CAP.

CAP. XXV.

IUſticiarii itinerantes de cætero non amercient villatas in itinere ſuo, pro eo quod ſinguli xii. annorum non venerint coram Vicecomitibus & Coronatoribus, ad inquiſitiones de roberiis, incendiis domorum, vel aliis ad Coronam ſpectantibus faciend'. Dum tamen de villatis illis veniant ſufficientes, per quos inquiſitiones hujuſmodi plenè fieri poſſunt, exceptis inquiſitionibus de morte hominis faciend', ubi omnes xii. annorum, venire debent, niſi rationabilem cauſam habeant abſentiæ ſuæ. Magna Chart. ca. 35. Hic ca. 10. & 8.

Two miſchiefes were before the making of this Statute.

Firſt, that if the Sheriffe did preſent before the Iuſtices in Eyre, that thoſe of the age of twelve yeares came not to the Tourn, that the Townſhips where they dwelt ſhould be amerced, for that every one above twelve years appeared not at their Tourns, where they ſhould be ſworne, (as hath been ſaid) amongſt other things, that they ſhould doe no felony, nor aſſent to any, and therefore albeit they could not be preſent ad inquiſit' faciend', being under age of 21. yet they ought to be there to take the oath, and to diſcover felonies, if any they knew, according to their oath.

Another miſchiefe, that when any robbery, burning of houſes, homicide, or other felony was done, the Sheriffe, for ſo much as pertained to him, or the Coroner in caſe of the death of man, would ſummon many Townſhips, and ſometime a whole Hundred, where twelve would ſerve to make enquiry: And if all did not appear according to the ſummons, they would preſent the ſame before the Iuſtices in Eyre, where the whole Townſhips or Hundred were amerced, albeit many times a ſufficient number to make enquiry did appeare. Now this Statute provideth remedy, that when there commeth out of the Townſhips ſo ſummoned, a ſufficient number by whom inquiſitions may be fully made, that no amerciaments ſhall be ſet upon the Townſhips or Hundred by the Iuſtices in Eyre, which was one remedy for both the two miſchiefes.

¶ Singuli xii. annorum.] Where old Bookes mention ſometime 14. years, it is but miſprinted; For the time for one to come to the Tourn or Leet, and to take his oath, as is aforeſaid, is twelve yeares, and ſo it is provided by this Act. Mag. Chart. c. 35

¶ De roberiis.] See for this word in the firſt part of the Inſtitutes, ſect. 501. Vide W. 1. c. 15.

¶ Incendiis domorum.] By this it appeareth, that burning of houſes was felony by the Common Law, for otherwiſe he could not have enquired of the ſame in his Tourn. Bract. l. 3. fol. Brit. fol. 16. Fleta lib. 2. ca. 35.

This is to be underſtood not only of a dwelling houſe, but of the Barne or Stable belonging thereunto. Stamf. Pl. Cor. fol. 36. a. 11 H. 7. 14.

The Mirror goeth further, for he reckoning the ſame amongſt the higheſt offences, ſaith, Ardours ſont que ardent City, Ville, Maiſon, beaſt, ou autres chateux de lour felony in temps de peace pur haine, ou vengeance. Mirror ca. 1. § 8. de Ardours et § 13 Cap. 2. § 11. de

Les appeales de arſons ſe ſons in tiel manner, Cedde ley appeal Harding illonque Appeal de Arſon & Cap. 1. § 13.

(ove les ſurnoſmes)de ceo q̄ come meſme ceſti Cedde avoit un maiſon ou pluſors,ou un taſſe de blee, ou un mollein de feyne, ou auter manner de biens in tiel lieu,&c. la vient meſme celuy Harding, & en le dit meaſon miſt fewe,&c. felonioul-ment, &c.

Fleta ubi ſupra. And Fleta ſaith,Si q̄is ædes alienas nequiter ob inimicitiam vel prædæ cauſa tempore pacis combuſſerit, & inde convict' fuer' per appellum vel ſine, capitali debet ſententia puniri. But this belongeth to another Treatiſe.

¶ Vel aliis ad coronam ſpectantibus.] Here is meant other felonies at the Common Law, which are called Placita Coronæ, either enquirable before the Sheriffe in his Tourne, or the Coroner, of whom the Statute here ſpeaketh.

¶ Dum tamen de villatis illis veniunt ſufficientes.] But if there appeare not ſufficient, as if there appeare under 12. then all that were ſummoned ſhall be amerced, and this doth follow the reaſon of the Common Law, for where for triall of any iſſue there ſhall be ſummoned 24. if there 12 onely appeare, and are ſworne, the others that made default ſhall not be amerced; but if any of them that doe appeare be challenged and tried out, ſo that 12 remain not to try the iſſue, then all the reſt ſhall be amerced, as if there had under 12 originally appeared: And it is a good expoſition of a Statute, when the reaſon of the Common Law is purſued: See before Cap. 18. concerning amerciaments.

Britton cap.6. ¶ Exceptis inquiſitionibus de morte hominis, &c.] The Law hath ſo great reſpect to the puniſhment of homicide or murder, that at that inquiſition before the Coroner, all above 12 muſt appeare (to the end the truth may be found out and puniſhed, and the horrible crime of murder detected) unleſſe they have a reaſonable excuſe to the contrary.

CAP. XXVI.

Bracton lib.1. fol.120,121. Britton cap.6. Fleta lib.1.ca.23. MUrdrum de cætero non adjudicetur coram Juſticiariis, ubi infortunium tantummodo adjudicatum eſt, ſed locum habeat murdrum de interfectis per feloniam tantum, & non aliter.

Britton cap.7. 3 E.3. Coron.354 3 E.3.ibid.322. The miſchiefe before this Statute was, That he that killed a man by miſadventure, per infortunium, as by doing any Act that was not againſt Law, and yet againſt his intent the death of a man enſued, this was adjudged murder: As if a man had caſt a ſtone over an houſe, or ſhot at a mark, and by the fall of the ſtone, or glaunce of the arrow a man was ſlain, the party ſhould ſuffer death.

21 E.3.17.b. And ſo it was at the Common Law, if a man had killed a man ſe defendendo, he ſhould be hanged, and forfeit in both caſes, as in caſe of murder; ſo tender a regard had the Law to the preſervation of the life of man. And with the Common Law was agreeable the Judiciall Law, before the Cities of refuge were appointed; he that killed a man by miſadventure, &c. was put to death, to the end that men ſhould be ſo prudent and wary of their actions, as no death of man, woman or child might enſue thereupon.

Numb.35.9. Deut.29.2. Joſhua 20,21,&c.

This

This Statute doth remedy both points, for the latter clause is generall, that it shall not be murder, but where it is done per feloniam, i. felleo animo, and by malice prepensed. And albeit his life in neither of these cases is now lost, yet the forfeiture of his goods and chatels remained in both cases. And so if a man kill a man by misadventure, if he escape, the towne shall be amerced, &c. is also a mark of the Common Law.

See the Statute of Glouc' c. 9.
2 H. 4. 18.
11 H. 7. 23.
3 E. 3. coron. 302.

¶ Murdrum.] For this word, see the 1. part of the Instit. sect. 500. To speak of the parts of homicide, doth belong to another Treatise; this onely shall suffice for the understanding of this Act.

¶ Per feloniam.] For this word, and the signification thereof, see the first part of the Institutes at large.

See the first part of the Institut. sect. 745.

CAP. XXVII.

PRovisum est, quod nullus qui coram Justiciariis itinerantibus vocatur ad warrantum in placito terræ, vel tenement', amercietur de cætero, pro eo quod præsens non fuerit quando vocatur ad warrantum (excepto primo die adventus Justiciar' ipsorum) sed si *Warrantus* ille fuerit infra comitatum, tunc injungatur vicecom', quod ipsum infra tertium diem, vel quartum (secundum locorum distantiam) faciat venire, sicut in itinere Justiciar' fieri consuevit. Et si extra comitat' maneat, tunc rationabilem habeat summonitionem xv. dierum ad minus, secundum discretionem Justiciar' & legem communem.

Bract. l. 3. fo. 115, 116. Brit. c. 2. fo. 7. Fleta li. 1. cap. 9. Mirrour cap. 4. cap. Itineris.

By the Common Law, all the men of the County ought to appeare before the Justices in Eire per breve de generali summonitione vic' direct', quod præmoneat omnes de com' quod sint coram talibus Justiciariis ad certum diem & locum per quadraginta dies, as well that every man should be ready to answer to any matter, wherewith he was to be charged, or commenced against them, as to serve the King and his country, as need should require, and to heare and learne the lawes and customes of the Realme, under which they lived. Now the mischiefe was, that if the * Vouchée appeared not at the first day, he was amerced, for that he ought to be present. Now this Statute enacteth, that he shall not be amerced at the first day, but Proces shall be awarded against him, as by this Act is limited; and if he come not then, he shall be amerced: wherein it is to be observed, how the Common Law provideth for expedition of Justice, and how necessary it is for understanding of old Statutes, to reade old Bookes.

* For this word Vouchee, see the first Part of the Inst. §. 145. verb. Et il vouche, &c. Custumier de Norm. cap. 50. fo. 64. b.

CAP.

CAP. XXVIII.

SI Clericus aliquis pro crimine aliquo, vel retto, quod ad coronam pertineat, arreſtatus fuerit, & poſtmodum per præceptum domini Regis in ballium traditus *fuerit* vel replegiatus extiterit, ita quod hii, quibus traditus fuerit in ballium, eum habeant coram Juſticiariis, non amercientur de cætero illi quibus traditus fuerit in ballium, nec alii pleg' ſui, ſi corpus ſuum habeant coram Juſticiar', licet coram eis propter privilegium clericale reſpondere noluerit, vel non potuerit propter Ordinarios ſuos.

¶ In ballium traditus fuerit, vel replegiatus extiterit.] Here note a difference betweene Baile, and Replevie; for the one is by the higher Courts at Weſtminſter, and the other, viz. Replevie, by the Sheriffe, by force of the Writ of homine replegiando.

Vide W.1.ca.15. Stam.pl.cor. 72. Regiſt.77.

For the underſtanding of this Act, it is to be knowne, that at the common Law when any man was appealed or indicted of felony, if he were bayled, the bayle was, that he ſhould appeare at a certaine day before ſuch Juſtices to anſwer to the felony. Now the miſchiefe was, that if a man were bailed, or delivered by plevin, albeit he did appeare, yet if he claimed the benefit of his Clergie, the perſons that bailed him, or his pledges were amerced, becauſe he refuſed to anſwer to the felony, but take himſelfe to his Clergie; this Statute doth provide, that if in that caſe the Clerk doth appeare before the Kings Juſtices, his Baile or Pledges ſhall not be amerced, although he will not anſwer before them by reaſon of his Clerks privilege.

a W.2.cap.2. Regiſt.in homine replegiand. F.N.B.fo.66.

¶ Si Clericus aliquis.] If he were no Clerk at the time of the baile, or deliverie by plevin, but learned to reade before his appearance, yet he was within this Statute, and yet a Clerk was not bailed nor delivered by plevin.

b Al.Powlters caſe, li.11.29,30. Art.cler.cap.14. Mich.31 E.3.coram rege rot.138 in Theſau. Abbas de Miſſenden. 17 E.2.rot.Rom. m.6. Adam Eveſq; de Heref. 20 E.2.coro.283 19 H.6.47.25 E.3 c.4,5.18 E.3.c.1. Vide Powlters caſe ubi ſup.

¶ De aliquo crimine vel retto quod ad coronam pertineat.] a Where it is printed rectum, it muſt be amended after the Originall, and made rettum: This is derived of an old word rette, or reatte, à reatu, and ſignifieth in our legall underſtanding an offence or fault.

b Crimen and rettum are here taken for ſuch offences wherefore a man ſhould loſe life or member, becauſe for no other offence he can have his Clergie, or the privilege of a Clerk. But in crimine læſæ majeſtatis he was not to have his Clergie, and therefore this Act extendeth not to perſons let to baile for high Treaſon, and ſo it is in caſe of ſacrilege, and the like.

And thus is this dark Statute clérly expounded.

c Mirror c.3. de except.de Clergy Bract.li.3. 123, 124 Flet.l.1.c.28 Brit.cap.4.fo.11. lib.6.cap.36.

c Now to ſet down in what caſes one ſhall be bailed, or delivered by plevin, and where a man ſhall have the benefit of his Clergie, and where he is barred thereof by Act of Parliament, doe belong to another Treatiſe: in the meane time ſomewhat you ſhall reade of Clergie in Alex. Powlters Caſe, ubi ſupra, and lib.4. fo.44,45,46.

CAP.

CAP. XXIX.

PRoviſum eſt, quod ſi deprædationes, vel rapinæ aliquæ fiant Abbatibus, Prioribus, vel aliis Prælatis eccleſiaſticis, & ipſi jus ſuum de hujuſmodi deprædationibus proſequentes morte præveniantur, antequam judicium inde fuerint aſſequuti, ſucceſſores eorum habeant actiones ad bona Eccleſiæ ſuæ de manibus hujuſmodi tranſgreſſoris repetend'. Similem inſuper habeant actionem ſucceſſores de hiis quæ domui ſuæ & Eccleſiæ [recenter]ante obitum prædeceſſorum ſuorum per hujuſmodi violentiam fuerint ſubtracta, licet prædicti prædeceſſores ſui jus ſuum proſecuti non fuerint in vita ſua. Si autem in terris & tenementis hujuſmodi religioſorum, de quibus eorum Prælati obierint ſeiſit', ut de jure Eccleſiæ ſuæ, aliqui ſe intrudant tempore vacationis, ſucceſſores ſui breve habeant de ſeiſina recuperand', & adjudicetur eis dampna ſua, ſicut in nova diſſeiſina adjudicari conſuevit.

There were two miſchiefs at the Common Law (as many did hold) that in the caſe of Abbots, Priors, and other regular and religious perſons, if the goods of the Monaſtery were taken away in the life of the predeceſſor, that after his death his ſucceſſor had no remedy for ſuch treſpaſſes: The other miſchief was, that if in time of vacation, when there was no Abbot, Prior, or other regular or religious Soveraigne, any intruſion were made, the ſucceſſor had no remedy to recover the land with damages, though thereof his predeceſſour died ſeiſed, and both theſe are remedied by this Act.

℄ Abbatibus, Prioribus, vel aliis Prælatis Eccleſiaſticis.] This Act extendeth onely to Abbots, Priors, and other Prelats that be religious and regular, and not to Biſhops and other perſons Eccleſiaſticall being ſecular: For in the ſecond clauſe of this Act, hujuſmodi religioſorum is mentioned for the diſtinction betweene religious and ſecular. See the firſt part of the Inſtitutes, ſect. 133. And the reaſon of this diverſitie is, that the Abbots, Priors, and other religious and regular perſons are dead perſons in Law, and have capacity to have lands and goods onely for the uſe and benefit of the houſe; and cannot make any teſtament; and therefore the Church or religious houſe is holden alwayes one, in reſpect whereof the ſucceeding Abbot ſhall have an Aſſiſe for a diſſeiſin done in the life of the predeceſſour, and an action of Waſte for waſte done in his predeceſſors time; but ſo ſhall not a Biſhop, Archdeacon, Dean, Parſon, or the like, that are Eccleſiaſticall ſecular, becauſe the Church by their death hath an alteration, and is not alwayes one, and they may make their Teſtament, for that they may have goods and chattels to their own uſe.

Also the Biſhop is of an higher degree then the Abbots and Priors, with which this Act begins.

42 E. 3. 22. 2 H. 4. 2, 3, 19. 21 H. 6 46 4 E. 4. 8. 9 E. 4. 3 18 E. 4. 16. 1 E. 5. 4, 5. Li. 2. fo. 46. Hic c. 19. W. 1. c. 3. 15, 26.

℄ Morte præveniant'.] So it is if an Abbot or Prior be depoſed, the ſucceſſor ſhall have an action upon this Act, although the predeceſſour be alive, as well as if he had died, for as to that houſe he is civiliter mortuus. Temps E. 1. fol. 247.

℄ Suc-

¶ Succeſſores habeant actionem ad bona Eccleſiæ ſuæ de manibus hujuſmodi tranſgreſſoris repetend'.] Some have thought in reſpect of this word repetenda, that this muſt be intended of an action of Detinue, or the like action, wherein the thing it ſelfe is to be recovered, but de manibus hujuſmodi tranſgreſſoris make it evident, that it muſt be intended of a treſpaſſe quare vi & armis, for thereof was the doubt at the Common Law: for it is holden, that for goods taken from the predeceſſour of an Abbot or Prior, no action was given to the ſucceſſor at the Common Law before this Act, for by the taking the property was devеſted. But an Action of Account, debt, detinue, replevin, and the like Action, which affirmes the property to continue, the ſucceſſor ſhall have an action at the Common Law.

12 H.4.tit. Account 124.4 E.3. 11,17.25 E.3.45. 9 H.6.25.17 E.3. tit.Execut.106. 11 E.3.Account 57. 47 E.3.23.

¶ Bona.] 1. If an obligation be taken from the predeceſſour, it is within this Statute. 2. The ſucceſſor ſhall have by the equitie of this Statute an action of Treſpaſſe of cutting downe of trées, and carrying them away: wherein it is to be obſerved, that Acts that give remedy for wrongs done, ſhall be taken by equitie.

3 E.3.31.4 E.4.8. 18 E.4.16.

7 H.4.5.11 H.4. 55. ſemble.

¶ Eccleſiæ ſuæ.] The Action that the Succeſſor ſhall bring upon this Statute, ſhall be Bona & catalla domus & Eccleſiæ ſuæ tempore I. prædeceſſoris ſui, which without queſtion a Biſhop, Deane, or other Eccleſiaſticall ſecular cannot ſay.

7 E.4.15.2.9 E.4. 33.9 H.6.25,26. Regiſt.96.

¶ Recenter ante obitum.] Yet if the taking of the goods were long before the death of the Abbot or Prior, his ſucceſſor ſhall have an Action of Treſpaſſe by this Statute.

16 E.3.trñs 211.

¶ Si autem in terris & tenementis hujuſmodi religioſorum, &c. aliqui ſe intrudant tempore vacationis, &c. breve habeant de ſeiſina ſua, & adjudicentur eis damna.] This branch is alſo taken by equitie, for by theſe words, the ſucceſſor of an Abbot, Prior, or any other religious Soveraigne ſhall have an Action of Treſpaſſe for trées cut downe and carryed away in the time of vacation.

18 E.2.trñs 237. 2 H.4.ubi ſup. 18 E.4.16. F.N.B.89.i.

But a Biſhop ſhall not have an Action of Treſpaſſe in that caſe, 1. as hath béen ſaid, for that this Act extends not to him; 2. The King hath the temporalties during the vacation, and therefore he cannot have an Action of Treſpas: But in the Regiſter there is in that caſe an Oier & Terminer to be granted to heare the treſpaſſes done in time of vacation of the Biſhoprick, as thereby appeareth, which ſéemeth in favour of the Church to be granted by the Common Law, for it is not grounded upon this Act, and therefore I leave the marginall notes in the Regiſter that are newly added, and are not warranted by ancient Manuſcripts, to the judicious Reader.

Regiſt.125. F.N.B.112.h. & 113.

And the Writ of Intruſion lieth not for the ſucceſſor of the Biſhop, for an intruſion in time of vacation for the Kings poſſeſſion (which he hath without office) preſerveth the inheritance of the Biſhop, but it lyeth by this Statute, where one intrudes after the deceaſe of an Abbot or Prior. Vide the firſt part of the Inſtitutes ſect. 443. for this manner of intruſion, while the freehold and inheritance is in conſideration of Law.

4 E.4.8.

CAP.

CAP. XXX.

PRoviſum eſt etiam, quod ſi alienationes illæ, de quibus breve de Ingreſſu dari conſuevit, per tot gradus fiant, per quot breve illud in forma prius uſitata fieri non poſsit, habeant conquerentes breve ad recuperandum ſeiſinam ſuam, ſine mentione graduum, ad cujuſcunque manus per hujuſmodi alienationes res illa devenerit, per breve originale, & per commune conſilium Domini Regis inde providendum, &c.

Bract.l.4.fo.318. &c. Brit.ca.114. Fleta lib.1.ca.11. Lib.4.cap.1. Paſch.18 E.1. in Banco Rot. 4. Eborum, John de Hodleſtons caſe.

It is to be obſerved, that the Common Law provided for the quietneſſe of mens freehold and inheritance, and that they ſhould not be diſturbed from manurance of their grounds; in ſo much as he that right had could not enter upon him that came in by deſcent or lawfull conveyance, but was driven to his Writ of Entry; and the Common Law for the ſafety of mens poſſeſſions further provided, that if the land were conveyed out of the Degrées, ſo as the Demandant could not have his Writ of Entry in le Per, or in the Per & cui, the Demandant (to the end that ſuits might have an end) was driven to his Writ of Right, a long and finall remedy, and that he which right had ſhould take his remedy by Writ of Entry before there were above two deſcents, or two conveyances, and alſo within the time of preſcription.

See the firſt part of the Inſtitutes ſect.473.

14 H.4.39,40.

This Statute in caſes of deſcents and conveyances, after the Degrées paſt, doth give a Writ of Entry in the Poſt, which in thoſe caſes lay not at the Common Law. But in other caſes, then in caſe of alienation and deſcent, there was a Writ of Entry in the Poſt at the Common Law: as where one entred by diſſeiſin, intruſion, abatement, judgement, ſucceſſion, or as Tenant by the curteſie, in theſe caſes a Writ of Entry in the Poſt did lie at the Common Law, but if the wife recover her Dower by judgement, yet is ſhe in the part by her husband, and if the ſecond alienee be diſſeiſed, and he recover in a reall Action, yet lieth the Writ againſt him in the Per & cui, becauſe the alienation to him is the ground of his title, Et ſic de cæteris.

F.N.B.192. f. Fleta lib.5. c.34.

¶ Si alienationes, &c.] Hereby it appeareth that this Act extendeth where the lands were aliened from one to another, either by lawfull conveyance, or by deſcent; and by conſtruction this Act extendeth as well to alienations, &c. made before the Statute as after, for Statutes, that give remedy to them that right have, are ever favourably expounded; obſerve well the words of this Act: If the diſſeiſée doth releaſe to the diſſeiſor, this doth amount to an alienation, and maketh a degrée, but a ſurrender of an eſtate for life maketh no degrée, yet is it an alienation.

5 E.2. cui in vita 23. 7 E.3.12.

19 H.6 17. 21 H.6.8. 9 E.4.16. 1 H.6.1.

¶ Breve de ingreſſu.] This is underſtood of Writs of Entry, Sur diſſeiſin in le Poſt, in le quibus, ſine aſſenſu capit', cui in vita, ſur cui in vita, non compos mentis, dum fuit infra ætatem, ad term' qui præteriit, in caſu proviſo, in conſimili caſu ad communem legem; Of intruſion, Cauſa Matrimonii prælocuti.

¶ Per tot gradus fiant.] Gradus dicitur à gradiendo, becauſe the ſtate paſſeth by degrees from one to another, and in the Law it ſignifieth, a conveyance, or a deſcent from one to another, and there be but two degrées, viz. in

50 E.3.21.

the Per, and in the Per and cui, if it proceed any further either by condepance or descent, it is out of the degrées: If a gift in tayle, or a lease for life be made the remainder over, the first estate, and all the remainder make but one degrée.

*15 H.3.brē.878. 20 H.3.Ass.432. 19 E.2.Ass.450. 4 E.2. brē.790. 8 E.3.63.8 Ass.28 7 E.3.69. 50 E.3. 22. 43 Ass.14.

*And these alienations that make degrées ought (as hath been said) to be so lawfull, as the alienée may be in by title; and therefore a feoffement by a garden by Chivalry, Socage, or by Gardian, a Termer for yeares, Tenant at will, or Bayliffe, or Tenant in Villenage doe make no degree, because they amount to a disseisin, and some hold the feoffee was a disseisor at the Common Law; and where the words of the Statute be Quod alienationes, those must be intended lawfull alienations, such as by the auncient Law should have taken away an Entry.

3 E.4.17. 10 E.4. 18. W.2.cap.25. Bract.fo.318,323 324,326. Brit.cap.11. Fleta li.1. ca.11. lib.4. cap.1.

aRegularly a man should not have a Writ of Entry in the Post, where he may have a Writ within the Degrées, and the cause thereof is to ouste false Vouchers, yet in some cases a man may have election either to have a Writ of Entry in the Post, or a Writ of Entry in the Per & cui; bAs if I may have a Writ of Entry in the Per & cui against B. who aliens, so as now it is out of the Degrées, yet if B. take back an estate again, I may chuse either a Writ of Entry in the Per & cui, or in the Post, but prima facie, the Writ of Entry in the Per & cui is more beneficiall, because the Tenant in the Writ of Entry in the Post may vouch at large, and so he cannot doe in the other Writ, but onely within the Degrées.

aW.1.c.40.7 E.3. 25. 11 E.3.brē. 472. 22 E.3.1.b. 5 E.3. 216. 24 E. 3.70. 39 E.3.25. 14H.4.39,27 H.6 ent.23 F.N.B 192 b 31 E. 1.brē. 875. 39 E.3.33. 44 E.3.45. 9 E.4. 47. 5 H.7.6. 21 H.6 8. Br. tit. Entry 19.

cBut if the Tenant take back an estate to him, and to another, then I am driven to my Writ of Entry in the Post, so it is if the state be made to the heire of B.

c 5 E.3.31. 3 H.6.38.

A woman seised of a Rent taketh husband, the husband purchaseth the land where out, &c. and after alieneth the land in fée, by which he incidently pulleth the rent and dieth, the wife in a Cui in vita, shall suppose the alienée to be in the Per or Post. And yet in some case one shall have a Writ of Entry in the Post, when the Degrées be not past, (note well the words of this Act.)

7 H.4.17. 7 E.3.53.

If a disseisor hath issue two daughters, and the one daughter hath issue and dieth, in this case the Aunt is in the Per, and the Niece is in the Per & cui, and one Writ must be brought against them both, which must be in the Post, because one Writ cannot be brought both in the Per as to one, and in the Per & cui as to the other.

30 E.1.brē.884. 4 E.3.fo. 24 E.3 32. 36 H.6.Dower 30. Vide first part of the Inst. sect.393.

Howbeit in some cases a Writ of Entry in the Per shall lie, although there be many alienations or disseisins; as if the husband be seised in fée and die, and twenty alienations or disseisins be made, now both the Writ of Entry in the Post lie, but if the Wife be endowed, the Entry of the Wife shall be supposed by her husband; but otherwise it is of the Tenant by the courtesie, for the Law worketh by issue had without any assignement, and therefore merely in the Post.

¶ Sine mentione graduum.] This is intended a Writ of Entry in the Post, so called of this word used in the Writ, In quod idem A. non habet ingressum nisi post disseisinam quam C. injuste, &c. fecit prædict' B, &c.

As the Writ of Entry, which Writ is sine mentione graduum, as our Act speaketh: As the Writ of Entry in the Per, is so called of this word [per] in the Writ, In quod idem A. non habet ingressum nisi per C. qui illud ei dimisit: And in the Per & cui, of these words in the Writ, In quod idem A. non habet ingressum nisi per C. cui D. illud dimisit, qui inde injustè, & sine judicio disseisivit, &c.

But for as much as the Law is never knowne untill the reason thereof be apprehended; Wherefore should not the successors of a Bishop, Deane, Abbot, Prior, &c. be as well in the Per, as the heirs by descent? And the reason there of is, for that the heire commeth in by his ancestor, and therefore a descent shall take away an Entry, and the Warranty of the Ancestor shall barre the heir, but

in

in caſe of ſucceſſion, a dying ſeiſed taketh not away an Entry, nor the Warranty of the predeceſſour doth binde the ſucceſſor; and therefore the Regiſter delibereth it for a rule, with the reaſon thereof. Breve de ingreſſu debet impetrari verſus ſucceſſorem ſemper in le poſt, *quia ſucceſſor per prædeceſſorem non ingreditur.* And herewith agreeth Bracton, who ſaith, Item quæritur, &c. an faciunt gradum de Abbate in Abbatem, ſicut de hærede in hæredem; & videtur quod non, magis quam in computatione deſcenſus, quia etſi alternatur perſona, non propter hoc alternatur dignitas, ſed ſemper manet. Regiſt. 230. See the firſt part of the Inſtitutes. ſect. 386. 534. 5 Ed. 3. 13.

¶ Res illa devenerit.] This is intended of lands, tenements, rents, and other things whereof a Præcipe doth lie.

¶ Per conſilium Domini Regis inde providendum.] Which was done accordingly, and the Writt ſet downe in the Regiſter. Regiſt. 130.

X 2 STATUTUM

Statutum de Weſtminſter primer.

Editum Anno 3 Edw. 1.

The Preface of the Statute of W. 1.

CEux ſont les eſtabliſhments le Roy Edward fits le Roy H. faits a Weſtminſt. a ſon primer Parliament general apres ſon Coronement, lendemaine de la cluſe de Paſche, lan de ſon raigne 3. per ſon Counſell, et per laſſentments des Archieveſques, Eveſques, Abbes, Priors, Countes, Barons, et tout le Comminalty de la terre illonques ſummones: Pur ceo que noſtre Seignior le Roy ad graund volunt et deſire del eſtate de ſon Realme redreſſer en les choſes ou meſtier eſt damendment, et ceo pur le common profit de ſaint Eſgliſe, et de *ſon* Realme, et pur ceo que leſtate de ſon Realme, et de ſaint Eſgliſe ad eſte malement garde, et les Prelates et Religious de la terre en mults des manners grieves, et le people auterment treit que eſtre duiſt, et la peace meines garde, et les leyes meins uſes, et les misfeſants meins punies, que eſtre duiſſent, per quoy les gents de la terra doubteront meins a misfaire: cy ad le Roy ordeine et eſtablie les choſes ſouthſcripts, les queux il entende deſtre profitables et covenables a tout le Realme.

℄ Ceux ſont les eſtabliſhments.] Stabilimina, or ſtabilimenta, Eſtabliſhments, or Aſſurances comming of ſtabilis, and that againe à ſtando, of ſtanding; And juſtly may not onely theſe Chapters challenge that name, but all other the Statutes made in the raigne of this King may be ſtyled by the name of Eſtabliſhments, becauſe they are more conſtant, ſtanding, and durable Laws, then have been made ever ſince: ſo as King E. 1. who (as Sir William Herle Chiefe Juſtice of the Court of Common Pleas, that lived in his time, ſaid, Fuit le pluis ſage Roy que unques fuit) may well bee called our Juſtinian.

5 E. 3. 14.

℄ A ſon Parliament generall.] So called, becauſe all the Laws then made were generall, and that great and honourable Aſſembly were not entangled with private matters, but with ſuch onely, as were for the generall good of the Common-wealth, for the end of this Parliament, is, as hereafter in the Preface is expreſſed, Pour le common profit de Saint Eſgliſe, & del Realme.

Apres

℄ Apres ſon coronement.] He began his raigne the 16. day of November, Anno Dom. 1272. he then being in the land of Paleſtine; and after his returne into England, was crowned the 19. day of Auguſt, in the 2. yeare of his raigne, (and not the 9. day of December, in the 1. yeare of his raigne, as ſome have miſtaken) as evidently appeareth by this Preface, and by ancient Records hereafter remembred. Vet. Mag. Chart. fo. 144.

℄ Lendemaine de la cluſe de Paſche.] That is, in craſtino clauſi Paſchæ, or in craſtino octabis Paſchæ, which is all one: in English, the morrow of the utas of Eaſter. It is called utas of huit, which ſignifieth eight, viz. the eighth day after, including Eaſter day it ſelfe for one. Glanv. li. 1, c. 6.

Note, this Parliament was ſummoned to be holden at London in quindena of the Purification after his Coronation, and prorogued from thence untill the morrow after the utas of Eaſter to be holden at Weſtminſter. And the number of eight was much reſpected in the ancient Lawes, as amongſt the Lawes of King Edward the Confeſſor, Pax regis die qua coronatus eſt, quæ dies tenet octo, in die natali Domini dies octo, in Paſchate dies octo, in Penteceſte dies octo, &c. Now the eighth day, accounting the feaſt day for one, is clauſum feſti, that is, the cloſing up of the feaſt for many purpoſes.

℄ L'an de ſon raigne 3.] This proveth that he was crowned in Anno 2. for if he had been crowned in Anno 1. of his raigne, then this Parliament ſhould have been holden in the 2. yeare: and this is proved by other matter of Record. But the truth is, that the 19. day of December, in Anno 1. of his raigne, he was not returned into England. Vide vet. Mag. Char. 1 part, fo. 144. b.

Rex venerabili in Chriſto Patri, Roberto Cant' Archiepiſcopo, totius Angliæ Primati, ſalutem. Quia generale Parliamentum noſtrum, quod cum Prælatis & Magnatibus regni propoſuimus habere London' ad quindenam Purificationis beatæ Mariæ proxim' futur', quibuſdam certis de cauſis prorogavimus uſque in craſtinum clauſi Paſchæ proxim' ſequen'; vobis mandamus, rogantes quatenus eidem Parliamento ibidem in eodem craſtino clauſi Paſchæ interſitis ad tractandum & ordinandum una cum Prælatis & magnatibus regni noſtri de negotiis ejuſdem regni, & hoc nullatenus omittatis. Teſte Rege apud Woodſtock, 27. die Decembris. Dorſ. clauſ. An. 3. E. 1. m. 21.

Rex in primo generali Parliamento ſuo poſt coronationem ſuam in craſtino octabis Paſchæ, Anno regni ſui 3. de voluntate ſua, & Conſiliariorum ſuorum conſilio, & communitatis regni ſui ibidem convocat' conſenſu, ad honorem Dei, &c. ordinavit & ſtatuit quod &c. Rot. pat. An. 4. E. 1. m. 9. 14.

Rex Edw. tenuit primum generale parliamentum ſuum poſt coronationem ſuam in craſtino octabis Paſchæ, Anno 3. regni ſui. Rot. pat. An. 3o. E. 1.

℄ Per ſon counſell.] This proveth that this King and other Kings before him had a Privie Councell, which appeareth by the Writs of Parliament, that Parliaments are ever ſummoned to be holden de adviſamento conſilii noſtri. Of this ſee more in this firſt Chapter.

℄ Per aſſentments des Archeveſques, Eveſques, Abbes, Priors, Countes, & Barons, & tout la comminaltie de la terre illonq; ſummones.] Here is a compleat Parliament for the making or enacting of Lawes, the King, the Lords Spirituall and Temporall, and the Commons: For if an Act be made by the King, and the Lords Spirituall and Temporall, or by the King and the Commons, this bindeth not, for it is no Act of Parliament; for the Parliament concerning making or enacting of Lawes conſiſteth of the King, the Lords Spirituall and Temporall, and the Commons; and it is no Act of Parliament, unleſſe it be made by the King, the See the 4. part of the Inſtit. cap. of the high Court of Parliament.

11 H.7.27. the Lords and Commons. And where it is ſaid, by all the Commonalty, all the Commons of the Realme are repreſented in Parliament by the Knights, Citizens and Burgeſſes.

The purpoſe of this Parliament is to redreſſe the ſtate of the Church and of the Realme in thoſe things that néed amendment. The end is twofold, Pur le common profit de ſaint Egliſe, & de ſon Realme.

There were five things that néeded amendment.

1. For that the State of the Realme and of holy Church (which are ever like Hipocrates twins) had béen ill governed.

2. That the Prelates and other men of the Church many wayes had béen grieved, and the people otherwiſe entreated then they ought to have béen.

Maxim 3. The Peace had not béen well kept, which was againſt a maine Maxime of the Law, Inprimis intereſt reipublicæ, ut pax in regno conſervetur, & quæcunq; paci adverſentur, providè declinentur: Which Maxime hath béen repeated and affirmed by authority of Parliament.

3 E.6.cap.12. 1 Mar. cap.12.

4. That the Lawes had not béen put in execution againſt another principle of the Common Law, Nihil infra regnum ſubditos magis conſervat in tranquilitate & concordia, quàm debita legum adminiſtratio. Affirmed alſo in Parliament.

32 H.8 cap.9. Maxim

5. Offendors ſeldome puniſhed, Et impunitas continuum affectum tribuit delinquendi; for this Statute ſaith, By reaſon whereof the people of the land feare leſſe to offend.

The remedy hath two excellent qualities, which ought to be inſeparable to every Act of Parliament, viz. to be profitable, and convenient.

Here ſhall you ſée the effects of the Writs of Parliament, as they be at this day: Firſt, the Writ is, Nos de adviſamento Conciliii noſtri; and this Act ſaith, Le roy per ſon councel.

2. The Writ is, Pro quibuſdam arduis & urgentibus negotiis nos, ſtatum & defenſionem regni noſtri Angliæ concernentibus: and it is expreſſed in this Act, Que noſtre Seignior le Roy ad graund volunt, & deſire del eſtate de ſon Realme redreſſer, en les choſes ou meſtier eſt damendement, & ceo pur le common profit de ſaint Egliſe & de ſon Realme, & pur ceo que leſtate de ſon realme & de ſaint Egliſe ad eſtre malement gard, &c.

And here it is to be obſerved, that this noble and wiſe King E. 1. was contented in a free and generall Parliament to heare of the miſgoverment of the State of the Realme and of the Church, and never ſought to cover theſe irregular proceedings, either in his fathers time, or his owne; and thought it ſhould be greater honour for him to rip up theſe grievous ulcers both in the Church and Common-wealth, and to cure them by wholſome rules and lawes, then to cover them, leſt it ſhould be vainly feared they ſhould reflect upon his fathers, or his owne miſgovernment, where in truth all the fault ſhould reſt upon great Counſellors, and Officers, and Miniſters of Juſtice, and other the Kings Officers and Miniſters; and ſo it hath falne out in divers other Kings times. This Preamble to all the Statutes is worthy of due and deliberate conſideration.

Rot.Parl.50 E. 3 nu.10, 15, 16, 17, 18, &c. Rot.Parl. 5 H.4.nu.8. 7 H 4. nu.30, 41. 9 H.4.indemnities Seigniors, &c. 1 H.5. nu.8. &c.

Of this worthy King we have ſpoken in other places; This we will adde out of an approved Author, Nemo in conſiliis illo argutior, in eloquio torrentior, in periculis ſecurior, in proſperis cautior, in adverſis conſtantior.

Now this Parliament holden at Weſtminſter, is called Weſtminſter the firſt for excellencie.

CAP.

CAP. 1.

EN primes voit le Roy & commaunde, que la peace de ſaint Eſgliſe, & de la terre, ſoit bien garde & mainteign' en touts poines, & que common droiture ſoit fait a touts, auxybien as povers, come as riches, ſans regard de nulluy. Et pur ceo que les Abbies, & les meaſons de religion de la terre, ont eſte ſurcharges & greves malement, per le venue des graundes gents & dauters, que lour biens ne ſuffiſont a eux meſmes, per que les religious ſont ci abates & impovers, que ilz ne poient eux meſmes ſuſteign', ne la *charge de* charitie quils ſoilent faire. Purview eſt que nul ne veigne manger, herberger, ne giſer a meaſon de religion dauter avowſon, que de la laine, al coſtages de la meaſon, ſi ne ſoit prie & requiſe ſpecialment per le governour de la meaſon, avant que il veigne. Et que nul a ſes coſtages demeſne, ne entr', ne veign' giſer encounter la volunt ceux de la meaſon. Et per cel eſtatute nentend' pas le roy, que grace de hoſpitality ſoit ſuſtreit as beſoignes, ne que les avowes des meaſons lez puiſſent per lour ſovent venues ſurcharger ne deſtruer. Purview eſt enſement, que nul graund ne petit, per colour de parent', ou deſpecialtie, ou per auter affiance, ne per auter encheſon, ne courge en auter parke, ne peſſho en auter viver, ne veign' manger ne herberger en meaſon, ne en manour, ou en meaſon de Prelate, ne de home de Religion, ne dauter encounter la volunt le ſeignior, ou le bailife, de coſtages le ſeignior, ne a ſon coſt demeſne. Et ſil veigne, ou enter per le gree, ou ſans le gree le ſeignior ou le bailife nul ſarure, huis, ne feneſtre, ne nul maner de ferme ne faire overer, ne de pecher per ſoy, ne per auter, ne nul maner de vitail' ne auter choſe preigne per colour de achate, ne auterment. Et que nul face barter blee, ne prender blee, ne nul maner de vitaile, ne les auters biens, de nulluy Prelate, home de Religion, ne de auter, ne de clerke, ne de lay, per colour de achate, ne auterment enconter la [bone] volunt, & le conge de celuy, a que la choſe ſerra, ou de gardein, deins ville merchandiſe, ou dehors. Et que nul preigne chivals, boſes, charets, ne charets, neeſes, ne bateux, ne auter choſes affaire cariage, ſans le bone volunt

lunt de celuy, a que les choſes ſerront. Et ſi il per la bone volunt de celuy le face, lors maintenant face ſon gree ſolonque le covenant fait enter eux. Et ceux que viendront enconter les eſtabliſhments avantdits, & de ceo ſoient attaints, ſoient adjudges a la priſon le roy, & dillonques ſoient rentes, & punies ſolonque la quantity & le maner du treſpas, & ſolonque ceo que le roy en ſa court veier que bien ſoit. Et ſoit aſſaver, que ſi ceux a que le treſpaſſe fuit fait, voillent ſuer les damages, que ils avera reſceux, lour ſerra agarde & reſtore au double. Et ceux que le treſpas averont fait, ſoient enſement punies in le maner avantdit. Et ſi nul ne voile ſuer, eit le roy la ſuit, come de choſe fait enconter ſon defence, & encounter ſa peace. Et le Roy ferra enquire de an en an, ſicome il quidra que bien ſoit, queux gents eyent tiel treſpas fait. Et ceux queux ſerront endites per ceux enqueſts, ſerront attaches & diſtreign' per la grand diſtreſſe, de vener a certain jour, que conteigne le ſpace du moys en la court del roy, la ou luy plerra. Et ſi ceux ne veigne a cel jour, ils ſerront auterfoits de recheffe diſtreigne per meſme diſtr', de vener a un auter jour, que conteigne le ſpace de vi. ſemaignes. Et ſi ceux adonques ne veignent, ſoient adjudges come attaints, & rendent le double (per le ſuit del roy) a ceux queux le dammages averont reſceux, & ſoient grevement rentes, ſolonque le maner del treſpas. Et le roy defende & commande, que nul deſormes ne face male, damm', ne grevance a nul home de Religion, perſon de ſaint Eſglis, ne a auter, per encheſon de ceo que ils eyent deny lhoſtelle, où le manger a nulluy, ou per encheſon de ceo que aſcun ſoy pleint ou court, de ceo que il ſoit greve des aſcuns choſes avantdits, & ſi aſcun le face, & de ceo ſoit attaint, ſoit incurre le peine avantdit. Et eſt purview que ces points avantdits lient auxibien nous Counſellors, Juſtices del Foreſt, & auter nous Juſtices, come auters gents: Et que les points avantdits ſoient mainteignes, gardes, & tenus. Cy defende le Roy ſur ſa grieve forfeiture, que nul Prelate, Abbe, Prior, home de religion, ou bailife daſcun de eux, ou del auter, ne reſceive nul home enconter la forme avantdit. Et que nul envoyau meaſon, ne au manor de religion, ne de auter home, gents, chivalx, ne chiens a ſojourn', ne nul lez reſceive. Et que le ferra, pur ceo que eſt enconter

le

le defence & le commandement le Roy, il ſerra puniſh grevement. Uncore eſt purview, que les Vic' ne herbergent ove nulluy, oveſque plus que v. ou vi. chivalx, ne que ils ne grevevent la gentes de Religion, ne auter per lour ſovent vener, ou giſer a lour meaſons, ne a lour manors.

This Chapter doth ſpread it ſelfe into thirteen branches.

¶ En primes voet le Roy, et commaund, que le peace de Saint Egliſe, et de la terre ſoit bien gard, et mainteine en touts points, et que common droiture ſoit fait a touts, auxibien as poures, come as riches, ſans regard de nullluy, &c.] 1. *Branch.*

Imprimis Rex vult, & præcipit, quod pax ſacroſanctæ Eccleſiæ, & Regni ſolide cuſtodiatur, & conſervetur in omnibus, quodque juſticia ſingulis, tam pauperibus, quam divitibus adminiſtretur, nulla habita perſonarum ratione. Obſerve well this Law.

This is an auncient maxime of the Common Law repeated and affirmed amongſt the Lawes of king Edgar: Primum Eccleſia Dei jura & immunitates ſuas omnes habeto, publici juris beneficio quiſque fruitor, eique ex æquo & bono (ſive is dives, ſive inops fuerit) jus redditor. Inter leges Edgari Regis. *Maxim*

Fleta reciteth this fundamentall Law in fewe words, Quod pax Eccleſiæ, & terræ inviolabiliter obſervetur, ita quod communis juſticia ſingulis pariter exhibeatur. Fleta lib. 1. ca. 29.

And this Law hath ben explained and affirmed by divers other Acts of Parliament. 1 R. 2. cap. 2. 1 H. 4. cap. 1. 2 H. 4. cap. 1. 4 H. 4. cap. 8. 7 H. 4. cap. 1, &c.

Britton fol. 1. ſaith, Peace ne poet my bien eſtre ſans ley; Therefore this Law as a meane, that peace may be kept and maintained, provideth that common Droiture, (i. Juſtice ſelonque le Ley, & cuſtome d'angliterre) ſoit fait a touts, &c.

But this auncient Law had great nèd at this time to be rehearſed, and commanded to be put in execution, for that by reaſon of the often inſurrections, tumults, and inteſtine Warres in the raigne of king Hen. 3. the peace of the Church, and of the Land was for a long time miſerably diſturbed, and in a manner overthrown, for of theſe inteſtine Warres the Poet ſaid truly,

Nulla fides pietaſve viris, qui caſtra ſequuntur.

And of theſe ſeditious Subjects, another in the perſon of the poore Ploughman in the like caſe ſaid;

Impius hæc tam culta novalia miles habebit? Virgill.
Barbarus has ſegetes? en quo diſcordia cives
Perduxit miſeros!

Another miſchiefe was, that during theſe tumults and inteſtine Warres, Law and Juſtice lay aſleep, for Silent leges inter arma; But the rule is good, and doth ever hold, Dormiunt aliquando leges, moriuntur nunquam. *Regula*

By all which it appeareth, Quòd ex malis moribus bonæ leges oriuntur.

¶ Purview eſt que nul ne veigne manger, herberger, ne giſer al meaſon de Religion, &c.] The miſchiefe is at large ſet downe in this Act, wherein it is to be obſerved, that over and above their owne competent maintenance, the reſidue ought to be expended in works of charity. 2. *Branch.* Vide leſtatute de Carlile, Anno 35 E. 1. Lib. 8. fo. 130. the caſe of Thetford ſchole.

Hereof Fleta ſaith, Et ne religioſi per oneraciones indebitas ſupervenientium depauperentur, per quod eleemoſynas & ſervitia ſubtrahere cogantur, vel terras ſuas vendere, vel alienare, ex principis conſtitutione prohibitum eſt, quod nullus hoſpitari præſumat in domibus religioſorum de aliena advocatione, niſi ſpecialiter Fleta lib. 3. cap. 5. Britton fol. 37.

rogatus, nec sumptibus domus nec suis propriis contra tutorum domum voluntatem.

3. *Branch.* ¶ Et per ceſt Statute nentend' pas le Roy, que grace de hoſpitalitie ſoit ſuſtreit as beſpignes.] Here it appeareth that the grace of hoſpitality conſiſteth in diſtributing to them that have nede.

4. *Branch.* ¶ Ne que les avowes des meſons les puiſſent per lour ſovent venues ſurcharger ne deſtruer.] This is evident.

5. *Branch.* ¶ Purview eſt enſement que nul graund ne petit, per colour de parent', ou deſpecialtie, ou per auter affiance, ne per auter encheſon, ne courge en auter parke, ne peſhe en auter viver, &c.] Hereof Fleta ſaith, Nec etiam præſumat quis temere illicentiatus currere in parco alieno, nec in alterius vivario piſcari, veruntamen ſi contingat aliquis in hujuſmodi domibus per licentiam magiſtri domus vel ejus balivi, quod non aperiat feneſtras inhibitas, vel aliquas frangat ſeruras, & victualia vel alia bona violenter capiat, vel extrahat ſub colore emptionis, vel alio quoquo modo, &c.

Fleta ubi ſupra.

Vide hic. cap. 20. Here note that vivarium, vivary is here taken for waters where fiſhes are nouriſhed and kept.

6. *Branch.* ¶ Et que nul face barter blee ne prender blee, &c.] This branch againſt purveiors both extend as well to Lay, as Eccleſiaſtical perſons, and is well explained and confirmed by divers and many Statutes.

Mag. Chart. c. 21.
Artic. Cler. ca. 11
14 E. 3. cap. 3.
18 E. 3. ca. 3.
Regiſt. 92.

7. *Branch.* ¶ Et que nul preigne chivals, boefs, chares, ne charets niefs, ne bateux, ne auter choſe a faire carriage, &c.] And by the Statutes abovesaid and many other, this branch concerning cariage is alſo well explained and confirmed.

8. *Branch.* ¶ Et ceux queux viendront encontre les eſtabliſhments avandits, & de ceo ſoient attaints.] Here is contained the puniſhments of ſuch as doe offend againſt any of theſe eſtabliſhments, as well at the Kings ſuit, as at the ſuit of the party grieved.

Brit. fol. 37. And herewith agreeth Britton, for he ſaith, Et auxi des Viſcounts & des touts nous auters Miniſters, Juſtices, & Coroners, & auters que gents de Religion, & auters gents greveront per ſurcharges de lour venues pur herberger oveſque eux ſovent a auter coſtages, oveſq;. trope de frap de gents & per ſojourners de lour gents, & de lour chivaux, ou de cheines, ou autrement per emprompts de lour chivaux ou de cariage, ou de deniers, ou per begger merime, ou fees, ou auter choſe a eux ou a aſcun de lour meyne, ou de lour amys, & in ceo caſe ſoient puny per fyns.

9. *Branch.* ¶ Et le roy defend, & commaund que nul deſormes face male damage, &c.] This clauſe extends as well to Lay as Eccleſiaſticall perſons.

10. *Branch.* ¶ Et eſt purview que ceux points liont auxibien nous Counſellors, Juſtices de foreſts, et auters Juſtices, et auters gents.] Of theſe two branches Fleta ſaith thus, Item nec graventur viri religioſi, perſonæ Eccleſiaſticæ, vel alii, pro eo quod vetuerunt hoſpitium, vel victualia alicui, vel pro eo, quod queſti fuerunt de aliquo gravamine eis illato in prædictis articulis contento, quod ſi quis fecerit, & inde convincatur, puniatur per pœnam

Fleta ubi ſupra.

nam supradictam, nec excipiantur in præmissis consiliarii Regis nec Justic' de foresta, vel alii quicunque Justiciarii vel ministri Regis, non magis quam mediocres, vel minores. Consiliarii Regis

¶ Et que les points avandits soient mainteynes, &c.] This branch extends as well to Lay, as Ecclesiasticall persons. 11. *Branch.*

¶ Et que nul envoie a meason, &c.] This is also as generall as the former. 12. *Branch.*

Note it is an article, Inter capitula Itineris de hiis qui miserunt ad domus vel maneria religiosorum homines, equos, vel canes perhendinando ad custum eorum.

¶ Uncore est purview que Viscounts ne herbergent ove nulluy, &c.] Of this Fleta saith, De Vic' provisum est quod non hospitentur alienbi nisi propriis sumptibus, verumtamen concessum est, quod in domibus religiosorum vicissim per unam noctem tantum cum sex equis, & non pluribus sumptibus alienis in suis balivis hospitentur, dum tamen frequenter non venerint. See Cap' Itineris de Vicecomitibus venientibus ad hospitandum cum pluribus quam 5. vel. 6. equis in balivis suis, vel qui per frequentes adventus ultra quoscunque oneraverint. 13. *Branch.* Fleta ubi supra.

Here is to be observed that often in Fleta, and other old Authors and Statutes this word perhendinare is used, which signifieth to sojourne, and perhendinationes signifieth sojourning.

And that we may note once againe for all, whensoever an Act of Parliament doth generally prohibit any thing, as in this Chapter it doth, the party grieved shall not have his Action onely for his private relieve, but the offender shall be punished at the Kings suit for the contempt of his Law; and therefore upon this Statute it shall be inquired at the Kings suit, De hiis qui miserunt ad domos vel maneria religiosorum vel aliorum homines, equos, vel canes perhendinando ad custum eorum, & de Vicecomitibus venientibus ad hospitandum cum pluribus quam quinque vel sex equis in balivis suis, vel qui per frequentes adventus ultra quoscunque oneraverint. 36 E. 3. Cap. Cap. Itin. Ver. Magna Cart. 154

CAP. II.

PUrview est ensement, que quant Clerke est prise pur rette de felony, &. il soit demande per Lordinary, il luy soit liver, solonque le priviledge de saint Esglise, en tiel peril come ils appent, solonque le custome avant ses heures use. Et le Roy amonist les Prelates, & eux enjoine en la foy que ils luy doient, & pur la common profit de la peace de la terre, que ceux que sont endites de tiel rette per solempne questes des probes homes fait en la Court del Roy, en nul manner ne les deliverent sans due purgation, isint que le Roy neit mestier de mitter auter remedy. Marlb. cap. 4.

The mischieses before this Statute were three: 1. That the ordinary would often challenge one for a Clark that was none. 2. That when any that were or had

had ability to be of the Clergy, were endicted of felony, the Ordinary would presently demaund them, and the Court would deliver them without inquisition. But alwayes after this Statute, the Court took an inquisition of office, Ut sciatur qualis ordinario deliberari debeat. 3. That the Ordinaries would often deliver them without due purgation, whereby the King lost his forfeiture, and offences remained unpunished.

20 E.2.Coro.233 26 Ass.19.7 H.4. 36. 9 E.4 28.

¶ En tiel peril come il appent.] The peril was, that if the Ordinary should demand any man for a Clark that none, his temporalties should be for that contempt seised, and some have holden that he should lose that franchise or privilege to demaund Clarks for him and his Successors for ever; but see the Statute of 25 E.3. Cap.6. for since that Statute it hath been holden but finable.

25 E.3.cap.6.

Le statute de Bigamis cap.6. & Artic.Cler.ca.15

¶ Que ceux queux sont endites de tiel rette per solemne enqueſt des probes homes en la Court le Roy in nul manner ne deliverent sans due purgation.] Before this Statute if any Clark had been arrested for the death of a man, or any other felony, and the Ordinary did demaund him before the secular Judge, he was delivered without any inquisition to be made of the crime; and this appeareth by Bracton, who writing before this Statute saith, Cum verò Clericus, &c. captus fuer' pro morte hominis, vel alio crimine, & imprisonatus, & de eo petatur curia Christianitatis ab ordinario loci, &c. imprisonatus ille statim ei deliberetur sine aliqua inquisitione facienda.

Bract.l.3. fo.123. Artic.Cler.ca.15

But after this Statute, to the end that the Ordinary might have more care of purgation to be duly done according to the provision of this Act, when any Clark was indicted of any felony, and refused to answer to the felony, but claimed privilegium Clericale, and was demaunded by his Ordinary, yet before he was delivered to the Ordinary, all the Records say, Sed ut sciatur qualis ei (s. ordinario) liberari debeat, inquiratur inde rei veritas per patriam: And thereupon an inquisition was taken whether he were guilty of the fact or no, and if he were found guilty, his goods and chattels were forfeit, and his lands seised into the hands of the King.

Brit.ca.4.fo.11.

Britton that wrote after this Statute, saith, Si le Clerk encoupe de felony, (i. indite ou appeale de felony) alledge Clergie, & est tiel trove (s. q̃ est un Clerke) & p Lordinary demaund, donques serra inquise coment il est mescrue (i. culpable) & sil soit nient mescrue, &c. donques il serra aroge touts quits, & sil soit mescrue si soient ses chateux taxes, & ses terres prises in nostre maine, & son corps deliver al Ordinarie: So as by the one Author, who wrote a little before this Statute, and the other who wrote presently after (together with the constituall practise thereof) the diversity doth appeare.

8 E.2.Coro.417. 17 E.2.ibid.386. 3 H.7.12.

Monachus indictatus de felonia, petiit privilegium Clericale, Abbas præsens petiit eum tanquam suum professum, & ad hoc fuit admissus loco ordinarii, inquisitio capta ex officio dixit quod non culpabilis, ideo quietus recessit, & si culpabilis inventus fuisset, ad huc dicto Abbati liberaretur, &c.

But of the allowance of the benefit of Clergy upon the arraignment, it was very prejudiciall to the Prisoner, for that he lost his challenges to the inquest, that found him guilty, and yet upon the inquest of office formerly used, Ut sciatur qualis ordinario liberari debet, he forfeited all his goods, and chattels, and the profits of his lands untill he had made his purgation; And therefore that thrice reverend and learned Judge Sir John Prisot Chiefe Justice of the Court of Common Pleas studying how to relieve the poore prisoners that were destitute of counsell, with the advice of the rest of the Judges in the raigne of H.6. for the safety of the innocent, would not allow the Prisoner the benefit of Clergy before he had pleaded to the felony, and having had the benefit of his challenges and other advantages, had been convicted thereof: which just and

3 H.7.fo.1,12.

charitable

charitable courſe hath been generally obſerved ever ſince.

¶ Sans due purgation.] Before this Statute, purgations were unduly made, more for favour, then for furtherance of Juſtice, whereby malefactors were encouraged to offend: Wherefore the King admoniſhed and enjoyned by this Act of Parliament the Prelates upon the faith which they ought unto him, &c. to deliver no Clerks, that were endited, without due purgation, as they tendred the common peace of the Land. But this royall admonition and inſtruction (and many other in ſucceeding Ages, as it by Parliament Rolls appeareth) took little effect, but the abuſes in making Purgations in the end became ſo intolerable, as Queene Elizabeth, by aſſent of the Lords Spirituall and Temporall, and the Commons in Parliament aſſembled, as matter unreformable, toke it quite away; but yet, what the Law was therein before that Statute, is good to be knowne, and therefore ſomewhat ſhall be ſaid thereof in the Treatiſe of the pleas of the Crowne, being the proper place for the ſame. 18 Eliz. cap. 8.

CAP. III.

Purview eſt uniement, que nul rien deſormes ſoit demande, ne priſe, ne levie per Viſcount, ne per auter, pur eſcape de laron, ou felon, jeſque a tant que leſcape ſoit adjudge per Juſtices errants. Et que autrement ne le ſerra, ey rendra a celuy, ou a ceux que riel averont pay, quant que il avera priſe et reſceive, et au roy au tant. Regiſt. 184. cap. Itineris. Vet. Mag. Char. 154.

The miſchiefe before this Statute was, that Sheriffes in their Tourne, and Lords in their Leets, who had juriſdiction to enquire of eſcapes of theeves and felons, upon preſentment before them of ſuch eſcapes, would levie fines or amerciaments for ſuch eſcapes, for that they pretended that the ſaid preſentment was not traverſable: Now for ſmuch as it required judgement in Law to diſcerne betweene a voluntary eſcape and a negligent in caſe of felony, and alſo what ſhould be judged an eſcape, and what not, they might enquire onely, and the Judgement thereupon belonged to the Juſtices in Eire. 18 E. 2. Stat. de viſu Franc'.

This Statute doth declare, that nothing ſhould be demanded, taken, or levied by any Sheriffe, or other, untill the eſcape be adjudged by the Juſtices in Eire, and addeth a penalty if any ſuch thing be done.

For proofe whereof, we find before the making of this Statute, Quod evaſiones latronum ſecundum legem & conſuetudinem regni coram Juſticiariis regis itinerantibus, & non alibi, debeant & conſueverunt judicari, & attachiamenta inde proveniencia per ſummonitionem Scaccarii ſunt levand'. Vide alſo in the ſame yeare, that before this Act of 3 E. 1. was made another Record, Quia evaſiones latronum coram Juſticiariis regis itinerantibus, & non alibi judicari debent, mandatum eſt vicecomiti quod reſtituat S. I. W. C. quas ab eo cepit pro evaſione cujuſdam hominis, &c. Now that the Common Law, the miſchiefe before the Statute, and the purview of the Statute be more fully underſtood, let us peruſe the words of the Act. Rot. clauſ. 2 E. 1. m. 11. Mirr. c. 5. §. 3. Rot. clauſ. 3 E. 1. m. 15.

¶ Per Viſcount, ne per auter, &c. jeſque a tant que leſcape ſerra adjudge per Juſtices Errants.] By theſe words the Court

Lib. 2. fol. 46. Marleb. c. 19, 28. Hic cap. 15.

Court of the Kings Bench which is holden coram rege, is not excluded, but presentment of such escapes may be made there: First, for that this prohibition beginneth with Sheriffes, and therefore the generall words [or by any other] shall be intended of Leets, being inferiour Courts, and not of the Justices of the Kings Bench, being the highest of any ordinary Court of Justice in England. Secondly, for that the Court of the Kings Bench is an Eire, (the returnes there being Ubicunq; fuerimus in Anglia) and more then an Eire; for if the Kings Bench had come into a County where the Eire had sit, the Eire had ceased, for in præsentia majoris cessat potestas minoris.

21 E. 3. 54. b. 21 ass. 12. 27 ass. p. 2. *Regula.*

31 E. 3. cap. 14. Stat. 1. 1 R. 3. cap. 3.

But by the Statute of 31 E. 3. it is enacted, that escapes of théeves and felons, &c. from henceforth to be judged before any of the Kings Justices shall be levied from time to time as they shall fall, as well in the time past, as in the time to come.

CAP. IV.

Custumier de Norm. cap. 17.

DE wreck de mere est accorde, que la ou home, chien, ou chat escape vive hors de la niefe, la niefe ou barell', ou nul rien, que la eins fuit, ne soit [adjudge] wreck, mes soient les choses saves & gardes pur le vieu del vicont, coroner, ou al', ou del bailiffe le roy, & bailes en les mains ceux de la ville, ou les choses sont troves, issint que si nul sue les biens, & puit prover que ils soient, ou a son seigniour, ou en sa garde peris, deins lan & le jour, sans delay luy soient rendus: si non, remaigne au roy. Et soient prises per le Vic' & Coroners, & bailes a la ville pur respoign' devant Justices de wrecke que appent a Roy. Et la ou wrecke appent a auter que au Roy, ci le eit per mesme le manier. Et que auterment fra, & de ceo soit attaint, soit a-garde al prison, & rent al volunt le roy, & rendra les dammages ensement. Et si le bailife le face, & soit disavow de son seigniour, & le seigniour ne ottrie de ceo a luy, respoign' le bailife, sil eit de quoy, & sil neit de quoy, rendra le seigniour le corps du bailife au roy.

Doct. & Stud. cap. 51. fo. 156.

Many have doubted what the Common Law was before the making of this Statute; and some have holden, that the Common Law was, that the goods wrecked upon the sea were forfeited to the King, and that they be forfeited also since the Statute, unlesse they be saved by following this Statute. To this I answer with Macrobius, Multa ignoramus, quæ nobis non laterent, si veterum lectio nobis esset familiaris: For Bracton, who wrote before this Statute, proveth, that this Act is but a declaration of the Common Law,

Bract. li. 3. fo. 120 Brit. fo. 7. 26. 85. Flet. li. 1. cap. 41.

Magis proprie dici poterit Wreccum, si Navis frangatur & de qua nullus vivus evaserit, & maxime si dominus rerum submersus fuerit, & quicquid inde ad terram venerit, erit domini regis, &c. & quod hujusmodi dici debeant Wreccum, verum est, nisi ita sit, quod verus dominus aliunde veniens per certa indicia & signa

ſigna docuerit res eſſe ſuas, ut ſi canis vivus inveniatur, &c. Et eodem modo ſi certa ſigna appoſita fuer' mercibus & aliis rebus.

The Mirrour ſaith, A lour view (s. les coroners) de wrecks a les appent denquirer ou les wrecks vient a terre, quelles choſes, combien & la value diſtinctment per parcells. Et ſi home, beſte, oiſell, ou auter choſe vivant vint avecq; ou non, & iſſint per dividend ſoit livre a la prochein ville, un ou pluſors pur ent reſponder al verey Seigneur (i. proprietarie) ſi la vient challenger, & defreſuer de deins lan. Mirr. c. 1. §. 13. & c. 3. §. de wrecks.

And albeit this Author wrote after this Statute, yet he wrote of the ancient Lawes before the ſame, and is more large then the words of the Act: for therein is named onely of a man, a dog, and a cat, that eſcapeth alive; and this Author ſpeaketh generally of any beaſt, hawke, or other living thing, ſo as he purſueth not this Act, but treateth of the Common Law.

Rex pro ſalute animæ ſuæ, & ad malas conſuetudines abolendas, conceſſit, quod bona in mari periclitata non perdantur nomine Wrecci, quando aliquis homo, aut beſtia vivus de navi evaſerit. And now having cleared this point, let us peruſe the words of our Act. Rot. cart. an. 20. H. 3. Rot. clauſ. 14 H. 3. m. 6. Vide li. 5. fo. 107. Sir Hen. Conſtables Caſe.

¶ De wrecke de mere.] Wrecke or Shipwrecke is an Engliſh word, in French, Naufrage, in ancient French, Varech, in Latine, Naufragium, legally Wreccum maris, Wrecke of the ſea in legall underſtanding is applyed to ſuch goods as after Shipwreck at ſea are by the ſea caſt upon the land, and therefore the juriſdiction thereof pertaineth not to the Lord Admirall, but to the Common Law. Cuſtumier de Norm. c. 17. 5 E. 3. 3. 11 H. 4. 16. F. N. B. 112. c. Sir Hen. Conſt. Caſe, ubi ſup.

Although this Statute ſpeaketh onely of Wrecke, yet this Statute extendeth to Flotſam, Jetſam, and Lagan: for which ſee Sir Henry Conſtables caſe, lib. 5. ubi ſupra.

The cauſe wherefore originally Wrecke was given to the Crowne, ſtood upon two maine Maximes of the Common Law; Firſt, that the property of all goods whatſoever muſt be in ſome perſon. Secondly, that ſuch goods, as no ſubject can claime any property in, doe belong to the King by his prerogative, as treaſure trove, ſtrayes, wrecke of the ſea, and others; becauſe of ancient time, when the art of Navigation was not ſo perfect, nor trade of merchandize growne to ſuch perfection, as now it is, it was a matter of great difficulty to be proved, in whom the property of goods wrecked at ſea was. Bracton ſaith, Item tempore dicuntur res in nullius bonis eſſe, ut theſaurus. Item ubi non apparet dominus rei, ſicut eſt de wrecco maris. Item de hiis quæ pro waivio habentur, ſicut de averiis ubi non apparet dominus, quæ olim fuerunt inventoris de jure naturali, jam efficiuntur principis de jure gentium. Others have yelded another reaſon, that the King by old cuſtome of the Realme, as Lord of the Narrow Sea, is bound to ſcoure the Sea of the Pirats and petie robbers of the ſea: and ſo it is read of that noble King Edgar, that he would twice in the yeare ſcoure the ſea of ſuch Pirats, &c. and becauſe that could not be done without great charge, the Law gave unto him ſuch goods as be wrecked upon the ſea towards the charge. Bract. li. 1. fo. 8. 9 H. 6. 45.

If a Ship be ready to periſh, and all the men therein for ſafeguard of their lives leave the Ship, and after the forſaken Ship periſheth, if any of the men be ſaved and come to land, the goods are not loſt. Rot. pat. 28 E. 1. m. 23. in dorſ. the Merchants of Portugals caſe. 46 E. 3. 15. Rot. clauſ. 5 R. 2. pro Willielmo Fiſhlake. *Nota wreck of the Sea*

A Ship on the ſea is purſued with enemies, the men for ſafegard of their lives forſake the Ship, the enemies take the Ship, and ſpoile her of her goods and tackle, and turne her into ſea, by the weather ſhe is caſt on land, where her men arrived, and it was reſolved by all the Judges of England that the Ship was no wrecke, nor loſt.

¶ Home, cheine, ou car.] This Statute, as hath been ſaid, being but declaratory of the Common Law, theſe three inſtances are put but for examples, for beſides theſe two kind of beaſts, all other beaſts, ſowles, birds, hawkes,

Bract. ubi supra, fo. 120. 27 E. 3. c. 13. by his marks cart or cocket. 31 H. 6. c. 4. 2 R. 3 fo. 2. 2.

hawkes, and other living things are unnerstood, whereby the ownership or property of the goods may be knowne: and Bracton yet goeth farther, Si certa signa apposita fuerint mercibus, & aliis rebus, &c.

Pl. Com. 466.

¶ Mes soient les choses saves & gardes per le vieu del Visc', Coroner, &c.] Yet if the goods be bona peritura, the Sheriffe may sell such goods within the yeare, lest they should perish, and nothing be made of them; and therefore for necessity (which is excepted out of Law) the sale in that case is good within the yeare.

Doct. & Stud. fo. 118.

¶ Et poient prover, &c. deins l'an & le jour.] Yet if the owner die within the yeare, his executors or administrators may make proofe, for that this Act is but a declaration of the Common Law.

35 H. 6. 27, per Notingham.

This yeare and day shall be accounted from the seisure made as wrecke, for that is the thing whereof the owner may take the best notice.

Sir Hen. Const. Case, ubi supra.

But if the Kings goods be wrecked, and cast upon ground, where a subject hath wreck of the sea, who seiseth the same, the King may make his proofes at any time when he will, and is not confined to a yeare and a day, as the subject is.

35 H. 6. 27.

Regist. fo. F. N. B. 112.

Now if the goods or merchandises so cast upon the land be not seised, as is aforesaid, but taken away by certaine wrong doers not knowne, the partie may have a Commission of Oier and Terminer to enquire of them, that did the trespasse, and to heare and determine the same, and to make restitution to the partie.

Vide Rast. Pl. cor. fol. 611. 15 R. 2. cap. 3.

¶ Devant les Justices del wrecke que appent al Roy.] That is, it shall not be tryed in the Admirall Court, but before the Kings Justices at the Common Law, because the wrecke is ever cast upon the land.

Bract. li. 3. fo. 120 Britt. 7. 26. 85.

¶ Et la ou wrecke appent al auter que au Roy, &c.] Wrecke may belong to the Subject, either by graunt from the King, or by prescription.

Of ancient time, wrecke of the sea, and other casualties, as treasure trove in the land, straves, and the like, were primi inventoris quasi totius populi, sed postea ad regem translata fuerunt, quia non modo totius populi, sed reipublicæ etiam caput est: But if treasure be found in the sea, the finder shall have it at this day.

2 R. 3. fol. 11. Vide hic ca. 9, 20, 24, 25, 26, 29.

¶ Et rent al volunt le roy.] That is, be fined at the Kings will, which is to be unnerstood, that the Kings Justices, before whom the party is attainted, shall set the fine, Et non dominus rex per se in camera sua, nec aliter coram se, nisi per Justiciairos suos: Et hæc est voluntas regis, viz. per Justiciarios, & legem suam, unum est dicere.

CAP. V.

Art. super cart. cap. 8. & 13. 33 H. 8. cap. 27. Dier, 8 El. 247. 14 H. 8. 2. 29. 31 Eliz. cap. 6.

ET pur ceo que elections doient estre frankes, cy defend le roy sur la greeve forfeiture, que nul haute home, ne auter, per poyar des armes, ne per malice ou manaces, ne disturbe de faire franke election.

7 H. 4. cap. 14.

See the Statute of 7 H. 4. that Knights of Shires for the Parliament shall

ſhall be choſen libere & indifferenter ſine prece aliꝰ præcepto.

There were two miſchiefs before the making of this Statute. 1. For that elections were not duly made. 2. That elections were not freely made; both theſe were againſt the ancient maxime of the Law, Fiant electiones rite & libere ſine interruptione aliqua: And again, Electio libera eſt; for before this Act in the irregular raign of H. 3. the Electors had neither their free, nor their due elections, for ſometimes by force, ſometimes by menaces, and ſometimes by malice the Electors were framed, and wrought to make election of men unworthy, or not elegible, ſo as their election was neither due, nor free: This Act briefly rehearſeth the old rule of the Common Law, (for that elections ought to be free) wherein both the ſaid points are included; 1. It muſt be a due election, and 2. It muſt be a free election. *Regula.* 7 H.6.12.

This Statute doth enact, that no man upon grievous forfeiture ſhall diſturb any to make free election, and is excellently penned in two reſpects; Firſt, for that generally it extendeth to all elections, that is to ſay, to every dignity, office, or place elective, be it Eccleſiaſticall or Temporall, of what kinde or quality ſoever. Secondly, the Act is penned in the name of the King, viz. The King commandeth: and therefore the King bindeth himſelf not to diſturb any Electors to make free election, as in the like caſe upon a Statute made in the raigne of the ſaid King; the Act ſaying, Rex perpendens, &c. the ſame bound the King. Now that Electors might make free and due elections without diſpleaſure or fear thereof, by this Act of Parliament, as a ſure defence, the King commandeth the ſame upon grievous forfeiture: And this Act extends to all elections, as well by thoſe that at the making of this Act had power to make them, as by thoſe whoſe power was raiſed, or created ſince this Act. W.2. 13 E.1. c.1. Pl. Com. The Lord Berklies Caſe. 14 H.4.20,22. Stamf. Pl. Cor. 168.c.d. 12 E.2. Coro. 381. 22 E.3 ibid. 275. Dier 12 El. 289. ſemble

℄ Greve forfeiture.] That is, the diſturbers to be puniſhed by grievous fines and impriſonment.

What offices and places be eligible, See Artic. ſuper Chart. Cap. 8. and this Act extendeth to all elections in Counties, Univerſities, Cities, Corporations, and other places. Art. ſuper Chart. ca. 8. & vide hic. ca. 10.

And thus much ſhall ſuffice for the underſtanding of this excellent and neceſſary Act. See hereafter Cap. 10.

CAP. VI.

ET que nul City, Borough, ne Ville, ne nul home ſoit amerce ſans reaſonable encheſon, & ſolonque le quantity del treſpaſſe, s. franke home ſavant ſon contenement, Merchant ſavant ſon Merchandiſe, et villein ſavant ſon gainage, et ceo per lour peeres. Cap. Itin. Vet. Mag. Chart. fol. 164.b.

One miſchiefe before this Statute was, that ſeeing the words of the Statute of Magna Charta were Liber homo non amercietur, &c. it extended not onely to naturall and ſingular men, but to ſole bodies politique or corporate; and not to Corporations, or Companies aggregate of many, as Cities, Boroughs, and Townes. Another miſchiefe was, that many times not onely Cities, Boroughs, and Townes, but private men alſo were amerced without cauſe. Laſtly, that the ſaid Statute of Magna Charta extends but to him that was Liber homo. Mag. Chart. ca. 14. 13 E.1. Attachment 8. F.N.B. 170.

For all theſe three this Statute provideth, viz. that no City, Borough or Town,

Town, nor any man shall be amerced without reasonable cause, and according to the quantity of his trespasse, and upon this Statute the party grieved may have an attachment without any prohibition precedent; for this Act is a prohibition of it selfe.

Mirror ca. 5. § 4. And yet the Mirror doth take it, that all this was contained in the grand Charter.

¶ Quantity de trespasse.] Here Trespasse, transgressio signifieth offence, fault or default, and so it is taken in many auncient Records, as taking one example for many: the Statute, that is called Ragman, ordaineth that Iustices shall goe through the Land, to enquire, heare, and determine the plaints and querels of trespasses, as well of the Baylifes and Ministers of the King, as of the Baylifes of others, and of other people whatsoever they be, except appeales of felony, &c. which was understood as well of outragious takings, as of all manner of trespasse, contempt, neglect, default, or offence to the King or any other, &c.

Stat. Voc. Ragman Anno 4 E. 1.

And in that sense the Apostle saith, Ubi non est lex, ibi non est transgressio.

Fleta lib. 2. cap. 1. Fleta describing it saith, Transgressio autem est, cum modus non servatur nec mensura, debet etenim quilibet in facto suo modum habere & mensuram.

CAP. VII.

Cap. Itineris vet. Mag. Chart. fol. 154. b. DEs prises des Constables, ou Casteleins, faits des auters que des gents de la Ville, ou la Castles sont assise. Purview est, que nul Constable ne Castelein deformes nul manner de prise ne face dauter home que de la Ville ou son Castle est assise, & ceo soit paie, ou gree fait deins xl. jours, si ceo ne soit auncient prise due au Roy, ou a Castle, ou al Seignior del Castle.

Fleta lib. 2. ca. 43. Of this Chapter Fleta saith thus, Nullæ prisæ capiantur de aliquo per aliquem Constabularium Castellanum, præterquam de Villa, in qua situm sit castrum, & illis satisfact' sit infra 40 dies, nisi sint prisæ antiquæ debit' Regi aut Domino castri aut castro debend'.

Mag. Chart. c. 29. Upon the Statute of Magna Charta, and this Act, there were two Articles amongst others, that the Justices in Eyre enquired of, viz. De prisis factis per Vicecomites, vel Constabularios, vel alios balivos contra voluntatem eorum quorum catalla fuerint: Item de prisis Domini Regis sive in terra, sive in mari, sive in aqua dulci, sive in libertatibus spectantibus ad castra sua, sive ad Civitates suas, sive ad Burgos suos, vel in aliis locis, quæ sunt, & quantum valeant, vel quis eas occupaverit, celaverit, vel suffocaverit, & quis eas ceperit, Constabularius, vel alius, & quid valent.

Bract. li. 3. fo. 117 Bracton treating of the Articles of the Justices in Eyre saith thus, De prisis Domini Regis in terra, sive in aqua dulci, sive salsa, & libertatibus spectantibus ad Castella sua, sive ad Comitatum, sive ad Burgos suos, quæ sunt, & quantum valeant per finem.

Brit. fol 27. And Britton writing of the same matter saith, Et auxi des prises faits per nous Castellains, & autres que sont perners de vittaile, ou de autre choie, per queux tiels prises ount estre faits, & a queux damages, & de quels gents, & en

tiel

tiel case, voillons nous que nul ne soit garrant per continuance de seisin in damage.

And Fleta hath it thus, De prisis factis per Vicecom, Constabularios, vel alios contra voluntat' eorum quorum catalla illa fuerint: Item de prisis Constabulariorum castrorum factis de bonis aliorum, quam eorum, qui sunt de Villis ubi castra sita sunt, & de bonis eorum, &c. si non satisfact' fuer' infra 40 dies, &c. Fleta ubi supra.

It is to be observed, that in the raigne of this King, and in most of the succeeding Kings, there have ben many other Statutes made concerning Purveyors, yet never did any Reporter publish any case, that I have seene, and remember, that may serve for the exposition of any of them, and many proceedings have bene judicially upon many of them against Purveyors, which doe appeare of Record. Vide Magna Charta Cap. 19. and the exposition thereof, and the third part of the Institutes, Cap. Purveyors.

CAP. VIII.

ET que nul fine soit prise pur Beaupleder, sicome auterfoits fuit defendu en temps le Roy Henry, pier le Roy que ore est.

That is to say, by the Statute of Marlebridge, Anno 52 H. 3. where this matter is explained. Marleb. cap. 11.

CAP. IX.

ET pur ceo que la Peace de la terre ad estre feeblement garde avant ces heures, pur defalt de bone suit fait sur les felons solonque due manner, et nosment per encheson des franchises ou les felons sont resceves: Purview est, que touts communement soient prestes, et aparailes, au commandement et a les summons des Visconts, et au crie de pays, de suer et arrester les felons, quant mestier serra, auxibien deins franchises come dehors. Et ceux que ceo ne ferront, et de ceo soient attaintes, le Roy prendra a eux grevement. Et si le default soit trove en le seignior de la franchise, le Roy se prendra a mesme le franchise. Et si le default soit trove en le Bailife, eit lenprisonment dun an, et puis soit grevement rente, et sil neit de quoy, eit lenprisonment de ii. ans. Et si Viscount, Coroner, ou auter Bailife deins franchise, ou dehors, per lower, ou per prier,

ou per poies, ou per nul manner daffinity, concelent, conſentent, ou procurent de conceler les felonies faits en lour Bailies, ou auterment, ſe teignont attacher, ou arreſter les misfeſants per la ou ils purra, ou auterment ſe feignont de faire lour office, en nul maner de favour des misfeſants, et de ceo ſoient attaintes, que ils eient lenpriſonment dun an, et puis ſoient greevement rentes a le volunt le Roy, ſils eient de quoy, ſinon, eient lenpriſonment de iii. ans.

℄ Pur default de bone ſute fait ſur les felons in due manner.] **Some have thought that Hue and Cry have bén grounded upon this Statute, but this Act proveth that Hue and Cry for the apprehenſion of Felons was before this Statute, for it findeth fault that good ſuit, that is, freſh ſuit, was not duly made; And it appeareth that Hue and Cry in thoſe caſes hath bén by the auncient Laws of this Realme.**

Mirror ca. 1. § 3. **The Author of the** Mirror **writing of the auncient Laws before the Conqueſt under the title** Des articles des viels Royes ordeines, **ſaith,** Ordeine fuit que cheſcun del age de xiiii. ans, & ouſtre de mortels pecheors enſuivre de Ville, & Ville a Hue & Cry.

Inter leges Regis Canuti. Si quis latroni obviam dederit, eumque nullo edito clamore abire permiſerit, quanticunque fuerit latronis vita æſtimata, extremum ſolvat denariolum, aut pleno & perfecto jurejurando de facinore nihil habuiſſe cogniti confirmato. Sin quis proclamantem audierit, neque vero fuerit inſecutus, ſuæ in Regem contumaciæ (ni omnem criminis ſuſpicionem diluerit) pœnas dato.

Glanv. li. 14. c. 3. Glanvill **calleth Hue and Cry** Clamor popularis juxta Aſſiſam (i. Statutum) ſuper hoc proditam. **But this Statute is not now extant.**

Bract. l. 3. fo. 121. Bracton **of Hue and Cry ſaith,** Statim & recenter inveſtiganda ſunt veſtigia malefactorum, & ſequenda per ductum carectæ, paſſus equorum, & veſtigia hominum, & alio modo, ſecundum quod conſultius & melius fieri poſſit.

Mag. Chart. c. 35. **And it is one of the Articles of that auncient Court of the view of frankpledge (of whoſe antiquity we have ſpoken before) to enquire of Hue and Cries levied and not purſued.**

All theſe Authorities were before the making of our Act, and therefore it was truly ſaid, whoſoever ſaid it, Pervetuſta Anglorum lege ſancitum eſt, ut ſi quis damnum ex furto paſſus, aut qui ipſum ſpoliatum viderit, ſontem per acclamationem inſequatur, Conſtabularius ejus Villæ cujus opem implorat, auxilia ciere furemque perquirere debeat; quod ſi furem illic non deprehenderit, in proximam commigrare, & Conſtabularium ad ferendas ſuppetias iterum invocare, &c.

Brit. fol. 19, 20. Fleta lib. 1. ca. 24. Anno 4 E. 1. 4 E. 1. De offic. Coro. Vid. 13 E. 1 Stat. de Winch. 28 E. 3. ca. 11. 27 Eliz. cap. 13. **Of this Hue and Cry our auncient Authors ſince our Statute have alſo written, and divers Acts of Parliament have ſince bén made concerning Hue and Cry, as the Statute** De officio Coronatoris, **made the next yeare after our Act, where it is ſaid,** Et omnes ſequantur hutesium, & veſtigium, ſi fieri poteſt; & qui non fecerit, & ſuper hoc convictus fuerit, attachietur, quod ſit coram Juſticiariis de gaola, &c. 28 E. 3. & 27 Eliz.

℄ Au commandement et a les ſummons des Viſcounts, &c.] **Men ought to be in theſe caſes at the commandement of the Sheriffe, for he hath** Cuſtodiam Comitatus **committed to him; and he that goeth not at the commandement of the Sheriffe or Conſtable at the Cry of the Country, that is, upon Hue and Cry, ſhall be grievouſly fined and impriſoned.**

Cap. Itin. Ver. Mag. Chart. 1 55. W. 2. cap. 29. 5 H. 7. 5. a. 2 H. 7. 15. b.

℄ Ou

¶ Ou a crie de pais.] Note, in legall understanding Hue and Crie is all one; in ancient Records they are called Hutesium & Clamor, and here Crie is used for both. And this Hue and Crie may be by horne and by voice, avec hue & crie de corne & de bouche. How the Hue and Crie shall be made, and all incidents thereunto, you shall reade in the abovesaid Statutes, and in our Reports you shall find how the same have been expounded. Mirr. cap. 2. Britt. ubi sup. Lib. 7. fo. 6, 7. Dier 23 El. 370.

¶ De suer & arrester les felons.] By these words it is holden, that there must be a felonie done, or else the arresting of the party, though it be upon Hue and Crie, is unlawfull, because it wanteth a foundation; but if a felonie be done, and the Hue and Crie is against one, that is neither indicted, nor of ill fame, nor suspicious, nor unknowne, yet the arrest of him is lawfull, though he be not guilty; for the Hue and Crie of it selfe is cause sufficient, where there is a foundation of a felonie committed. And he that levieth Hue and Crie upon another without cause, shall be attached and punished for disturbance of the Kings peace. 29 E. 3. 39. 11 E. 4. 4. b. 5 H. 7. 5. 2 H. 7. 15.

¶ Auxibien deins franchises come dehors.] This was not intended of Sanctuaries, but of Lords, and others, that had Franchises of Infangthefe, Outfangthefe, and the like.

¶ Le Roy prehdra eux grevement.] That is, at the Kings suit they shall be fined grievously, and imprisoned.

¶ Et si le default soit trove in le Seigniour de la franchise, le roy se prendra a mesme le franchise.] It seemeth hereby, that the Franchise is lost for ever, for the words be, that the King shall take to himselfe the Franchise, (viz. as forfeit.)

¶ Et si le default soit trove en le bailife, eit lenprisonment dun an, &c.] And this is according to the old rule, Qui non habet in ære, luet in corpore.

¶ Et si Viscount, Coroner, ou auter bailife de franchise, ou de hors, &c.] Note here five things are rehearsed, as causes wherefore Sheriffes, and other the Kings Officers and Ministers of Justice doe neglect their duties. 1. By prayer, prece, (by letters, messages, or word of mouth.) 2. Reward, precio, (forbid bribery.) 3. Feare, metu, (the basest, and yet the most forcible of all affections.) 4. Sanguine, any manner of consanguinitie or affinitie: under which word (Affinitis) in this Act is included as well neereneese of bloud, as alliance by marriage. Lastly, favore, favour, in respect of friendly affection, for men may be corrupted, not onely by reward, but in respect of the other foure also, all tending to one and the same end, to suppresse truth; as here to conceale, consent, or procure to conceale the felonies done within their severall precincts or bayliwicks. Præce. Precio. Metu. Sanguine. Favore.

¶ Ils eyent lenprisonment dun an, &c.] Note here the punishment for concealment of felonies, or consenting to, or procuring the concealment of the same; for all this make not them accessarie to the felony, for then they were to have been punished in another maner, but it is called misprision, or concealment of felonie. Observe well the punishment of this misprision, but the learning thereof appertaines to the Treatise of the pleas of the Crowne, and therefore this little touch here shall suffice. See the 3. part of the Institutes, Cap. Misprision.

¶ Al volunt le roy.] See here Cap. 4, 20, 25.

CAP.

CAP. X.

Cap. Itin. fo. 155. ET pur ceo que petits gents meins ſages ſoient eſlieus ore de novel communement al office de Coroner: & meſtier ſerroit que probes homes loialx & ſages ſe intermellent de cel office: Purview eſt, que per touts les counties ſoient eſlieus ſuffiſant homes Coroners, des plus loyals & plus ſages chivallers, queux melius ſachent, puiſſent, & voilent a cel office entender, & que loyalment attachent et repreſentent les plees de la corone. Et que le Vicont eit conter rolles ove les Coroners, auxybien des appeales, come des enqueſts, de attachments, ou des auters choſes, que a cel office appendent. Et que nul Coroner riens demande, ne preign' de nulluy pur faire ſon office, ſur paine de la greeve forfeiture al Roy. [14 *E.* 1. *Stat. Exon.*]

The miſchiefe before both appeare in the Preamble, viz. That men of ſmall value and little underſtanding, of late time were choſen to the office of a Coroner, where it ſhould be needfull that a Coroner ſhould have five qualities: 1. That he ſhould be probus homo: 2. Lawfull, i. Legalis homo: 3. Of ſufficient underſtanding and knowledge: 4. Of good ability and power to execute his office according to his knowledge: 5. And laſtly, of diligence and intendance for the due execution of the ſaid office. And reaſon required it ſhould ſo be, for that Coroners were in thoſe dayes the principall gardeins of the Peace, and therefore the Common Law did not onely require expert men to be Coroners, but men of ſufficient ability and livelihood for theſe purpoſes: 1. The Law preſumes that they will doe their duty, and not offend the Law, at the leaſt for feare of puniſhment, whereunto their lands and goods be ſubject. 2. That they be able to anſwer to the King all ſuch fines and duties as belong to him, and to diſcharge the Country thereof, wherewith the Country being their electors were chargeable, as hereafter ſhall be touched. 3. That they might execute their office without bribery. And theſe five properties are neceſſary to every Officer. Vide the laſt clauſe of this Act.

Vide devant c. 5. ¶ Soient eſlieus.] It is to be knowne, that the office of a Coroner ever was, and yet is eligible in full County by the Freeholders, by the Kings Writ De Coronatore eligendo: and the reaſon thereof was, for that both the King and the Country had a great intereſt and benefit in the due execution of his office, and therefore the Common Law gave the Freeholders of the County to be electors of him. And for the ſame reaſon of ancient time the Sheriffe called Vicecomes, who had cuſtodiam comitatus, was alſo eligible: For firſt, the Earle himſelfe of the County had the office of the Sheriffe of the County, and when he gave it over, the Vicecomes (as the word ſignifieth) came in ſtead of the Earle, & was eligible by the Freeholders of the County: And moreover, for the ſame cauſe were conſervators of the Peace in like manner choſen, and ſo were, and yet are elected the Verderors of the Forreſt, and all theſe for the time of peace: For the time of war, there were likewiſe leaders of the Counties ſouldiers, of ancient time choſen by the Freeholders of the County.

Erant

Erant & aliæ poteſtates & dignitates per provincias & patrias univerſas, & per ſingulos comitatus totius regni prædict' conſtitutæ, qui Heretoches apud Anglos vocabantur, ſcilicet Barones, Nobiles, & inſignes ſapientes, & fideles & animoſi: Latinè verò dicebantur Ductores exercitus, apud Gallos, Capitales Conſtabularii, vel Mareſchalli exercitus. Illi verò ordinabant acies denſiſſimas in præliis, & alas conſtituebant prout decuit, & prout eis viſum fuit, ad honorem coronæ, & ad utilitatem regni. Iſti verò viri * eligebantur per commune concilium pro communi utilitate regni, per provincias & patrias univerſas, & per ſingulos comitatus in pleno Folkemote, ſicut & * Vicecomites provinciarum & comitatuum eligi debent, &c.

Inter leges Edw. regis, cap. de Heretochiis.

* Nota.

* Nota.

The Mirrour ſpeaking of the Articles by old Kings ordained, ſaith, Auxi fuer' ordeines Coroners in cheſcun countie, & Viſcounts a garder le paix, quant les countes ſoy demiſteront del gard, &c. And the Sheriffe was choſen by Writ directed to the Cozoners.

Mirr. cap. 1. §. 3.

And ſo were the conſervatozs of the Peace eligible alſo, by Writ directed to the Sheriffe.

Rot. par. an. 5. E. 1

For the Verderoz, he is ſtill choſen by the Freeholders of the County by the Kings Writ.

Our King in the 28. yeare of his raigne reſtozed to his people the ancient election of Sheriffes in theſe wozds, Le roy ad grant a ſon people, que ils eient election de lour Viſcount en cheſcun Countie, ou Viſcount nett my de ſoe, ſilz voillions.

Art. ſuper cart. an. 28. E. 1. c. 8. 13. Vide ſupra.

But now by the Statute of 12 R. 2. the Chancellor, Treaſurer, Keper of the Priby Seale, Steward of the Kings houſe, the Kings Chamberlaine, Clerks of the Rolls, Juſtices of the one Bench and of the other, Barons of the Exchequer, and all other that ſhall be called, are to ordaine, name, or make Sheriffes, ſhall be firmly ſworne that they ſhall not ordaine, name or make any Sheriffe, for any gift or bzocage, favour or affection, but that they ſhall be of the moſt lawfull men, and ſufficient, to their eſtimation and knowledge.

12 R. 2. cap. 2. Vide Stat. 9. E. 2. De Vic'. 14. E. 3. 7

It is holden in our Books, that albeit the King dieth, yet the Cozoner, becauſe he is elected by the Freeholders of the County by Writ, and returned of Recozd in the Chancery, which is a judiciall act, remaines, and ſo of the Verderoz: otherwiſe it is of Judges and Juſtices, that hold their places by Writ, Commiſſion, Letters Patents, or otherwiſe at will, which might be a reaſon wherefoze the Sheriffe of ancient time was eligible. for that he had cuſtodiam comitatus, and a principall conſervator of the Peace; and therefore his authozity ſhould not ceaſe by the death of the King, no moze then that of the Cozoner.

Dier, 1 El. fo. 165

Now ſeeing that Cozoners are elected by the County, if they be inſufficient, and not able to anſwer ſuch fines and other duties in reſpect of their office, as they ought, the County as their ſuperiour ſhall anſwer the ſame: As for example, the County of Kent made election, by force of the Kings Writ, of William Herlizon to be one of the Cozoners for the ſame County, who after was amerced pro falſo retorno 40 s. whereupon Præcelle went out to the Sheriffe to levie it; the Sheriffe upon his oath ſaid, that the ſaid William Herlizon non habet terras vel tenementa, bona ſeu catalla in baliva ſua, unde dict' denarii levari poſſint: Now ſaith the Reaſon, if upon the Cozoner elected ſuit pro comitatum, &c. ita quod in defectu ejuſdem Coronatoris totus comitatus ut electo & ſuperior &c. tenetur Regi reſpondere; præceptum fuit nunc Vicecomiti, quod de terris & tenementis hominum totius comitatus in baliva ſua fieri fac' predict' 40 s. And the like law was of the Sheriffe, and other the ſaid Officers, when they were eligible. But now let us returne to the purview of our Act.

In Scaccar. inter præcept. Term. Hill. anno 14. E. 3. ex parte Remēb. Regis. 20 H. 9.

Respondeat ſuperior.

¶ Homes Coroners.] The number of Cozoners are not ſet down by Law: in moſt Counties there are foure, in ſome Counties five, in ſome fewer, and in ſome Counties one.

23 aſſ. p. 7. 14 H. 4 34. 39 H. 6 40. F. N. B. 163. k.

For the word Coronator, ſee Mag. Cart. cap. 17.

¶ Suf-

Li. 3. fo. 41. Greislics case. F.N.B. 163. n. 4 E. 1. de offic' Coronat'. 14 E. 3. cap. 7.

¶ Sufficients.] Sufficiens is a large word, and implyes as much as idoneus, and it hath two of the attributes mentioned in the Preamble, that is, lawfull, and sage.

Brit. 3. b. Flet. lib. 1. cap. 18. 25. 23 ass. p. 7. Mag. Char. c. 17. F.N.B 164. See the next Chap. & Chap. 36 See hereafter Stat de milit. Regist. 177. b. F.N.B. 163. m. Regist. & F.N.B. ubi sup.

¶ Chivaliers.] In ancient times none were chosen under the degree of Knighthood to be Coroners. But some say, that this word (Chivaliers) was put into this Statute, to the end that the party to be chosen might have sufficient in the County, which may serve for interpretation of divers other Statutes, being accompanied with use and experience.

¶ Queux melius sachent, puissent, & voilent a cel office entender, &c.] Qui melius sciant, possint, & velint officio illi intendere, &c. Note well these three qualities.

Now what causes there be to remove a Coroner, Vide Regist. & F.N.B.

Mirr. lib. 1. cap. de office de Coroner. Bract. li. 3. fo. 121. Britt. fol. 3. Flet. lib. 1. cap. 18. & 25. 4 E. 1. Stat. de officio Coronat. Regist. jud. 76. 22 ass. 98. 4 H. 6. 16. Mag. Char. cap. 17. Hic cap. 14. 4 H. 6. ubi supra.

¶ Que les Coroners loialment attachent & representent les plees del Coron, &c.] By this it appeareth, that the Coroner is Judge of the cause, and not the Sheriffe; and this agreeth with our old and latter Books, onely the Sheriffes have counter-rolls with the Coroners by force of this Act, and therefore a Certiorari may be directed to the Sheriffe and Coroner to remove an appeale by Bill before the Coroner, because the Sheriffe hath a counter-roll: But if the Certiorari be directed to the Sheriffe onely in case of appeale or indictment of death, it is not sufficient to remove the Record, because he is not Judge of the cause, but hath onely a counter-roll. Vide Magna Chart. cap. 17. many authorities cited there concerning this matter.

14 E. 1. Stat. de Exonia. 3 H. 7. cap. 1. Vide hic c. 26. See 5 E. 6. c.

¶ Et que nul Coroner riens demaund, ne preigne de nulluy pur faire son office, sur peine de la greve forfeiture al Roy.] And this was the ancient Law of England, that none having any office concerning administration of Justice, should take any fee or reward of any subject for the doing of his office, to the end he might be free and at liberty to doe Justice, and not to be fettered with golden fees, as fetters to the suppression or subversion of truth and justice: And therefore this Statute was made in affirmance of the Common Law; this onely is added, sur paine de greve forfeiture al roy.

3 E. 3. coron. 372. A Coroner received 1. d. of every Mesne when they came before the Justices in Eire, as belonging to his office, which was neither against the Common Law, nor this Statute; for he took it not for doing of his office, but a right due to his office, which might have a reasonable beginning, viz. for and towards his travaile, attendance, and charges.

3 H. 7. cap. 1. And this Statute stood in force untill the Statute made in 3 H. 7. ca. 1. which gave him a fee of viii. s. iiii. d. upon the view of the body of the goods of the murderer, &c.

1 H. 8. cap. 7. But if the Coroner sit upon the view of any slaine by misadventure, he shall have nothing. More shall be said hereof hereafter, Cap. 26.

CAP.

CAP. XI.

ET pur ceo que pluſors reintes de mort de home, & que ſont culpables de meſme la mort ſont (per favorables enqueſts, priſes per Viſconts & per bre' le Roy que eſt appelle *Odio & atia*) replevies, jeſques a la venue des Juſtices errants: Purview eſt, que tiel enqueſts ſoient deſormes priſes per probes homes eſlieus per ſerement, dount les deux ſoient a meines chivalers, que per nul affinitie, touchent a les Priſoners, ne auterment ne ſoient ſuſpectious. [Gloc.c.9. Weſt.2.c.29.]

See the 26 Chapter of Magna Charta where this matter is handled at large, and need not here to be repeated, and how this Writ De odio & atia was taken away, and ſince revived by a later Statute, as there it appeareth. Mag.Cart.c.26.

CAP. XII.

PUrview eſt enſement, que les felons eſcries, & queux ſont apertement de male fame, & ne ſoy voilent mitter en enqueſts des felonies que homes met ſur eux devant Juſtices a la ſuit le Roy, ſoient miſes en la priſon fort & dure, come ceux queux refuſent eſtre al Common Ley de la terre. Mes ceo neſt mye a entender pur Priſoners que ſont priſes per legier ſuſpection.

¶ Que les felons.] This Statute extendeth not to Treaſon, which is the higheſt offence, nor to petit Larceny, which is of all felonies the loweſt. 15.E.4.32.Stam. pl.cor. 150.

This Act doth extend as well to women as to men, and ſo it doth appeare by divers auncient and late precedents, and to that end the makers of this Act did uſe this generall word, Felons. Tr.40.El.coram Rege,Rot.4. Jane Wiſemans caſe.

¶ Eſcries et apertement de male fame.] No perſon ſhall be put to this puniſhment unleſſe the matter be evident or probable, which is the duty of the Judge to look unto.

¶ Ne ſoy voilent mitter en enqueſts des felonies.] This Act ſpeaketh onely of indictments at the ſuit of the King. But the judgement of Paine fort & dure was at the Common Law, both in appeales, and in indictments.

A man may ſtand mute two manner of wayes; firſt, when he ſtands mute without 43.Aſſ.Pl.30. 8 H.4.1.4 E.4.11 7E.4.29.14 E.4.7

without speaking of any thing, and then it shall be inquired, whether he stand mute of malice, or by the Act of God; and if it be found, that it was by the Act of God, then the Judges of the Court (who ever are to be of counsell with the Prisoner, to give him Law and Justice) ex officio ought to inquire whether he be the same person, and of all other Pleas which he might have pleaded, if he had not stood mute.

Note: *Prisoner standing mute.*

And note well the above said words of our Book, [whether of malice, or by the Act of God] for it may be, the Prisoner in truth cannot speake, and yet being not mute by the Act of God, he shall be forthwith put to his penance, as if the delinquent cut out his owne tongue, and thereby became mute.

Another kinde of mute is, when the Prisoner can speake, and perhaps pleade Not guilty, or pleade a plea in Law, and will not conclude to the enquest according to this Act; or speake much, but doe not directly answer, &c. for Idem est nihil dicere, & insufficienter dicere: to be short, when in the end he will not put himselfe upon the enquest, that is, De bono & malo to be tried by God and the Countrey, then this Act is sufficient warrant, if the cause be evident or probable, to put him to his penance; but if he demurre in Law, and it be adjudged against him, he shall have judgement to be hanged: And though by his demurrer he refuse to put himselfe upon the enquest according to the Letter of this Act, yet for as much as he is out of the reason of this Act, for that he refuseth not the triall of the Common Law, the demurrer being allowed to him by Law, and to be tried by the Judges, he shall not be put to his penance, but have judgement to be hanged; and so it is if he challenge above the number of 36. he shall be hanged, and not have Paine fort & dure.

4 E.4.11.7 E.4.29
14 E.4.7.

3 H.7.2. & 12.

¶ Al suite le Roy.] This Act extends not to the suit of the party by appeale, because the judgement of Paine fort & dure was both in appeale and indictment at the Common Law, as hath been said, and hereafter shall be said and proved.

Stamf.Pl.Cor. 149. f.

¶ Soient mys en la prison fort et dure.] Upon these words there have been divers opinions; First that the punishment of Paine fort & dure was given by this Act.

8 H.4.2.
Stamf.Pl.Cor. ubi supra.
21 E.3.18.

Some other have holden, that at the Common Law for felony the Prisoner standing mute should upon a Nihil dicit be hanged, as at this day it is in case of high Treason, and as they say, in case of appeale. Others have holden that at the Common Law, in favour of life he should neither have Paine fort & dure, nor have judgement to be hanged, but to be remaunded to Prison untill he would answer.

For the finding out of the truth herein, let us first see, what the judgement, which our Act calleth Fort & dure is, and then what the reason should be, that to severe a judgement is given in that case.

8 H.4.1.4 E.4.11.
Tr.40 El.ubi sup.

The judgement is, that the man or woman shall be remaunded to the Prison, and laid there in some low and dark house, where they shall lie naked on the bare earth without any litter, rushes, or other clothing, and without any garment about them, but something to cover their privy parts, and that they shall lie upon their backs, their heads uncovered and their feet, and one arme shall be drawne to one quarter of the house with a cord, and the other arme to another quarter, and in the same manner shall be done with their leggs, and there shall be laid upon their bodies iron and stone, so much as they may beare, and more, and the next day following they shall have three morsels of barly bread without any drink, and the second day they shall drinke three of the water that is next to the house of the Prison (except running water) without any bread, and this shall be their diet untill they be dead.

So as upon the matter they shall die three manner of wayes, viz. Onere, fame, & frigore, by weight, famine, and cold, and therefore this punishment (if it were

were executed according to the severity of the Law) should be of all other the most grievous and fearfull. But what should be the reason of this so terrible a judgment? This Act answereth, because he refuseth to stand to the Common Law of the Land, that is, lawfull and due triall according to Law, and therefore his punishment for this contumacy without comparison is more severe, lasting, and grievous, then it should have bene for the offence of felony it selfe; and for the felony it selfe, it cannot be adjudged without answer.

Now let us examine the opinions abovesaid, and we hold, that none of them are consonant to Law; for as to the first, we hold that this heavy punishment was not given, that is, first inflicted by this Act: for what Court, or Judges upon these words [have strong and hard imprisonment] could frame such a judgement as is abovesaid, consisting upon so many divers particulars? and therefore it must necessarily follow, That the said punishment which this Statute calleth Fort & dure imprisonment, because the penance was to be done in Prison, was before this Act, but sufficiently signified (as it hath bene ever since) by these two Epithets, Fort & dure; so as this Act setteth forth the quality of the judgement, and not the judgement it selfe.

2. This Act describeth what persons shall be punished by Paine fort & dure, viz. notorious felons, and which be openly of ill name, but setteth not downe (as hath ben said) what the punishment is, but provideth it shall not be for leger suspition.

3. All Books, that held with great authority, that in case of appeale the Prisoner upon standing mute should have judgement De paine fort & dure, do prove that such a judgement was before the making of this Act, for this Statute extends not to appeales, which are the suit of the Subject, but onely to the suit of the King, which is by way of indictment: and herein the words of Fleta are very remarkable, Si autem appellatus nihil respondere velit, &c. & appellans inde petierit judicium, indefensus remanebit, morti tamen non condemnabitur, sed gaolæ committetur, &c. And there setteth downe the penance, which of necessity must be (as hath ben said) by the Common Law. And herewith agreeth Britton that wrote some after this Act; so as the penance in case of appeale, is both by auncient and sound authority. Mirror ca. 5. § 4. 41 Ass. p. 30. 8 H. 4. 1. 4 E. 4. 11 14 E. 4. 7. 3 H. 7. 2 Fleta lib. 1. ca. 38. Britton fol. 40. Fleta ubi supra. Britton ubi supr.

To the second opinion, if the Prisoner standing mute should be hanged by the Common Law; The answer to the first doth answer this also, and if he should be hanged by the Common Law, this Statute taketh it not away, but ordaineth that he shall have strong and hard imprisonment. And therefore by their opinion, the felon standing mute might be hanged at this day, which is against all our Books, and against constant and continuall experience.

To the third, Let no man imagine that the Common Law, which is the absolute perfection of reason, could foster so unreasonable and unjust a meane of encouragement of felons, that they by their owne contumacy against the Common Law should suffer onely one of the lowest punishments, viz. imprisonment untill they would answer; and the answers to the first are answers to this also.

Now let us see what our auncient Authors (who as you have often perceived, have heretofore bene our good guides) say in this behalfe.

You have already heard Fleta; and Britton also mentioneth this penance in two severall places, both upon the indictment, and in the appeale, and voucheth no Statute therefore, as no doubt in this case he would, as in other like cases he had done, and specially, seeing he wrote some after this Statute, hee would have mentioned the Act that had inflicted so strange and stupendious a punishment, if the Statute had not bene made in affirmance of the Common Law. Britton fol. 11. a & 40. b

And the Mirror saith, In peche de homicide chient mortalment ceux que occiont home in prison per surcharge de peine en case quant alcun est judge al penance. And in another place writing upon our very Chapter, hee saith, Le poinr de mitter gents rettes de felony, que se ne voillent mitter in paiis, a Mirror ca. 1. § 9. Mirror ca. 5 § 4.

penance, eſt cy diſuſe que ben les tue ſans aver regard as conditions des perſons, &c. This Author, as hath bén ſaid, writeth of the auncient Law long before this Act, as he himſelfe teſtifieth in the beginning of his Booke. He calleth this puniſhment of Paine fort & dure (the penance) becauſe it is the greateſt and moſt ſevere penance, and paine of all other, and ſo it is commonly called in our Books.

CAP. XIII.

Cap. Itineris. 15 5 E. 1. Offic. Coronatoris. Vide Paſc. 6 E. 1. Rot. 4 in Banco Lanc. W. 2. 13 E. 1. ca. 34. 6 R. 2. ca 6. 4 & 5 Ph. & Mar. ca. 18. 18 Eliz. c. 6. Regiſt. fo. 97

ET le Roy defende, que nul ne raviſe ne preigne a force damaſelle deins age, ne per ſon gree, ne ſans ſon gree, ne dame ne damaſelle de age, nauter feme mauger le ſoen. Et ſi ul le face, a le ſuit celuy que ſuera deins les 40 jours, le Roy luy fra common droiture. Et ſi nul commence la ſuit deins les 40 jours, le Roy ſuera, & ceux queux il trovera culpables, ils averont la priſonment de ii. ans, & puis ſerront rentes a la volunt le Roy, & ſils neient dont eſtre rentes, ſoient punies per plus longe priſonment, ſolonque ceo que le treſpaſſe demande.

For the better underſtanding of this and other Statutes concerning rapes, it is firſt to be ſéene, what this word [rape] doth ſignifie, and ſecondly, what offence rape was at the Common Law before this Statute.

Mirror ca. 1. § 12. See the firſt part of the Inſtitutes. ſect. 190. Third part Inſt. cap. Rape. 9 E. 4. 26.

This is well deſcribed by the Mirror. Rape ſolonque le volunt del eſtatute eſt priſe pur un proper mote done pur cheſcun afforcement de fem, de quel le condition q̄ el ſoit; But better in another place, Rape is, when a man hath carnall knowledge of a woman by force, and againſt her will; and as the Mirror ſaith, it is a proper word; and rapere to ravith legally ſignifieth as much, as carnaliter cognoſcere, and cannot be expreſſed in legall proceeding by other words, as elſewhere hath bén ſaid.

Glanv. li. 1. ca. 2. lib. 14. cap. 6. Mirror ca. 4. de homicide. Bract. l. 3 fo. 147. Brit. fo. 3, 7, 39. 45 Fleta l. 1. c. 25, 33.

The offence is called Raptus, and the offender Raptor. This offence was felony at the Common Law, but had a puniſhment under ſuch a condition as no other felony had the like, that I have read of; for firſt, Divers of our auncient Authors, that wrote before our Statute, agrée, that of old time Rape was Felony, for which the offender was to ſuffer death, but before this Act the offence was made leſſer, and the puniſhment changed, viz. from death, to the loſſe of the members whereby he offended, viz. his eyes, Propter aſpectum decoris, quibus virginem concupivit. Amittit etiam teſticulos, qui calorem ſtupri induxerunt; So as it was no felony at the making of this Act: And in thoſe dayes if the offender in the appeale brought by her, that was raviſhed, had bén condemned by the Country, without any redemption he ſhould loſe his eyes and his privy members, unleſſe ſhe that was raviſhed before judgement demaunded him for her husband; for that was onely in the will of the woman and not of the man: for if (ſay they) it ſhould have bén in the will of the man, this inconvenience might have followed, that a Ribaud, or a Raſcall Slave might ravith a Noble-woman, and by occaſion of one ſhamefull pollution, perpetually to defile her, and to the diſhonour of her houſe to take her to wife.

But

But admit that the rauisher had bẽn a Nobleman, and the woman rauished base and ignoble, it might be thought that the like inconuenience might follow, if in that case the woman should haue the election. Responsio; quod sive vir nobilis, sive ignobilis sit, voluntas semper erit fœminæ, & electio; quia quod est in fœmina voluntarium, in vico erit necessarium, ut membra sua redimat ex necessitate: cum igitur mulier habeat electionem, et spreto judicio petit eum in virum, conceditur ei de gratia domini regis ob favorem matrimonii.

And herewith agreeth the Mirrour; that before the time of our King Edw. the 1. the punishment was by castration and putting out of the eyes of the offender, &c. but of ancient time at the Common Law it was death at the election of the single woman rauished. Mirr. cap. 4. de homicide.

And that also was the Law amongst the Romans, for Seneca saith, Rapta raptoris aut mortem, aut indotatas nuptias optet: upon which Law there arose this case, Una nocte quidam duas rapuit, altera mortem optat, altera nuptias: there the case is largely and doubtfully disputed, which in our Law would make but little question; for though the one for the offence done to her might take him to her husband, yet shall he suffer death according to the Law for the offence done to the other. Li. 2. controversiarum, contr' 5. & 24.

Now let us heare what the Law was herein before the Conquest, Qui viduam per vim stuprarit proprii capitis æstimatione compensato, nec mitiori conditione qui virgini vim intulerit. Qui per vim pagani hominis ancillam stuprarit, pagano fol' senos numerato, & 60 præterea sol' mulctator: Servus autem si servulam stuprarit, virga virilis ei præcidatur; qui teneræ ætatis virginem stuprarit, eadem lege tenetor, qua is qui adultam compresserit. Inter leges regis Canuti. Int. leges Alurodi regis.

And if the Lord had rauished his vnfree or bondwoman, she might haue had an appeale of Rape against her Lord, as at this day she may. See the 1. part of the Inst. sect. 190.

And the punishment aboue-said, viz. the losse of the said members in such sort, as Bracton expressed the same, continued vntill the making of this Act; the purpose of which Act was once againe to change the punishment, and yet to make it lesser, that is, to make it punishable by fine and imprisonment at the Kings suit, if she pursued not her remedy within forty dayes, as by this Act appeareth. Bract. ubi supra, & li. 3. fo. 123.

But it is not credible what ill successe this Act, that mitigated the former punishment, had; for many ill disposed persons taking upon this occasion encouragement to follow the heat of lust, did many shamelesse and shamefull rapes in barbarous and inhumane manner: As taking one example for all, Warren de Henwicke rauished openly in the high way Matild the daughter of Syward de Warton, and after he came and desired to haue her to his wife, which was granted by the Iustices, and was affianced to her in open Court. Hil. 6. E. 1. in com. banc. Rot. 4. Lanc'.

This crying sin daily increasing, our noble King, ten yeares after this Act, made rape by authority of Parliament felony, as by the Statute in that case prouided, appeareth. W. 2. 13 E. 1. c. 34

Now this that hath bẽn said doth agrée with our Books, and therefore it is benedicta expositio, when our ancient Authors, and our yeare bookes, together with constant experience doe agrée: For if rape had not bẽn made felonie by the Statute of W. 2. but had bẽn felony when that Act was made, then should the Court of the Leet haue enquired of it, as of a felonie by the Common Law; but seeing it was made felonie by that Statute, it hath bẽn often adiudged, that the Leet cannot inquire thereof: for albeit it was once felonie, yet the nature of the offence being changed, as is aboue-said, to be no felonie, when another Act made it felonie againe, yet could not the Leet enquire thereof, as of a felonie, which is worthy of obseruation. 18 E. 2. Stat. de visu franc'. 9 E. 4 26. 22 E. 4. 22. 1 R. 3. 1. 6 H. 7. 4. 11 H. 7. 22. Dier 3 El. 201.

More shall be said of Rape in the Treatise of the Pleas of the Crowne, and when we come to the said Statute of W. 2. cap. 34.

¶ Ne preigne a force.] The taking away by force of a woman what- Regist. fo. 97. 22 E. 4. 22. Rast. pl. 496. Dier 9 El. 256.

whatſoever againſt her will, albeit there be no rape, &c. is generally prohibited by this Act, upon the penalty herein expreſſed.

¶ Deins age.] Here it ſhall be taken for her age of conſent, that is 12. yeares old, for that is her age of conſent to mariage; and the taking her away within that age, whether ſhe conſent or no, is prohibited by this Act. Whereof, notwithſtanding all the abovеſaid Statutes, good uſe may be made, becauſe it is generall, and not bound with ſo many letters as ſome of them be. See more hereof in the Third part of the Inſtitutes, Cap. Rape.

CAP. XIV.

Utlage, Utlagatus, Exlex. Utlagaria, Exlegalitas. Vid. Lam. inter leges Ed. Conſeſſ. cap. 38. 3. Part of the Inſt. ca. Appeals.

ET pur ceo que home ad uſe en aſcun pays de utlager les gentes appeales de commandement, force, aide, ou de receiptment, deins meſme la terme, que home doit utlager celuy que eſt appelle de fait: Purview eſt et commaunde per le Roy, que null' ne ſoit utlage pur appele de commandement, force, aide, ou de receiptment, jeſque a taunt que lappellee del fait ſoit attaint, iſsint que un meſme ley ſoit de ceo per tout la terre, mes celuy que voit appeller, ne leſſa pas pur ceo de attacher ſon appele, al procheine countie vers ceux, auxibien come vers les appellees du fait: Mes lexigent de eux demurge tanque les appellees de fait ſoient attaints per utlagarie, ou auterment.

Un meſme ley.

3. Part of the Inſt. ca. Principall et Acc.

Here are acceſſaries divided into two parts, viz. to acceſſaries before the fact, and to acceſſaries after the fact.

Againe, acceſſaries before the fact are divided into three branches: De commandement, force, & aide; acceſſaries after the fact is onely by recitement.

¶ Commandement.] Præceptum. Under this is underſtood all thoſe that incite, procure, ſet on, or ſtir up any other to doe the fact, and are not preſent when the fact is done.

¶ Force] Fortia, is a word of art, & properly ſignifieth the furniſhing of a weapon of force to doe the fact, and by force whereof the fact is committed, and he that furniſheth it is not preſent when the fact is done: For theſe two words, præceptum, & fortia, beare what Bracton ſaith, Ubi factum nullum, ibi fortia nulla, nec præceptum nocere debet. And againe, Vulnus, fortia, & præceptum, generant unicum factum; non eſſet vulnus forte, ſi non adfuiſſet fortia; nec vulnus, nec fortia, niſi præceptum præceſſiſſet: and ſometimes in a large ſenſe is taken for any that is acceſſary before the fact.

Bract. li. 3. fo. 139 Britt. li. 5. b. Mirr. ca. 1. §. 13. 40 aſſ. 25.

Fleta li. 1. c. 23. Et poteſt quis corporaliter occidi, facto, & lingua.

¶ Aide.] Auxilium. Under this word is comprehended all perſons counſelling, abetting, plotting, aſſenting, conſenting, and encouraging to doe the act, and are not preſent when the act is done; for if the party commanding, furniſhing with weapon, or aiding, be preſent when the act is done, then is he principall.

Re

¶ Reſceitment.] This is underſtood after the fact done, that is, when one knowing the ſelonie doth receive the ſelon, and not onely conceale his offence, but favour and aid him, that he be not knowne. Brit. ubi ſupra.

In the Preamble the miſchiefe is recited, that before this Act in ſome countries it had been uſed to outlaw accellaries within the ſame time, that the principall was outlawed. Here it is to be underſtood, that in thoſe dayes moſt Appeals of death, &c. were ſued by Bill in the County before the Coroner, in which Bill of Appeale the Appellant doth make a diſtinction betweene the principall and the accellary. And therefore this Act is intended of Appeales commenced by Bill, for in the Appeale by Originall Writ, both principalls and accellaries are generally charged alike, without any diſtinction, who be principalls, and who be accellaries, untill the Plaintife maketh his counte, and therein he muſt diſtinguiſh them; But if the Defendants in ſuch an Appeale, where ſome be principals, and ſome accellaries, make default, the Appellant before the Exigent ought to declare, to the end it may be knowne who be principals, and who be accellaries, and to take the Exigent onely againſt the principals, and continue the plea againſt the accellaries, untill the principals be attainted; for if the Plaintife ſhould pray an Exigent againſt them all, he is concluded afterward to charge any of them as accellaries. 43 E.3.17.18.34. The difference between an Appeal by Bill and by Writ. 7 H.4.31. Nota. Declare before any appearance.

This Act was made in affirmance of the Common Law, and it doth not hold onely in Appeals at the ſuit of the party, but in indictments alſo at the ſuit of the King; for it is an ancient and fundamentall Maxime of the Common Law, Juri non eſt conſonum, quod aliquis acceſſorius in curia Regis convincatur, antequam aliquis de facto fuer' attinctus: Yet if the accellary will, he may pray Proces againſt the Enqueſt before the principall be attainted, for quilibet poteſt renunciare juri pro ſe introducto. *Regula.*

¶ Jeſque lappellee del fait ſoit attaint.] If the principall wage battaile, and is ſlaine in the field, yet he is not attainted, but the Judgement muſt be, that he was vanquiſhed in the field, Ideo conſideratum, quod ſuſ' per coll', &c. And this was agreed by the Juſtices, for otherwiſe in this caſe the Lord ſhould have no eſcheat, nor any Outlawrie could be ſued by the Appellant againſt the accellaries. 8 E.3.judgm.225 3.part of the Inſtit. Hic cap. 14. fo.353.

Our Act ſpeaketh Appellee in the ſingular number; yet in an Appeale brought againſt two as principals, and againſt another as accellarie to them, in this caſe both of them muſt be attainted before the accellary be outlawed; and if one of the principals be found not guilty, the accellarie is diſcharged, for the plaintife made him accellary to two, and therefore he cannot be found accellary to one. But where there be divers principals, the Appellant may have his appeale againſt any one of them, and make the Accellary accellary to him onely, if he will, for the ſelonie is ſeverall, but the Appellant cannot have ſeverall appeals of one death. 40 aſſ.25. 7 H.4. 30.Pl.com.99. Li.4.fo.47.Waits caſe. & fo.44.45. Vaux caſe.

In caſe of poyſoning, albeit the delinquent be not preſent when the poiſon is received, yet is he principall, and ſo the principalls and accellaries may be both abſent. Vaux caſe, ubi ſupra.

It is to be obſerved, that in the higheſt offence, and loweſt injury, there are no accellaries, but all be principals; as in treaſon, petit larcenie, and treſpaſſe.

And in one caſe of ſelonie all be principals as well before as after, though they be abſent at the doing of the ſelonie; but that is ſpecially provided by the Statute of 3 H.7. cap. 2. ataking of women againſt their wills, &c. 3 H.7.cap.2. 2 E.3.27. 5 lib. aſſ.5.13 aſſ.14. 22 E.3.coro.260. 7 H.4.16,36. 10 H.4.5.11 H.4 93.3 H.7.1. 3 H.7.coron.53. 4 E.6.coron. Br.184.

¶ Soit attaint.] That is, have Judgement in caſe of ſelonie for the ſelonie; for if the principall be convict by verdict, and prayeth his Clergie; or if the principall upon his arraignment confeſſe the ſelonie, and before Judgement obtaine a pardon, the accellarie is thereby diſcharged, becauſe the principall was never attainted, as our Statute ſpeaketh; And ſo it is if the principall

Lib.4. fol.43,44. Eyres case, & Bibithes case.

cipall die before Judgement, or upon his arraignment stand mute. And these cases have been according to this declaratorie Act well resolved, wherein there hath been great variety of opinions.

2 R.3.fo.21,22.

If the principall be erroniously attainted, yet this erronious attainder is within this Act, for the accessary shall not take advantage of the error, but the principall onely.

7 H.4. 47. 9 H.7.19. b.

And note, that the attainder of the principall must be in the same suit where the accessary is also to be put to answer; and therefore if the principall be attainted of murder at the Kings suit, and after the wife bring an appeale against the principall and accessary, the principall plead the former attainder, the accessary shall not be put to answer, and yet the principall is attainted.

40 ass.p.8. 7 H.4. 30.9 H.4.2.Li.9. fo.19. Seig.Zanchars case.

The experience and course at this day is, and warranted by good authority and reason, that if the principall plead not guilty, the accessary shall plead not guilty also, and may be tryed by one Inquest; but the charge of the Jury is, that if they find the principall not guilty, they shall find the accessary not guilty also; and this is for advancement of Justice; for if there were no procurers before, nor any receivers after, there would be fewer principals.

9 H.7.19. 50 E.3. 15,16.

But if the principall plead not directly to the felonie a plea to bar the plaintife, as auterfoits attaint, or unques accouple, or the like; there the accessary shall not plead untill that plea be determined: And so if the principall plead a plea to the Writ, the accessary shall not be driven to answer untill the plea be determined.

For this word [Attaint] and of Attainders in Deed and in Law, see the first part of the Institutes, sect. 747.

¶ Isint que un mesme ley soit de ceo per tout la terre.] This is the honour of the Law, when all the Courts of Justice through the whole Land, in all cases pronounce the Law (quam uno ore, which this branch both aime at in this particular case, and ought to be observed in all other cases; Lex uno ore omnes alloquitur.

¶ Dattacher son appeale al procheine Countie.] That is, to commence his appeale before the Coroner at the next Countie.

Rast.pl.42,47,48

¶ Lexigent de eux demurge, &c.] So much hath been said as may serve for the exposition of this Act, the residue shall be handled in the Treatise of the Pleas of the Crowne. See the third part of the Instit. ubi supra.

CAP. XV.

Cap.Itin. Vet. Mag.char.155. 27 E.1.cap.3. 23 H.6. cap.10. Pl.com. 67.

ET pur ceo que Viscounts, et auters, queux ount prises et retenus en prison gents rettes de felonie [et] meint foits ount lesse per replevin les gents, queux ne sont my repleviables, et ont detenus en prison ceux queux sont repleviables, per encheson de gaign' des uns, & de grever les auters, & pur ceo que avant ces heures ne fuit my determine [certainment] queux gentes fuissent repleviables, & queux non, forspris ceux queux fuissent prises pur mort de home, ou per commandement le Roy, ou de les Justices,

ces, ou pur la foreſt : Purview eſt, & per le Roy commande, que les priſoners queux ſont avant utlages, & ceux queux eyent forjure la terre, provours, & ceux queux ſont priſes ove mainer, & ceux queux ount debruſe la priſon le Roy, larons apertment eſcries & notories, & ceux que ſont appelles des provours tanque come les provours ſont en vie (ſils ne ſoient de bone fame) & ceux queux ſont priſes pur arſon felonioufment fait, ou pur faux money, ou fauxer le Seale le Roy, ou excommenge priſe per prier Leveſque, ou pur appiert melveiſt, ou pur Treaſon que touche le Roy meſme, ne ſoient en nul maner repleviſables per le common brieſe, ne ſans brieſe : Mes ceux queux ſont endites de Larceny per enqueſts des Viſconts, ou des bailifes priſes de lour offices, ou pur legier ſuſpection, ou pur petit Larceny, que namount ouſter le value de xii. deniers, ſils ne ſoient rettes dauter Larceny devant cel heure, ou rettes de receiptment des larons, ou des felons, ou de commaundement, ou de la force, ou del aide de le felony fait, ou rettes dauter treſpaſſe, pur le quel un ne doit perdre vie ne member, & home appell' de provour puis la mort le provour, ſil ne ſoit apert laron eſcrie, ſoit deſormes leſſe per ſuffiſant plevin, devant le Vicont, dont le Vicont voile reſpondre, & ceo ſans rien doner de lour biens pur la plevin. Et ſi le Vicont, ou auter leſſent per plevin ul', que ne ſoit repleviſable, ſi ceo ſoit Vicount, Conſtable, ou auter bailife de fee que eit gard de priſons, & de ceo ſoit attaint, perdr' le fee & baillie a touts jours. Et ſi ſoit South-vicount, Conſtable, ou Bailife, ou celuy que ad tiel fee pur garder les priſons, & ait ceo fait ſans la volunt ſon ſeignior, ou auter bailife que ne ſoit de fee, eit lem priſonment de 3. ans, & ſoit rent a le volunt le Roy. Et ſi ul' deteigne les priſoners repleviſables, puis que le priſoner eit offre ſuffiſant ſuerty, il ſerra en le greve mercy le Roy. Et ſil prent loure pur luy deliverer, il rendra le double au priſoner, & enſement ſerra en le greve mercy le Roy. *De Finibus levatis. 27 E. 1. cap. 13.*

℄ Viſcounts & autres.] That is to ſay, Sheriffes and gaolers that have cuſtody of gaoles, ſo as this Act extends not to any of the Kings Juſtices, or Judges of any ſuperiour Courts of Juſtice; firſt, for that they being

Lib. 2. fol. 46. Marleb. ca. 19, 28

being superiours are not comprehended in the generall words, as often have been observed. 2, Queux ount prises ou reteynus prisoners, which Iudges doe not. 3. Because in those dayes prisoners were commonly bailed by the Kings Writ De homine repleg', and then also by the Writ De odio & atia, both which were directed to the Sheriffe.

Brit. fol. 34. b.

And here it is proved, that it is an offence as well to baile a man not bailable, as to deny a man baile, that ought to be bailed; and the reason is added wherefore the Sheriffes and others did so offend, because they would gaine of the one, and grieve the other, viz. either for avarice, or for malice.

¶ Gents rets de felony.] In those dayes felony comprehended in it as well Treason (as in this Chapter it appeareth) as homicide, rape, or burglary, robbery, arsons, and all larcenies and thefts; for the word and signification, see the first part of the Institutes, sect. 745.

For the word repleviſable, see Marleb. cap. 28. Stamf. Pl. Cor. 72 Regiſt. 77.

¶ Avant ces heures ne fuit determine, &c.] Here is another mischiefe recited, That it was not certainly determined, what people were repleviſable, and what not, within the generall words of the Writ De homine repleg', viz. Pro aliquo alio retto, quare ſecundum conſuetudinem Regni non ſunt replegiabiles.

Marlb. cap. 28. Regiſt. F. N. B. 249.

¶ Et queux homes fuer' repleviſables.] This word [repleviſable] proveth, that this Act intendeth what persons were to be replevied by the common Writ De homine replegiando, which was directed to the Sheriffe under whose custody the Prisoners are, and of whom this Act speaketh, and so it appeareth by the Regiſter: And replevy, or plevy is applied to the Sheriffe to take pledges, and baile to the highest Courts of Record. And the Writ De manucaptione directed to the Sheriffe is grounded upon this Act, in which Writ not onely replegiar' but manucapere also is used.

Regiſt. 77. & 133 Brac. l. 3. 121, 154 Fleta lib. 2. cap. 2. Britton fol. 73. Hil. 43 E. 3. Coram Rege. Rot. 110. Glanv. l. 14. c. 1, 3. Bract. l. 3. fo. 123.

¶ Forſpris ceux queux fuer' priſes pur mort de home.] Here our Act firſt ſetteth downe what persons were not baileable for certain offences by the common Writ De homine repleg', and they be in number foure. But by the auncient Law of the Land in all cases of felony, if the party accused could finde ſufficient ſureties, he was not to be committed to prison, Quia carcer eſt mala manſio; but after it was provided by Parliament that in case of homicide the offender was not bailable, for so Glanvill saith, In omnibus autem placitis de felonia ſolet accuſatus per plegios dimitti, præterquam in placito de homicidio, ubi ad ſcrofam aliter ſtatutum eſt.

25 E. 3. 42. 28 E. 3 94. 40 E. 3. 42. 44 E. 3. 38. 43 E. 3. 17. 29 Aſſ. 44. 37 12. 43 Aſſ. 49. 41 Aſſ. 14. 7 H. 4. 27. 21 E. 4. 84. F. N. B. 250. b.

¶ Pur mort de home.] The death of man is so odious in Law, that (as before hath been) by the common Writ De Homine repleg', neither principall nor accessary was repleviſable.

a Pl. Com. 234. Seign. Berkleyes Caſe. & 217. le Duchy caſe. Stamf. Pl. Cor. 72, 73. 9 See before c. 4. 2 R. 3. fol. 11.

¶ Per maundement le Roy.] Per præceptum Regis. a The King being a body politique cannot command but by matter of Record, for Rex præcipit, & Lex præcipit are all one, for the King muſt command by matter of Record according to the Law.

1 H. 7. 4. See hereafter at this mark †.

b When any judiciall Act is by any Act of Parliament referred to the King, it is underſtood to be done in ſome Court of Juſtice according to the Law. And the opinion of Gaſcoine Chiefe Juſtice is notable in this point, that the King hath committed all his power judiciall to divers Courts, ſome in one Court, ſome in another, &c. And because ſome Courts, as the Kings Bench, are Coram Rege, and ſome Coram Juſticiariis, therefore the Act ſaith, Per maundement le Roy, and the next words be, Ou de ſes Juſtices.

Huſſey Chiefe Juſtice reported, that Sir John Markham ſaid to King E. 1. that the King could not arreſt any man for ſuſpition of Treaſon, or Felony, as any

of

of his Subjects might, becauſe if the King did wrong, the party could not have his Action: If the King commaund me to arreſt a man, and accordingly I doe arreſt him, he ſhal have his Action of falſe impriſonment againſt me, albeit he was in the Kings preſence; reſolved by the whole Court in 16 H.6. which authority might be a good warrant for Markham to deliver his ſaid opinion to E.4. Paſch.18 E.3. Coram Rege. Rot.33. Joi de Bildeſtons caſe. optime.16 H.6. tit.Monſtrans des faits 182. Stamf. Pl.Cor 72.c. Dier 4 & 5. Ph.& Mar.162.b. 10 Eliz.275. Mich 12 & 13 Eliz.297.

The words of the Statute of 1 R.2. cap.12. are, Si non que il ſoit per brieſe ou auter maundement le Roy; and it was reſolved by all the Judges of England, that the King cannot doe it by any commandement, but by Writ, or by Order, or Rule of ſome of his Courts of Juſtice, where the cauſe dependeth, according to Law.

Dominus Rex de aliquo contemptu ſibi illato, alium judicem in regno, quam in curia ſua, habere non debet. Vide Marleb. cap.1.

And Forteſcue ſpeaking to the Prince to inſtruct him againſt he ſhould be King, ſaith, Melius enim per alios, quam per teipſum judicia reddes, quo, proprio ore nullus Regum Angliæ uſus eſt, & tamen ſua ſunt omnia judicia Regni, licet per alios ipſa reddantur, ſicut & judicum olim ſententias Joſaphat aſſeruit eſſe judicia Dei. Tr.21.E.3.Norf. Coram Rege. Rot.170. Marlb. cap.1. Forteſc. cap.8.

And Bracton ſaith, Nihil aliud poteſt Rex, &c. quam quod de jure poteſt.

So as, maundement le Roy is as much as to ſay (as ſome affirme) as by the Kings Court of Juſtice; * for all matters of judicature, and procedings in Law are diſtributed to the Courts of Juſtice, and the King doth judge by his Juſtices, 8 H.4.fol.19. & 24 H.8.cap.12. and regularly no man ought to be attached by his body, but either by Proces of Law, that is (as hath béene ſaid) by the Kings Writs, or by indictment, or lawfull warrant, as by many Acts of Parliament is manifeſtly enacted and declared, which are but expoſitions of Magna Charta; and all Statutes made contrary to Magna Charta, which is Lex terræ, from the making thereof untill 42 E.3. are declared and enacted to be void, and therefore if this Act of W.1. concerning the extrajudiciall commandement of the King be againſt Magna Charta, it is void, and all reſolutions of Judges concerning the commandement of the King are to be underſtood of judiciall procéding. † Mag.Char.c.29 5 E.3.c.9.28 E.3. ca.3.38 E.3.ca.9. 42 E.3.c.3.2 E.3 fol.2.& 3. See Mag.Charta ca.29.verb. per legem terræ. * 8 H.4.19.Gaſc. & 24 H.8.ca.12. 42 E.3.ca.1.

¶ Ou de les Juſtices.] Upon any cauſe, whereof they are Judges, appearing to them. Britton fol.73. 2 R.3.11.

¶ Ou pur la Foreſt.] And all theſe foure are particularly excepted out of the Common Writ De homine replegiando, that the Sheriffe in his County Court, which is not a Court of Record, ſhall not replevy any of theſe foure that are committed; For example, though the party be committed by the perſonall commandement of the King, albeit the commitment be unlawfull, yet the Sheriffe ſhall not deale therein by the Writ De homine replegiando, but the ſuperiour Courts at Weſtm. upon a Habeas corpus, &c. ſhall doe Juſtice to the party in all theſe foure cauſes; So as Stamford, being well conſidered, impugneth not in any ſort this opinion, for his opinion extendeth only to the County Court upon the Writ De homine replegiando, and not to the ſuperiour Courts. 1 E3.ca.9.

But ſince we had written thus much, and paſſed over; ſée the Petition of Right, Anno 3 Caroli Regis, reſolved by the King, the Lords Spirituall, and Temporall, and the Commons in full Parliament.

Now this Act doth provide, that theſe Priſoners hereafter following ſhall not be repleviſable neither by the common Writ (that is the Writ De homine repleg', nor Ex officio (without Writ) by the Sheriffe or other gaoler, and they be 13. in number, and all theſe 13. are excepted out of the ſaid common Writ by the ſaid generall words, viz. Vel pro aliquo alio retto, quare ſecundum conſuetudinem Regni non ſunt replegiabiles.

¶ 1. Perſons utlages.] Perſons outlawed are attainted in Law, and therefore Bract.l.3.154.

2 Eliz. Dier 179. 15 H. 7. 9. Britton fol. 73. therefore are not replevisable or to be bailed: for if a man be arraigned of homicide, and plead not-guilty, and is found guilty, and for difficulty of Clergy is respited, it was resolved by the Justices, that he was not bailable, for the intendment of the Law in bails is, Quod stat indifferenter, whether he be guilty or no; but when he is convict by verdict or confession, then he must be deemed in Law to be guilty of the felony, and therefore not bailable at all, à fortiori, when the party is attainted in Law.

Bract. l. 3. 121. b. 5 H. 7. 14. 9 H. 6. fo. 2. And herewith agreeth Bracton, Nec sunt illi qui culpabiles inveniuntur, per plegios dimittendi, &c. And yet if the party upon the Cap. utlag' pleads misnomer, or alledge error, &c. he may be bailed.

¶ 2. Queux eient forjure.] They be also attainted upon their owne confession, and therefore not bailable at all by Law.

Brac. l. 3. fo. 153. b ¶ 3. Provours.] The reason wherefore Provours or Approvours be not bailable is, for Provours doe first confesse the felony to be done by themselves, and therefore they are not bailable, because it appeareth that they be guilty of the fact.

¶ 4. Ceux queux sont prises ove le mainer.] For in this case Non stat indifferenter, as hath been said, whether he be guilty or no, being taken with the mainer, that is with the thing stolne, as it were in his hand, anncciently called handinabbend; the like is anncciently called backberend, as a burthe or fardle at his back, which Bracton useth for manifest theft, furtum manifestum, and so doth Britton.

Bract. l. 3. fo. 154. Brit. fol. 22. b. & 72. b.

Bract. l. 3. 153. b. ¶ 5. Ceux queux ont debrusé la Prison le Roy.] There be two offences: 1. His breaking of the Prison; for it is presumed, that he that is innocent will never break Prison: And 2. his flying, Quia fatetur facinus, qui judicium fugit.

16 E. 4. 5. ¶ 6. Larons apertment escries & notories.] Felons openly known and notorious are not bailable.

¶ 7. Ceux queux sont appelles des Provours tanque come les Provours sont en vie (silz ne soient de bone fame.)] The appeale of the Approver is forcible against the Appellée, because the Approver confesseth himselfe guilty of the same felony, and therefore it serveth in nature of an inbictment against the Appellée, so long as the Approver liveth, unlesse the Appellée be of good fame. But yet the generall words doe receive qualification, for albeit the Prover be alive, yet if the Approver waive his Appeale, the Appellée shall bee bailed, if no other Appeale bee against him.

25 E. 3. 42.

Lib. 11. fo. 29. Alex. Powtlers case. Glanv. li. 14. & 1. cap. 2. Mirror ca. 1. § 8. De Ardours. Bract. l. 3. fo. 118. Brit. fo. 16, 39. Fleta li. 1 ca. 35. 10 E. 4. 14. 11 H. 7. 1. ¶ 8. Ceux queux sont prises pur arson felonioussment fait.] Burning of houses, &c. was felony by the Common Law, as it appeareth by this Act; and by our anncient Authors, viz. Glanvill, the Mirror, Bracton, Britton and Fleta saith, Si quis ædes alienas nequiter & ob inimicitiam vel prædæ causa tempore pacis combusserit, & inde convictus fuerit, &c. capitali debet sententia puniri. And this seemeth to be the Law before the Conquest: [a] Incendiariis capitis pœna esto. And againe, [b] Sanè quidem tectorum excisiones & incendia, apertæ compilationes, cædes manifestæ, dominorumque proditores, scelera sunt jure humanò inexpiabilia.

a Inter leges Athelstani. b Int' lege. Canuti

¶ 9. Ou pur faux money.] This appeares to be Treason by the Common Law. Glanvill lib. 14. cap. 7. Bracton lib. 3. fo. 118. Britton fol. 16. Fleta lib. 1. cap. 22. Mirror cap. 5.

Præterea

Præterea autem statuimus, ut unus per omnem ditionem nostram atque idem sit nummus, eumque nemo extra oppidum cudito, acqui siquemquam nummum quis; nummos corruperit, ei manus scelere violata præciditor. See the third part of the Institutes, in the exposition upon the Statute of 25 E. 3. c. 1. of Treason. Inr. leges Ethelstani regis.

¶ 10. Ou fauxer le seale le Roy.] This was also Treason by the Common Law, as it appeareth by the said ancient Authors.

And both these were declared to be high Treason at the Common Law, by the Statute of 25 E. 3. cap. 1. See more hereof in the third part of the Instit. ubi supra.

¶ 11. Ou excommenge prise per prier del Evesque.] That is, he that is certified into the Chancery by the Bishop to be excommunicated, and after is taken by force of the Kings Writ of Excommunicato capiendo, (which is so called of words in the Writ called a Significavit) is not baileable, for in ancient time men were excommunicated but for heresies, propter lepram animæ, or other hainous causes of Ecclesiasticall cognisance, and not for small or petie causes; and therefore in those cases the partie was not baileable by the Sheriffe, or Gaoler without the Kings Writ: but if the party offered sufficient caution De parendo mandatis Ecclesiæ in forma juris, then should the party have the Kings Writ to the Bishop to accept his caution, and to cause him to be delivered. And if the Bishop will not send to the Sheriffe to deliver him, then shall he have a Writ out of the Chancery to the Sheriffe for his delivery: Or if he be excommunicated for a temporall cause, or for a matter whereof the Ecclesiasticall Court hath no Conusance, he shall be delivered by the Kings Writ without any satisfaction. Bract. li. 5. fo. 408 409. Fleta lib. 6. cap. 44. Regist. F.N.B. 63. &c. Doct. & Stud. li. 2. cap. 32.

¶ 12. Ou put apert malveist.] Or for open or manifest offences. For, as hath been said, Bailé is quando stat indifferenter, and not when the offence is open and manifest.

¶ 13. Ou put treason que touche le roy.] Britton, who wrote after this Statute, saith, Queux sont repleviables, & queux non, avons dit en nous Statutes. Et ousser ceo ne sont mye repleviables endite ou appeales de compassement de nostre mort, sicome desuis est dit, ne ceux que sont prises per judgement de nous Justices, &c. Brit. fo. 73.

For by the Common Law a man accused or indicted of high Treason, or of any felonie whatsoever, was baileable upon good surety; for at the Common Law the Gaole was his pledge or surety that could find none. And this appeareth by Glanvile, who saith, Is qui accusatur, ut prædiximus, per plegios salvos & securos solet attachiari, aut si plegios non habuerit, in carcerem detrudi: so as a man by the Common Law was baileable for any offence, untill he were convicted: And this seemeth to be the old Law of the Land before the Conquest, viz. Ingenuus quisque fidejussores, qui enim (si quando in crimen vocetur) jus suum cuique tribuere quam paratissimum fore præstent, fidissimos adhibeto. Glanv. li. 14. cap. 2. & 3. 40 ass. p. 33. Int. leges Ethelred. regis.

¶ Ne soient in nul manner repleviables per le common briefe, ne sauns briefe.] That is, the Sheriffe shall not replevie them by the common Writ De homine replegiando, nor without Writ, that is, Ex officio: But all or any of these may be bailed in the Kings Bench, &c.

¶ Mes ceux queux sont endites de larcenie.] Latrocinium, larcinium, i. furtum, theft: and this Act divideth larcenie into two kinds: sc. Grand & petit: Grand larcenie is when the thing stolne is above the value of xii. d. ousser le value de xii. d. as out of that speaketh the Text: petit larcenie is when it is of the value of xii. d. or under. And the things stolne are to be reasonably valued, for the ounce of silver at the making of this Act was at the value of xx. d.

xx. d. and now it is of the value of v. s. and above.

Regist. 269. Flet. li. 1. c. 36. Bract. lib. 3. fo. 150, 151. Britt. fo. 22. 45. Fortescue cap. 46 8 E. 2. coron. 404, 406, 415. 18 ass. 14. 22 ass. p. 39. Tr. 21 E. 3. Coram rege Rot. 42. 10 E. 4. 14.

Est enim furtum de re magna, & re parva: pro minimo tamen latrocinio 12. denariorum, & infra, nullus morte condemnetur, &c. ex pluralitate tamen & cumulo modicorum delictorum poterit capitalis sententia generari: And this is good Law at this day, and approved by many authorities.

¶ Per Enquests des Viscounts ou des bailiffes, &c.] That is, of Sheriffes in their Tournes, or Lords in their Léets, or those that have Infangthefe and Outfangthefe, &c.

Here our Act setteth downe seaven kinds of offenders that may be bailed.

1. Persons indicted of Larceny before the Sheriffe, &c. yet this is so expounded by the Register, that they be of good fame.

Regist. 83. 268.

2. Imprisoned for light suspicion. Here is added also, Dum tamen bonæ famæ sunt.

3. For petit larceny, which doth not amount above the value of xii. d. if they be not charged with other larceny.

Regist. ubi sup. F. N. B. 249. 250.

4. Accused for the receiving of thieves or felons.

5. Or of commandement, force, or aid of the felonie done.

6. Or accused for other trespasse, for which a man ought not to lose life or member.

Regist, ubi sup. F. N. B. ubi sup.

7. Or the appellée of an approver after the death of the approver; and upon our Act is the Writ De manucaptione grounded, which maketh mention thereof.

¶ Soit desormes lesse per suffisant plevin devant le Viscount.] That is to be understood where the indictment was taken before the Sheriffe in his Tourne, for there he was Judge of the Cause, for other prisoners could not be bayle without Writ: and if the Sheriffe having sufficient surety offered unto him, refused to bayle him, he should have a Writ De manucaptione directed to the Sheriffe to take pledges of him; And if the Bailiffe of a Hundred (which is intended of a Steward in a Léet) refused to take pledges of one indicted before him, the prisoner should have had a Writ De manucaptione to the Sheriffe to take pledges of him; and all this appeareth by the Writ De manucaptione. But since this time (to speak once for all) this Writ of Manucaptione is taken away by the Statute of 28 E. 3.

Bract. li. 3. fo. 154 Regist. 83. 268. 291. F. N. B. 249. 250.

F. N. B. ubi sup.

1. & 2. Ph. & M. c. 13. 2 & 3 P. & M. cap. 10.

The Statute of 1. & 2. Phil. & Mar. concerning baylement by Justices of Peace, hath relation to our Act, which hath made me the longer in explaining hereof. And see the Statute of 2. & 3. Phil. & Mar. concerning that matter.

Vide cap. 20. & 26.

¶ Per sufficient plevin dont le viscount voille responder.] They which take pledges, ought to take sufficient pledges, for which they will answer.

¶ Et ceo sans riens doner.] For neither the Sheriffe, nor other of the Kings Officers could take any thing for doing his office. Vide cap. 26.

¶ Et si le Viscount ou auter lessent per plevin ul que ne soit plevisable.] Ou auter. This is expounded by the words following.

¶ Si ceo soit Viscount, Constable, ou auter bailife de fee que eit gard de prisoners.] So as at this time there were Sheriffewicks in fée, and Constables and Bailiwicks in fée, which had the keeping of prisons: These being attainted of letting to baile of any prisoner not bailesble, should lose the fée and bayliwick for ever: and upon office found, the King should have the inheritance of the office in him to be grantable over.

¶ Et si soit south Viscount, &c.] Here it appeareth, that Under-

Vnder-ſheriffes are of greater antiquity, then ſome haue ſurmiſed.

Note, the act of the Vnder-ſheriffe or other Vnder-bailie without the aſſent of his ſuperiour is no forfeiture of the fée, or bailiwick of his ſuperiour, though in many other caſes the ſuperiour ſhall anſwer for his deputie. 39 H.6.32. For this ſee the Stat. of 26 E. 1. intituled, *Contra Vic' & Clericos.*

¶ Et ſil deteine les priſoners repleviſables puis que le priſoner eit offre ſuffiſant ſuretie, il ſerra en le greve mercy le roy.] Here it appeareth, that to deny a man plevin that is plevisable, and thereby to detaine him in priſon, is a great offence, and grieuously to be puniſhed. Vet.mag.chart. 159.160. Vet.N.B.fo.40.

¶ Et ſi il priſt louer pur luy deliverer.] And if the ſheriffe, &c. take any reward for his deliuerance, the party ſhall recouer double the value, and alſo he ſhall be in the great mercy of the King. Vide cap. 26.

There be many Statutes made ſince our Act, that doe prohibite baile or mainprize in very many caſes, and alſo doth the ſame in many other, which ſtand not to the exposition of our Act, and doe belong to another Treatiſe, and therefore we omit to ſpeak of them any farther in this place.

See the Statute of 1 E. 4. cap. 2. that upon all preſentments and indictments taken before any Sheriffe or other in their Tournes, Leets, or Law-dayes, they ſhall haue no power to attach, arreſt, or put in priſon any perſon in preſentes or indicted, but that the Sheriffe ſhall deliuer all ſuch preſentments and indictments to the Iuſtices of peace at their next Seſſions. 2 E.4.cap.2.

CAP. XVI.

EN droit de ceo que aſcun gents parmount, & prendre fount les avers des auters, & les chaſent hors del countie our les avers fueront priſes: Purview eſt, que aul deſormes ne le face. Et ſi ul le face, ſoit grevement rente ſolonque ceo que eſt contenue en les eſtatutes de *Marleb. cap.* 4. faits en temps le roy H. pier le roy que ore eſt. Et per meſme le maner ſoit fait de ceux, queux parmont les avers a tort, & queux font diſtres en auter fee, plus grevement ſoient punies, ſi le maner de treſpas le demaund. Vide Flet.lib.2. c.40. 30 aſſ.28.

This Statute conſiſteth upon two branches: The firſt is a confirmation of the Statute of Marlebridge, cap. 4. and the ſecond branch is a confirmation of the Statute of Marlebridge, cap. 2. & 15. where you may reade the expoſition of them: Onely theſe differences I obſerue betweene them, that Marlebridge, ca. 4. ſpeaketh onely of Diſtreſſes, and our Act ſpeaketh of all manner of takings. Marlebridge prohibiteth Diſtreſſes generally, our Act, of beaſts, and goeth no farther. Marlebridge ſpeaketh of Diſtreſſes which he hath taken; our Act which he hath taken or cauſed to be taken. Marlebridge, cap. 15. excepteth the King and his Miniſters, &c. which our Act doth not, but put by conſtruction of Law they are excepted, becauſe the King might doe it by his prerogatiue. Vide Cap.1.in. Vet.mag.char. fo.155. 13 E.4.6.

This Act Fleta recyteth in this manner: Proviſum eſt quod nullus averia aliena Fleta ubi ſup.

aliena capiens per se, vel per suos notos vel ignotos extra com', in quo capta fuerint, fugare præsumat, &c.

CAP. XVII.

PUrview est ensement, que si ul deformes preigne les avers des auters, & les face chase en chastell, ou en forcelet, & illonques dedeins le close du chastell, ou de forcelet les deteign' encounter gage & pledge, pur que les avers serront solempnement demandes per visc', ou per auter bailife le Roy a la suit del pl', le visc' ou le bailife prise ove luy poyar de son countie, ou de sa bail', & voile assaier de faire de ceo repl' des avers a celuy que les aver' prise, ou a son seigniour, ou as auters des homes son seigniour quicunque queux sont troves en le lieu, ou les avers fueront enchases. Et si home luy deforce adonques de la deliverance des avers, ou quel ne trove home pur le seigniour, ou pur celuy que les aver' prise que respoign' & face le deliverance, apres ceo que le seigniour, ou parnour, per visc' ou per bailife, serra admonist de faire la deliverance, si soit en pays, ou pres, ou la ou il purra per le parnour, ou per auters des fees covenablement estre garnie de faire le deliverance, sil fuit hors de cel pays quant le prise fuit fait, & ne face adonques maintenant les avers deliver, que le roy pur le tresspas & pur le despite, face abate le chastell, ou le forcelet sans recoverie: Et touts les dammages que le plaintife avera resceve de ses avers, ou de son gainage disturbe, ou en auter maner puis le primer demaund des avers fait per le vic', ou per le bailife, luy soient restores au double, de seigniour ou de celuy que les avers aver' prise, sil eit de quoy, & sil neit de quoy, respoign' le seigniour quel heure, & en quel maner deliverance soit fait apres ceo que le vicount ou le bailife serra venue pur la deliverance faire. Et soit ascavoire, que la ou le vic' dever' faire returne del briefe le roy ou bailife le seigniour du chastell, ou le forcelet, ou a auter a que returne de briefe le roy appent, si le bailife de cel franchise ne face le deliverance, puis que le vicount aver' le return' a luy fait, face le vicount son office sans delay, & sur lavantdit peine. Et per mesme le maner soit fait la deliverance

verance per attachment de pleint fait ſans briefe, & ſur meſme la peine. Et ceo face a entender per tout la, ou le briefe le Roy court. Et ſi ceo ſoit en le marche de Gales, ou ailors, la ou le briefe le Roy ne court mye, le Roy que eſt Soveraigne Seigniour ent fra droit a ceux queux pleindre ſe voudront.

The miſchiefe before this Act was, that in the irregular time of H. 3. great men, when they took a diſtreſſe of the beaſts of their Tenants or neighbours, that ſerved for their tillage or husbandry, to prevent the ſpeedy courſe of Juſtice, and to enforce the owners of the beaſts for neceſſity to yeild to their deſire, would drive the beaſts into a Caſtle or Fortreſſe, and there detaine and keepe them againſt gages and pledges, ſo as no replevy could be made according to the ordinary courſe of Law; for that in caſe of a Subject he could not break the Caſtle or Fortreſſe, but the Sheriffe was to returne averia elongata, and thereupon the owner was to loſe the uſe of his beaſts of long time. But this Act giveth remedy, that the Sheriffe taking with him the power of the County may make replevin, as by the body of the Act appeareth. Vide Marlb. 52 H. 3. ca. 1.

¶ Chaſe in Caſtel ou en forcelet.] And ſo it is, if he that diſtrain chaſe the diſtreſſe into any other houſe, park, or other place of ſtrength, the Sheriffe to make replevin may by force of this Act break the houſe, caſtle, or fortreſſe, park, or other place of ſtrength by force of this Act, at the ſuite of a Subject. Vide 52 H. 3. c. 3. Britton 54. b. Fleta lib. 2. ca. 40. W. 2. cap. 39. Lib. 5. fo. 91, 92. Semaines Caſe. Vet. N. B. 43, 44. Regiſt. 83, 85. 8 H. 4. 17. in Repl.

¶ Pur que les avers ſerront ſolempnement demandes per Viſcont, ou auter Bailife le Roy a la ſute del Plaintife, le Viſcont ou le Bailife priſe ove luy poyar de ſon County, &c.] Nota, every man is bound by the Common Law to aſſiſt not only the Sheriffe in his Office for the execution of the Kings Writs (which are the commandements of the King) according to Law; but alſo his Bailiff, that hath the Sheriffes Warrant in that behalfe, hath the ſame authority, which his maſter the Sheriffe hath, for the Sheriffe cannot doe all himſelfe, and if they doe it not being required, they ſhall be fined and impriſoned; But this is ſo to be underſtood, where the Sheriffe may lawfully do it, & that before the Sheriffe doth uſe any force, he ought (as our Act teacheth) to demand according to the Law the goods to be delivered, ſo as replevy might be thereof made, for ſequi debet potentia mandatum legis, non præcedere, force ought to follow, and not to precede the commandement of the Law.

Bracton who wrote before this Act ſaith, Et ſi [Vicecomes] aliquem invenerit reſiſtentem, aſſumptis ſecum (ſi opus fuerit) militibus & liberis hominibus de Com' ad ſufficientiam capiat corpora hominum reſiſtentium, & illos in priſona ſalvo cuſtodiat, donec Dominus Rex inde præceperit voluntatem ſuam, &c. Bract. li. 5. 442. b Fleta lib. 2. c. 62.

And our Statutes of W. 1. W. 2. and Marlebridge are all in affirmance of the Common Law in that point, ſaving for breaking of the Caſtle, Fortreſſe, Houſe, &c. in caſe of the Subject; in which caſe our Act giveth remedy. W. 1 ca. 9. & 17. W. 2. cap. 29. Marlb. cap. 21.

If any man, how great ſoever, might have reſiſted the Sheriffe in executing of the Kings Writs, then had it been a good retourn for the Sheriffe to have returned ſuch reſiſtance, but as the Statute of W. 2. ſaith, Quod hujuſmodi reſponſio multum redundat in dedecus Domini Regis & Coronæ ſuæ; and that which is in dedecus Domini Regis, &c. is againſt the Common Law, therefore of neceſſity, if néed be, for the due execution of the Kings Writs, the Sheriffe may by the Common Law take poſſe Comitatus to ſuppreſſe ſuch unlawfull force, and reſiſtance. Semaines Caſe. ubi ſupra. 3 H. 7. 2. 10. 12 H. 7. 17. b. W. 2. ca. 39.

19 E. 2. tit. Execution 24.

R. did graunt and render lands by fine to I, I. sued the Kings Writ to the Sheriffe to deliver seisin, the Sheriffe retourned, that he could not execute the Kings Writ for resistance of B. and others unknown; and because the Sheriffe tolde not the power of the County in aid of the execution, as the Statute willeth, he was amerced at xx. marks, and an attachment awarded against B. and the rest, &c.

8 E. 2. tit. Execution 252.

And it is holden for a maxime of Law, that it is not lawfull for any man to disturb the Ministers of the King in the due execution of the Kings Writs, or Processe of Law.

Now besides the Warrant of the Common Law, the Sheriffe hath his Letters Patents of assistance, whereby the King commandeth, that all Arch-bishops, Bishops, Dukes, Earles, Barons, Knights, Freemen, and all other of that County be to the Sheriffe thereof in omnibus quæ ad officium illud pertinent, intendentes auxiliantes, & respondentes; so as no man Ecclesiasticall or Temporall is exempted from this service being above 15. and under 70. for so it is by construction of Law.

¶ Et voille assaier de faire plevin.] By force of this

Fleta li. 2. ca. 40.

clause he ought by the power of the County to make replevin, and it is no retourn for him to say, that the beasts be in a Castle, &c. whereof you shall reade more hereafter in this Chapter.

¶ Que le Roy pur le trespasse & pur le dispite face abater le Castel ou le Forcelet sans recovery.] But this totall prostrating or demolishing of the Castle, &c. cannot be done upon the retourne of the Sheriffe, but upon a suit on the Kings behalf, wherein the parties interessed may be called to answer, and upon judgement given against them Processe to be made to the Sheriffe to prostrate and demolish the Castle and Fortresse, and so is the book that speaks thereof to be intended.

Semaines Case. ubi sup. fo. 93. a.

¶ De ses avers, ou son gainage disturbe.] For the Law doth ever favour tillage, and the husbandry of the Realme, as by this clause appeareth, and therefore gives the party grieved double damages.

¶ Et soit assavoir, que la ou le Viscount dever' faire retourne del briefe le roy au bailife, le Seignior del Castel, ou de forcelet, ou a auter a que retorne del briefe le roy appent, si le bailife del franchise ne fait deliverance, &c. face le Viscont son office sans delay.] This doth give some light to the former branch, that if the beasts be detained in a Castle or Fortresse, the Sheriffe must doe his office without delay, that is, forthwith to replevy the beasts; and if he ought to doe it in this case of the franchise, the same he ought to doe in the other case.

Regist. 83.

It appeareth by the Register, that if the Constable of the Castle upon a Mandat to him to make replevin, nihil inde curavit, or if he make no retourne, &c. at all, upon retourne hereof, a Non omittas shall be awarded, &c.

F.N.B. 68. 47 E. 3. 33.

But such retournes were permitted before this Act, but now by this Act the Sheriffe in that case ought presently to enter, and make deliverance of the beasts.

¶ Et per mesme le manner soit fait la deliverance per attachment de pleint fait sans briefe & sur mesme la paine.]

Marleb. cap. 21.

See the Statute of Marlebridge that provideth to the same effect, where you shall reade more of this matter.

¶ Et

¶ Et si ceo soit en le Marches de Gales.] The Marches of Wales were the commots, great Seignoryes, and Baronies in Wales, which were holden of the King in Chiefe, and out of every County of England: If any distresse were driven into a Castle or Fortresse in the Marches of Wales, and detained, a Writ should be directed to the Sheriffe of the County of England next adjoyning to the Castle, or Fortresse, where the beasts be so detained, to make replevy. 18 E.2.Aff.382. 18.3.14.3E.3.82 8 E.3.427.13E.3 Jurisdict.23. 15E.3.ib.24.24E. 3.42. 47 E.3.6. 5 E.3.26.6H.4.9 6 H.5. Jurisdiction 34. 35 H.6 30

¶ Le roy que est Soveraigne Seigniour ent fra droit.] At this time, viz. in 3 E.1. Lluellen was a Prince, or King of Wales, who held the same of the King of England as his superiour Lord, and ought him liege, homage, and fealty; and this is proved by our Act, viz. that the King of England was Superior dominus, i. Soveraigne Lord of the Kingdome or Principality of Wales.

King H.3. after Prince Edward had married Elianor Daughter of Spaine, perceiving him (to use the words of mine Author) Ita suapte natura tanta indole præditum, ut maturius ad res gerendas idoneum redderet, primo Walliæ principatu donavit, deinde Aquitaniæ & Hiberniæ præposuit; hinc natum, ut deinceps unusquisque Rex, qui secutus est, filium majorem natu principem Walliæ facere consueverit. Polydor Virg. 37 H.3. pag.396. Pl.Com.126.b. Cambden in Fliath. pag.525.

Lluellen Prince of Wales, by the incitation of David his Brother, in the 9 year of E.1. rebelled against their Soveraigne Lord; in which rebellion Lluellen was slain, and the King brought all Wales under his subjection: The said David being brother and heire of Lluellen for his rebellion and Treason against his Soveraigne Lord was after the death of his Brother at a Parliament holden in the 11. yeare of E.1. attainted of high Treason; of whose judgement and execution heare what Fleta saith, Et unico malefactori plura poterunt infligi tormenta, prout meruerit, sicut contigit de Davide principe Walliæ cum per secordium quinque judiciis mortalibus torquebatur, suis namque meritis exigentibus, detractus, suspensus, decollatus, dismembratus fuit & combustus, cujus caput principali Civitati, quatuorque quarteria ad quatuor partes Regni in odium traditorum deferebantur suspendenda. By reason whereof, where Wales was before holden of the King, as of his Soveraigne Lord, as is aforesaid, now King Edw.1. became King of the same in possession, which appeareth by the Statute of Snowdon in these words; Edwardus Dei gratia, &c. Divina providentia, (quæ in sua dispositione non fallitur) inter alia suæ dispensationis munera, quibus nos & Regnum nostrum Angliæ decoravit dignata est, terram Walliæ cum incolis suis prius nobis jure feodali subjectam, jam sui gratia in proprietatis nostræ dominium, obstaculis quibuscunque cessantibus, totaliter & cum integritate convertit, & Coronæ Regni prædicti tanquã partem corporis ejusdem annexuit & univit: By which Act it further appeareth, that King E.1. had considered, and perused all the Laws of Wales, and some of them be utterly abrogated, some of them be permitted, some be corrected, and some be newly added to the others. Rot.Parl. anno 11 E.1. Fleta lib.1.ca.16. Rot.Parliam. anno 12 E.1. Pl.Com.126. that this is a Statute.

We have been, above our usuall manner, the more copious herein, because our desire is, that truth might prevaile, See the Statutes of 27 H.8. and 34. and 35 H.8. concerning Wales. See the fourth part of the Institutes, Cap. of the Courts, &c. of Wales. 27 H.8.cap.27 34 & 35 H.8.

CAP. XVIII.

PUr ceo que la common fine & amerciament de tout le County en Eyre des Justices pur faux judgements, ou pur auter trespas, est assesse per Vicount & Barretors des Counties malement, issint que la summe est meintfoits encrue, & les parcels autrement assesse que estre ne duissent, au damage du people, & plusors foits sont paies as Viconts & Barretors, que ne poient les acquitent. Purview est, & voit le Roy, que desormes en Eyre des Justices devant eux devant lour departure soit tiel summe assesse per serement de chivalers & des probes homes, sur touts ceeux que escoter deveront, & les Justices facent mitter les parcels en lour estreats que ils liverent al Eschequer, & non pas la summe totall.

There were foure mischiefes, or rather grievances before this Act.

1. That this common fine and amerciament before Justices in Eyre was grievously assessed by the Sheriffe and Barretors of the County (for so our Act speaketh) upon the fault-lesse, as well as upon the faulty, and that after the Justices in Eyre were departed and gone.

2. That the same was many times by them increased.

3. That the parcells were otherwise, then they ought to be, to the damage of the people.

4. That the said amerciament was paid to the Sheriffe, and Barretors, that could not acquite them, and therefore were often doubly charged.

The remedy by the body of the Act consisteth on two parts.

1. That such summes shall be assessed by the oath of Knights, and other honest men before the Justices in Eyre, upon such as ought to pay the same.

2. That the Justices shall cause the parcels to be put in their estreats, which shall be delivered up in the Exchequer, and not the whole summe.

Lib. 8. fo. 39. Greislies case.

¶ Common fine et amerciament.] Here fine and amerciament are all one, for, as by this Act appeareth, it ought to be asserred, which a fine in his proper sense ought not: This is parcel of the green wax, so called, because the estreats to the Sheriffe for levying of them are sealed with green wax.

42 E. 3. cap. 9. 7 H. 4. cap. 3.

This common amerciament was a great grievance to the people, for that the fault-lesse, as well as the faulty, were (as hath been said) thereby charged; and this was disperdere innocentem cum delinquente, much like the abuse of the Clark of the Market, who used to take a common fine, untill it was remedied by Act of Parliament.

23 R. 2. cap. 4.

Greislies case, ubi supra.

¶ Est assise.] That is, is asserred.

9 Eliz. Dier 263.

¶ Pur faux judgements.] The suitors in a base Court for false judgements shall be amerced, to the end they may be the more wary, and take better advice to doe justice.

Lib. 8. fol. 36, 37. First part of the Inst. sect. 701.

¶ Per Barretors.] For the signification of this word, see Pasch. 30 Eliz, the case of Barretry, and the first part of the Institutes.

¶ Sur

¶ Sur touts ceux queux eſcoter deveront.] This is a Law of great equitie, that ſuch as be faulty ſhould onely be contributory to the paiment of fine and amerciament. Mirr.lib.4.§.de amerciaments leviable.

¶ Al Eſchequer.] For that Court is the true center, into which all the Kings revenue and profit ought to fall, and by this meanes the toll ſhall come to the right mill. See hereafter cap.45.

¶ Et non pas le totall.] But particularly and by parcell, upon everyone that ought to contribute. See hereafter cap.45.

The Commons petitioned, that no common fine of any County from thence forth ſhould be made, but that every man may be particularly puniſhed. Whereunto the Kings anſwer was, Rot.Parl.An.17. E.3.nu.37.

The King willeth the ſame.

CAP. XIX.

EN droit des vic', ou auters queux reſpoign' per lour maines al Eſchequer, & queux ount reſc' de les dets le Roy pier le Roy que ore eſt, ou les dets le Roy meſme avant ceux heures, & queux ne ount my acquites de ceo les dettours al Eſchequer: Purview eſt, que le roy envoiera bones gentes per touts les counties, a oyer touts iceux, queux de ceo pleine ſe voudront, & a terminer iſſint la beſoign', que ceux que purront monſtrer que ils eient iſſint avant paies, a touts jours (ent) ſerront quites, le quel que les viconts ou auters ſerront morts ou vives, en certaine forme que lour ſerr' baill'. Et ceux que iſſint naver' fait, ſilz ſoient en vies, ſerront punies grevement; et ſils ſoient morts, lour heires reſpoign', & ſoient charges de la dette. Et commaund le roy, que les viconts, & les auters avantdits deſormes loialment acquitent les dettors a prochein accompt, puis que ils averont le dette reſceive: & donque ſoit le dett' alé louve al Eſchequer, iſſint que jammes ne veign' en ſummon'. Et ſi le vic' autermentface, & de ceo ſoit attaint, cy rendra al plaintife le treble de ceo que il aver' de luy reſceive, & ſoit rent a le volunt' le roy. Et bien ſe garde cheſcun vicont, que il eit tiel reſceivor, pur que il voudra reſponder, car le roy ſe prendra del tout as viſcont, & a lour heires. Et ſi auter que reſpoign' per ſa maine al Eſchequer le face, il rendra le treble al plaintife, & ſoit rent en meſme le maner. Et que les vic' facent tayles a touts iceux, queux paieront

paieront le det le roy. Et que la ſummons deſchequer a touts les debtors, queux demandet voudront la view, facent monſtrer ſans denier les a nulluy, & ceo ſans rien prender de louer, & ſans rien don', & que ne le fra, le roy prendra a luy grevement.

W. 1. cap. 32.

¶ Dets le roy.] Under this word [debitum] are all things due to the King comprehended; and not onely debts in their proper ſenſe, but duties or things due, as rents, fines, iſſues, amerciaments, and other duties to the King received, or levied by the Sheriffe: for Debt in his large ſenſe ſignifies, whatſoever any man doth owe, and debere dicitur, quia deeſt habere: debitori enim deeſt quod habet, cum ſit creditoris, maxime in caſu domini Regis.

¶ Lour heires reſponderont.] That is to be underſtood, quoad reſtitutionem, ſed non quoad pœnam; that is, for the civill, but not for the criminall part: For it is a Maxime in Law, Pœna ex delicto defuncti hæres teneri non debet: And Agatus, In reſtitutionem, non in pœnam hæres ſuccedit.

Maxims.

¶ Au prochein account.] See for this the Statute of 51 H. 3. Statutum de Scaccario, and the Statute of W. 4. Vet. Mag. Chart. fo. 33, 34.

¶ Et tiel receivor pur quoy il voet reſponder.] For the rule of this, and like cafes of the King, is, Reſpondeat ſuperior.

¶ Et que la ſummons deſchequer a touts les debtors, queux demander voudront la view, facent monſtrer ſans denier les a nulluy, & ceo ſans rien prender de louer, & ſans riens don' &c.] That is, the Proces, together with the Eſtreats under the Seale of the Exchequer ſhall be ſhewed to the party preſently without denyall, and freely without any thing to be given therefore, upon paine of grievous fine and impriſonment.

42 E. 3. cap. 9. 7 H. 4. cap. 3.

CAP. XX.

Cap. Itin. Vet. Mag. Chart. 155.

PUrview eſt enſement de misfeaſors en parkes, & en vivers, que ſi ul de ceo ſoit attaint per le ſuit del plaintife, ſoyent agardes bones & hautes amendes, ſolonque le maner del treſpas, & eit la priſonment de trois ans, & dillonq; ſoit rent a le volunt le Roy, ſil ad de quoy poit eſtre rent, & lors trova bon ſuertie que il jammes ne misface. Et ſil neit dont poit eſtre iſſint rente, apres la priſonment de trois ans, trova meſme le ſuertie; et ſil ne puiſſe trover la ſuerty, forjur' la Realme. Et ſi ul de ceo rette ſoit fugitive, & neit terre, ne tenement ſuffiſant pur quoy il poit eſtre juſtifie, ci-

Rot. Clauſ. 17 H. 3. m. 9.

court

court come le Roy avera ceo trove per bone enqueſt, ſoit demaund de countie en countie. Et ſil ne veigne, ſoit utlage. Purview eſt enſement & accorde, que ſi ul ne ſuiſt dedeins an & le jour pur le treſpas fait, le Roy avera le ſuit, & ceux queux il trova de ceo rettes per bon enqueſt, ſerront punies per meſme le maner en touts points, ſicome deſuis eſt dit. Et ſi ul tiel miſfeiſour ſoit attaint, quil eit priſe en ſes parkes beaſts domeſtes, ou auter choſe en le maner de robberie en venant, ou demurrant, ou en returnant, ſoit fait de luy common ley, que affiert a celuy que eſt attaint de apert robberie & larceny, auxibien a la ſuit le roy come dauter.

The cauſe of the making of this Statute was, that at the Common Law, the Plaintiffe in an action of Treſpas, ſhould, as in other caſes, recover no other dammages, but according to the quantity of the treſpaſſe: which the plaintiffe for treſpaſſes in Parks and Vivaries eſtéemed at a high rate; but the Country commonly found the dammages very ſmall; for the Common Law gave no way to matters of pleaſure, (wherein moſt men do excéd) for that they brought no profit to the Common-wealth; and therefore it is not lawfull for any man to erect a Park, Chaſe, or Warren, without a licence under the Great Seale of the King, who is pater patriæ, and the Head of the Common-wealth.

47 E.3.10.b. 9 H.6.

Temps E.2. tit. act' ſur leſtat. Br. 48. Li.11.fo.86,87.

¶ En Parks.] This is underſtood of a lawfull Parke, whereunto three things are required: 1. A liberty, either by graunt, as is aforeſaid, or by preſcription. 2. Incloſure by pale, wall, or hedge. And 3. beaſts ſavages of the Parke, for the which, and for the name, ſée the firſt part of the Inſtitutes.

1. Part of the Inſt. ſect. 378.

But this Statute extendeth not to a nominative Park erected without lawfull warrant, albeit it be called a Park; for this Statute is very penall, and therefore, as hath béen ſaid, extendeth onely to a lawfull Parke. But he may have an action of Treſpaſſe at the Common Law, quare clauſum fregit, & unam damam cepit; &c.

9 H.6.2. 18 H.6. 21. 19 H.6.6. 22 H.6.59.34 H.6.78,43. 10 H.7.6.b. 12 H.8.10.a. 43 E.3.13,24. 38 E.3.10.3 H.6 55. 8 E.4.5.

Under this word Park, a Chaſe is not included.

*This Act extends not to a Forreſt in the hands of a ſubject, for the Law is ſo penall, as it ſhall not be taken by equitie.

See the Statutes of 13 R.2.cap.13 19 H.7.cap.11. 14 H.8.cap.1. 3 Jac.c.13.7 Jac. c.13.21 Jac.c.28. 3 Car.cap.4.

¶ Miſfeſauns] In this Act is underſtood when a man either chaſeth in a Park, or by bow, or other engine endevoureth to kill ſome of the game of the Park againſt the liberty and privilege of the Park, †and not when the Lord of a Park takes beaſts to agiſtment in his Park, and the ſtones breake the Park, and takes them away without agréement for their paſture, for it is not within theſe words, De malefactoribus in Parcis, becauſe the treſpaſſe concerneth not the liberty of the Park by chaſing of the game thereof, but a collaterall treſpaſſe, & ſic de ſimilibus.

*21 H.7.21.

†30 E.3.f.11. the Counteſſe of Athols caſe.

¶ Vivers or Viviers.] This being a French word, ſignifieth Fiſh-ponds, or waters wherein fiſh are kept and nouriſhed; which being a matter of profit, and increaſe of victuals, any man may erect; and that in legall underſtanding it ſignifieth a Fiſh-pond, or waters where fiſh are kept, it appeares by our ancient Authors, who wrote ſome after this time: for Britton ſaith, Auxi de waſt fait per eux en parks & en vivers, de veniſon & de peſſon, & de conies, & auter deſtruction per eux faits en garrens: where he applyeth

Brit.fo.34.

plieth Veniſon to Parks, Peſſon to Vivers, and Conies to Warrens. And Fleta
Flet.li.2.ca.36. agréeth with him, for he ſaith, De feris & piſcibus poteſt fieri furtum: Ex benignitate tamen Principis conſtituitur, ne quis pro hujuſmodi furto vitam perdat, neque membra: Conſtitutio quidem talis eſt, proviſum eſt de malefactoribus in parcis & vivariis, quod ad ſectam querentis ſtatim adjudicentur emendæ, &c. and reciteth ſummarily this Act; and ſo it is taken before in this very
Vide hic cap.1. Parliament, Cap. 1. for fiſh ponds, or places where fiſh are kept, in theſe words, ne curge en auter parke, ne piſhet en auter viver. And Bracton, who
Bract.li.3.fo.117 wrote a little before our Statute, coupleth them together in the charge given by the Juſtices in Eire, as our Statute doth, viz. De malefactoribus in parcis, & vivariis.

F.N.B.88.H. It appeareth in the Regiſter, that there be divers formes of Writs for fiſhing in his piſcarie: One Writ is, Quare in vivariis ſuis piſcatus fuit: Another, Quare in ſeparali piſcharia ipſius A. piſcatus fuit, &c.

Hic c.1. Art.ſuper cart.cap.18. 34H.6.28.21 H.7 21. F.N.B.67.d. Therefore, as ſome have ſtretched this word too far, extending it to Warrens of Conies, which they might as well under the generality of the word [vivarium] extend it to Foreſts and Chaſes, (for they be loci ubi viventes cuſtodiuntur) whereof you have heard before; ſo ſome would reſtraine this word to Fiſh-ponds onely that be in Parks, which is expreſſly againſt both the letter and meaning of this Act, and the Fiſh-pond concerneth nothing the liberty and priviledge of the Park, whereof alſo a touch hath been given before.

If a man committeth a treſpaſſe in the Fiſh-pond, &c. of another, by taking and carrying away of water, he is no miſ-feaſor within this Statute; but if he let out the water, to the end to take fiſh, he is a miſ-feaſor within this Statute, or he muſt fiſh there, if he be within the danger of this Law, for collaterall treſpaſſes neither in Parks, nor Fiſh-ponds, &c. are within this Act.

And if one hunt in a Park, or fiſh in a Pond, &c. though he kill no Déer, nor take any Fiſh, yet this is a miſ-feaſance within this Statute.

Regiſt.111.b. 47 E.3.10.b. 5 H.5.1.2 E.4.4. 9 H.6.2. F.N.B. 67.d. 87.a. 7 El. Dier 238. Lib. Intr. Raſt.585. ¶ Per le ſuit del plaintife]. This ſuit is intended in an Action of Treſpas, but the Writ muſt rehearſe, and be grounded upon this Statute; for it is a Maxime in the Common Law, that a Statute made in the affirmative, without any negative expreſſed or implyed, doth not take away the Common Law: And therefore in this caſe the Plaintife may either have his remedy by the Common Law, or upon the Statute; If he bring his action of Treſpaſſe generally without grounding the ſame upon the Statute, then he waiveth the benefit of the Statute, and taketh his remedy by the Common Law.

7 El. Dier 238. Regiſt.ubi ſup. The preſidents of this action are, Ad reſpondendum tam domino regi, quam parti querenti: And yet by the Regiſter, he may have this in his owne name, and that may be gathered by ſome of our books, quoted before in this Section, in the margent.

¶ Soient agardes bones & hautes amends.] By theſe words [ſhall be awarded good and large amends] if the dammages be too ſmall, the Court hath power to increaſe the dammages, for this word [award] properly belongeth to the Court.

Dier ubi ſup. 15 El. Dier 323. 9 El.Dier 269. ¶ Et eit la priſonment de trois ans.] Both dammages and impriſonment concerne the plaintife, and therefore the Kings pardon cannot diſpence with them: But the ranſome, the finding of ſurety, and the forejuring of the Realme are puniſhments exemplarie, and concerne the King, and therefore he may pardon the ſame.

¶ Et dillonque ſoit rent a le volunt le roy.] And after
Vide hic cap.4. ſhall make fine at the Kings pleaſure.
See before for the expoſition of theſe words, Cap. 4.

¶ Et

¶ Et lors trova bone ſurety, que il jammes ne miſface.] And then ſhall finde good ſurety, that after he ſhall not miſdoe. Hil. 24 H. 7. Cor. Rege. Rot. 26.

This ſurety muſt be by recognizance to the King, and not to the Plaintife; For example, the ſureties in 10 l. and the Defendant in 40 l. the condition muſt be generall, and not reſtrained to that Park, or Mildry; for example, Quod ipſe in aliquibus parcis & vivariis contra formam Statuti prædict' amplius non malefaciet, &c. Tr. 13 H. 8. Cor. Rege. Rot. 480.

¶ Le roy avera le ſute.] Either by indictment, information, or Action of Treſpaſſe upon this Act.

¶ Forjure le Realme.] Fleta tranſlating this Act into Latine, ſaith, Abjurabit Regnum, and ſo doth the Regiſter; and Bracton uſeth the ſame word in caſe of Felony, Abjurabit Regnum. Fleta l. 1. cap. 36. Regiſt. 80. b. & fol. 111. b. Bracton.

And Britton uſeth our word, Forjure noſtre Realme, and in the ſame caſe he uſeth the word of abjuration. Brit. fol. 7. 25.

It ſignifieth in Law a perpetuall baniſhment of the Defendant out of the Realme, which to obſerve he bindeth himſelfe by oath, for ſo much is implied in this word forjure, or abjure, which properly ſignifieth to forſweare the Realme.

By the Common Law no man can be exiled, or baniſhed out of his Country, but in caſe of abjuration for felony: In all other caſes exile or baniſhment ought to be done by authority of Parliament (as here it is) and ſo are our books that ſpeak of exile or baniſhment to be underſtood. Mag. Chart. c. 29.

If ſuch a perſon, as hath forjured or abjured the Realme, returne againe, hee ſhall be puniſhed at the Kings ſuit for the perjury, and high contempt.

¶ Beaſts domeſts.] This is underſtood of kine, oxen, ſheep, and other domeſticall beaſts within the Park.

If there be within the Park tame Deere, and miſdoers come to hunt and kill veniſon, and they kill a tame Deere, and carry it away, not knowing the ſame to be a tame Deere, this is no felony, for the intent maketh felony, and ſo are the books to be intended. 10 E. 4. 15. b. Stamf. Pl. Cor. 25. b.

¶ En le manner de robbery.] In this Act robbery is taken in a large ſenſe; ſee the firſt part of the Inſtitutes. Firſt part of the Inſtit. ſect. 501.

CAP. XXI.

EN droit des terres des heires deins age, queux ſont en le garde lour Seigniors: Purview eſt, que les Gardeins les gardent, et ſuſteinent, ſans deſtruction faire en tout rien: et que de tiels manners des Gardes ſoit fait en touts points ſolonque ceo que eſt conteigne en la graund Charter des franchiſes fait en temps le Roy H. pier le Roy que ore eſt, *Magna Charta cap.* 4, 5, & 6. Et que iſſint ſoit uſe deſormes, et per meſme le manner ſoient gardes les Archiveſqueries,

Eveſqueries, Abbies, Eſgliſes, et dignities en temps de vacation. *Vide Artic' ſuper Chartas cap.* 18.

Mag. Cha. c. 4, 5, 6 Artic. ſuper Chart. ca. 18.

This Act both to heires in Ward, and the cuſtody of Archbiſhopricks, Biſhopricks, &c. during vacation, is but a confirmation of the Statute of Magna Charta, Cap. 4, 5, 6. whereof there you may reade at large.

CAP. XXII.

DEs Heires maries deins age, ſans le gree de lour Gardeins, avant que ils averont paſſes lage de xiiii. ans, ſoit fait ſolonque ceo que eſt contenue en le purveiance de Merton Cap. 6. Et de ceux que ſerront maries ſans le gree de lour gardeins puis que ils averont paſſes lage de xiiii. ans, le gardein eit le double value de ſon mariage, ſolonque le tenour de meſme le purveyance. Ouſter ceo ceux queux averont ſuſtret le mariage, rendant le droit value del mariage al Gardein pur le treſpaſſe, et jalemeins le Roy eit les amends ſolonque meſme le purueyance de celuy que le avera ſuſtret, Weſtm. 2. cap. 35. Et des heires females, puis que ils averont accomplies lage de xiiii. ans, et le ſeignior a que le mariage appent celes ne voudra marier, mes pur covetiſe de la terre, les voudra tener diſmarie. Purview eſt, que le Seignior ne poit aver ne tener per encheſon del mariage, les terres a tielx heires females ouſtre deux ans apres la terme de lavantdit xiiii. ans. Et ſi le Seignior deins les deux ans ne les marie, donques eiant els actions de recover lour heritage quietment ſans rien done pur lé garde, ou pur la mariage. Et ſi els pur malice, ou per malveis counſel ne ſe voillent pur lour chiefe ſeigniors marier, ou els ne ſont diſparages, que les ſeigniors teignent la terre, et la heritage jeſque al age del Enfant male, ceſtaſcavoire, xxi. ans, & ouſter jeſque ils eiant priſes le value del mariage.

Merton. cap. 6. 21 E. 3. 19, 20. 27 H. 6. tit. gard. 118. 33 E. 3. Judgement 251.

The Statute of Merton provideth (as hath bin ſaid) that if any Layman raviſh an heire, or detain him within the age of 14. yeares, that then the Gardein ſhould recover the value of the marriage againſt the Raviſher together with the Infant and his lands, and that the Defendant ſhould be impriſoned untill he hath recompenced the Plaintife, &c. and further, untill he hath ſatisfied the King for the Treſpaſſe.

This

This Act doth first confirme the Statute of Merton, both concerning the ravishment, and also concerning the forfeiture of mariage: And provideth further, that of them that be above the age of 14. yeares (over and above the double value of the mariage after-tender made according to the Statute of Merton to be recovered against the heire) the Gardien shall recover against the ravisher or detainer, the heire being maried, the full value thereof, and the King shall have also like amends according to the said Act.

¶ Ceux que averont sustret le mariage.] That is, the ravisher or detainer of the heire, and which married the heire after 14. and before 21.

This extendeth after 14. as well to Ecclesiasticall, as Lay persons, which the Statute of Merton of a ravishment before 14. doth not, but to Lay men onely.

¶ Et des heires females.] The mischiefe before this Act was, That whereas the heire female after her age of 14. yeares ought of right to be out of Ward, the Lord for covetousnesse would not marry them, but keep their lands at their will and pleasure many yeares after their age of 14. against the which wrong this Statute provideth remedy, and was made for the restraint of the wrong, and in truth for the advantage of the Lords. Brit. fol. 169. 35 H. 6. 40. 35 H. 6 Gard. 71. 39 H. 6. c. 2. F. N. B. 143. d

And here we are occasioned to explain a place in Bracton, Fœmina 14. vel. 15. annorum potest disponere domui suæ, & habere Cone & Key, &c. Which word [Cone] is mistaken in the impression, for it should be Cover & Key; and for Cover we use Cofer at this day, changing the v to an f, (which is usuall) so as at that age like a good huswife shee is able to discerne what things are in a houshold fit to bee kept in Cofer under locks and key; And the reason, wherefore, if the heire female of a Tenant by knights service be of the age of 14. yeares at the death of her Auncestor, she shall not be in Ward, is, for that she is viri potens, and can govern an household, and may marry an husband, which may doe knights service. Bract. L. 2. fo. 86. b

If a man hath two daughters and dieth, the one above the age of 14. and the other within the age of 14. the Lord shall have the Wardship of the body of her within age, and the moity of the land. See the first part of the Institutes. sect. 103, 104.

¶ Purview est que le Seignior.] 1. Every Lord is not within the purview of this Act. The heire female shall enter upon the Lord by posterority, because her mariage belongs not unto him. 35 H. 6. 52.

2. If the Lord graunt the mariage of the heire female to one, neither the graunter nor the grauntee shall have two years, but the heir female shall enter at her age of 14. for the grauntee cannot hold the land, and the graunter hath not the mariage. 35 H. 6. ubi supra. Gard 71.

3. So it is, if the King graunteth the Wardship of the body of the heire female, she shall sue her livery at her age of fourteen, for neither the King nor his grauntee can hold the land during the two yeares. 35 H. 6. ubi supra

¶ Per 2. ans ouster les 14. ans.] By this is understood that the Lord shall not have the 2. yeares, but where the heire female was within the age of 14. at the death of her Auncestor, and in Ward to the Lord. 35 H. 6. 52.

¶ Les terres.] Here a mesualty that is holden is understood, though this Statute speak of lands onely.

¶ Per encheson de mariage.] Cessante causa cessat effectus, and therefore if within the two yeares the Lord marrieth the heire female, the heire female shall presently enter, because for that cause the two yeares are given. 35 H. 6. ubi supra.

If the Gardien marry the heire female after the age of 12. yeares, he shall not detaine her land but untill her age of 14. for the cause ceaseth.

F.N.B. 143. d. So it is if the Auncestor marrieth his heir female, and dieth before she attain to her age of 14. the land shall be in Ward, but the Lord shall not have the 2. yeares.

35 H. 6. 40. tit. Gard. 71. Institutes, ubi supra. And it is to be observed, that the Lord hath these two years by force of this Act, and not as gardien, because his gardienship ended at her age of 14. and therefore a Writ of Dower doth not lie against him during those two yeares, because he holdeth not the land as gardien.

35 H. 6. Gard 71. And for that cause if the Lord tender to her a marriage, and she within the two years marry her selfe elsewhere, there lieth no forfeiture of marriage against her.

¶ Et si els per malice ou malveis counsel ne soy voillent, &c.] Here the Act in hatred of contradiction and disobedience, In odium contradictionis & disobedientiæ, giveth to the Lord her lands untill her age of 21, &c. but he holdeth not the same as gardien for the cause aforesaid.

Fleta l. 1. ca. 12. Of this whole Act Fleta saith thus, De fœmellis 14. annos habentibus, quibus Domini sui maritagium competens medio tempore non obtulerint, taliter provisum est, quod negligentia Dominorum hujusmodi talibus hæredibus non sit damnosa, sed retenta hæreditate per duos annos post 14. annos, eam hæredibus sine contradictione reddere non contradicant; quod si infra ætatem competenter & palam contulerint, ipsæque maritari non consenserint, tunc usque ad ætatem masculinam hæreditatem talium impune poterint retinere ulterius quam per duos annos, pro fine maritagii, & in odium contradictionis & inobedientiæ.

¶ Ouster jesque ils eient ptises le value.] Here the profits are accounted to goe in satisfaction of the value. Vide le Statute de Merton cap. 6.

If the Lord grant over the Wardship of the body onely, neither graunter nor graunteé shall take the advantage of this branch.

CAP. XXIII.

27 E. 3. Sta. 2 c. 17 PUrview est ensement, que en City, Burgh, Ville, Faire, ne Marche, ne soit nul home forein, que soit de cest Realme, distreine pur dette, dont il nest dettour ou pledge, & que le fra, serra grevousement punie, et sans delay soit le distresse deliver per les Bailises du lieu, ou per auter Bailises le Roy, si mestier soit.

The mischiefe before this Statute was, that divers Cities, the Cinque Ports, Boroughs, Towns Corporate, &c. within this Realme, did claime such a custome, that if any of one City, Society, or Merchant guild were indebted to any of another City, Society, or Merchant guild, if any other of the same City, Society, or Merchant guild that the debtor was of, came into the City, Society, or Merchant guild whereof the Creditor was, that he would charge such a forreiner for the debt of the other; which Customes are taken away by this Statute, whereof Fleta teacheth in these words; Solent plerique homines in feriis, Mercatis, Civitatibus, Burgis, & feodis, & in jurisdictionibus suis aliquos transeuntes de feodis, vel jurisdictionibus suis nullatenus existentes ad querimoniam

Fleta li. 2. ca. 56. Cap. Irin' in Vet. Mag. Cart. fo. 155

niam alicujus invenientis plegios de proſequendo impedire, diſtringere & gravare pro alieno debito, cujus non fuerit plegius nec debitor, imponentes ei quod erat tali debitori affinis, ut de una ſocietate vel civitate, & hujuſmodi & impune: propter quod proviſum eſt, & inhibitum, ne quis aliquem forinſecum, dum plegius non fuerit nec debitor, pro aliquo debito alieno alicubi diſtringat, nec ad aliquam ſolutionem compellat, & qui fecerit graviter punietur.

And it ſeemeth by the Mirrour, treating of this Chapter, that ſuch cuſtomes were againſt the Common Law, for there it is ſaid, Le point de tortiouſnes diſtreſſes duiſt conteine le paine de roberie. Mirr.cap.5.ſect.4

¶ Que ſoit de ceſt realme.] Theſe are materiall words: For if a Merchant of England be either wrongfully impriſoned in the parts beyond the ſea, or have his merchandiſes or goods taken from him there wrongfully, he ſhall have the Kings Letter to the King, Prince, or Lord of that Territorie, where the wrong is done, wherein the wrong is briefly recited, and requeſt made, Quod ſatisfactionem debitam ac juſtitiæ complementum fieri faciat, &c. which Letters of divers formes appeare in the Regiſter. Now if he be deſtitute of Juſtice there, then may he either have the Kings Writ De arreſto facto ſuper bonis mercatorum alienigen' pro tranſgreſſione facta mercatoribus Angliæ, or elſe according to the Law of Marque, he ſhall have from the King Letters of Marque or Repriſall under the great Seale, whereby he may redreſſe himſelfe of the goods of any of the men of that Territorie taken within this Realme. And it is called the Law of Marque, of a Saxon word, which ſignifieth a limit or bound; becauſe ſeeing he cannot obtaine Juſtice within the limits of the forreine Country, he may be redreſſed of the men of that Country within the limits of his owne: which appeareth by the Statute of 27 E. 3. in theſe words, "No merchant ſtranger be impleaded for anothers treſpaſſe, or for anothers debt, whereof he is not debtor, pledge, nor mainperno. Provided alwayes, that if our liege people, Merchants, or other "be endamaged by any Lords of ſtrange Lands, or their Subjects, and the ſaid "Lords (duly required) faile of right to our ſaid Subjects, we ſhall have the "Law of Marque, and of taking them againe, as hath béene uſed in times paſt, "without fraud or deceit. Wherein many things are worthy of obſervation; and (amongſt them) that this Law of Marque extends not onely to Merchants, but to all other the Kings Subjects. And this Law of Marque in ſome Records is called the Kings right, Jus regium, becauſe thereby he doth his Subjects right: As taking one example for many, In the Parliament holden in 11 H.4. John Kowley of Bridgwater in his Petition prayed the King that he might take Marque and Repriſall of all French-mens goods, (having no ſafe conduct of the King) to a certaine value, for certaine his Ships and other goods taken by the French in the time of the Truce: The anſwer of the King was, That upon ſuit made to the King, he ſhould have ſuch Letters requiſitory as are needfull, and if the French King refuſe to doe him right, the King will then ſhew his right. This Letter of Marque or Repriſall was anciently called Litera mercatoria, (becauſe moſt commonly Merchants obtained it) Litera mercatoria conceditur mercatoribus Anglis contra mercatores Heynon, Holland, Zealand, & Friſland. So as if thoſe words [which is of this Realme] had béen omitted, and the Statute had béen generall in the negative, that no forreine perſon ſhould be diſtrained for any debt, wherefore he is not debtor or pledge, this had taken away the ancient Law of Marque or Repriſall; and therefore neceſſarily were added the ſaid words [which is of this Realme] whereby the Law of Marque or Repriſall is implyed and ſaved. 27 E.3.ubi ſup. Rot.Parl. an.11. H.4. Norf.Tr.33.E.1. Corã rege rot.18 Mat.Paris fo. 966.b.

¶ Diſtreine pur dett.] At this time a Capias did not lie in an Action of Debt, but is given by the Statute of 25 E.3. but yet this Statute doth extend to the Capias, becauſe the Capias commeth in lieu of the Diſtres. 25 E.3.cap.7.

CAP.

CAP. XXIV.

PUrview eſt enſement, que nul Eſchetor, Viſcount, ne autre bailife le roy, per colour de ſon office, ſans eſpeciall garrant, ou commandement, ou certaine authoritie que appent a ſon office, ne diſſeiſe nul home de ſon franktenement, ne de choſe que appent a ſon franktenement. Et ſi aſcun le fait, ſoit a le volunt le diſſeiſee, que le roy de ſon office le face amend' a ſon pleint, ou que il eit la common ley per briefe de *Novel diſſeiſin*. Et celuy que ſerra de ceo attaint, rendr' les dammages a double a meſme le plaintife, & ſerra en le grevous mercie le roy.

The miſchiefe before this Statute was, that Eſchaetors, Sheriffes, and other of the Kings Bailiffes, would, colore officii, ſeiſe into the Kings hands the freehold of the Subject, and thereby diſſeiſe the partie, who thereupon to his intolerable veration and delay, was put to his ſuit to the King by Petition, for which this Statute provideth remedy.

¶ Bailiffe le roy.] Here by Bailiffe is underſtood any other officer or miniſter of the Kings.

Pl.com. ¶ Per colour de ſon office.] Colore officii is ever taken in malam partem, as virtute officii is taken in bonam: And therefore this implyeth a ſeiſure unduly made againſt Law.

And he may doe it colore officii two manner of wayes: Either when he hath no warrant at all, or when he hath a warrant, and doth not purſue it.

5 E.6.Br.55.tit. office.Li.8.fo.168 Paris Stoughtons caſe. Art.ſuper cart. cap.19. 29 E.1. Stat. de Lincoln. * 17 E.2.aſſ.371. 32 E.1.ibid.378. 4 E.2.diſſeiſ.10. 8 E.2.coron.390. 3 E.3.coron.347. & 300. 8 E.3.38. 15 E.3.extent 17 31 aſſ.28.10 E.3. 47. 17 E.3.66. 22 aſſ.96,81. 44 aſſ.14.43 E.3. 24. 26 aſſ. pl.32. 7 H.4.41.13 H.4. 13.Stamf.pl.cor. 192,193.Pl.com. Morgans caſe,12 13. 4 E.1.officium coronat. 1 R.3.cap.3.

¶ Eſpecial warrant.] That is, to the Eſchaetor, &c. a Diem clauſit extremum, Mandamus, or any other of the Kings Writs, and office thereupon found for the King.

Likewiſe to the Sheriffe the Kings Writ, as an Habere facias ſeiſinam, or the like.

By this Act no ſeiſure can be made of lands or tenements into the Kings hands before office found, and ſo is the common experience at this day. See the Statute of Articuli ſuper cart. cap. 19. & 29 E.1. leſtat. de Lincolne.

¶ Ou commandement] Under theſe words are comprehended not onely the Kings commandements by his Writs, as hath been ſaid, but alſo the commandement of the Juſtices of the Kings Courts of Juſtice.

* A man was indicted before the Sheriffe in his Tourne of felonie, upon which indictment his lands and chattels were by the Sheriffe ſeiſed for the King: afterward before Juſtices aſſigned he was acquited, and ſued out a Certiorari to remove the Record into the Kings Bench; which being removed, he prayed there to have reſtitution of his lands and goods; and it was reſolved that the Sheriffe had not warrant to ſeiſe the lands, (before he were attainted) and therefore that he ſhould ſue his Aſſiſe againſt the Sheriffe upon this Statute. It was further reſolved, that if the Sheriffe ſeiſe lands by the commandement of the Juſtices, then is the Sheriffe excuſed, though the Juſtices therein did erre; and if he did it of his owne head, then had the party remedy by an Aſſiſe; there-

therefore the partie was required to ſue out a Writ to the Juſtices to certifie if the ſeiſure were made by their commandement.

¶ Ou certain authoritie que appent a ſon office.] That is, Ex officio, without any Writ or commandement: For example, when the Eſchaetor taketh an office virtute officii, he may ſeiſe the land; for this, as our Act ſaith, doth belong to his office; but if of his owne head (as hath béne ſaid) he ſeiſeth the land without any office, that ſeiſure is colore officii, and therefore the Aſſiſe upon this Statute is maintainable againſt him in that caſe, & ſic de cæteris. Stamf. prærog. regis, 83, 84.

¶ Per briefe de novel diſſeiſin.] This is put for an example, for he may have any other Writ, or Action againſt him.

This Statute is made in affirmance of that, which ought to have béen done by the Common Law, and is the foundation as well of our Book-caſes aboveſaid, as of the Acts of Parliament that after have béen made concerning undue ſeiſures by Eſchetors, Sheriffes, and other Bailifes, as Coroners, and the reſt. Bract. lib. 3. fo. 121. b. Brit. fo. 3, 4 Flet. li. 1. c. 18, 25. Mirr. cap. 1. §. 5.

And if it doth appeare to the Court, that the Kings Officer doth ſeiſe for the King any lands without warrant againſt the Law, in an Action brought againſt the Officer, he ought not to have any aid of the King; Neither doth the Writ De domino rege inconſulto lie in that caſe, becauſe that which is done by him is void; and where the cauſe of aid faileth, there no aid is to be granted. It were againſt reaſon, that the King, who is the head of Juſtice, ſhould aid him in his wrong; and therefore this Act for doing of wrong in the Kings name, doth give the party grieved an Aſſiſe againſt him, wherein the plaintife ſhall recover his land, and double damnages, and beſides the Kings Officer ſhall be in the grievous mercy of the King, for doing injury in his name to the ſubject. 28 E. 3. 94. Mortimers caſe. Rot. Parl. 8 R. 2. nu. 14 the Prior of Mountegues caſe adjudged in Parliament. 4 H. 6. 29, 30.

Therefore in a reall action, if the Eſchetor (of whom this Statute ſpeaketh) be examined, and upon his examination ſaith generally, that he hath ſeiſed the lands in demand into the Kings hands; this is not good, and the Action ſhall proceed, for he muſt ſhew the cauſe of the ſeiſure, (as is implyed in this Act) which cauſe, if it appeare to be againſt the Law, the Judges of the Law ought to diſallow the ſame. 9 H. 7. 10. 30 aſſ. p. 5.

CAP. XXV.

NUl miniſter le roy, ne maintaine per luy, ne per auter, les plees, parols, ou beſoignes queux ſont en la court le roy, des terres, tenements, ou des auters choſes, pur aver part de ceo, ou auter profit per covenant fait. Et que le fra, ſoit punie a le volunt le roy. *Vide Champertie* 11 *Ed.* 1.

¶ Nul miniſter le roy.] Fleta in rehearſing this Statute, ſaith, Nullus miniſter regis cujuſcunque fuerit officii, &c. and another Statute proveth againſt all others. Miniſter regis was taken in this Kings time to extend to the Judges of the Realme; for in the caſe of Juſtice Heigham for a ſcandall, and reproachfull words ſpoken unto him, the Record ſaith, Sicut honor- Flet. lib. 1. cap. 30 Brit. fo. 37. b. Art. ſuper cart. ca. 11. 20 H. 6. 30, 31. M. 33. & 34. E. 1. Coram rege. See hereafter the 29. and 35. Chapters.

honor & reverentia, quæ Miniſtris Domini Regis attribuuntur, ipſi Regi attribuuntur; ita dedecus & infamia, quæ Miniſtris Domini Regis inferuntur, ipſi Regi inferuntur: In which Record and many other of that time [Miniſtri Regis] extend to the Judges of the Realme, as well as to them, that have Miniſteriall offices.

¶ Ne mainteine, &c.] Of Maintenance ſhall be ſpoken in the expoſition upon the 28. and 29. Chapters of this Parliament.

Regiſt. 183. 30 Aſſ. p. 15. 19 R. 2. Champerty 15. 3 H. 6. 54. 8 E. 4. 13.

¶ Queux ſont en la Court.] By theſe words it is declared, that regularly Champerty is pendente placito, and therefore a ſcoffement after judgement is not within this Statute.

¶ En la Court le Roy.] That is, in ſome of the Kings Courts of Record.

¶ Pur aver part de ceo.] Here is Champerty forbidden by this Act: Firſt, therefore it is to be ſeene what Champerty is; and ſecondly, whether it were not prohibited by the Common Law before this Act; and laſtly, what was the cauſe of the making of the ſame.

Fleta l. 2. ca. 30. Britton fol. 37. 47 E. 3. 9. 31 H. 6. 9 F. N. B. 171. f. 33 E. 1. Vet. Mag. Char. fo. 9. & 111.

Champerty is derived from two Latin words, Campo & parte, and therefore Champerty is a bargaine with the Demandant or Tenant, Plaintife or Defendant, to have part of the thing in ſuit, if he prevaile therein, for maintenance of him in that ſuit; It is called Campi pars, becauſe he ſhall have a part of the field or land, &c. in demand, In the Statute called Definitio conſpiratr', Champertors are called Campi participes, and are thus deſcribed, Campi participes ſunt, qui per ſe, vel per alios placita movent, vel moveri faciunt, & ea ſuis ſumptibus proſequuntur, ad campi partem, vel pro parte lucri habend'.

Every Champerty is Maintenance, but every Maintenance is not Champerty, for Champerty is but a ſpecies of Maintenance, which is the genus.

It was an offence againſt the Common Law; for the rule of Law is, Culpa eſt ſe immiſcere rei ad ſe non pertinenti. And, pendente lite nihil innovetur.

Bract. l. 3. fo. 117. Fleta lib. 1. ca. 20. Brit. ubi ſupra. Cap. Itineris. Vet. Mag. Chart. 152.

Bracton, who wrote before this Statute, rehearſing the Articles enquirable by the Juſtices in Eyre, ſaith, De exceſſibus Vic', & aliorum balivorum, ſi quam litem ſuſcitaverint, occaſione habendi terras vel cuſtodias, vel perquirendi denarios, vel alios profectus, per quod juſtitia & veritas occulteur, vel dilationem capiat; and Fleta agreeth with him, where it is ſaid, Per quod juſtitia & veritas occultetur; It appeareth that the end of Champerty and Maintenance is to ſuppreſſe Juſtice and truth, or at leaſt to worke delay, and therefore it is malum in ſe, and againſt the Common Law.

Mirror ca. 1. § 3. 11 H. 6. fo. 11.

And the Mirror ſaith, En perjurie chiont, &c. touts ceux Miniſters le Roy, que mainteinont faux actions, faux appeales, ou faux defences a eſcient.

An Action of Maintenance did lie at the Common Law, and if Maintenance in genere was againſt the Common Law, à fortiori Champerty, for that of all Maintenances is the worſt.

8 H. 5. 8. 15 H. 7. 2 in Sub pœna.

And our Act and other Acts concerning Champerty prohibite Maintenance, and Champerty en le Court le Roy, yet an Action of Maintenance in the nature of an Action of Treſpaſſe doth lie in ancient demeſne, and other baſe Courts at the Common Law.

11 H. 6. ubi ſupra.

As it is ſaid in our Books, this Act and other Statutes concerning Champerty and Maintenance doe give a greater puniſhment againſt them, that offended in Maintenance and Champerty then was at the Common Law; by this Act he ſhall be puniſhed at the will of the King, i. by his Juſtices, ſo as Champerty is both malum in ſe, by the Common Law, and malum prohibitum, by this Act.

And for that the Kings Miniſters or Officers within his Courts, were in place

place to doe more miſchiefe therein to the ſubverting of Juſtice and truth then others, therefore this Act provideth onely againſt the Kings Miniſters and Officers of his Courts.

Regiſt.182.4 E.2 Champerty 12. 21 E 3.10,52. 22 E.3.10. 30 aſſ. p.15. 50 aſſ.3. 1: 32 E.3.Champ.6 19 R.2.ibid.15. 12 H.4.26.13 H.4 16,17. 8 E.4.1. 9 H.7.18.F.N.B. 172. Regiſt. Judic.57.

Note it is provided by this Act that no Miniſter of the King ſhould maintain to have part, ſo that hereby it appeareth that it is no Champerty unleſs the ſtate, &c. be made for maintenance; Note the words of the Writ of Champerty, be Aſſumpſit manutenend, or Manucepit, &c. But ſee after the 29 Chapter, ſome perſons prohibited to purchaſe at all pendente placito.

¶ Ou auter profit.] * If the Tenant in a reall Action graunt a rent, common, or other profit apprender out of the land to maintaine, &c. this is Champerty, and yet the rent, common, &c. is not in demand, but they are profits out of the land.

*F.N.B.173.k.

¶ Ou auters choſes.] Within theſe words are included leaſes for yeares; and other goods and Chattels, debts and duties.

¶ Per covenant fait.] That is, by agreement, either by word or writing; for albeit in the common ſenſe a covenant is taken for an agreement by writing, yet conventio in his large ſenſe is taken (as here it is) for an agreement by writing, or by word.

F.N.B.171. i.

¶ Il ſerra puny a la volunt le Roy.] See before Cap.4, 9, 20. and hereafter Cap.26, 29.

This Act concerning Champerty is the foundation of all the Acts and Book Caſes that enſued.

Vide Vet.Mag.Chart. 11 E.1. Stat.de Champerty. Artic. ſuper Chart. Cap.11. 33 E.1. Definitio conſpiratorum. 1 E.2. cap.14. 20 E.3. Cap.4. 1 R.2. Cap.4. And thus much for the underſtanding of this firſt Act which is enlarged by divers of the Acts abovelaid.

CAP. XXVI.

ET que nul Viſcount, ne auter Miniſtet le roy ne preigne reward pur faire ſon office mes ſont paies de ceo que ilz purnont del roy, et que le fra rendre le double al Plaintife, et ſerra puny a la volunt le roy.

Cap.itineris Ver. Mag.Cha.fo.155 Marlb.ca.19,28. W.1.ca.3.15.

¶ Miniſter le roy.] Under theſe words, the Law beginning with Nul Viſcount, are underſtood Eſcheators, Coroners, Bailiffes, Gaolers, the Kings * Clerk of the Market, Auditor, and other inferiour Miniſters and Officers of the King, whoſe offices doe any way concerne the adminiſtration or execution of Juſtice, or the common good of the Subject, or for the Kings ſervice; That none of the Kings Officers or Miniſters doe take any reward for any matter touching their offices, but of the King. And ſome doe hold that the Kings Heralds are within this Act, for that they are the Kings Miniſters, and were long before this Statute.

Fletali.2. c.18.& 39. 27 Aſſ.p.14. Stamf. Pl. Coron.49.a. * See the fourth part of the Inſtit. Cap. Court of the Clerk of the Market. Rot.Parl.50.E.3 nu.11.

¶ Ne preigne reward pur faire ſon office.] See before Cap.19 verſus finem; And Forteſcue ſaith, Quod Vicecomes jurabit ſuper ſancta Dei Euangelia inter articulos alios quod bene, fideliter, & indifferenter exercebit,

W.1.cap.10. Fort.c.24.fo.28.

honor & reverentia, quæ Ministris Domini Regis attribuuntur, ipsi Regi attribuuntur; ita dedecus & infamia, quæ Ministris Domini Regis inferuntur, ipsi Regi inferuntur: In which Record and many other of that time [Ministri Regis] extend to the Judges of the Realme, as well as to them, that have Ministeriall offices.

¶ Ne mainteine, &c.] Of Maintenance shall be spoken in the exposition upon the 28. and 29. Chapters of this Parliament.

Regist.183. 30 Ass.p.15. 19 R.2. Champerty 15. 3 H.6. 54. 8 E.4.13.

¶ Queux sont en la Court.] By these words it is declared, that regularly Champerty is pendente placito, and therefore a feoffement after judgement is not within this Statute.

¶ En la Court le Roy.] That is, in some of the Kings Courts of Record.

¶ Pur aver part de ceo.] Here is Champerty forbidden by this Act: First, therefore it is to be seene what Champerty is; and secondly, whether it were not prohibited by the Common Law before this Act; and lastly, what was the cause of the making of the same.

Fleta l.2.ca.30. Britton fol.37. 47E.3.9.31H.6.9 F.N.B.171.f. 33 E.1.Vet.Mag. Char.fo.9.& 111.

Champerty is derived from two Latin words, Campo & parte, and therefore Champerty is a bargaine with the Demandant or Tenant, Plaintife or Defendant, to have part of the thing in suit, if he prevaile therein, for maintenance of him in that suit; It is called Campi pars, because he shall have a part of the field or land, &c. in demand, In the Statute called Definitio conspirat', Champertors are called Campi participes, and are thus described, Campi participes sunt, qui per se, vel per alios placita movent, vel moveri faciunt, & ea suis sumptibus prosequuntur, ad campi partem, vel pro parte lucri habend'.

Every Champerty is Maintenance, but every Maintenance is not Champerty, for Champerty is but a species of Maintenance, which is the genus.

It was an offence against the Common Law; for the rule of Law is, Culpa est se immiscere rei ad se non pertinenti. And, pendente lite nihil innovetur.

Bract.l.3.fo.117. Fleta lib.1.ca.20. Brit. ubi supra. Cap.Itineris.Vet. Mag. Chart.152.

Bracton, who wrote before this Statute, rehearsing the Articles enquirable by the Justices in Eyre, saith, De excessibus Vic', & aliorum balivorum, si quam litem suscitaverint, occasione habendi terras vel custodias, vel perquirendi denarios, vel alios profectus, per quod justitia & veritas occultetur, vel dilationem capiat; and Fleta agreeth with him, where it is said, Per quod justitia & veritas occultetur; It appeareth that the end of Champerty and Maintenance is to suppresse Justice and truth, or at least to work delay, and therefore it is malum in se, and against the Common Law.

Mirror ca.1. § 9. 11 H.6.fo.11.

And the Mirror saith, En perjurie chiont, &c. touts ceux Ministers le Roy, que mainteinont faux actions, faux appeales, ou faux defences a' eicient.

An Action of Maintenance did lie at the Common Law, and if Maintenance in genere was against the Common Law, à fortiori Champerty, for that of all Maintenances is the worst.

8H.5.8.15 H.7.2 in Sub pœna.

And our Act and other Acts concerning Champerty prohibite Maintenance, and Champerty en le Court le Roy, yet an Action of Maintenance in the nature of an Action of Trespasse doth lie in ancient demesne, and other base Courts at the Common Law.

11H.6.ubi supra.

As it is said in our Books, this Act and other Statutes concerning Champerty and Maintenance doe give a greater punishment against them, that offended in Maintenance and Champerty then was at the Common Law; by this Act he shall be punished at the will of the King, i. by his Justices, so as Champerty is both malum in se, by the Common Law, and malum prohibitum, by this Act.

And for that the Kings Ministers or Officers within his Courts, were in place

place to doe more mischiefe therein to the subverting of Justice and truth then others, therefore this Act provideth onely against the Kings Ministers and Officers of his Courts.

Regist. 182.4 E.2 Champerty 12. 21 E 3.10,52. 22 E.3.10. 30 ass. p.15. 50 ass.3. 1: 32 E.3.Champ.6 19 R.2.ibid.15. 12 H.4.26.13H.4 16,17. 8 E.4.1. 9 H.7.18.F.N.B. 172. Regist. Judic.57.

Note it is provided by this Act that no Minister of the King should maintain to have part, so that hereby it appeareth that it is no Champerty unlesse the state, &c. be made for maintenance; Note the words of the Writ of Champerty be Assumpsit manutenend', by Manucepit, &c. But see after the 29 Chapter, some persons prohibited to purchase at all pendente placito.

¶ Ou auter profit.] * If the Tenant in a reall Action graunt a rent, common, or other profit apprender out of the land to maintaine, &c. this is Champerty, and yet the rent, common, &c. is not in demand, but they are profits out of the land.

*F.N.B.172.k.

¶ Ou auters choses.] Within these words are included leases for yeares; and other goods and Chattels, debts and duties.

¶ Per covenant fait.] That is, by agreement, either by word or writing; for albeit in the common sense a covenant is taken for an agreement by writing, yet conventio in his large sense is taken (as here it is) for an agreement by writing or by word.

F.N.B.171. i.

¶ Il serra puny a la volunt le Roy.] See before Cap.4, 9,20. and hereafter Cap.26,29.

This Act concerning Champerty is the foundation of all the Acts and Book Cases that ensued.

Vide Vet.Mag.Chart. 11 E.1. Stat.de Champerty. Artic. super Chart. Cap.11, 33 E. 1. Definitio conspiratorum. 1 E.2. cap. 14. 20 E.3. Cap.4. 1 R.2. Cap.4. And thus much for the understanding of this first Act which is enlarged by divers of the Acts abovesaid.

CAP. XXVI.

ET que nul Viscount, ne auter Ministet le roy ne preigne reward pur faire son office mes sont paies de ceo que ilz purnont del roy, et que le fra rendre le double al Plaintife, et serra puny a la volunt le roy.

Cap.itineris Ver. Mag.Cha.fo.155 Marlb.ca.19,28. W.1.ca.3.15.

¶ Minister le roy.] Under these words, the Law beginning with Nul Viscount, are understood Escheators, Coroners, Bailiffes, Gaolers, the Kings * Clerk of the Market, Auditor, and other inferiour Ministers and Officers of the King, whose offices doe any way concerne the administration or execution of Justice, or the common good of the Subject, or for the Kings service; That none of the Kings Officers or Ministers doe take any reward for any matter touching their offices, but of the King. And some doe hold that the Kings Heralds are within this Act, for that they are the Kings Ministers, and were long before this Statute.

Fletali.2. c.18.& 39. 27 Ass.p.14.; Stamf. Pl. Coron.49.a. * See the fourth part of the Instit. Cap. Court of the Clerk of the Market. Rot.Parl.50.E.3 nu.11.

¶ Ne preigne reward pur faire son office.] See before Cap.19 versus finem; And Fortescue saith, Quod Vicecomes jurabit super sancta Dei Euangelia inter articulos alios quod bene, fideliter, & indifferenter exercebit

W.1.cap.10. Fort.c.24.fo.28.

& facier officium suum toto illo anno, neque aliquid recipiet coram, aut causa officii sui ab aliquo alio, quam a Rege; And note it is not said, that he shall take no reward generally, but no reward to use his office. Vide devisit, Cap. 10.

41 E.3. fol. 15. 21 H.7. 27.

The Sheriffe, or any other Minister of the King cannot prescribe to take a reward or fee for doing of his office: But the fee of 20. s. called Barrfee time out of minde taken by the Sheriffe of every Prisoner that is acquited, is not against this Statute or any other, for it is not taken for doing his office.

Mag. Chart. c. 29. 28 E.1. cap. 18. 36 E.3. cap. 15.

This Statute is made in affirmance of a fundamentall Maxime of the Common Law, which is Non capiant Vicecomites, vel alii Ministri Regis praemium, vel mercedem, vel aliquid pro officio suo faciendo, sed tantum de feodis suis a Domino Rege sint contenti.

See the Preface to the fourth part of my Reports, and the third part of the Institutes, Cap. Of the high Court of Parliament. Verb. See here cap. 42.

It is a certain and true observation, that the alteration of any of those Maximes of the Common Law is most dangerous, whereof you shall elsewhere reade some instances; whereunto you may adde this ancient Maxime affirmed by our Act of Parliament: For whiles Sheriffes, Escheators, Coroners, and other Ministers of the King, whose offices any way did concerne the administration or execution of Justice, or the good of the Common Weale, could take no fee at all for doing their office, but of the King, then had they no colour to exact any thing of the Subject, who knew, that they ought to take nothing of them.

Vide 4 E.3. ca. 10. 27 E.3. cap. 4. 8 Eliz. cap. 12. 23 H.6. cap. 10. 34 H. 8. cap. 28 Eliz. cap. 4. 3 H.7. cap. 12. 1 H.8. cap. 7. 11 H.7. cap. 4. 12 H.7. cap. 5. 8 H.6. cap. 5. 13 R.2. ca. 4, &c. See before ca. 4, 9, &c.

But when some Acts of Parliament changing the rule of the Common Law, gave to the said Ministers of the King fees in some particular cases to be taken of the Subject, whereas before without any taking at all their office was done, now no office at all was done without taking: But at this day they can take no more for doing their office, then have been since this Act allowed to them by Authority of Parliament.

This Statute doth adde a greater penalty then the Common Law did give, for by this Act the Plaintiffe shall recover his double damages, and besides they shall be punished at the will of the King, that is, by the Kings Justices, before whom the cause depends.

CAP. XXVII.

ET que nul Clerke de Justice, deschetor, ou denquiror, nul rien ne preigne pur liverer chapiters, forpris solement Clerks des Justices errants en lour Eyres, & ceo ii. s. & nient plus de chescun Wapentake, Hundred, ou Ville, que respoigne per xii. ou per vi. solonque ceo que auncientment fuit use. Et que autrement le fra, rendra le treble de ceo quel avera prise, & perdra la service de son Seignieur per un an.

Mirror ca. 4. des Artic. des Eires, Bract. l. 3. fo. 115, 116. Brit. ca. 2. fo. 9, 10. Flet. l. 1. c. 20. Mirror c. 2. § 13. See the fourth part of the Institutes. Cap. Justices in Eire.

For the better understanding of this Act, the manner of the proceeding by the Justices in Eyre in their Eyre is to be knowen. First, they had their authority and power by Writs, which Writs were at their Sessions first read, Quibus auditis, quidam major eorum & discretior publice coram omnibus proposuit quae observetur, &c. The charge being given, then were the Bayliffes of the Hundreds

dzeds called, and their names enrolled, and every of them ſwozn that out of every Hundzed they ſhould chooſe four Knights, who forthwith ſhould come beſoze the Juſtices, and ſhould be ſwozn, that they ſhould chooſe twelve Knights, oz fre and lawfull men, if Knights could not be found, &c. by whom the buſineſſe of the King the better, and with greater profit might be expedited; who being returned and ſwozn, then ſhould be read to them the Chapters oz Articles of their charge in writing indented, the one part whereof was delivered to them, and the other part remained with the Juſtices: And commandement was given to them by the Juſtices, that to every Chapter oz Article they ſhould anſwer in their verdict ſeverally and by it ſelfe, ſufficiently, diſtinctly, and openly.

Capitula verò quæ illis duodecim proponenda ſunt, quandoque variantur, ſecundum varietatem temporum & locorum, & quandoque augentur, quandoque minuuntur.

Bract. ubi ſupra. Brit. cap. 3. fol. 16. Fleta lib. 1. cap. 20

But the Ordinary Chapters oz Articles, as it appeareth by Capitula Itineris, amounted to the number of 138. oz thereabouts.

Cap. Itin' Mag. Chart. fol. 150.

¶ Enquiror.] Preſently after the making of this Statute, there was added to the Chapters of the Eyze the effect of this Act to be inquired of, viz. De Clericis Juſticiariorum, Eſchaetorum, vel aliorum miniſtrorum capiendis denarios pro capitulis deliberand', &c. Where Enquirozs oz Inquiſitozs are included under the name of Miniſtri.

Beſoze this Statute, not onely the Clerks of the Juſtices, but of Eſcheatozs and other Miniſters and Officers, that followed the Eyze, did uſe to wzite them, who would doe it readily, ſufficiently, and with leſſe charge, which was bozn by the twelve of every Hundzed. This liberty that the Subject had, could not be reſtrained but by Act of Parliament, and therefoze two things are hereby pzovided. 1. That no Clerks, &c. but onely the Clerks of the Juſtices Errants in their Eyzes, ſhould deliver the Chapters. 2. When this Act of Parliament had dzawn it to the hands of the Clerks of the Juſtices in Eyze, it was neceſſary to ſet down in certain, what they ſhould take, and that was but 2. s. of every Hundzed, which they well deſerved, and the County thereby much eaſed.

¶ Pur liverer Chapters.] Capitula are derived à Capite, the higheſt and pzincipall part of man, ſo when matters are diſtributed into pzincipall Articles, they are ſaid to be digeſted into heads, which thereupon are called Capitula: what is intended here by Chapters, is declared beſoze.

Cap. Itin' ubi ſup

¶ Que reſponde per 12. ou per 6.] Foz ſome Hundzeds were ſo decayed, as they uſed to anſwer to the Chapters oz Articles by 6. as beſoze time had been anciently uſed.

Now how this Chapter could be underſtood without reading of the ancient Authozs and old Recozds, let the indifferent Reader judge.

¶ Et que autrement le fra rendr' le treble value de ceo que il aver priſe.] That is to ſay, If any Clerk, but the Clerks of the Juſtices in Eyze, did foz reward deliver the Chapters, oz if the Clerks of the Juſtices in Eyze foz the delivery of them did take above 2. s. they ſhould render to them of whom they tooke treble ſo much as they received, and beſides loſe the ſervice of their Maſter foz one yeare.

CAP. XXVIII.

ET que nul Clerk le roy ne des Justices resceive diformes presentment del Esglise, dont plea ou conteke soit en la court le roy, sans speciall conge le roy, & ceo defende le roy sur paine de perdre lesglise & son service. Et que nul Clerke de Justice, ne de Vicont, ne mainteine parties en quarels, ne besoignes queux sont en la court le roy, ne fraud ne face pur common droiture delayer, ou disturber. Et si ull' le fait, il serra punie per la paine procheinment avantdit, ou per pluis grievous, si le trespasse le requiert.

1. This Act is divided into foure branches, first, that no Clerk of the King, nor of any Justice receive any presentment to any Church, whereof any plea was depending in the Kings Court; The mischiefe before this Act was, that depending a suit for a Church in the Kings Court, the one party or the other would present the Chaplain of the King, or of some of the Judges, the more to countenance the one party, and discourage the other, and the mischiefe was the greater for that at this time, Cum aliquis jus præsentandi non habens præsentaverit, ad aliquam Ecclesiam, cujus præsentatus sit admissus (i. institutus) ipse qui verus est patronus per nullum aliud breve recuperare poterit advocationem suam quam per breve de recto.

Brit. fol. 37. b. W. 2. 13 E. 1. c. 3. 45 E. 3. Quar. Imp. 139.

2. The second branch containeth the punishment, viz. that if he doth it without the Kings license, he shall lose the Church, that is, that the Church shall be void as unto him, and that he shall lose his service, that is, that he be not after Chaplain to the King during one yeare. And at this time divers Ecclesiasticall persons were not onely Clerks in the Chancery, and other the Kings Courts, but also Stewards of Houshold to Noble men, Justices, and other great men.

Regist. fol. 58. F.N.B. 44. g.

3. The third branch is, that no Clerk of any Justice or Sheriffe shall maintain any party in any querels, or busines depending in the Kings Courts.

¶ Ne mainteine parties, &c.] Ne manuteneas, whereof commeth the word of art manutenencia, or manutentio, derived à manu & tenere: manus doth not onely signifie power or help by word or countenance, but manus is herein used, for that most usually maintenance is done by the hand, either by delivery of money, or other reward, or by writing on the behalfe of one of the parties in a suit depending.

It is in the Register thus coupled, manutenuit & sustentavit, and sustentare is properly to underprop any thing that is likely to fall.

Maintenance is an unlawfull upholding of the Demandant or Plaintife, Tenant or Defendant in a cause depending in suit, by word, writing, countenance, or deed.

This Maintenance (as hath been said) is malum in se, and against the Common Law, and that is notably proved by this Act, for hereby Maintenance is branded with this quality that thereby common right is delaied, or disturbed, and consequently against the Common Law.

And

And it is to be understood, that Manutenentia est duplex, that is to say, curialis, that is, in Courts of Justice, pendente placito, and of this the said discription is given; and ruralis, that is, to stir up and maintaine querels, that is, complaints, suits, and parts in the Country, other then their owne, though the same depend not in plea, and this is punished with great severity, as by the Acts thereto provided appeareth. 1 E.3.c.14.4 E.3. c.11.20 E.3.ca.4. 1 R.2.cap.4.

Manutenentia curialis is divided into lawfull, and unlawfull, and into generall, and speciall, as shall be shewed in his proper place, viz. in the exposition of the Act of 28 Ed.1. Art. super cart'. Art.super cart. cap.11.

¶ Nul Clerke de Justice ne de Viscount.] These were prohibited by this Act, because they were in place, as before hath been said, to do more mischiefe, that is, by their maintenance to disturbe or delay common right. See cap.24.

¶ Ne fraude ne face.] This fraud is worthy of the punishment inflicted by this Act, for that it tendeth to delay, or disturbe common right, that is, the due proceeding of Law.

¶ Pur common droit delayer ou disturber.] These words refer as well to maintenance, as to fraud.

4. The fourth branch is the punishment, which evidently appeareth by the Act.

CAP. XXIX.

PUrview est ensement, que si ul serjeant, counter, ou auter face ul maner de diseeit, ou de colluſion en la court le roy, ou consent de faire la, en diseeit de la court, pur engin' le court, ou la partie, & de ceo ſoit attaint, lors puis eit la priſonment dun an & un jour, & ne ſoit oye en la court le Roy a counter pur nulluy. Et ſi ceo ſoit auter que count', per meſme le maner eit la priſon dun an & dun jour a tout le meins. Et ſi le treſpas demande greinder paine, ſoit a volunt le roy.

Before this Statute, in the irregular raigne of H. 3. Serjeants, Apprentices, Attorneys, Clerks of the Kings Courts, and others did practise and put in ure unlawfull shifts and devises so cunningly contrived, (and specially in the cases of great men,) in deceit of the Kings Courts, as oftentimes the Judges of the same were by such crafty and sinister shifts and practises inveigled and beguiled, which was against the Common Law, and therefore this Act was made in affirmance of the Common Law; onely it added a greater punishment: For heare what the Mirrour saith of the Serjeants at Law, what his office and duty was: Chescun Serjeaunt counter est chargeable per ſerement que il ne maintenera, ne defendera tort ne faixime a ſon ſcient, eins guerpera ſon Client, a quel heure que il puit ſon tort a perceiver. Auxi que il ne mitter in court faux delaies, ne faux teſmoignes ne movera, ne profera, ne aux Corruptions, deceits, menſonges, ne aux fauxes lies ne conſentera, mes loialment maintenera le droit de ſon Client, que il ne chiet per follie, negligence, ne default de luy, ne Mirr.ca.2.ſect.5. des counters.

ne de reſonne que a luy appendroit de pronouncer & per meſterie, leding, deſpiſer, coup, polie, tenſon, manace, noiſe, ne villanie, ne diſturbera judge, party, ſerjeaunt, ne auter in court per quoy il diſturbe droit ou audience. In former times learned and grave Appꝛentices of Law came not to this ſtate and degree per ambitum, but contrariwiſe when they were called thereunto, they allayed all means to avoid it, taking the degrée of an Appꝛentice to be the moꝛe permanent place: As taking one example foꝛ many; In the 5. yeare of H. 5. John Martine, William Babington, William Pole, William Weſtbury, John June, and Thomas Rolfe, ſix grave and famous Appꝛentices, having Writs delivered unto them to take the ſtate and degrée of Serjeaunts retournable in Michaelmas Terme, when all the meanes, which they had uſed could not pꝛevail, they at the returne thereof in Chancery abſolutely refuſed the ſame; whereupon they were called into the Parliament then ſitting, and there charged to take the ſtate and degrée upon them, which in the end they did, and divers of them afterwards did woꝛthily ſerve the King in the pꝛincipall offices of the Law, as by our Books appeareth.

Rot. Parl. an. 5. H. 5.

¶ Serjeaunt counter.] Of his antiquity and calling ad ſtatum & gradum Servientis ad legem, I have ſpoken in another place. In ancient books he is called Counter, oꝛ Narrator of the count oꝛ declaration, being grounded upon the oꝛiginall Writ, the foundation of the ſuit: And Serjeaunt being a generall woꝛd, Counter is added to it, to reſtraine it to a Serjeaunt at Law. Vide ca. 30. And untill this day, when Serjeaunts pꝛocéd, every of them counteth, that is, reciteth a count in an Action appointed to him by the Judges beꝛoꝛe them.

1. Part of the Inſt. ſect.

Flet. lib. 2. cap. 21 Cuſt. de Norm. cap. 64. Mirr. ubi ſup.

Mirr. ubi ſupra. The Mirrour ſaith, Counters ſont Serjeaunts ſachants le ley del Realme, que ſervent al common del people a pronouncer & defender les actions en judgement, pur ceux que mitteront pur loier, &c.

¶ Ou auter.] This extendeth to Appꝛentices, Attoꝛnies, Clerks of Courts, oꝛ any other.

Foꝛ the better underſtanding of this Act, it is neceſſary to ſet doꝛone the oath of the Serjeaunt at Law.

The Oath of the Serjeaunt at Law.

This Oath conſiſteth on foure parts.

1. That he ſhall well and truly ſerve the Kings people, as one of the Serjeaunts of the Law.

2. That he ſhall truly counſell them, that he ſhall be retained with, after his cunning.

3. That he ſhall not deſer, tract, oꝛ delay their cauſes willingly, foꝛ coveteouſneſſe of money, oꝛ other thing that may tend to his pꝛofit.

4. That he ſhall give due attendance accoꝛdingly.

The Oath of the Kings Serjeaunt at Law.

This Oath conſiſteth on ſix parts.

1. That he ſhall well and truly ſerve the King and his people, as one of the Kings Serjeaunts at Law.

2. That he ſhall truly counſell the King in his matters when hee ſhall be called.

3. And duely and truly miniſter the Kings matters after the courſe of the Law, to his cunning.

4. He ſhall take no wages oꝛ fée of any man foꝛ any matters, where the King is party, againſt the King.

5. He ſhall as duly, as haſtily ſpéd ſuch matters, as any man ſhall have to do againſt the King in the Law, as he may lawfully doe, without delay, oꝛ tarrying the party of his lawfull Pꝛoces in that belongeth to him.

6. He ſhall be attendant to the Kings matters when hee ſhall be called thereto.

The Appꝛentice at Law is not ſwoꝛne.

Con-

Concerning Attorneys, it is provided by the Statute of 4 H. 4. cap. 18 that they that be good and vertuous, learned, and of good fame, shall be received, and their names put into the roll, and that be those which are ready to serve in their offices, and specially that they make no suit maliciously in County. 4 H.4.cap.18.

The Roll of Attorneys.

Newton, Chiefe Justice of the Court of Common Pleas, gave judgement of an Attourney of that Court, that had sued out a Capias without an Original, that his name should be drawne out of the Roll of Attorneys, and that he should never be Attorney in this Court, nor in any other Court of the King, and that he should not meddle in them in the Law, and to perform all things in those things was sworne on a book. And Newton said to him: The King perhaps, when you shall have better grace, may pardon you by his Letters Patents, &c. and then you may be restored againe. 20 H.6.fo.37.

Note: Attorney

¶ Face ul maner de dicceit.] This must be a mis-reasons, and not a non-reasons; for the words be Doe, si facist aliquam deceptionem seu collusionem, &c. And to illustrate this matter, it is good to put some examples.

A Writ of Habere facias seisinam did falsly recite a recovery in a reall action, (where in truth there was no recovery at all) by colour of which Writ a man was put out of his freehold; a this was a collusion in deceit of the Court, and the delinquent was by this Statute awarded to prison, &c. a 17 E.3.51. F.N.B. 98. o. Hil.16.E.1. in Ban. 58. deceit, & collusion for recovery, &c. Rudulphus Paymel, &c. Hil. 22. E.1. Rot.70. in com. Banc. Allan Prats case.

b So it is to sue out a Capias without an Original. b 20 H.6.37

c Also to bring a Præcipe against a poore man, knowing that he hath nothing in the land, of purpose to get the possession of the land against the tenant who is in possession. c 39 E.3.fo.15.

d To procure an Attourney to appeare for a man, and plead without warrant. 3 E.3.49,50.semble. 4 E.3.37. F.N.B.103. d 41 E.3.17 Dier 20 El.362.

If a Serjeant, or an Apprentice of the Law in pleading a matter of fact (which he for his Client, alledge the same to be done at a towne in such a County, where in deed he knoweth there is no such towne, of purpose to delay Justice, & a enginer la court, this is a deceit within this Statute, and so it hath been holden. e Dier 8 El.249.

e A. H. in Execution in the Counter of London, and because that prison was a strait prison, devised a shift (in deceit of the Court) to be removed from thence to the Fleet, and his device was this: He made an Obligation of xx. l. to S. and caused the Obligation to be put in suit against himselfe in the name of S. and Judgement in the Court of Common Pleas was given against him upon his confession, and procured a habeas corpus cum causa, & thereupon he was brought into the Court of Common Pleas, and there one in the name of S. prayed that he might be committed in execution to the Fleet; and the Court being beguiled, and knowing nothing of this deceit, and subtill and false practise, committed him to the Fleet, where S. never had any a debt, nor ever was privie to any of the said proceedings, A. H. and his counsellors, &c. are within this Statute.

This Act is also in affirmance of the Common Law, for fraud and falshood is against the Common Law: And therefore if the Client would have the Attourney to plead a false plea, he ought not to doe it, for he may plead quod non fuit veraciter informatus, & ideo nullum responsum, &c. and that shall be entred into the roll to save him from dammages in a Writ of Deceit: And if an Attorney ought not wittingly to plead a false plea, a fortiori a Serjeant or an Apprentice ought not to doe the same. 10 E.4.9.b. F.N.B.98.1.

¶ Pur enginer (*ou enginger*) le court ou la partie.] That is, to beguile the Court, or the partie, as by the examples before expressed have appeared.

And this artificiall deceit is of all other the worst, for hereby the matter is so tricked, shadowed, and heightned by colour of painted art, as thereby the Judges themselves are abused and beguiled.

¶ Et

¶ Eit la prisonment dun an, & ne soit oye en la court le roy a counter pur nulluy.] This punishment extends as well to the Apprentice, as to the Serjeannt.

¶ Soit a volunt le roy.] These words are before expounded, Cap. 4. &c.

Tr. 18 E. 1. in Ba. Rot. 168. warr'.

William de Wasthill plaintiffe against Matthew of the Exchequer, in an Action of Deceit, and declared, that where he had demised to the said Matthew certain lands in Wyrlingscote in the County of Worcester, and Blakgreve in the County of Warwick for the terme of twelve yeares, and covenanted by fine to assure the same, the said Matthew other lands in the said fine fraudulently did insert, to have and to hold to him in fée, to the disherison of the plaintiffe, &c. This matter was treated of, and examined by all the Judges of England, and the Treasurer and Barons of the Exchequer in the presence (saith the Record) of Henry de Lacy Earle of Lincolne, Master William de Bishop of Ely, and Robert of Tipetet, and others: and, to use the words of the Record, Super examinationem tam ipsius Matthæi quam recordorum, compertum est, quod hæc & alia perpetravit in deceptionem Curiæ: And thereupon Judgement is given, Quòd committatur gaolæ ibidem moratur' per unum annum & unum diem secundum * statutum, & finis † cassetur. The quashing of the fine was by force of these words in this Statute, Et si le trespas demand greinder paine, soit a volunt le roy, That is, of the Kings Court, where the plea dependeth.

* W. 1. cap. 29.
† Nota hoc.

Hæc est finalis concordia facta in curia domini Regis apud Westm' a die Sancti Michaelis in xv. dies, Anno regni Regis Edwardi filii Regis Henrici tricesimo tertio, coram Radulpho de Hengham, Willielmo de Bereford, Elia de Bekingham, Petro Malore, Willielmo Howard, & Lamberto de Trykingham Justic', & aliis domini regis fidelibus tunc ibi præsentibus, Inter Rogerum de Gamages, & Ceciliam uxorem ejus querentes, & Iohannem filium Iohannis de Ballingham deforc' de duabus messuagiis, quinquaginta & duabus acris terræ, & una acra bosci, & dimid' un' acræ pasturæ, & medietate unius acræ prati, cum pertinentiis in Ballingham, unde placitum conventionis summonitum fuit inter eos in eadem Curia, scilicet quod prædictus R. recogn' prædicta tenementa cum pertinentiis esse jus ipsius Iohannis. Et pro hac recognitione, fine & concordia, idem Iohannes concessit prædictis Rogero & Ceciliæ prædicta tenementa cum pertinentiis, & illa eis reddidit in eadem curia. Habend' & tenend' eisdem Rogero & Ceciliæ, & hæredibus ipsius Ceciliæ de capitalibus dominis feodi illius per servitia quæ ad tenementa pertinent imperpetuum. Et præterea idem Iohannes concessit pro se & hæredibus suis, quod ipsi warrant' eisdem Rogero & Ceciliæ, & hæredibus ipsius Ceciliæ, prædicta tenementa cum pertinentiis contra omnes homines imperpetuum. Et pro hac recognitione, redditione, warrant', fine & concordia iidem Rogerus & Cecilia dederunt prædicto Iohanni viginti libr' sterlingorum.

Nota, Six Judges in the Court of Common Pleas. Mich. 33. E. 1.

Placit' convent'.

A render to Cecilie, which was not party to the conusans.

Hil. 7. E. 2. coram rege rot. 93. Heref.

This Fine being removed coram Rege, the heires of John Ballingham, viz. Cecilie the wife of Roger Burghull, and her husband, and Sibyl and Cecilie daughters and heires of Margerie, brought a Writ of Deceit, &c. for the avoiding of the Fine: Asserentes (saith the Record) prædictum finem minus ritè esse levatum in deceptionem Curiæ regis, & in exhæredationem hæredum prædict', eo quod prædicta tenementa in prædict' fine contenta sunt de manerio de Ballingham, quod est de antiquo dominico coronæ Angliæ.

After-

Afterwards Roger and Cecilie his wife upon their default were ſolemnly ſolemnly called, Sibill and Cecilie ſuen forth, and prayed that the fine for the cauſe aforeſaid, might be cancelled & penitus adnullatur, and the Court in this caſe reſolved thus; Et quia videtur Curiæ quod prædictæ Sibilla & Cecilia filiæ prædictæ Margeriæ ad breve ſuum. prædictum reſponder' non debent, eo quod prædict' Johannes filius Johannis anteceſſor earundem, &c. ſi modo viviſſet ad prædictum finem adnullandum admitti non debuit: And yet the Record proceedeth for the punishment of the deceit to the Court in theſe words, Quæſitum eſt a prædictis Rogero de Gamages. & Cecilia uxore ejus, quid reſpondeant ad deceptionem & colluſionem Curiæ dominæ Regis prædictæ, &c. qui dicunt quod prædicta tenementa in prædicto fine contenta ſunt ad communem legem placitabilia, & ſemper à tempore, quo non extat memoria hucuſque, &c. & non per breve clauſum de recto, &c. eo quod non ſunt de antiquo dominico, &c. & de hoc ponunt ſe ſuper Patriam, &c. Ideo ven' inde Iurata coram Rege à die Paſchæ in quindecim dies ubicunque, &c.

Vide 17 E.3.31. 30 E.3.22. 8 Aſſ. 35. 8 H.6.11. The Writ of Deceit is to bee brought by the Lord for the adnulling and revoking of the fine, but the Court may puniſh the Deceit to the Court, at the ſuit of the party or his heires. 17 E.3.31.

There is a Chapter added amongſt the Acts made in W.2. Anno 13 E.1. the laſt Chapter ſaving one in theſe words, Chauncellor, Treaſurer, Juſtices, ne nul del Counceil le Roy, ne Clerk de la Chauncery, ne del Eſchequer, ne de Juſtice, ne dautre Miniſter, ne nul del hoſtiel le roy ne clerk, ne ley, ne puit receiver Egliſe, ne advowſon de Egliſe, ne ile, ne tenement en fee per don, ne per achate, ne a farme, ne a Chantz perty, ne en autre maner, tanque come le choſe eſt en plea devant nous, ou devant ul de nous Miniſtres, ne nul lower ent ſoit priſe, &c.

It is certain that this Chapter was not enacted in 13 E.1. therefore it is to be ſeen when it was made a Law.

First, Fleta completh the 35. Chapter of this Parliament of W.1. and the ſaid Chapter inſerted into W.2. together; whereby it ſeemeth that it was made at this Parliament. Fleta ubi ſupra.

2. It is enacted in the French tongue, as this Statute of W.1. is, and all the reſt of the Statute of W.2. is in Latine.

3. It hath the ſame phraſe and manner of penning that the 25. 28. and 29. Chapters of this Act of W.1. hath.

4. The Statute of Champerty made in the 11. year of E.1. (which was before the Statute of W.2) reciteth the effect of this Chapter, and the 29. Chapter of the Parliament of W.1. for by the ſaid Act of 11 E.1. it is recited, Come contenue ſoit in noſtre Eſtatute, que nul de noſtre Court preigne plea a Champerty per art de per Engin; which is a ſummary recitall of the ſaid Act inſerted, as is aforeſaid, amongſt the Statutes of W.2. for the Chauncellor, Treaſurer, Juſtices, &c. are all of the Kings Courts, and it was fitter to rehearſe them generally, then by particular names. Stat. de Champ. anno 11 E.1. Vet. Mag. Cha. fo. 80. b.

And further, the ſaid Act of 11 E.1. reciteth this 29. Chapter concerning Counters, Attourneyes, and Apprentices, and others, as Fleta doth, rather by way of explanation, then in the ſame words.

5. There is no one Act in W.1. ſo generall as this rehearſall in the 11 E.1. is, for the 25. Chapter is nul miniſter, and this is nul generalment without limitation.

6. Mention is made in the recitall of the ſaid Act of 11 E.1. of Officers à hauts homes & autres de la terre, and in no Statute before that, any mention is made des hauts homes, that is, of the Chauncellor, Treaſurer, the Kings Counſellors, &c. but onely in this Act, which is inſerted amongſt the Statutes of W.2.

7. And where by the 28 Chapter, proviſion was made againſt the Clerks of the King, and of the Juſtices, and by the 29 Chapter againſt Serjeants, Apprentices, Attournies, and others, it had been a great omiſſion and defect in the Makers of theſe Laws, to have left out the great Officers and Juſtices themſelves of the Kings Courts, and others recited in this Act inſerted in W.2. againſt whom it was more neceſſary to provide, then againſt the other, becauſe they had more power to offend; And the Law had not ſeemed equall, if proviſion had not been made as well againſt the majorites, as the minorites, the great, as the ſmall.

8. The ſaid Act inflicted into W. 2. inflicteth puniſhment (a la volunt le Roy) the Act of 21 E. 1. doth adde hereunto three yeares impriſonment, for dignitas perſonæ auget pœnam.

¶ En fee.] That is, in fee ſimple.

¶ Per done.] That is, by a gift in taile.

¶ Ne per achate.] That is, by purchaſe for money or other conſideration.

30 Aſſ. 15. 30 E. 3. 3. ¶ Ne a farme.] That is, by leaſe for life, or for yeares.

¶ Ne a Champerty.] This hath béene explained before Chap. 25.

8 E. 4. 13. ¶ Ne en auter manner.] Theſe be generall words, and forbid all purchaſes pendente placito by the perſons named in this Act; which is worthy of obſervation, to make a diverſity betweén theſe perſons herein named, and others: See before Cap. 25. and note well the books there quoted.

¶ A volunt le roy.] This is explained before Cap. 4. &c.

Vide W. 2. ca. 49. Stat. de 33 E. 1. De conſpiracy, Vet. Mag. Cart. fo. 111. b. ¶ Auxibien celuy que purchaſe come celuy que le fra.] Note the puniſhment lieth by this Act equally, as well upon the giver as the taker.

CAP. XXX.

Vide Mirror c. 5. §. 4. Britton 37. b

ET pur ceo que multz des gents ſe pleignent des Serjeants, criours de fee, & les Marſhals des Juſtices en Eire, & [dauters Juſtices] quelles pernent a tort deniers de ceux queux recoveront ſeiſin del terre, ou queux gaignont lour quereles, & de fine levie, & des jurors, villes, priſoners, & des auters attaches en plees de la Corone, autrement que faire ne duiſſent, en mults des manners, & de ceo quil ad plus grand number de ceux que eſtre ne duiſt, per que le people eſt malement greve; le Roy defende, que ceſtes choſes ne ſoient diſformes faits. Et ſi ull' ſerjeant de fee le face, office ſoit priſe en le maine le Roy. Et ſi Marſhals des Juſtices le facent, ſoient punis grevement a la volunt le Roy. Et a touts les Plaintifes lun & lauter rendre le treble de ceo quels aver' priſe en cel maner.

Fleta li. 2. ca. 32. de Virgatoribus. ¶ Serjants.] Fleta rendreth theſe words thus, Virgatores ſervientes, they were called virgatores à virgis, of white rods, which they carried in their hands

hands before the Juſtices in Eyre and other Juſtices.

¶ Criors de fee.] It appeareth by Fleta that theſe are comprehended under the generall name of virgatores, and therefore carried rods alſo. He rendreth theſe words clamatores de feodo. Fleta ubi ſupra.

¶ Et les Marſhals des Juſtices.] Juſticiariorum Mareſchalli. Fleta ubi ſupra.

¶ Et de ceo que il ad pluis nombre que eſtre ne duiſt.] Hereby it appeareth, that the over-great number of theſe Virgers, Criers, and Marſhals, was a meanes of extortion, or grievance of the people; and ſo it is in all other caſes of what profeſſion or place ſoever, Multitudo imperatorum perdidit Cariam: Beſides it taketh away the eſtimation and credit of the ſame.

CAP. XXXI.

DE ceux queux parnent outragious tolnet', encounter common uſage du Realme en la ville merchandie: Purview eſt, que ſi ull' le face en la ville le Roy meſme, que ſoit bail' a fee farme, le roy prendra le franchiſe del marche en ſa maine. Et ſi ſoit auter ville, & ceo ſoit fait per le Seigniour de meſme la ville, le roy le fra per meſme le maner. Et ſil ſoit fait per le bailife ſans le commandement le Seigniour, il rendra al Plaintife au tant pur le outragious priſe, come il avoit priſe de luy, ſil uſt import ſon tolne: & il avera priſon del xl. jours. Des Citizens, & des Burgeſſes a que le roy ou ſon pere ad grant murage pur lour villes encloſer, & que tiel murage parnent autrement que lour eſt grante, & de ceo ſoient attaintes: Purview eſt, que ils pardent cel grant de touts le temps que ſerra a vener, & ſerront en le grievous mercy le Roy. Mag. Chart. c. 30. W. 2. cap. 25.

In the troubleſome and irregular raigne of H. 3. outragious tols were taken and uſurped in Cities, Boroughs, Towns, where Faires and Markets were kept, to the great oppreſſion of the Kings Subjects, by reaſon whereof very many did refraine from the comming to Faires and Markets, to the hinderance of the Common-wealth; for it hath ever been the policy and wiſdome of this Realm that Faires and Markets, and ſpecially the Markets, be well furniſhed and frequented.

¶ Tolnet.] Toll. For the generality of the word, ſée Jehu Webs Caſe, Lib. 8. Magna Charta, and W. 2. whereof, and of the ſeverall kinds thereof, more Lib. 8. fol. 46. Mag. Chart. ubi ſup. W. 2. ubi ſup.

more shall be said in the expositions of the Statute of W. 2. for that here it is restrained, as hereafter appeareth.

Vide ca. 36. for this word.

¶ Outragious.] That is, either where a reasonable toll is due and excessive toll is taken, or where no toll at all is due, and yet toll is unjustly usurped, for it is an outrage to doe such a common injury and wrong; sometime it is called superfluum, vel indebitum, vel injustum.

Cap. Irin' Vet. Mag. Chart. Fleta lib. 2. ca. 43. & li. 1. ca. 20.

No toll is due either on the part of the Lord, when he hath a Faire or Market, and not any toll; or on the part of the Market-man, who ought to be discharged of toll, or of the thing sold that is not tollable.

Bract. li. 2. 56, 57. *Forum, Nundinæ, Feria, Mercatus, Oppidum.*

¶ En la ville merchandie.] That is, in a City, Borough, or Town of Merchandize, where Faires and open Markets are kept, for merchandizing, and buying and selling.

This is intended of toll to the Faire or Market, whereof we will only speak in this place.

Toll to the Faire or Market is a reasonable summe of money due to the owner of the Faire or Market, upon sale of things tollable within the Fair or Market, or for stallage, picage, or the like.

Cap. 1. § 3. Inter leges Inæ Regis.

And this was at the first invented, that contracts might have good testimony, and be made openly; for of old time, privy or secret contracts were forbidden, and the Mirror said truth, for the auncient Law was, Negotiator in vulgo si quid mercatus fuerit in eam rem testimonia habeto; nemo extra oppidum, nisi præsente præposito aliisve fide dignis hominibus, quicquam emito. And another, Ne quis extra oppidum quid emat, In these Lawes oppidum is taken for Faire or Market.

Inter leges Ethelstani Regis.

And again the same King, Si quis testatò rem aliquam mercatus fuerit, quam alius deinceps quisque suam esse contenderit, eam venditor præstet, atque in se recipiat, sive is servus sive ingenuus fuerit: die autem dominico nemo mercaturam faciato; id quod si quis egerit, & ipsa merce, & 30. præterea solidis mulctator.

Here note by the way two things, first, the antiquity of the Law for changing of property, according to these auncient Laws, and therefore to this day it is called, Apertum forum, or Apertus mercatus, an open Market, or Market overt; And secondly, that no Merchandizing should be on the Lords Day.

Inter leges Ethelredi Regis.

Bonorum (sine fidejussione, & testimonio) emptio, aut permutatio non esto.

Inter leges Canuti Regis.

Si quis testibus non adhibitis quicquam fuerit mercatus, idemque alter uti suum ipsius proprium vendicaret, emptori nulla fiat advocandi potestas, verum is Domino rem reddito, &c. Which I have recited for the confirmation of the Mirror, and for the honour of venerable antiquity.

Every one, that hath a Faire or Market, ought to have it by graunt or prescription; If the King graunt to a man a Faire or Market, and graunt no toll, the Patentee shall have no toll, for toll being a matter of private for the benefit of the Lord is not incident to a Faire or Market so graunted without a speciall graunt, as it was adjudged in the case of Northampton, for such a Faire or Market is accounted a free Faire or Market; and there it was also resolved, that after such a graunt made the King cannot graunt a toll to such a free Faire or Market without quid pro quo, some proportionable benefit to the Subject. Lastly, it was there resolved, that if the toll graunted with the Faire or Market bee outragious or unreasonable, the graunt of the toll is void, and that the same is a free Market or Faire.

Mich. 39 & 40. Eliz. Cor. Rege.

But if the King graunt unto one a Faire or Market, he shall have without any graunt a Court of Record, called a Court of Pipowders, as

as incident thereunto, for that is for advancement and expedition of Justice, and for the supporting and maintenance of the Faire or Market; and so note a diversity between the private and the publique. Bract. l. 5. ca. 3 3. 17 E. 4. c. 2. 1 R. 3. c. 6. 7 E. 4. 23. 13 E. 4 8. 7 H. 6. 18, 19. 13 H. 7. 19. b. Dier 3 Mar. 132, 133.

*No toll for any thing tollable brought to the Fair or Market to be sold, shall be paid to the owner of the Faire or Market before the sale thereof, unlesse it be by custome time out of mind used, which custome none can challenge that claime the Faire or Market by graunt within the time of memory, viz. since the raigne of King R. 1. which is a point worthy of observation for the suppression of many outragious and unjust tolls incroached upon the subject to be punished within the purview of this Statute. So note, it is better to have a Faire by prescription, then by graunt. *9 H. 6. fo. 45. tit. toll 7.

Also if the Lord or owner of the Faire or Market doe take toll of the seller of horses, &c. he is to be punished within this Statute, for he ought to take it of the buyer onely. Vide 2. & 3. Ph. & Mar. & 31 Eliz. And so de communi jure no toll shall be paid for things brought to the Faire or Market, unlesse they be sold, and then toll to be taken of the buyer; but in ancient Faires and Markets toll may be paid for the standing in the Faire or Market, though nothing be sold. 2. & 3. P. & M. c. 7 31 Eliz. cap. 12. 9 H. 6. 45.

If the King or any of his Progenitors have granted to any to be discharged of this toll either generally or specially, this grant is good to discharge him of all tolls to the Kings owne Faires or Markets, and of the tolls, which together with any Faire or Market have been granted after such grant of discharge, but cannot discharge tolls formerly due to Subjects, either by grant or prescription. Bract. li. 2 fo. 57. 3 E. 3. ass. 445. 14 E. 3. Barr. 177 16 E. 3. grant 53. 39 E. 3. 13. b. 41 E. 3. 24. 43 E. 3 29. 44 E. 3. 20.

Hereof Bracton said, In omni libertate concessa, &c. erit prioritas præferenda. And againe, Esse enim poterit libertas, ut si quis teneatur ad dandum ex servitute, sicut theolonium & consuetudines, ex libertate defendi poterit ad non dandum, Item si ex servitute teneatur quis ad non capiendum, ex libertate concessa capere possit consuetudines & theolonia. F. N. B. 94. f. & 227. Bract. fo. 56. 2. & 57. b.

Tenants in ancient demesne, for things comming of those lands, shall pay no toll, because at the beginning by their tenure they applyed themselves to the manurance and husbandry of the Kings demeans, and therefore for those lands so holden, and all that came or renewed thereupon, they had the said privilege: But if such a tenant be a common Merchant for buying and selling of wares or merchandises, that rise not upon the manurance or husbandry of those lands, he shall not have the priviledge for them, because they are out of the reason of the privilege of ancient demesne, and the tenant in ancient demesne ought rather to be a husbandman then a merchant by his tenure, and so are the books to be intended. And herewith agreeth an ancient Record, the effect whereof is, Quod hii qui clamant esse immunes de theolonio præstando, ut senentes in antiquo dominico, vel per chartas regum, non debent distringi pro aliquo theolonio pro merchandizis ad usus suos proprios emptis; imo pro merchandizis qu' emerint vel vendiderint ut mercatores, debent solvere pro eis. 7 H. 4. 4. 9 H. 6. 25. F. N. B. 228. d Regist. Hil. 14 E. 1. coram rege rot. 41. Devon.

King H. 3. did grant to the Abbot of L. and his successors, Quod ipsi & homines sui sint quieti ab omni theolonio in omni foro & in omnibus nundinis, &c. And there it is resolved, that the Abbot should have this privilege by force of this generall graunt in this manner, Quod ipsi & homines sui sint quieti à præstatione theolonii in venditionibus & emptionibus pro suis necessariis, ut in victu, vestitu, & similibus, & hoc ad opus proprium ipsius Abbatis & hominum suorum. Rot. Parl. An. 18. E. 1. fo. 2. int. Abbatem loci sancti Edw. & Balivos de Southampton. Mich 2 E. 2. coram rege pro mercatio de Brimmingham acc'.

*The King shall not pay toll for any of his goods, and if any be taken, it is punishable within this Statute. *35 H. 6. 57.

¶ Marche.] This word doth here include as well a Faire as a Market: for Forum, from whence Faire is derived, signifieth both: and a Mart is a great Faire holden every yeare, derived à Merce, because merchandises and wares are thither abundantly brought: and Mercatus is derived à mercando.

¶ Prendra

¶ Prendra le franchiſe.] That is, ſhall ſeiſe the Franchiſe of the Faire or Market untill it be redéemed by the owner: But this is intended upon an office to be found, for in Statutes incidents are ever ſupplyed by intendment.

¶ Seignior de meſme la ville.] That is, the owner of the Faire or Market.

Flet.li.2. cap.43. verſus finem.

Fleta collecteth the effect of this former part of the Act in theſe words, Inhibitum eſt ne quis in villis Regis merchandiis, quæ dimiſſæ ſunt & commiſſæ ad feodi firmam, indebita & injuſta capiat theolonia; quod ſi quis fecerit, extunc eo ipſo capiet Rex libertatem mercati in manum ſuam; eodem modo facit Rex, licet in alterius villa præmiſſa fieri contigerit, ſi balivus hoc fecerit ſine voluntate domini ſui, reddet tantum querenti, quantum cepiſſet balivus ab eo, ſi tolnetum aſportaſſet, & nihilominus habeat priſonam 40. dierum.

Here I perſwade my ſelfe ſome would deſire to know, what is due for toll to the Faire or Market: To which I anſwer, that I can tell what was due of

Mirror ca.1. §3.

old, and what was ordained in times paſt by ancient Kings to be paid: for the Mirrour ſaith, Que Faires & markets ſe fiſſent per lieus, & que achators de blee, & beaſts donaſſent toll a les bailifes des ſeigniours de markets, ou de faires, ceſt aſcavoire maile de dixe ſoux de biens, & de meynes, meynes, & de pluis, pluis al afferant, iſſint que nul tol paſſaſt un denier de un maner de merchandize, & ceſt tolle fuit trove pur teſtmoigner les contracts, car cheſcun privie contract fuit defendue. But at this day there is not one certaine toll to the market taken, but if that which is taken be not reaſonable, it is puniſhable by this Statute, and what ſhall be deemed in Law to be reaſonable, ſhall be judged, all circumſtances conſidered, by the Judges of the Law, if it come judicially before them.

Cap.Itin.ubi ſup. 3 E.3. aſſ.445. 13 H.4.17.a.Rot. pat.12 E.3.1.part m.30. Harwich. Rot.pat.8 R.2. 1.part.m.35. Salop.m.38.Yarmouth.

¶ Murage pur lour villes incloſer.] Muragium, à muro, as our Act doth explaine it, to wall in, or incloſe with wall a towne, under which word is here included a City and Burghe.

Murage is a reaſonable toll to be taken of every Cart, Wayne, Horſe laden comming to that towne, for the incloſing of that towne with walls of defence, for the ſafegard of the people in time of war, inſurrection, tumults, or uproares, and is due either by grant or by preſcription.

But if a wall be made, which is not defenſible, nor for ſafegard of the people, then ought not this toll to be paid, for the end of the graunt or preſcription is not performed.

*He that hath Burghbote granted to him, is diſcharged of Murage granted afterwards: And although Murage be here particularly named, yet are graunts of like nature within the purview of this Statute: as,

a Pontage.
b Pavtage.
c Kepage, &c.

*Flet.li.1.ca.42. a 3 E.3.& 13 H.4 ubi ſup. Rot.pat. 1 E.2. m.17. de tranſeuntibus ſubtus pontem Londō. Rot.pat. 12 H.6 .m. 18. 1.part. Reg.259. F.N.B.227. b Rot.par.10 E.3 m.32.Henley 2. part. Rot. Par. 1 E.2. 1. part.m. 1. Gainsburgh. F.N.B.227. Regiſt.259.

¶ Pardent cel graunt de touts temps.] Here the whole Franchiſe is forfeited, and ſo note a diverſity betweene prendra la franchiſe, &c. and pardent cel graunt, the one implying a ſeiſure, as hath been ſaid, and the other a forfeiture for ever, d for it is a miſuſer, or abuſer: c And thereof Bracton ſaith, Hujuſmodi autem libertates, &c. ſtatim quaſi transferuntur, & quaſi poſſidentur, &c. donec amiſerit per abuſum, vel non uſum.

c Rot.Par. 1 E.3. m.10. d 22 aſſ.p.34. 39 H. 6. 32. 20 E. 4. 6. 2 H.7.11. e Bract.li.2.fo.56 Lib.3.fo.117. Flet.li.1.c.20. Ca.Itin.ubi ſup.

It is to be obſerved, that Conſuetudines hath ſeverall ſignifications in Law: for ſometime it ſignifieth Cuſtome, which doth include all manner of tolls: and therefore Bracton ſaith, De novis conſuetudinibus levatis ſive in terra, ſive in aqua, quis eas levavit, & ubi: So called, becauſe they colour things ſo taken under preterit of preſcription or cuſtome, where there is none at all: and there-

fore

fore here they are called novæ consuetudines, because they were new tolls exactions, under the visure of antiquity.

Fleta rendreth this last part of this Chapter in these words: Item qui muragium ad villam claudendam gravius ceperint; quam concessum fuerit per cartam regis, perdant extunc gratiam suæ concessionis, & gravitèr amercientur. Fleta. li. 2. cap. 43.

And presently after the making of this Act, the effect thereof for Justices to come to enquire of it, was inserted in the Chapters or Articles of the Eire in these words: Item de his qui ceperunt superflua vel indebita tolneta in civitatibus, burgis, vel alibi contra communem usum regni; Item de civibus & burgensibus qui de muragio per dominum regem eis concesso, plus ceperunt quam facere deberent, secundum concessionem domini regis factam. Cap. Itin. ubi sup.

The Mirrour saith, touching Murage, thus: Le point que voet que ceux que misusent murages les perdent ne fait mistier daver estre, car ley voet que chescun perdra son franchise que misusera: So as this Statute was made in that point for two purposes, viz. to affirme the Common Law, and to adde a further punishment, viz. to be grievously amerced. Mirr. cap. 5. §. 4.

CAP. XXXII.

DE ceux queux parnent vitaile, ou nul riens al oeps le Roy a creance, ou a garrison du chastell, ou ayllors, & quant ils ont resceive le payement al Exchequer, ou en Garderobe, ou ayllors, deteignont le payment des creancers, a grand dammage de eux, & en esclander du roy; Purview est, de ceux queux ont terres ou tenements, que maintenant soit ceo leve de lour terres, ou de lour chateux, & paies as creancers, ove les dammages queux ils averont ewe, & soient rentes pur le tresspas, & sils neient terres ne tenements, soient en le prison a la voluunt le roy. De ceux que pernont part des dets le roy, ou auters louers pernent des creansors le roy, pur faire le payment des mesmes celles dets: Purview est, quils rendent le double, & soient punies grevement a la volunt le roy. Et de ceux queux parnont chivals, ou charettes a faire le cariage le roy, plus que mestier serroit, & pernont louers pur [relesser] ses chivals, ou les charettes. Purview est, que si ul de la court le face, il serra grevement chastice per les Mareschals, & si ceo soit fait hors de la court, [per un del court] ou per auter que de la court, & il [ent] soit attaint, il rendra le treble, & serra en le prison le roy per xl. jours.

¶ De ceux queux parnent vitaile.] Concerning this point of Purveiance, we shall refer the Reader to Magna Chart. cap. 21. and shall say on

no more concerning that matter for three causes: 1. For the Text of this Law is evident. 2. For that there have been many excellent Statutes made concerning Purveyours, and Purveyance, in all to the number of 48. which are fully and plainly penned, one of them being a good exposition and inlargement of another, 3. I find no Book Case, nor any Report for the exposition either of this or of any of the said Statutes, which (to say the truth) has more use of execution then exposition: and therefore either the Purveyours have been so honest and just dealing men, as they seldome or never offended; or else they have had either so good friends, or so good hap, as their offences have been covered, or not imputed to them.

¶ De ceux queux parnent part des dets le roy.] The mischeifes before this Statute were, First, that in the raigne of King H. 3. the Kings Officers, that had charge of his treasure and revenue, or their agents would, in respect of his troubles and expences, pretend to those, to whom the King was indebted, that the Kings coffers were empty, and thereupon paying part to the Kings creditors, compounded for their whole debts, and took their Acquittances for the whole, and converted the residue to their owne use.

The second was, that sometime they would craftily pay the whole, and take a great reward therefore, which was dishonourable to the King, damage to the Creditors, and corrupt dealing in those officers, or their agents.

This Act is generall against all those that take part of the Kings debts, or other reward of the Kings creditors, for payment of the same debts. This Law doth provide, that he that so doth, shall render double to the party grieved, and shall be punished grievously at the Kings will.

This Act is in affirmance of the Common Law, onely it addeth a greater punishment.

Rot. Parl. 50 E. 3 nu. 17. Richard Lions Merchant of London, and Farmor of the Kings Customes and Subsidies, was adjudged in Parliament for buying debts of divers men, due by the King, for small values, and for taking of bribes, to pay to the Kings creditors their due debts, to be imprisoned at the Kings will, and all his lands, tenements, and goods to be seised to the Kings use, which proveth it an offence or misdemeanour against the Common Law, for the Judgement was not given according to this Act.

Rot. Parl. 50. E. 3 nu. 34. John Lord Nevill, while he was one of the Kings Privy Council, bought divers debts due by the King, namely, of the Lady of Ravensholme, & Simon Love Merchant, far under the value: The Lord Nevill being herewith charged in Parliament, confessed that he received of the said Lady 95. l. which she gave him of her own good will for the obtaining of her debt: for this (amongst others) he had Judgement of imprisonment at the Kings will, and that his offices, lands and goods should be seised into the Kings hands, and to make restitution to the Executors of the Lady (who then was deceased) of the said 95. l.

See for these words before, cap. 19. ¶ Detts le roy.] See for the exposition of these words before, Ca. 19.

Cap. Itin. Vet. Mag. Char. 155. Cap. Itineris doth render this clause thus: Et similiter de his qui partem ceperunt debitorum domini regis, vel alia munera, ut de residuo creditoribus satisfacerent.

Mirror ca. 1. § 5. Cap. 5. § 4. To conclude this point, the Mirrour saith, In perjurie vers le Roy pechent ceux ministers, queux rien ne paierent des dets le roy, solonq; ceo que enjoyne lour fuit a faire, ou rendant part pur satisfaction del entier, & ne rendant au roy le remnant.

¶ Et de ceux queux parnent chivals, &c.] This Article concerns Purveyances, and Purveyors; and therefore for the causes before rehearsed, no more shall be said hereof in this place.

CAP.

CAP. XXXIII.

PUrview eſt, que nul Vicount ne ſuffer Barretors, ne maintainours des parols en counties, ne Seneſchalles des graundes Seigniours, ne des auters (que ne ſoit Attorney ſon Seigniour) a [la] ſuit faire, ne render les judgements des Counties, ne pronouncer les judgements [ou aſſenter de faire les juſticements] ſil ne ſoit eſpecialment prié & requiſe de touts les ſuitors, & les attornies des ſuitors, queux ſerront a la journe. Et ſi ul le face, le Roy ſe prendra grievouſement al Vicount, & a luy.

Where by the Statute of Merton it is prouided, that every free ſuitor of the County, &c. might freely make his Attourney to doe theſe ſuits for him. Now by colour hereof two miſchiefes did ariſe. Merton cap. 10. See there the expoſition thereof.

1. That Barretors and Maintainers of querels were by the Sheriffe countenanced to be Attorneys to make ſuit, and amongſt the ſuitors to give judgements in the Counties, and ſometime pronounce judgement in the name of the ſuitors.

2. That Stewards of great Lords, and of others, who had no Letters of Attourney, according to the ſaid Statute of Merton would doe the like: This Act doth remedy both theſe miſchiefes, as by the Letter hereof appeareth.

¶ Barretors.] For the word and the ſenſe thereof, ſée Lib. 8. fol. 36. in the caſe of Barretry. Li. 8 fo. 36. in the caſe of barretry. See the firſt proof the Inſt. ſection.

¶ En Counties.] That is, in the County Court, for there the ſuitors be Judges.

¶ Juſticements.] That is, all things belonging to Juſtice.

¶ A la journe.] That is, at the Court.

CAP. XXXIV.

PUr ceo que pluſors ſont ſovent troves in counte controvours des novelles, dont diſcord, ou manner de diſcord ad eſtre ſovent enter le roy & ſon people, ou [aſcuns de] les hautes homes de ſon Roialme: Defendu eſt pur le damage que ad eſtre, & que uncore ent purra avenier, que deſormes nulle ne ſoit cy harde de dire, ne de counter nulles faux novelles, ou controvor, dont diſcord, ou manner de

diſcord, ou eſclaunder puit ſurdre entre le roy & ſon people, ou les hautes homes de ſon roialme. Et qui le fra ſoit pris, & detenus in priſon jeſques a tant que il eit trove en court celuy dont la parol ſerra move. 2 R. 2. *cap.* 5.

The offences, viz. falſe reports and newes punishable by this Law are forbidden by the Law of God:

Exodus 23. 1. Thou ſhalt not have to doe with any falſe report, neither ſhalt thou put thy hand to the wicked to be an unrighteous witneſſe.

For they which gladly heare falſe reports and newes, will be alſo as ready to publiſh them.

Ep. Jude. ver. 8. ver. 10. Exod. 22. 28. Againſt thoſe that deſpiſe Rulers, and ſpeak evill of thoſe that be in authority, and againſt thoſe that ſpeake evill of thoſe things which they know not: Judicibus non detrahes, & principi populi non maledices: Thou ſhalt not raile of the Judges, nor ſpeak evill of the Ruler of the people.

Before this Statute, in the raigne of King H. 3. two kinde of perſons were Authors of great diſorder and ſcandall in two ſeverall degrees; firſt, men that did raiſe and imagine, out of their owne heads, falſe bruits and rumours, and others that reported and ſpread the ſame, whereby diſorder and ſcandall was oftentimes ſo kindled, ſometime between the King and his Commons, and other times between the King and his Nobles, the great men of the Realm, as they wrought privy diſcontentment, that produced publique diſorder and ſcandall, whereof our Act ſpeaketh; which ſcandall and diſorder appeares in many Parliaments between the King and his Commons, and between the King and his Lords of Parliament, and eſpecially in thoſe two Parliaments, the one in 11 H. 3. when Magna Charta was confirmed, and the other in 42 H. 3. holden at Oxford, which in ſtory is called Inſanum Parliamentum; And this diſorder and ſcandall did oftentimes in the raigne of that King break out into fearfull and bloody warres and rebellions according to that old obſervation, Improbi rumores diſſipati ſunt rebellionis prodromi, which fully appear in our Hiſtories warranted by good Record, as is implied in this Act in theſe words; "Foraſmuch as there hath been oftentimes found Deviſors and Reporters of rumors, &c. whereby diſorder hath "many times ariſen between the King (meaning H. 3.) and his people, or the "great men of the Realm. And amongſt all thoſe rebellions in thoſe dayes, thoſe at Lewes in Suſſex and Eveſham in Worceſterſhire were moſt fearfull, bloody, and dangerous, for at Lewes, the King himſelf manfully fighting, confoſſo ex utroque latere equo capitur cum Richardo Rege Almanorum fratre ſuo, & Edovardo principe filio, &c. And at Eveſham, Simon Mountford Earle of Leiceſter (our Engliſh Cataline) inſtruit aciem impedimentis ex acie remotis, ac in fronte aciei ponit Henricum Regem, quem ſecum captivum ducebat, atque ſuis armis indoit, ut ſi fortuna adverſa ſit, dum ille imperatoris perſonam gerens ab hoſte petitur, ipſe interim fuga ſaluti conſulere poſſit: inſtruuntur contra & hoſtes & animis & viribus ſuperiores: committitur utrinque pugna, quæ aliquandiu anceps ſtetit, Henricus inter primos hoſtium ictus non pugnat, ſed Regem Henricum clamando indicat, quod ei ſaluti fuit, &c. Quod ubi Simon animadvertit, ſuos cohortans in medios hoſtes procurrit, qui à multitudine circumventus præſtando occiditur cum Henrico filio.

Polydor Virgil. lib. 16. pag. 312. anno Dom. 1264, 1265. 48 & 49 H. 3.

King E. 1. finding by dangerous experience the woefull effects of ſuch falſe rumors and reports, as is aforeſaid, and knowing that the State of every King ſtood more aſſured by the hearty and inward love of the Subject towards their Soveraigne, then by the dread and feare of ſevere and rigorous Laws, did therefore make this Law for redreſſe both for the deviſing and ſpreading of ſuch falſe rumors and bruits in all mild and temperate manner, both for the ſtyle and the puniſhment, rather leaving the ſame to the cenſure of the Common Law, (which all men willingly obey) then by inflicting any new deviſed puniſhment, which

which moderation of our King, leauing the punishment to fine and imprisonment, was the greater, for that the auncient Law of England before the Conquest was much more seuere, and rigorous, as by a few examples shall appeare.

Qui falsi rumoris in vulgus sparsi author fuisse deprehenditur, leviori aliqua pœna non mulctator, verum lingua ei præcidetur, ni is eam integra capitis sui æstimatione data redemerit. Int' leges Aluredi Regis. cap. 28. Edgari cap. 4.

Si quis alium rumoribus dissipatis improba voce lacerarit, quam ob rem, aut corpori ejus damnū inferatur, aut de fortunis imminutis aliquid, cum saltem auditiones tanquam falsas refellere & coarguere poterit, aut is linguam data capitis æstimatione redimito, aut ei lingua præcidetur. Inter leges Edgari Regis. & inter leges Canuti Regis.

¶ En Counte.] That is, in the Country or Realme.

¶ Controvors.] That is, Deuisors or Inuentors of their owne head.

¶ Discord.] Discordia. That is, dissensio cordium, dissention of hearts. This grew (as hath been said) to such an height in the raign of H. 3. as that of the Philosophicall Poet might well be applied to it: (which before is remembred.)

Impius hæc tam culta novalia miles habebit?
Barbarus has segetes? en quo discordia cives
Perduxit miseros! ——— Virgil.

Discordes, quasi duo habentes corda.

¶ Ou maner de discord.] That is, Latens odium, privy hatred or discontentment, which is occasion of discord, and whereby men become malecontents.

¶ Defendu est pur le damage que ad estre.] This damage or danger you have partly heard before.

¶ De dire, de counter, ou controvor.] Two manner of persons are hereby prohibited, the first, those that tell, spread or report false and feigned brutts and rumours under these words, Dire ou counter; And secondly, such as deuise or inuent of their own head the same under this word Controvor: Now the persons being described, this Statute doth set down generally what those brutts and rumours should be.

¶ Faux novels, dont discord, ou maner de discord ou dislaunder poet surder enter le Roy, & son people ou les hauts homes de son Realme.] Of these false newes, that is, false brutts or rumours, there be five kindes within this Act.

1. First, if they be against the King, whereby discord or scandall may arise betweene the King and his Commons, signified here by people. 1st.
2. Against the Commons, whereby discord or scandall may be moued betweene them and the King. 2d.
3. Thirdly, against the King, whereby discord or scandall may grow betweene the King and the Peeres, or Lords and Nobles of the Realme, signified here by Les hauts homes de son Realme. 3d.
4. Fourthly, against the Peeres, or Lords, and Nobles of the Realme, whereby discord or slander may happen betweene them and the King. 4th.
5. Lastly, whereby discord or scandall may arise between the King, his Lords, and Commons. 5th.

Quod narratores rumorum qui cedere possunt ad timorem, & tremorem populi, & in dedecus Regis & Regni, capiantur, & in carcere detineantur, &c. Tr. 19 E 2. Rot. 15. Coram Rege.

By this Record it appeareth of what quality the rumors muſt be.

By Commiſſions of Oyer and Terminer power is given to enquire, De illicitis verborum propalationibus, and to punish the ſame.

Britton fol. 33. Britton ſpeaketh of both theſe kinds of offenders, viz. the Deviſor, and the Reporter, in theſe words, De ceux que trovont, & content menſoynes del Roy, &c.

Fleta li. 2. ca. 1. And Fleta ſaith, Sunt etiam quedam atroces injuriæ, quæ priſonam voluntariam inducunt, ſicut de inventoribus malorum rumorum, unde pax poſſit exterminari.

5 R. 2. ca. 6. 1 E. 6 c. 12. 1 Mar. cap. 17 R. 2. cap. 8. 13 H. 4. ca. 7. 5 Mar. Dier 155. Oldnolles caſe. The Statute of 5 R. 2. punished ſeditious rumors in an high degree, but that is repealed by 1 E. 6. & 1 Mar.

It was reſolved by all the Juſtices, that horrible and ſlanderous words ſpoken of Queen Mary, were within this Statute and punishable hereby, and not by the Statutes of 2 R. 2. cap. 5. nor 12 R. 2. cap. 11. for the King or Queene is an exempt perſon, and not included within theſe words, [Les hauts, ou grand homes, ou Nobles, &c.]

Cicero pro Cluentio. Some ſay that Rumores dicuntur à ruendo, quia inducunt ruinam; and true it is that another ſaith, Ut mare, quod ſua natura tranquillum eſt, ventorum vi agitatur; ſic populus ſua ſponte placatus, hominum ſeditioſorum vocibus, ut violentiſſimis tempeſtatibus, attollitur.

Dier fo. 27 H. 7 Keylway 28, 29. F. N. B. 42. g. 2 R. 3. 9. But it is to be underſtood, that albeit this Statute, and the ſaid Act of 2 R. 2. be generall in the negative; yet doe they not extend to all manner of falſe newes, or horrible and falſe ſcandals and lies, &c. for they extend onely to extrajudiciall ſlanders, &c. And therefore if any man bring an appeale of murder, robbery, or other felony againſt any of the Peeres or Nobles of the Realme, &c. and charge them with murder, robbery, or felony, albeit the charge be falſe, yet ſhall they have no Action De ſcandalis magnat', neither at the Common Law, nor upon either of theſe Statutes for the bringing of his Action, nor for affirming the ſame to his Councell, Attourney, or Curſitor for the framing of his Writ, or for ſpeaking the ſame in evidence for a Jury, or uſing of theſe words for the neceſſary commencement or proſecution of his Action judicially; and ſo it is in an Action of Forger of falſe Deeds, or any other Action whatſoever: for it is a Maxime in Law, Que home ne ſerra puny pur ſuer des briefes en Court le Roy, ſoit il a droit ou a tort; And the reaſon thereof is, that men ſhould not be deterred to take their remedy by due courſe of Law; and therefore the Statutes never intended to prohibit the ſuing out of the Kings Writs, and the proceeding thereupon; And ſo it is, if in the Star-chamber a Peere of the Realme be charged with forgery periury, or the like; But if in the bill the Plaintife chargeth him with felony, or any other offence not examinable in that Court, that ſlander is within theſe Statutes, for that the Plaintife purſueth not his charge in any judiciall courte, ſeeing the Court hath no juriſdiction of the ſame, and ſo hath it been adjudged.

F. N. B. 41. g. 22 E. 3. 15. 43 E. 3 20. tit. faux judgment 10. 43 Aſſ. 40. 2 R. 3. 9 13 H. 7. Keylwey 28, 29.

¶ Soit priſe & detenus in priſon jeſque a tant que il eit trove en court celuy dont le parol ſerra move.] It hath appeared before, that by the body of the Act not onely the tellers and reporters of ſuch falſe news, but the deviſors and inventors thereof are prohibited: but no puniſhment is inflicted by this Act upon the deviſor or inventor, for he is left to the Common Law to be puniſhed by fine and impriſonment according to the quality and quantity of the offence, which is aggravated in reſpect that it is prohibited by this Act of Parliament.

Deuter. cap. 17. And the Law is grounded upon the Law of God in this point, Non maledices principi populi.

Eccleſiaſtes. c. 10. Nay, in the Kings caſe the ſecret cogitation of the heart is prohibited, In cogitatione tua Regi ne detrahas: and the ſcandals of great men are likewiſe forbidden, Et in ſecreto cubiculi tui, ne maledixeris diviti, quia aves cæli portabunt vocem tuam, & qui habet pennas annunciabit ſententiam; That is, Almighty

Almighty God will prouide meanes, that ſuch detraction and malediction ſhall come to light, and be diſcouered.

Onely this Law inflicteth impriſonment vpon the reporter, vntill he hath found out, and brought into Court the Author of thoſe falſe newes.

7 E. 1. the King ſent Commiſſions to all the Counties of England, to enquire De ſparſoribus rumorum, &c. 25 E. 1. Declaratio regis miſſa ad omnes Com' Angliæ, de rege purgand' de certis ruthoribus iniquis contra ipſum ortis, &c.

Rot. Pat. 7 E. 1. m. 13. Rot. Pat. 25 E. 1. pars 2. m. 7. & Franc. m. 4 Rot. clauſ. Vaſc. anno 10 E. 3. m. 26 In dorſ. clauſ. anno 20 E 3. pt 1. m. 18. & 26.

Rex mandavit Maiori & Vicecom' Londoñ' quod facta inquiſitione de ſparſoribus rumorum & ſedic' in civitate ipſos caperet, & in priſona de Newgate detineret, &c.

Vide lib. Intrat. Coke, fo. 302, 303. in *False imprisonment.*

CAP. XXXV.

DEs hautes homes, & de lour bailifes, & des auters (forſpris les miniſters le roy, as queſx ſpeciall authoritie eſt done de ceo faire) que a le pleint des aſcuns, ou per lour authoritie demeſne attachent auters ove lour biens treſpaſſantes per lour poier a reſponder devant eux des contracts, covenants, ou de treſpas faits hors de lour poier, & lour juriſdiction, la ou ils ne teignont riens de eux, ne deins le franchiſe ou lour poier eſt, en prejudice du roy, & de ſa corone, & a damage du people: Purview eſt, que nul deſormes ne le face. Et ſi aſcun le face, il rendra a celuy, que per cel encheſon ſerra attache, ſon damage au double, & ſerra en le grieve mercy le roy.

The miſchiefe before this Statute was, that great men and others that had particular juriſdiction and power to hold plea of contracts, covenants, and treſpaſſes made or done within a certaine precinct, as within a Manour, Citie, or Borough, would attache others by their goods to anſwer in their Courts of contracts, covenants, and treſpaſſes made or done out of their power or franchiſe, pretending the ſame to be tranſitorie, and ſuppoſe the ſame to be done within their power and franchiſe, which was to the prejudice of the King and his Crown in loſing his fines in Actions of debts and treſpaſſes vi & armis, and amerciaments, and other profits upon a falſe ſuppoſall, not like to the generall juriſdiction, and power of the Kings Juſtices of the Court of Common Pleas, through the whole Realme; for whereſoever the contract, covenant, treſpas, &c. were made, the matter being tranſitory, the plaintife may alledge it in what Countie he will, and the King can loſe nothing; and ſo it is in the Kings Bench and Exchequer againſt priviledged perſons in thoſe generall Courts: And the Statute ſaith further, and to the damage of the party being attached and ſued, as he is paſſing and trauailing within that particular precinct, upon a falſe ſuppoſall, where in truth he ought not. For this miſchiefe this Act prouideth remedy, as by the ſame ſhall appeare.

¶ De lour bailifes.] Here Bailifes are taken for the Iudges of the Court, as manifeſtly appeareth hereby. Mag. Chart. c. 28.

¶ Et

¶ Et des auters.] That is, others that have particular jurisdictions and powers, as manifestly appeareth by the exception hereafter.

¶ Forsprise les ministers le roy, as queux especiall authoritie est done a ceo faire.] Here is to be observed,

Regist. fol. 98. Fleta l. 2. ca. 42. Cap. Itineris.

1. That all these words belong to the exception, as by the Regist. appeareth.

2. That Ministri regis are intended here the Kings Justices in his generall Courts of Justice, and so taken in this Kings time, as it hath been touched before.

¶ Des contracts, covenants, et trespas faits hors de lour poier et lour jurisdiction.] That is, out of the precint of the Manour, or such like particular jurisdiction, &c. where by prescription or grant they have power and jurisdiction to hold plea of contracts, covenants, and debts made or done within the Manour, or such other particular jurisdiction.

¶ La ou ils ne teignont riens de eux.] This Act beginneth,

Bract. l. 2. fo. 14. Lib. 2. fol. 56. Lib. 3. fol. 228. Lib. 5. fol. 328. b.

Des hauts homes: and Bracton saith, Sunt qui Barones, & alii libertatem habentes, scilicet, Soc & Sac, &c. & isti possunt indicare, &c. for Soc is a power or jurisdiction to have a free Court, to hold plea of contracts, covenants, and trespasses of his men and tenants; therefore materially were these words added; that if a great man or others having Soc, should hold plea by force of that liberty of any that is not his tenant, it is coram non judice, and punishable within this Statute. It is diversly written, viz. Soc, Soca, Sock, Soeke, Soke, Sockne, and Soknes, and it is derived from the old Saxon word Soken, Sochen, or Suchen, i. to enquire or find out, that is, to enquire and find out the truth of the matter in plea before him, and to determine it accordingly, which is as much to say, as ad inquirend', audiend', & terminand'.

Mirror ca. 1. § 3. Int' leges S. Edw fol. 23. & 132.

Fleta li. 2. ca. 42.

And Fleta therewith agreeth, and saith, Soke significat libertatem curiæ tenentium, quam Sokam appellamus: and Curia implieth ad audiendum & terminandum.

Mirror ca. 5. § 1.

The Mirrour saith, that En temps le roy Alfred, perdront les suters de Doncaster lour jurisdiction ouster lauter paine, pur ceo que ils tiendront plea defendu per les usages del realme aux judges ordinaries suters a tener, which I rather vouch together with the derivation of the word Soc, for the great antiquity of the Law in this point.

¶ Ne deins la franchise.] That is, nor within any such like particular power or jurisdiction, either by the graunt of the King, or prescription.

Regist. 98.

For the reliefe of the subject upon this Statute, two originall Writs are framed: The one in nature of a Prohibition before the suit begun, commanding that the party shall not be arrested contrary to the forms of this Statute.

The other, after the suit begun, the party to recover the penalty of this Act, viz. double damages, and a command to deliver the goods attached or distrained; both which Writs appeare in the Register: But the party may waive the benefit of this Statute, and therefore if he plead to the Action any Barre, &c. he hath concluded himselfe, and shall not have any Action upon this Statute, therefore he must plead the spetiall matter, and by that meanes take benefit of this Act.

Fleta lib. 2. c. 42.

Fleta rendreth this Act in this manner: De magnatibus & eorum balivis & aliis (exceptis ministris regis, quibus ad hoc authoritas data est) qui ad querimoniam aliquorum, vel authoritate propria attachiant alios per bona sua, qui per eandem potestatem & jurisdictionem veniunt ad respondendum coram eis de

18 E. 2. tit. Testament. f. 6.

contractibus, conventionibus, & transgression' extra eorum potestatem & jurisdictionem, ubi nihil tenent de eis, nec sunt de libertate eorum aut jurisdictione:

statutum

ſtatutum eſt, quod ſi quis de hujuſmodi convictus fuer', reddat quadruplum damna in duplo, ac etiam graviter amercietur.

And it is to be obſerved that at the making of this Statute, if a man had brought an Action of Debt, Account, Detinue, or Covenant upon any contract by original Writ in the County of North. he might have declared of the contract in Suff. or any other County then where the original was brought; for the rule was, that debitum & contractus, &c. ſunt nullius loci, and every party is a party in every County: but in caſe of account this diverſity is to be obſerved, that in account againſt a receiver the Land was then as is aforeſaid, but if a man brought an Action of account againſt one as Bailiff, in one County, he could not charge him as Bailiffe of a Manor in another County, for that is local.

6 E.3. 19 E.3.7. 12 E.3.bſe 479. 14 E.3. bſe.274. 30 E.3.26.4 H.6.6 15 E.4.20.21 E.4 li.7.fo.3.Bulwers Caſe.

But after this Act it is provided by the Statute of 6 R.2.cap.2. that in plees of debt, or account, or ſuch like, as detinue, or contract, it ſhall not be declared that the contract was made in any other County, than is contained in the original Writt.

6 R.2.cap.2. 13 R.2.bſe.469.

But at the Common Law one that hath a particular juriſdiction to hold plea of Debt, contract, detinue, covenant, or treſpaſſe within his Manor, or the like, could not hold plea of a debt, contract, account, detinue, covenant, or treſpaſſe alledged to be made out of the Manor, &c. becauſe albeit it was tranſitory, yet was it (being ſo alledged) not within his power or juriſdiction which he had by preſcription or by grannt; for all pleas holden there muſt be infra juriſdictionem Curiæ.

3 H.6.30.

As if a Lord hath Probate of Teſtaments made within the precinct of his Manor, he cannot prove a Teſtament made out of the precinct of his Manor.

2 R.3. Teſtam. 4. 11 H.7. 12.

And likewiſe of the Court Pipoudres of contracts, &c. made out of the Faire or Market. Et ſic de cæteris.

17 E.4.c.2. 1 R.3 c.6. lib.6.fo.20. Michelborns caſe. Dier. 3 Mar. 132, 133. 7 E.4.19. 13 E.4.8. 7 H.6. 18,19. 13 H.7.19.

CAP. XXXVI.

Pur ceo que avant ceux heures ne fuit unques reaſonable aid' a faire leigne fitz chivaler, ne a leigne file marier miſe en certein, ne quant ceo deveroit eſtre priſe, ne quel heure, per quoy les uns leverent outragious aide, & plus toſt que ne ſembleit meſtier, dount la people ſe ſentit greve: Purview eſt, que deſormes de fee de chivaler entier ſolement ſoient dones 20. s. & de 20. l. de terre tenus per ſocage 20. s. & de pluis, pluis, & de meins, meins, ſolonque lafferant. Et que nul ne puiſſe lever tiel aide a faire ſon fits chivaler, tanque que ſon fits ſoit del age de xv. ans, ne a ſa file marier tanque que el ſoit del age de 7. ans. Et de ceo ſerra fait mention en le briefe le Roy fourm', ſur ceo quant home le voile demander. Et ſi aveigne que le pier, quant il avera tiel aide leve de les tenants, moruſt avant quil eit ſa file marie, les Executors le pier ſoient tenus a la file, en tant come le pier avera reſceu pur ceſt aide.

Fleta lib.2. c.40. lib.3.cap.14. Brit. fo.57.& 70. Cuſtumier de Norm. cap.35. fol.53,54.

Et

Et si les biens le pier ne suffisent, son heire soit de ceo tenus a la file.

By the Common Law to every tenure by Knights service, and socage, there were three aides of money, called in Law auxilia, incident and implied, without speciall reservation or mention, that is to say, reliefe when the heire was of full age, aide pur faire fits chivalier, and aide pur file marier; Now the first aide, viz. reliefe by reason of a tenure by Knights service, was certain, because he was to pay it if he were of the age of 21 years at the death of his ancestor, as hath been said before, without regard of any circumstance; and likewise the reliefe of an heire in socage being of the age of 14. at the death of his ancestor was ever certain, viz. to double his rent. But the aides pur faire fits chivalier, and pur file marier were uncertain at the Common Law, for that the Lords many times would pretend their eldest son, and eldest daughter to be hopefull and toward, and therefore would exact too great an aid, and before due time, whereas by the Law they ought to have reasonable aids, and in reasonable time, which in a suit therefore should be determined by the Justices of that Court before whom the suit depended. Now the Tenants found themselves grieved in three things:

5 E.3. fol. 11. 40 E.3. 21, 47.

Mag. Chart. ca. 2.

Vid. Inst. sect. 127

1. That the said aids were outragious and excessive, Et excessus in requisitione juris reprobatur communi, so as these outragious and excessive aides were against Law, whereof elsewhere you may read at large.

Lib. 11. fol. 44. R. Godfreys case. See before Cap.

2. The Lords exacted those sums at what time they pleased before reasonable age apt for the paiment of those aides.

3. That he could not avoid the same but by suit in Law with his Lord, wherein he found by experience those old verses true;

Cum pare luctari dubium, cum procere fultum,
Cum puero pœna, cum muliere pudor.

And our Act saith, Dont le people se sentist greve.

These three mischiefes are reformed by this Act, and certainty the mother of quiet and concord established therein.

18 E.3. fol. 16. 40 E.3. 22, 47. 13 R.2. Avowry 89. 14 H.4. 8. 5 E.4. 41.

But where it is said that these aids are incidents, it is to be understood that they are incidents separable, either by speciall words at the creation of the tenure, or by discharge or release by speciall words, or speciall rehearsall afterwards.

But if the Lord at the creation of the tenure had reserved fealty, and 4. marks per annum, pro omnibus servitiis, exactionibus & demandis quibuscunque; or if the Lord after the seigniory created had released to the Tenant, omnia servitia, exactiones & demanda quæcunque (except fidelitate & reddit' iiij. mercarum per annum,) yet should the Tenant pay reliefe, aid pur faire fits chivalier, and file marier, which is necessary to be knowne for the understanding of ancient deeds.

Britton 57. b. F.N.B. 82. g. Regist. 87. in the rehearsall of this Act it is said, *Primogenito filio et primogenitæ filiæ*

¶ A faire leigne fits chivalier.] Lord, Grandfather, Father, and two sons, the Father dieth, the Lord shall not have aide for his eldest grandchild, for he is not his eldest son, much lesse shall he have aide for his elder brother, or his eldest cousin and heire: but if a man hath issue two sons, and the eldest die in the Fathers life without issue, he shall have aide for the second son, for he is now eldest, and the Statute saith eldest son, and not first borne; yet the Writ grounded upon this Statute is ad primogenitum filium suum maritandum, but he is primogenitus then living. But if the Lord had received aide for his eldest son, he shall not have aid again for the second, for unicum auxilium, one aid is onely due to one and the same Lord, to make his eldest son a Knight: Non tenetur quis de uno tenemento eidem domino plura dare auxilia ad filium suum militem faciend'.

Regist. ubi supra.

If the Lord hath issue two sonnes, the eldest son hath issue a daughter and dieth, the Lord shall not have aide to make his second son a Knight, for the second son is not his heir apparent (and in this case he ought to be his heire apparent) for at this time the state of all lands was fée-simple, and the lands of the Lord should descend to the daughter, and therefore the Law would not have the dignity of chivalry to be apparelled with poverty, and in respect thereof the son to be Knighted was to be heire apparent. And this agréeth with the letter and meaning of this Act, A faire son eigne fits chivalier, who by common intendment is heire apparent. Mirror ca. 1. § 3. Fleta ubi supra. F.N.B. 82.

If the eldest son be made a Knight before the age of fifteen, the Lord can have no aide, because the words be A faire leigne fits chivalier; and none was ever due to the Lord.

If the Lord hath issue bastard eigne, and mulier puisne, he shall not have aide to make the bastard a Knight, for he is not in judgement of Law accounted his son, but he shall have it for the mulier puisne.

It was holden in auncient time, that the Lord could not demaund aide pur faire fits chivalier, unlesse he himselfe were a Knight, ne filius antecederet patri: But Knights in auncient time grew so scarce, as Esquires that were of ability to be Knights, not onely in this case, but in many other, supplied the place of Knights; Sufficiens honor est homini, qui dignus honore est. Vide cap. 10.

Hereby it appeareth that by the policy of the Law, the eldest son of a Knight was not only trained up in his tender years in learning and knowledge of liberal arts to adorn the minde, but when he came to convenient yeares, did for the defence of the Realme learne and exercise the déeds of Armes and chivalry, that he might be able to serve his Country both in time of peace, and of Warre.

¶ Ne a leigne file marier.] By this the policy of the Law appeareth, that the eldest daughter might be timely preferred in marriage, for thereby come strength and good alliance to the Family, and both these are given by Law without any speciall reservation; and the observation of the auncients was, That marry the eldest daughter well, and all the rest will bee preferred the better; and to that end aide was graunted for the eldest daughter. See 35 H. 6. 40. F.N.B. fol. 82. c. d

¶ Outragious aide.] Tenant peravaile shall be contributory to the aide for the marriage of the Kings daughter. See for this word before Cap. 31. Pasch. 17 E. 1. in Banco Rot. 38. Northampt.

¶ De fee de chivalier entier solement soient done 20. s.] Here it is to be observed (as it hath bén noted) that reliefe is the fourth part of a Knights fée being then 20. l. is 5. l. and aide pur faire fits chivalier, or pur file marier, is the twentieth part of a Knights fée, viz. 20. s. limited by this Act. Mag. Chart. ca. 2.

¶ Et de 20. l. de terre tenus per socage.] This summe is set downe because the value of a Knights fée was then 20. l. (which then was sufficient to maintaine the dignity of Knighthood) and so the Statute maketh them equall in value; the King was not bound by this Statute, but he might take such reliefe, and at such time as was due by the Common Law. See more hereof in the Commentary upon the Statute of 1 E. 2. De militibus.

But the Statute of 25 E. 3. doth asséese the aides at such a rate as this Statute doth, and that Act doth well expound this Statute, that none shall pay these aides but the Tenants of the land holding the same immediately in demesne without any mesne. 25 E 3. cap. 10. Rot. Parliam. 29 E. 3. nu. 16.

For mesne Lords ought to pay no aide implied in these words of our Act, De fee de chivalier, & de 20. l. terre, and if the Tenant peravaile by Knights service goeth with his Lord, &c. he discharged all the mesne Lords. Note these words, De fee de chivalier, doth exclude grand serjeanty, for he 6 H. 3. Avowry. 242. F.N.B. 83. k. 11 H. 4. 34. 10 H. 4 Avowry 267. 13 H. 6. Aunc' demesne 11. Rot. Par 9 H. 6. nu. 15.

that holdeth by that tenure shall pay no aide to the Lord either to make his son a Knight, or to marry his daughter; for by this Act it appeareth, that none shall pay any aide but Tenants by Knights service, or Tenant in socage, and no other tenure.

1 E.2. Stat. de militibus.

¶ Tanque le fits soit del age de 15. ans.] Note no man shall be compelled to take Knighthood upon him untill he be 21. yeares old, and have sufficient land for maintenance of that degree, yet at the age of fifteen yeares he may begin to learn some things that belong to Chivalry, but it is good for the Lord to make what speed he can after that age to recover the aide either by the Writ De auxilio ad filium suum militem faciend', or by distresse; for if the son die, the Lord loseth the aide, for that by his death the finall cause ceaseth, and so likewise if the Father dieth, the aide is lost, for that the duty and remedy is onely given to the Father, who in respect of nature hath the Wardship of his eldest son, and as a naturall Father is to provide for his advancement; and so as a Father by the Law of nature is bound to provide a competent mariage for his daughter, which are therefore personall to the Father: And so note the diversity betweene reliefe, which is absolutely due to the Lord in respect of the seigniory meerly, and these aids, which are not absolutely due to the Lord, but for the performance of a duty of nature.

Jura naturalia. Instit. sect. 114. Lib. 7. fol. 13 b. Calvins case. 1 E.3. fol. 17. 33 H.6. 57.

¶ Tanque el (*s. la file*) soit de 7. ans.] In auncient time Gentlemen of good houses, for knitting themselves in greater bonds of amity and alliance, maried their children very young, which the Law doth seeme to favour, for that it giveth her Dower, if she be of the age of nine yeares at the death of her husband, whereof I have knowne some to have prospered well, but more that have proved unfortunate.

ta mariage

F.N.B. 82.i. et 83.a

¶ Et moruſt avant que il avoit ſa file marie.] Here our Act giveth onely remedy to the daughter, and maketh no mention of the son in that case, and yet the son shall have the same remedy against the Executors, that the daughter shall have, being in æquali jure.

Hil. 9 E. 2. fol. 62, 63. in libro meo. Phil. Leuteynes case.

Tenant for life, or Tenant in Dower shall not have aide pur file marier, ou pur faire fits chivalier, but the verie Lord, to whom by possibility they might inherit, and whom the Lord by nature is bound to preferre; but Tenant for life, &c. shall have Escuage, Ward, Mariage, and Reliefe.

3 E.3. Debt 156.

If the Father receive the aide, and after the son is Knighted, or the daughter maried in the life of the Father, neither son nor daughter shall have remedy for the aide, for the end of the Law is performed. But by the whole content of this Act it appeareth, that small portions preferred in mariage the daughters of good Families, when vertue and good blood was more esteemed then great portions.

¶ Les Executors ſon pier ſont tenus al file.] Note, the Father himself hath time to make his eldest son a Knight after his age of 15. and to marry his daughter after her age of 7. yeares at any time during his life, and therefore though the Father receive the aides, yet have they no remedy against him, but to depend upon his paternall care, and their remedy is against the Executors, or Administrators of the Father, if they be not preferred in his life time, as it appeareth by this Act.

¶ Et ſi les biens le pier ne ſuffiſent, ſon heire de ceo ſoit tenus a le file.] And here it is to be observed, that if the personall estate of the Lord be sufficient to pay the aide, the heire (who is to maintaine the state and countenance of his Father) is not to bee charged therewith.

In

In an Action of debt brought by the eldeſt daughter againſt the heire for an C. s. which the Father received of his Tenants for reaſonable aide to marry her, and that ſhe was not maried in his life time, &c. and in her declaration made no mention that the Executors had no aſſets, and yet the count was ruled to be good, for that is the ordinary count in an Action of debt, which the Statute giveth, and if the Executors have aſſets, the heire ſhall plead it in barre. 3 E. 3. Debt 157.

Although the Statute be, that his heire ſhall be bound to the daughter, it is underſtood, that he ſhall be bound, if he hath aſſets in fee-ſimple by deſcent from his Father.

The daughter ſhall not recover part againſt the Executors, and the reſidue againſt the heire, but either all againſt the Executors, or all againſt the heire, as theſe words doe prove.

The eldeſt ſon muſt have his remedy onely againſt the Executors, for he himſelfe is heire. F.N.B. ubi ſupra.

And theſe aides appeare by the Mirror to be very auncient, ordained by King Alfred, and other auncient Kings, for he ſaith, Et que Eſcuage, Reliefe & Aides, ſe fiſſent per les Tenants a lour Seigniours de lour heritage reliever, les heires les Seigniours faire chivaliers, & de lour eigneſſes files marier. It is to be obſerved how moderate the aids be by force of this Act, and therefore it is to be collected that the fees of the Heralds were then (and yet ought to be) moderate alſo. Mirror ca. 1. § 3.

CAP. XXXVII.

PUrview eſt & accorde enſement, que ſi home ſoit attaint de diſſeiſin fait en temps le Roy que ore eſt, oveſque robbery, de aſcun maner de chattel, ou de moveable, & ſoit trove vers luy per recogniſance de Aſſiſe de Novel diſſeiſin, le judgement ſoit tiel, que le plaintife recovera ſa ſeiſin & les damages, auxibien de chattel & de moveable avantdits, come de ſoile. Et le diſſeiſor ſoit rente, le quel que il ſoit preſent ou non, iſſint que [ſil ſoit preſent] primes ſoit agard a la priſon. Et per meſme le maner ſoit fait de diſſeiſin fait a force & armes, tout ne face home robbery. See Marlb. ca. 14. Verb. Attinct. the firſt part of the Inſt. ſect. 514. Verb. en Attaint.

This Statute is made in affirmance of the Common Law, as appeareth by originall Writs of Aſſiſe, wherein the words be, Facias tenement' illud reſeiſiri de catallis quæ in ipſo capta fuerunt, & ipſum tenementum cum catallis eſſe in pace uſque ad primam aſſiſam; which Writt was at the Common Law before this Statute, as it appeareth by Glanvill, and by Bracton who wrote before this Act. Glanv. l. 3. ca. 33, 34, &c. Bract. l. 4. fol. 179

And the Iudges of the Aſſiſe ought to enquire of the ſame, for if goods be taken away by the diſſeiſor, it is a diſſeiſin with force, and therefore ex officio, the Iudges ought to enquire thereof. 11 H. 4. 16, 17. 11 H. 4. 16, 17.

¶ En temps le Roy que ore eſt.] Yet this Act being in affirmance

4 E. 2. damage 10 mances of the Common Law doth extend to all times after, which the Iudges in 4 E. 2. not obſerving, nor remembring the words of the Writ of Aſſiſe denied to enquire of the taking away of the goods.

¶ Oveſque robbery.] Here [robbery] is taken in a large ſenſe, for a wrongfull taking away of goods, as a wrong doer and treſpaſſer.

¶ De aſcun manner de chattel, ou de moveable, &c.] If a man be diſſeiſed, and hath goods, which he hath thereupon as Executor or Adminiſtrator, taken away, theſe are not accounted his goods within this Statute, becauſe he hath them, in auter droit, to the uſe of the dead.

8 E. 3. 3. 54.

11 H. 4. 16. 7 H. 6. 30. b. A man ſeiſed of land in the right of his wife, or joyntly with his wife, and is diſſeiſed, and his goods taken away; in an Aſſiſe brought by the husband and wife, he and his wife ſhall recover ſeiſin of the land, and he alone upon that originall brought by him and his wife ſhall have damages, which is worthy of obſervation.

And ſo it is, if two joynt-tenants be diſſeiſed, and the goods of one of them taken away, both ſhall recover the land, and the one damages for his goods: Theſe be the only caſes that I remember in the Law, where one Demandant or Plaintife without any ſummons or ſeverance ſhall have judgement alone in one originall; for regularly the judgement ought to be given according to the originall Writ: As if the husband and wife bring an Action of battery for the beating of himſelfe and his wife, the Writ ſhall abate, becauſe the wife cannot joyne for the battery of her husband, and the husband cannot have judgement alone, becauſe his wife is joyned with him in the originall; Et ſic de ſimilibus.

12 E. 4. 6.

But the Aſſiſe is a ſpeciall caſe, for the Plaintife making his plaint to be diſſeiſed of his free-hold in ſuch a Towne with the appurtenances generally, yet ſhall he recover his goods, if the diſſeiſin be found with robbery of his goods, as the Statute ſpeaketh, and the goods are contained in the originall, and not in the plaint; And the Aſſiſe of Novel diſſeiſin was feſtinum remedium, and much favoured in Law for the reliefe of the diſſeiſe, both for the regaining of his poſſeſſion of the land, and of his ſtock of cattle, and goods thereupon: therefore where our Act ſaith, that the Plaintife ſhall recover his ſeiſin, and his damages, as well for the goods and moveables aforeſaid, as for the free-hold, it is ſo to be underſtood reddendo ſingula ſingulis, according to that which hath been ſaid. William Burcheſter, and Margaret his Wife were diſſeiſed of the land which he held in the right of his wife, and diſpoſſeſſed of his goods; in an Aſſiſe brought by the husband and wife, judgement was given for them both, Damna pro diſſeiſina C. l. pro bonis C. marc': in a Writ of Error the judgement was reverſed for the C. marks, becauſe the wife had nothing in them.

Coram Reg. Tr. 4 H. 4. Rot. 24. Suff

¶ Et le diſſeiſor ſoit rente.] And the diſſeiſor ſhall be fined, which is alſo in affirmance of the Common Law, for a diſſeiſin with taking away of goods is a diſſeiſin with force, and therefore finable.

¶ Et per meſme le maner ſoit fait de diſſeiſin fait a force & armes, tout ne face home robbery.] Note the Writ of Aſſiſe mentioneth not a diſſeiſin vi & armis, but the words thereof be Injuſte & ſine judicio diſſeiſivit, and therefore if the Iurors finde a diſſeiſin, and no force, the judgement ſhall be Ideo in miſericordia, and not quod capiatur, but as it hath been ſaid, the Court ex officio ought to enquire of the force; but if they doe not, it is not error, as it hath been adjudged.

M. 25 & 26 El. Co. Reg. in bre de Error. int' Bartlet & Baxter in Aſſ. de freſh force in Ipſewich.

CAP.

CAP. XXXVIII.

PUr ceo que aſcuns gentes de la terre doutent meins faux ſerement faire, que faire ne duiſſent, per que mults des gents ſont diſherites, & perdent lour droit: Purview eſt, que le Roy, de ſon office, deſormes donera Attaints ſur les enqueſts en plea de terre, ou de franktenement, ou de choſe que touche franktenement, quant il ſemblera que beſoigne ſoit.

The miſchiefe before this Statute (which was the firſt concerning Attaints) was, that albeit (as the common opinion is) an Attaint did lie upon a falſe verdict given in a plea of land, yet the King many times would not graunt it without ſuit made to him, which turned the party grieved, not onely to great delay, but to extreame trouble, attendance, and charges. And the reaſon that made the difference betwixt the plea reall, and the plea perſonall, was, that in the plea perſonall the party grieved had no other remedy, but the Attaint; but in the plea reall he had other remedy in an Action of higher nature, and for that cauſe was not granted without difficulty. And ſome Judges held, that in a plea reall an Attaint did not lie, and therefore this Act provideth that the King ſhall grant it * ex officio, that is, ex merito juſtitiæ. And this Act is holden to be in affirmance of the Common Law, whereof you ſhall reade at large, Mariebr. cap. 14. And this is the common opinion agréeable with our old bookes, as there you may reade.

Paſch. 32 E. 3. fo. 65. in libro meo. H. 3. graunted to the Burgeſſe of S. Albans, that none of them ſhould be impleaded of no freehold in attaint, &c. & *allocatur*.

* De ſon office.

Merleb. cap. 14.

That perjury in Jurors was puniſhed before this Act, hath bin ſufficiently proved already: Now the preamble of this Act giveth juſt occaſion to examine whether perjury alſo in witneſſes were puniſhable by the auncient Lawes of England; De pejerantibus præterea ſtatutum eſt, ut ſi quis juſjurandum violarit, falſumve dixerit teſtimonium, fides ei in poſterum non habetor, verum is in ordalium adjudicator.

Int' leges Edw. Regis. 48. 3.

Si quis falſum juraſſe convictus fuerit, ei poſtea non modo non creditor, verumetiam ſacra ei etiam prohibetor ſepultura.

Inter leges Ethelſtani 67, 25.

Si quis ſacra tenens pejeraſſe convictus fuerit, ei manus præciditor, &c.
Vide inter leges W. Conq. fol. 125. b.

Inter leges Canuti 113. 34.

And the Mirror ſaith, Que ſolonque les auncient priviledges, & uſages aſcuns ſe ſont per perde del ponce, come eſt de faux notaries, & de ciſſers de burſes de meyns q̄ xii. d. & pluis que vi. d. que le Roy R. 1. ſe chaungea a la parte de oriel, aſcuns per couper des langues, come ſoloit eſtre de faux teſtmoines.

Mirror cap. 4. de paines. 10 H. 3. Coron. 434.

And in the ſame Chapter treateth further of this matter, ſaying, Perjury eſt graund peche, &c. whereof you may reade there more at large. Britton ſaith that it was puniſhable, and to be enquired of De ceux queux ſe voilont perjurer pur lower.

Britton fol. 38. Fleta l. 5. c. 21. & lib. 2. cap. 1. Bract l. 4. fo. 289.

Fleta deſcribeth perjury thus, Perjurium eſt mendacium cum juramento firmatum; and further ſaith, Et tribus modis committitur; primo, cum quis ſcit, vel putat aliquid falſum eſſe falſum, & jurat eſſe verum; ſecundo, cum quis fallitur, & credit verum eſſe quod eſt falſum, & temere & indiſcrete jurat; tertio, ſi quis credit falſum eſſe verum, & jurat quod verum eſt.

Where you may reade further of this matter. And of ſome it is called, Crimen læſæ conſcientiæ. Bract. fol. 291.

Thomas

Hil. 8 E. 1. in Communi Banc. Rot. 38. Essex. John of Huntingfield, Case.

Thomas Vigras and two others were found guilty, &c. of perjury.
18 E. 3. 53. Once, for two one, and ever for two one.
7 H. 6. 25. Perjury punished.
Vide the Statutes of 3 H. 7. cap. 1, 11 H. 7. cap. 25. 32 H. 8. cap. 9. 5 Eliz.

Upon all that which hath been said touching this point, you may observe how milde the late Laws have been in punishing of perjury in respect of the auncient, wherein I have been the longer, for that some have given out, that perjury was not punished by the auncient Laws of England, wherein there should have been a great defect, and an encouragement to ill disposed men, if Jurors should by the Common Law have been punished for perjury, and witnesses, which are great motives to them of giving their verdict, should be perjured, and not be punished.

Mich. 5 E. 1. in Banco Rot. 63. Midd.

℄ Quant il semble que besoigne soit.] See 5 E. 1. which was within two yeares after this Act, an Attaint was brought upon a false verdict given in Assise before Justices in Eyre before the making of this Statute: And the Record saith, Quod non est intentio Domini Regis, nec extitit tempore confectionis statuti prædicti, quod breve de Attinctu transiret super hujusmodi inquisitionibus ante statutum captis, prout Johannes de Lovet recordatur, imò post statutum concess' Consideratum est quod querens nihil capiat per breve, &c. And this was the Law taken then by colour of these words; but others hold, that these words are not to be so taken for the reason aforesaid, for that the party grieved in this plea reall had remedy in an Action of higher nature: but later Statutes quoted before in the margent have cleared this point.

CAP. XXXIX.

ET pur ceo que le temps est mult passe puis que les brieses desouth nosmes fuerent auterfoits limittes: Purview est, que en count countant de descent en brieve de Droit, nul ne soit ci ose de counter de la seisin son anc' de plus longe seisin que de temps le Roy R. Uncle le Roy Henry, pier le Roy que ore est. Et que le brieve de *Novel disseisin*, & de purparty, que est appelle *Nuper obiit*, eyent le terme puis le primer passage le Roy Henry, pier le Roy, que ore est en Gascoine, mes nemy avant. Et les brieves de Mortdanc', de Cosinage, de Ayle, de Entre, & brieve de Neifrie, eiant le terme del coronement mesme le roy Henry, & nemy avant. Mes que touts les brieves ore a per mesme purchases, ou a purchaser, entour cy & [la feast] S. John en un an, soient pledes de temps que avant solent estre pleades.

1. Inst. sect. 170.

℄ De temps le roy R.] That is by construction from the first day of the raigne of King Richard the first, and so hath it been resolved in Parliament.

This

This Act doth limit within what time the ſeiſin ſhall be in a Writ of Right, and by conſtruction the time of preſcription is taken for this time. 34 H. 6. 36. Inſtit. ubi ſupra.

¶ Puis le premier paſſage le roy Henry, &c. in Gaſcoine.] That was in anno 5 H. 3.

¶ Del Coronement meſme le roy Henry.] H. 3. was crowned 28 Octobris, Anno Dom. 1217. & Regni ſui primo; but others ſay he was crowned 16 Junii, Anno Regni ſui primo. Vet. Mag. Chart. 144.

This King was crowned again in anno 5. of his raign, but this Act intendeth his firſt Coronation.

Theſe limitations are altered by the Statute of 32 H. 8. as you may reade before in the expoſition upon the Statute of Merton cap. 8. See the firſt part of the Inſtitutes, ſect. 170.

CAP. XL.

PUr ceo que mults des gents ſont delayes de lour droit, per fauxment voucher a garranty: Purview eſt, que en brieſes de poſſ. tout adeprimes come en brieſe de Mortdaunc', Coſinage, del Ayle, *Nuper obiit*, de Intruſion, & auters brieſes ſemblables, per les queux terres ou tenements ſont demands, queux devoient diſcender, reverter, remainder, ou eſchier per Mortdanc', ou dauter, que ſi le tenant vouche a garrant', & le demandant luy counterpled', & voile averrer per aſsiſe, ou per pays, ou en auter maner, ſicome le court le roy agarde, que le tenant ou ſon aunc' que heire il eſt, ſuit le primer que entra apres la mort celuy de que ſeiſin il demand, ſoit le averrement del demandant reſceve, ſi le tenant le voile attender, & ſi non, ſoit bote ouſter le auter reſpons ſil neit ſon garrantor en preſent, que luy voile garranter de ſon gree; & maintainant enter en reſpons, ſalve al demandant ſes exceptions enconter luy, ſil voile voucher ouſter, come il avoit avant, enconter le primer tenant. De recheſſe en touts maners des brieſes Dentre, queux font mention des degrees: Purview [eſt] que nul deſormes vouche hors de la line. Et en auters brieſes Dentrie, ou nul mention eſt fait de degrees, les queux brieſes ne ſont ſuſtenus, forſque la ou les avantdits brieſes de degrees ne poient giſer ne lieu tener. Et en brieſe de Droit purview eſt, que ſi le tenant vouche a garranty, & le demandant le voile counterpleder, & ſoit priſt

priſt de averrer per pays, que celuy que eſt vouche a garranty, [ne nul] de ſes anceſters ne unques avoient ſeiſi de la terre, ou del tenant demande, ne fee, ne ſervice per la maine le tenant, ou [aſcun] de ſes aunceſters, puis le temps celuy de que ſeiſin le demandant counte jeſques al temps que le briefe fuit purchaſe & plee move, per que il poit le tenant ou ſes aunceſtors aver feoffe: Adonques ſoit laverrement del demandant reſceive, ſi le tenant le voil' attender, & ſinon, ſoit le tenant bote ouſter a auter reſpons, ſil neit ſon garrantor en preſent, que luy voile garranter de ſon gree, & maintenant enter en reſpons, ſalve al demandant ſes exceptions enconter luy, ſicome il avoit avant encounter le primer tenant. Et lavantdit exception eit lieu en briefe de Mortdaunceſtre, & en les auters briefes devant noſmes, auxibien come en briefes queux touchent droit. Eo[l] ſi le tenant per cas eit charter de garranty de auter home *de ceo choſe* que ſoit oblige en nul des avantdits caſes a le garranty de ſon eigne degree, ſalve luy ſoit ſon recoverer per briefe de Garranty de charter de le Chauncellor le Roy, quant il le voudra purchaſer, mes que le plee ne ſoit pur ceo delay.

13 E. 1. counterplea de voucher. 118. 16 E. 2. ibid. 110. 8 E. 3. 61.

The miſchiefe before this Statute was, that every Tenant in a reall Action was permitted to vouch any of the people, though he or any of his Auncеſtors had never any thing in the land whereof he might enfeoffe the Tenant or any of his Auncеſtors; and againe that Vouchée might vouch another in like manner, and upon every ſummons ad Warrantizandum, **there muſt be nine returnes, &c. ſo as the delay was in manner infinite, and all upon falſe Vouchers; which matter being ſhewed in this Parliament,** Fuit adviſe al Roy que ceſt ley fuit malveis, **for it is a Maxime in Law, that** Lex dilationes ſemper exhorret; **whereupon this Act of Parliament for remedy was made.**

22 H. 6. 40. per Markham.

¶ Vouchee a garranty.] **For this word [vouché] ſée** Lit.

Inſtit. ſect. 143. Glanv. l. 13. ca. 9, 10. & alibi ſæpe. Bract. l. 5. fo. 380. Britton c. 75. Fleta lib.

Vide Glanv. **of this matter.**

Vide Bracton, **a whole tractate of vouching to Warranty.**

Vide Britton, **a Chapter of the ſame.**

Fleta ſaith, Sunt autem nonnulli lites protrahere nitentes, minores falſo vocant ad Warrantes, & de quibus proviſum eſt (**ſumming up the principall part of this Statute in few words**) quod ſi petens replicando offerat verificare quod vocatus nec aliquis anteceſſorum vocati nunquã ſeiſinam habuit de re petita, feodum nec ſervitium per manus tenentis vel alicujus anteceſſoris ejus à tempore ejus ex cujus ſeiſina petit uſque ad tempus impetrationis brevis & placiti moti, per quod potuit verificare tenentem vel ejus anteceſſores inde feoffatos fuiſſe, admittatur verificatio illa ſi tenens voluit hoc expectare, alioquin ulterius reſpondere compellatur, ſalvis petenti talibus replicationibus, quales verſus principalem tenentem obtineret: Et ſi tenens chartam habuerit alicujus extraneæ perſonæ qui ſe ad Warrantiam obligaverit, vel per anteceſſorem obligatus fuerit qui gratis warrantizare voluerit, tunc

tunc competit tenenti remedium per breve de warrantia Chartæ, ſed propterea non capiat placitum jam motum dilationem.

In ancient time it ſéemed ſtrange when the oꝛiginall Præcipe was bꝛought againſt the Tenant of the land, that the Court upon that oꝛiginall ſhould hold plea betwéen the Tenant and the Mowchée, but it is moꝛe ſtrange to make a queſtion of that, which hath receiued an ancient, continuall, and conſtant allowance, and the Mowchée commeth in in loco tenentis, and in judgement of Law is a Tenant to the Demandant, and our Act doth allow of true Mowchers, but pꝛohibiteth againſt falſe Mowchers, as our Act ſpeaketh, foꝛ delay onely. Mirror. 8 E.3.61.

¶ En brieſes de poſſeſsion.] So called, becauſe either the auncéſter, of whoſe ſeiſin he demands, was in poſſeſſion the day he died, oꝛ the demandant himſelfe was in poſſeſſion, as Mortdaunc', Coſinage, Aiel, Nuper obiit, Intruſion and other like Writs, as Beſaile, &c. 8E.3.57.b.32 E.3 Count.de vowcher 82.21E.3.41

The diuerſity betwéen the Actions Auncéſtrel droiturel, and the Actions Auncéſtrel poſſeſſorie, you ſhall reade at large in my Repoꝛts in Markals Caſe, and is neceſſary to be obſerued foꝛ the underſtanding of this Act, which maketh the ſame diſtinction of Actions. 46 E.3.2. Li.6.fo.34,35,&c Markals Caſe.

¶ Per les queux terres ou tenements ſont demaundes.] In a Writ of Right of Ward of Body and Land, the Defendant bowched, and the Plaintiffe counterpleaded the Mowcher by this firſt bꝛanch of this Act, that the Defendant was the firſt that abated after the death of his Tenant, and the ſame continued till the Mowcher, and adjudged a good counterplea foꝛ albeit it is named a Writ of Right, and ſo in letter is out of this bꝛanch, yet is it in nature of a Writ of poſſeſſion, and the woꝛds are per mort daunceſter ou dauter, and though no lands oꝛ tenements be demaunded, which regularly is intended of an eſtate of fréehold, yet this caſe being within the ſame miſchiefe is taken within the remedy. 8 E.3.57,61. 21 E.3.11. 22 E.3.6. 25 E.3.39.32 E.3 Count.de vow.83

In Dower the Tenant bowch T. Coſine & heire; A. the Demandant ſaid that her husband died ſeiſed, and the Mowchée was the firſt that abated; and a good counterplea within theſe woꝛds, Autres brieſes ſembles, but that plea is not in caſe of the heire. 2E.3.31.22 E.3.3 32 E.3.75.a. in libro meo.

¶ Diſcender.] A Formedon in the Deſcender is out of this bꝛanch, foꝛ it is a Writ of Right in his nature, and not a Writ of Poſſeſſion, and he demandeth not the land of the ſeiſin of his auncéſtoꝛ, as the Statute ſpeaketh, but of the gift. 4 E.3.56. 39 E.3.36.b.

¶ Reverter.] A Formedon in the Reverter is not within this bꝛanch, foꝛ that it is a Writ of Right in his nature. 32 E.3.infra. †.

¶ Remainder.] A Formedon in the Remainder is not within this bꝛanch, foꝛ it is no Writ of Poſſeſſion, but a Writ of Right in his nature, and the Demandant doth not demand the land of the ſeiſin of his auncéſtoꝛ, as the Statute ſpeaketh, but by the Remainder. 4 E.3. Count.de vowcher. † See 32 E.3.fol. 74,75. in libro meo. Lopinion del Court al contrary. vide 32 E.3 tit. counterplea de vowcher. 82.

¶ Eſchier.] This is in the Engliſh tranſlation turned to Eſcheate, which ought not to be, but Eſchier ſignifieth to fall, and a Writ of Eſcheat is not within this bꝛanch, foꝛ that it ſoundeth in the Right, and Reverter, Remainder, oꝛ Eſchier is to be intended after the death of his auncéſtoꝛ, oꝛ Tenant foꝛ life, Tenant in Dower, oꝛ by the Curteſie. 4 E.3.33.32 E.3. count.de vow.82.

An Aſſiſe of Novel diſſeiſin, and in Aſſiſe of Darrein preſentment are within this bꝛanch, if the Tenant bowch any named in the Writ, and the Demandant may counterplead the Mowcher, as well when the Tenant is pꝛeſent in Court, as when he is abſent. 3 E.3.vowch.199 26H.6.tit.count. de vowcher 5. 21 H.6.50.

The first counterplea given by this Act.

¶ Que le tenant ou ſon auncestor que heire il eſt fuit le primier que entra apres la mort celuy de que ſeiſin il demaund, ſoit laverment del demaundant reſceive.] A. dieth ſeiſed in fée, B. abateth, and maketh a leaſe for life, & graunteth the reverſion to C. in fée, and dieth, C. graunteth the reverſion to D. the heire of B. Tenant for life is impleaded in a Writ of Coſinage, and makes default after default, D. is received and voucheth to warranty C. the Demaundant counterpleads the Voucher, for that B. was the firſt that abated after the death of his auncestor, of whole ſeiſin he makes his demand: and two objections were made, that this counterplea was not within this Statute. 1. That D. claimed the reverſion by purchaſe, and ſo B. was not his auncestor within this Statute, for he claimed not the land as heire. 2. That this Statute ſpeaketh of the Tenant, which muſt be underſtood of the Tenant for life, who is the Tenant to the Præcipe in deed, and not of the Tenant by receit, who is Tenant in Law: As to the firſt it was anſwered and reſolved, That in as much as the abatement is confeſſed, albeit that divers ſtates be made, yet for that D. is heire to the abator, and B. his auncestor within the letter of the Statute, and Injuria per circuitum non tollitur, and ſo within the meaning. But if the Fate of the abator had béen avoided by a title paramount, and the heire of the abator had béen enfeoffed, there the heire had not claimed under the abatement, and therefore although he were within the letter of this Act, yet had he béen out of the meaning.

40 Aſſ. 22.

¶ Auncestre.] And where it is ſaid here auncestor, predecessor is taken by equity; for Acts of Parliament made for ſuppreſſion of falſhood practiſed for delay, as theſe falſe vouchers be, ſhall have a benigne interpretation.

¶ Tenant.] To the ſecond, albeit Tenant by receit be but Tenant in Law, yet is he in lieu of the Tenant, and ſo within this branch, for otherwiſe the abator may make a leaſe for life, and by his default after default be received, and ſo by covin betwéen them make this branch of none effect, which ſhould be againſt reaſon, et in fraudem legis; And Tenant in Law by Warranty is within this Act, albeit he be not preſent in Court.

Hil. 9 E. 2. fol. 63. in lib. meo. en Coſinage.

¶ Primier que entra.] A. and B. doe abate to the uſe of B. the whole ſtate is in B. if B. infeoffe A. this coadjutor is within this Act, and yet he gained no freehold, but this Statute ſaith, Le primer que enter, and though he entred not at the firſt ſolie, yet is he within this Statute.

But if the abator maketh a feoffement in fee, and taketh back an eſtate to him and a ſtranger, and they both be impleaded in a Writ of Aiel, and vouch their feoffor for the benefit of the ſtranger (who is out of the Statute) the Vowcher cannot be counterpleaded within this branch.

But if the ſtranger releaſe to the abator, and he be impleaded, and vouch, this vowcher may be counterpleaded by force of this branch.

45 E. 3. 16.
8 H. 7. 5.

¶ Et ſi non, ſoit bote ouſter al auter reſpons.] So as this clauſe giveth no benefit to the Tenant, unleſſe he giveth over his Vowcher, and then he ſhall be received to anſwer, but if he ſtand to his Vowcher, and demurre in Law upon the counterplea, and it be adjourned to another Terme, it is peremptory to the Tenant in reſpect of the delay, in ſuch ſort, as if ſiſne had been taken, and a triall had: By theſe words [Soit bote a auter reſpons] he may as well vouch as plead in chiefe. Note the words be, Soit bote a auter reſpons, *& ne dit en chiefe*, ſo as any anſwer ſufficeth, and therefore the vowchee may plead outlawry in the Plaintife in an Action of Debt, after the laſt continuance.

40 E. 3. 14. Br. tit. Coun. de vouch. 5

21 E. 4. 54.

But

But if the counterplea be adjudged for the demandant in the ſame term, he may plead in bar, but he cannot vouch. 22 H. 6. 40. 11 H. 4. 22. 42 E. 3. 16. 10 H. 7. 22.

A demurrer in Law upon a Voucher adjourned to another term is peremptory; for the demurrer is in lieu of an anſwer, otherwiſe in caſe of counterplea the ſame term, as hath been ſaid.

¶ Sil neit ſon garantor en preſent, que luy voille garrant' de ſon gree, &c.] In a Writ of Right of Ward, the Defendant vouch, and for that the Vouchée was preſent in Court, and entred into Warranty, the Plaintiffe could not counterplead. Hil. 9 E. 2. fol. 63. in lib. meo en Coſinage. Temps. E. 1. Count. de Vouch. 116. See the ſtatute de Vocat. ad Warr. 20 E. 1.

¶ Des recheiſe in touts maners des briefes des entries queux font mention des degrees: purvieu eſt que nul diſormes vouchera hors del lien.] A Diſſeiſor makes a leaſe for life, the Remainder in fee, the Diſſeiſee brings a Writ of Entry ſur diſſeiſin in the Per againſt the Leſſee, who makes default after default; he in the Remainder is received, he ſhall vouch out of the line, becauſe he is not within the degrees mentioned in the Writ. The ſecond Counterplea given by this Act. 16 H. 7. 5. 9 E. 3. 16. ſimile.

And there is no ſuch miſchief in this caſe, as ſhould follow, if the Law were ſo taken in the firſt branch, as before it appeareth.

But of the Vouchée, in caſe of the Per & Cui, Fleta ſaith, Fiat vocatio de perſona in perſonam, & de warranto in warrantum de perſonis in brevi nominatis uſque ad ipſum diſſeiſitorem; and the reaſon may be, becauſe it appeareth, that the Vouchée is within the degrees mentioned in the Writ: and the words of the Statute are generall, Nul vouchera hors de lien; in which words, the Vouchée is included. Laſtly, it had been to little purpoſe, to reſtrain the Tenant in the Per, and to let the Vouchée in the Cui at large; ſo as this branch hath (as you ſee) his ſpeciall reaſon. Fleta li. 5. ca. 37.

If a Writ of Entry in the Per be brought againſt the husband and wife, and upon the default of the husband the wife is received, ſhe ſhall not vouch out of the line, becauſe ſhe is party to the Writ.

So it is, if a Writ of Entry in the Per be brought againſt the Tenant for life, and he pray in aid of him in the reverſion, and he joyn in aid, he muſt joyn in plea with the Tenant, and therefore ſhall not vouch out of the degrees.

¶ Hors del lien.] Lien is properly the binding of the Vouchée by force of the Warranty; for the Vouchée ſaith, Que aves a vous a lier a garranty; and then the Tenant ſheweth the Lien, that is, the Deed or Fine, &c. that bindeth him to Warranty: here it is taken for the Degrees; of which you have heard before, in the expoſition of the laſt Chapter of Marlebridge.

In a Writ of Entry in the Per and Cui againſt B. of the feoffment of A. A. dyeth, B. ſhall vouch the heir of A. for the heir is within the intention and meaning of this Law, leſt he ſhould loſe his warranty (ſo much favoured in Law) by the act of God, viz. the death of A. 12 E. 3. Count. de Vouch. 92. 27 H. 6. 1.

¶ Et in autres briefes Dentre ou nul mention eſt fait de degrees.] That is, Writs of Entry in the Poſt; whereof, and of this whole clauſe, ſomewhat hath been ſpoken in expoſition of the ſaid Statute of Marlebridge.

¶ Et in briefe de droit.] This is not onely underſtood of a Writ of Right right, but of all Writs of Right in his nature, or which touch the right, as this Law hereafter ſpeaketh, as the Writ of Eſcheat, Writs of Formdon in Revertet, Remainder, Diſtender, &c.

¶ Que celuy que eſt vouche.] If the Tenant vouch A. as Aſſignée to B. the Demandant may counterplead the ſeiſin of B. within the meaning of this branch, for that overthrowing the voucher, which is the end of this Law.

a If an Infant be vouched as heir to A. it is not ſufficient to counterplead the ſeiſin of A. the anceſtor, for that the Infant cannot make a feoffment; but he muſt counterplead the ſeiſin of the Infant and his anceſtors, and the infancie ſhall come upon the Lien.

¶ Ne nul de ces auncеſters.] b Here is implyed (whoſe heir he is) but yet this doth extend aſwell to the ſpeciall heir of the poſſeſſion, (as the heir in Borough Engliſh, and in Gavelkinds) as to the generall heir at the Common Law.

c Where a Biſhop or an Abbot be vouched, the Counterplea muſt not be of the Biſhop or Abbot and his anceſtors, according to the letter of the Law; but of him and his predeceſſors, according to that capacitie whereby the land is demanded: and ſo it is of other bodies Politique and Corporate.

d If a Baron and Feme be vouched, the ſeiſin of the Feme and her anceſtors may be counterpleaded, unleſſe ſpeciall matter be ſhewed to the contrary: and ſo it is, if two others be vouched, it is a good Counterplea to counterplead the ſeiſin of one of them, for ouſting of Delay by eſſoins, protection, death, and his heir within age, &c.

¶ Ne uniques avoient ſeiſin de la terre ou tenement, &c. per que il poet aver, &c. feoffe.] e Yet if he hath but an eſtate for yéars, it is ſufficient; for by the livery he gaineth ſeiſin, and both the feoffments de jure and de facto are within this Statute, but otherwiſe it is of an eſtate at will.

If the Vouchée hath but an eſtate for life, ſo as his feoffment ſhould be a ſurrender, yet hath he ſuch an eſtate, as is within this Statute.

Husband ceſti que uſe in the right of his wife, or ſeiſed in the right of his wife, hath a ſeiſin donc il poet feoffment faire, a feoffment for maintenance, though the Statute of 1 R.2. make it void, yet ſeeing it is not void untill entry, it is a ſufficient ſeiſin to make a feoffment.

f One Joyntenant cannot enfeoff another, yet hath he ſuch a ſeiſin as is within this Act; for [Feoffment faire] is ſpoken but for example; but a Fine, releaſe, or any other conveyance which giveth an eſtate, is within this Law.

If a Vouchée or any of his anceſtors had any ſeiſin, though it were avoided or determined, it is ſufficient.

¶ En demaunde.] g If a Rent be demanded, and the Tenant vouch by reaſon of a feoffment of the land diſcharged of the Rent with warranty, the Demandant may counterplead the ſeiſin of the Vouchée, &c. of the land, albeit the Rent is onely in demand.

¶ Ne fee, ne ſervice per la maine le tenant, ou aſcun de ſes auncеſters, &c.] h For in reſpect of ſome tenure and ſervice, the Tenant may vouch to warranty; as Frankalmoigne, homage, auncеſtrel, reverſion, &c.

¶ Puis le tẽps celuy de que ſeiſin le demand' coũte.] i Here [ſeiſin] is taken for the title of the Demandant in his Writ, for it is a Maxime in counterpleas, that the Demandant is not to counterplead any ſeiſin, but after the title of his Writ; and where the ſeiſin is in the title, there the counterplea muſt be after that ſeiſin: as for example, in a Writ of Right, after the ſeiſin of him of whoſe ſeiſin he demand.

Here

The third counterplea given by this Act.
12 E.3. Count. de Voucher. 42.
a 21 E.3. 9. 31 E.3 Count. de Vouch. 88. Dyer. 13 El. 290.
b 10 E.3. 30. 18 E.3. 3. 26. 38 E.3. 22. 40 E.3. 14. 23. 43 E.3. 19. 27 H.6. 1. 35 H.6. 34. 21 E.4. 10. 20 H.7. ibid.
c 40 Aſſ. 22. 19 E.2. Count. de Vouch. 114. 6 E.2. Vieu. 162. Tẽps. E.1. ib. 171
d 22 Aſſ. 30. 48 E. 3. 28. 18 E.3. 53 54. 47. 39 E.3. 30. 32. 16 H.7. 13. 20 H.7. ibid.
e Temps. E.1. tit. Count. de Vouch. 126. 50 E.3. ibid. 124. 16 E.3. Count. de Garr. 36. 37. 18 E.3. Iſſue 36. 40 E.3. 12. 13. 44 E.3. 27. 13 E.3. Count. de Vouch. 36. 8 H.7. 5. 21 H.6. Count. de Vouch. 3. 14 H.6 10.
f 44 E.3. Count. de Vouch. 45 E.3. 16. 14. 35 H.6. 10 9 H.6. 49. 8 H.7. 5. 50 E.3. tit. Count. de Vouch. 124.
g 3 E.3. 36 5 E.3. 16. 37. 10 E.3. 20. 26 H.6. Count. de Vouch. 5. 12 R.2. ibid. 34. 35 H.6. 30. 21 E.4. 26.
b Fleta li. 6. ca. 23 13 E.1. Count. de Vouch. 118. 47 H.3. Vouch. 270. 271. 9 H.3. ibid. 277. 1. part. Inſtit. ſect. 243.
i 11 E.3. Count. de Vouch. 118. 6 E.3. 21. 38 E.3. 28. 39 E.3. 36. 41 E.3. 15. 46 E.3. 32. 48 E. 3. 2. 11 H.4. 19. 22 H.6. 42. 21 E.4. 20.

here is implyed, (and before the Writ purchaſed) for it be pendente brevi, it ought not to be allowed. 21 E.3.20. 21 E.4.26. 12 H.7.2.

¶ Ieſq; le temps que le briefe fuit purchaſe & plea move.] * For no Warranty, created after the purchaſe of the Writ, ſhall helpe the Plaintiffe, unleſſe upon that conveyance the Writ be made good; as if a Præcipe be brought againſt A. of land whereof B. is ſeiſed, and B. infeoffe A. pending the Writ, he ſhall vouch by force of this Warranty, otherwiſe not. 28 E.3.90. 41 E.3.5. 12 R.2. Count. de Vouch 33. 18 E.4.27. a ſimile.

¶ Soit le tenant bote ouſt' al' aut' reſpons.] Of this ſufficient hath been ſaid before.

¶ Lavantdit exception eyt lieu en briefe de mordanc', & en les autres briefs devant noſmes auxy bien come in briefs queux touchant droit.] By this clauſe, the Demandants in Writs of poſſeſſion, as the Mortdauncester, Coſinage, Aiel, Nuper obiit, Intruſion, and the like, have a greater privilege and advantage, then Demandants in Actions which touch the Right; for this Act gives the Demandants in Writs of poſſeſſion, not onely the firſt counterplea, that is, that the Tenant or his anceſtor was the firſt that entered, &c. but alſo the laſt counterplea, which is given in Writs touching the Right, viz. that neither the Vouchée, nor any of his anceſtors had ever any ſeiſin, &c. 12 H.7.2. b. per Wood & 3. per Brian.

¶ Et ſi le tenant per caſe eyt charter de garrantie de auter home, que ſoit oblige in nul des avantdits caſes, &c.] If any man be ouſted of his Voucher by this Statute, yet if he hath a Charter of Warranty, he may have his Writ of Warrantia chartæ; as if a man that never had any thing in the land, nor any of his anceſtors before him, releaſeth to the Tenant of the land with Warranty, if the Tenant vouch him, and the Demandant counterplead the Voucher, by the laſt branch of this Act, viz. that the Vouchée, nor any of his anceſtors had ever any ſeiſin, &c. and the Vouchée is not there preſent, to enter into Warranty; in that caſe the Tenant ſhall be ouſted of his Voucher, but may have his Writ of Warr' chartæ. So if a man after the death of my anceſtor abate, & make a feoffment in fée, and after purchaſe the land again with Warranty, and after is impleaded in an Aſſiſe of Mortdanceſter, he ſhall be ouſted of his Voucher by the firſt branch of this Act, becauſe he was the firſt that entred, &c. but he may have his Warrantia chartæ. So if a diſſeiſor make a feoffment in fée to A. who infeoffeth B. and after repurchaſeth the land of B. with Warranty, againſt whom the Diſſeiſée brings a Writ of Entry in the Per, as he may do, he cannot vouch B. by the ſecond branch of this Statute, but the Diſſeiſor onely, and is driven to his Writ of Warrantia chartæ againſt B. Inſtit. 1. part. ſect. 743. More of this matter.

It is to be known, that there are counterpleas to the Voucher, and that this Statute giveth to the Demandant, againſt the Tenant in theſe caſes, as hath been ſaid.

And there is a counterplea to the Warranty, or to the Lien, (which is all one) and that is between the Tenant and Vouchée, whereof there is no occaſion given to treat at this time; for this Act deals not in any ſort with it.

There were at the Common Law divers counterpleas of the Voucher, to prevent or to ouſt the Demandants delay, whereof it is not impertinent to ſay ſomewhat.

It was a good counterplea at the Common Law, to ſay, that there was Nul tiel, as the Vouchée; and that the Statute of 14 E.3. cap. 18. was in affirmance of the Common Law. 7 E.3.27. 7 Aſſ. 4. 28 E.3.96. * 14 H.6. 10. 48 E.3.17.

* So it is, if one be vouched as heir both by age, & that the Parol may demur, to ſay, that he is a baſtard; ſo it is, to ſay that the Vouchée is villein to the Demandant. 14 E.3. Count. de Vouch. 67.

It

40 E.3. 36.25 E. 3.43. 17 E.3.41. 21 E.3.36.7 E.3. 27.5 E.3.35.

It was a good counterplea at the Common Law, to ſay that the Voucher was dead, but upon this diſtinction, that the Demandant ſhew the ſame before any Proceſſe awarded; for after Proceſſe awarded, it muſt come in by the returne of the Sheriffe: and that the Statute of 14 E.3. ca.18. was made but in affirmance of the Common Law, for if was adjudged in 5 Edw.3. a good counterplea.

39 E.3.32.

And ſo it is, if two be vouched, it is a good counterplea, to ſay, that one of them is dead for preventing of delay.

18 E.3.55.

In dower it is a good counterplea, to ſay, that the Tenant entred by her husband.

3 E.3.38. 6 E.3. 18 E.3. Vouch.7 32 E.3. ibid. 99. 7 H.4. 11 H.4. 21. 22 H.6.19.

It is a good counterplea of the Voucher, to ſay, that the Tenant hath formerly prayed in aid of him, in reſpect of the delay.

In all caſes, where one doth vouch out of common courſe, there the Tenant ought to ſhew cauſe.

And whenſoever the Tenant cannot be admitted to his Voucher without ſhewing of cauſe, there by the Common Law the Demandant may counterplead the cauſe.

21 E.3.37.25 E. 3.53.40 E.3.14. 41 E.3.21.44 E. 3.38. 38 E.3.4. 29 E.3.29.32 E.3 Vouch.96. 10 H. 7.21,22.16 H.7. 13. 43 E.3.19.

When one voucheth himſelf, for ſaving of his eſtate tail; or when he voucheth himſelf as heir, and his brother as Tenant in Borough English, becauſe it is out of common courſe, the Tenant muſt ſhew cauſe, and the Demandant ſhall have a counterplea to the cauſe.

In a Præcipe, the Tenant vouched two brethren as one heir, and that the youngeſt was within age; and becauſe it was out of common courſe, he was ruled to ſhew cauſe; and ſhewed, that the father was ſeiſed of lands in Gavelkinde, and that the ſame deſcended to them, and the Demandant counterpleaded the cauſe.

4 E.3.13.11 H.4. 16. 21.48.

So it is, if a Præcipe be brought by four, and two be ſummoned and ſevered, the Tenant cannot vouch them that be ſummoned and ſevered, without ſhewing cauſe for the reaſon aforeſaid; and the cauſe being ſhewed, the Demandant ſhall counterplead the ſame.

42 E.3.16.3 E.3.8 12 H.7.2.3. 3 E.3.38. 8 E.3. 61.17 E.3.61.62 25. Aſſ.Pl.ult. 31 E.3. Vouch. 24.44 E.3.18. 14 H.6.10.

In a Præcipe againſt two they cannot vouch ſeverally without ſhewing of cauſe, becauſe it is out of common courſe, that Jointenants ſhould vouch ſeverally without ſhewing of cauſe; which cauſe the Demandant ſhall counterplead by the Common Law: and ſo in all other caſes, whereof there are plentifull authorities in our Books.

See more of this matter in the firſt part of the Inſtitutes, Cap. Garrantie.

CAP. XLI.

DE ſerements des Champions, eſt iſsint purview: Pur ceo que rarement avient que le champion le demandant ne ſoit perjure en ceo quil jure, que il ou ſon pier veiſt la ſeiſin ſon Seigniour, ou de ſon auncеſtour, & que ſon pier luy commande a faire la darreign', que deſormes ne ſoit le Champion le demandant conſtreint a ceo jurer, mes ſoit le ſerement garde en touts ſes auters points.

Glanv.li.2.ca.3.

At the Common Law none could be a Champion for the Demandant, but ſuch an one, as either himſelf ſaw, or heard his father ſay, that he ſaw the ſeiſin of the Demandant or his anceſtor, and that his father commanded him to teſtifie

testifie the right, and that this was true, he took a corporall oath: But oftentimes the Demandants seisin was so ancient, as seldome any man could take that oath, and yet in these cases, champions in those times took the oath, though they knew it not, either ex visu, or ex auditu, &c. and therefore as this Act saith, were perjured.

¶ Des serements des champions.] Champion, Campio dicitur à campo, because the combat was fought in the field, and therefore is called Campfight, and he must be liber homo, a free man.

This triall by Champion in a Writ of Right hath ben anciently allowed by the Common Law, and the Tenant in a Writ of Right hath election either to put himselfe upon the grand Assise, or upon the triall by combat by his Champion with the Champion of the Demandant, which was instituted upon this reason, that in respect the Tenant had lost his evidences, or that the same were burnt or imbezeled, or that his witnesses were dead, the Law permitted him to try it by combat betwéen his Champion, and the Champion of the Demandant, hoping that God would give victory to him that right had, and of whose party the victory fell out, for him was judgement finally given, for seldome death ensued hereupon, (for their weapons were but Batounes) victory onely sufficed. Brac. l. 3. fo. 344. 9 H. 3. Fleta l. 6. cap. 9. in fine.

Now concerning the oath of the Champions, and the solemne manner and order of proceeding therein, and betwéen what parties triall by battell should be joyned, you may reade in the Statute of W. 2. cap. 41. and at large in our bookes; and the oath of the Champion, as well of the Tenant as of the Demandant continued since this Statute, followeth in these words: Brac. l. 3. fo. 141. b 4 E. 3. 41. 17 E. 3. 2 29 E. 3. 12. 30 E. 3 20. 9 H. 4. 3. 1 H. 6. 6. 9 E. 435 19 H. 6. 35. 21 H. 6. 4. 14 E. 4. 7. 13 Eliz. Dier 301. See the first part of the Inst. sect. 489 & 514.

> Heare this you Judges, that I have this day, neither eate, drunke, nor have upon me either bone, stone, ne grasse, or any inchauntment, sorcery, or witchcraft, where through the power of the word of God might be *inleased or diminished, and the Devils power increased, and that my appeale is true, so helpe mee God and his Saints, and by this Booke.

* Of the French word, enlasse. i. intangled, or ensnarled.

The Law doth allow a triall by battell in another case, and that is in case of life in an appeale of felony, the Defendant may chuse either to put himselfe upon the Country, or to try it by body to body, that is by combate betwéen him and the Plaintiffe, but there the parties themselves shall fight. Brac. l. 3. fo. 138. b Mirror ca. 1. § 3. Fleta l. 1. cap. 32. Bract l. 3. fo. 141, 142. Brit. 41. fo. Fleta ubi supra. Mir. c. 3. ordinatio pugnantium.

And it appeareth by our auncient Authors, Quod si appellatus se defenderit contra appellantem tota die usque horam qua stellæ incipiunt apparere, tunc recedat appellatus quietus de appello.

And in case of the Writ of Right, the Champions are not bound to fight but untill the Starres appeare, and if the Champion of the Tenant can defend himselfe untill the Starres appeare, the Tenant shall prevaile, for they shall combat but once, and it is sufficient for the Tenant to defend being in possession.

The Judges of the Court of Common Pleas are Judges of the battell in a Writ of Right, and the Judges of the Kings Bench in an appeale of felony. But if the cause of appeale be not determinable by the Common Law, but before the Constable and the Marshall according to the Civill Law, there the Constable and Marshall are Judges. Mirror, Bracton, Britton, Fleta } ubi supra. 37 H. 6. 26. Rot. Vasc. 9 H. 4. m. 14 19 E. 2. Cor. 385. 13 R. 2. cap. 2. 5 Mar. tit. Batt. Br. 15. Dier 13 El. ubi supra. * 20 E. 4. 6.

But this triall in an appeale at the Common Law of later times seldome come in use, for that the appellant procures the appelle to be indicted, and then he cannot try it by battell: *but if the indictment be insufficient, then the Defendant may try it by battell.

Now the auncient Lawe was, that the victory should be proclaimed, that he that was vanquished, should acknowledge his fault in the audience of the people, or pronounce the horrible words of Craven in the name of recreantise, &c. and presently judgement was to be given, and after this the recreant should amittere liberam legem, that is, he should become infamous, and should not be accounted in Mirror cap. 3. ordinatio pugnantium.

in that respect Liber & legalis homo, and therefore could not be of any Jury, nor give testimony as a witnesse in any case, because he is become infamous, and of no credit: And this doth notably appeare in an ancient Record, where the case was, that battell being joyned in a Writ of Right of Advowson, in Anno 55 H. 3 before the Justices in Eyre in the County of Northampton, and the champions combatting, Philip le Pugil champion for one of the parties was vanquished, and thereupon Proclamation made accordingly; the King by advice of his Councell reciting under his great Seal the joyning of battell in the said Writ of Right of Advowson, and the procéding thereupon did signifie, Quod in duello prædicto coram Justiciariis prædictis percusso, irruerit in eundem Philippum tanta multitudo hominum, unde oppressus se defendere non potuit, qui homines perpetuam defamationem sibi imposuerunt, & in eodem duello Creantiam proclam': Rex inde certior factus, &c. statuit quod prædictus Philippus propter Creantiam prædict' liberam legem non amitteret, &c.

Rot. Pat. Anno 55 H. 3. m. 3.

Pugil a Champion.

Vide Mic. 15 E. 1 Rot. 8. in Banco Norff. *Duellum percussum, & serviens Abbatis de Bury, tenentis devictus & interfectus.* Vide Mich. 3 E. 1. Rot. 19.

Of this triall by battell, Fleta saith thus, Duellum singularis pugna inter duos ad probandam veritatem litis, & qui vicerit probasse intelligitur; & quamvis judicium Dei expectetur ibidem, quicunque tamen monomachiam, i. singularem pugnam, sponte susceperit, vel obtulerit, homicida est, & mortale contrahit peccatum.

Fleta li. 1. ca. 32. See lib. 9. fo. 32. b. Le case del Abbot de Strata Marcella.

¶ Son pier luy commande a faire la dereign'.] And these words are well explained by Glanvill, Cui pater suus injunxit in extremis agens, in fide qua filius tenetur patri, quod si aliquando loquelam de terra illa audiret, hoc dirationaret, sicut id quod pater suus vidit & audivit.

Deuter. cap. 18. verse 10.

Glanv. ubi supra. Bract. li. 5. fo. 373.

¶ Ne soit le champion le Demandant constreint a ceo jurer.] Hereby it appeareth that preventing Justice is better then punishing Justice, Melior est Justitia verè prævenies, quam severè puniens; for when it is punished, yet the offence is committed, but when it is prevented, then there is neither offence nor punishment: This Law preventeth perjury, which taketh away that part of the oath which seldome or never was or could be kept.

CAP. XLII.

PUr ceo que en briefe dasisie, dattaints, & de *Iuris utrum*, les Jurors sont sovent travels per essoines des tenants: Purview est, que del heure que le tenant un foits apparust en Court, jammes ne puisse *le tenant* se essoine, mes faire son Attourney a suer pur luy, sil voile. Et si non, soit lasisie, ou le Jurie prise per son default.

The mischiefe doth appeare by the preamble, and that the rather, for that in these Actions here rehearsed there is a Jury retourned the first day, and therefore the delay of the Jurors was the greater, but of two mischiefes, one onely remedy was provided; for as great delay had the Jurors where the Demandant, as where the Tenant was essoined, and here provision is made for the essoine of the Tenant which was the greater mischiefe, for commonly the Tenant seeks delay, and the Plaintifes expedition; Petens præsumitur desiderare potius instantiam litis, quam dilationem.

Bract. li. 5. fo. 342.

This

This Act is not underſtood of a Writ of Aſſiſe De novel diſſeiſin, for that in that Writ, the Tenant ſhall not be eſſoined, neither before, nor after appearance, Locum non habet eſſonium in perſona diſſeiſitoris, vel rediſſeiſitoris; but this is intended of an Aſſiſe of Mordaunceſter, and it is ſaid, that the Juſtices of the Kings Bench will not allow an eſſoine for the Plaintiffe in no manner of Aſſiſe, nor for the Tenant in Aſſiſe of Mordaunc'. Britton fol. 164. Fleta lib. 6. ca. 9. 10 H. 6. 22. 14 H. 6. 22. 8 Aſſ. 22. 22 Aſſ. 79. 30 Aſſ. 51. 34 Aſſ. 6 6 E. 3. 25

But albeit no eſſoine for the Tenant doth lie in Aſſiſe of Novel diſſeiſin, yet if the ſame be diſcontinued by the non venu of the Juſtices, or by the demiſe of the King, in a reattachment the Tenant ſhall be eſſoined, and ſo ſhall the Tenant be in a reſummons after a diſcontinuance in Aſſiſe of Mord. 44 E. 3. 5. 44 Aſſ. 24.

An Aſſiſe of Mord was brought in Cheſter, the Tenant vouched a forreiner to warranty, whereupon the Record was removed into the Court of Common Pleas, 15 Paſch. at which day (though it be in an Aſſiſe of Mord) the Tenant may be eſſoined, for the plea in Bank is not the plea of Aſſiſe, but the plea there is onely upon the Warranty, for the Aſſiſe ſhall not be taken in Bank. 30 Aſſ. p. 5. 8 Aſſ. p. 22.

The Statute of W. 2. doth provide for the other miſchiefe in the caſe of Aſſiſe of Mord, Attaint, and Juris utrum, viz. that the Demandant therein after appearance ſhall not be eſſoined; but that Statute extendeth not to the Aſſiſe of Novel diſſeiſin. W. 2. cap. 28. 26 Aſſ. p. 35. 45 Aſſ. 2. 30 H. 6. 1 16 Aſſ. 10.

¶ Dartaints.] This Statute is intended of the Tenant in an Attaint as well in a plea perſonall, or mixt, as upon a plea meerly in the realty. 28 Aſſ. p. 25. 34 Aſſ. p. 6.

¶ Juris utrum.] See the Statute of W. 2. aboveſaid. 6 E. 3. 25.

¶ Que le Tenant.] This doth extend as well to the Tenant in Law, as the Vowchee, and Tenant by receipt, as to the Tenant in deed, for it is to ouſt delay for expedition of Juſtice, and for the eaſe and benefit of the Jurors, and therefore being in equall miſchiefe ſhall be within the ſame remedy. 22 Aſſ. p. 79. 23 Aſſ. p. 15.

Hereby it appeareth that this Statute provideth onely againſt the Tenant after appearance, and leaveth the eſſoine of the Plaintiffe (as hath been ſaid) at large.

¶ Se eſſoine.] Though here eſſoine be ſpoken indefinitely, yet is it to be taken in a common ſenſe, and therefore is it to be underſtood of a common eſſoine, and not of an eſſoine de ſervice le Roy, for Statuta per Regem, Dominos, & Communitatem Regni ordinata in communi, & vulgari ſenſu intelliguntur. 12 E. 2. eſſoin 175 4 E. 3. 34. 6 E. 3. eſſoine 55.

¶ Mes fait ſon Attourney a ſuer pur luy.] By the policy of the Common Law, that ſuits might not encreaſe and multiply, Cum lites potius reſtringendæ ſunt, quam laxandæ, both Plaintiffe, and Defendant, Demandant, and Tenant in all Actions reall, perſonall, and mixt did appeare in perſon, as well in Courts of Record, as not of Record, becauſe the Writs doe command the Tenant or Defendant to appeare, which was alwayes taken in proper perſon; and the entry in every Action for the Demandant or Plaintiffe is, & prædictus petens, or querens obtulit ſe 4. die. which was ever underſtood in proper perſon: but when this and other Statutes had given way to appeare by Attourney, it is not credible how (with Attourneys and their multiplication) ſuits in Law (for the moſt part unneceſſary and for trifling cauſes) when the parties themſelves might ſit quiet at home, increaſed and multiplied: ſo dangerous and ill ſucceſſe have ever had the breach of the Maximes and auncient rules of the Common Law, as elſewhere hath been obſerved. F. N. B. 25. Brit. 285, 286, 287, &c. Merton cap. 10. Gloc. cap. 8. W. 2. cap. 10. 27 E. 1. de terris amortiſand. Stat. de York. 12 E. 2. cap. 1. 15 E. 2. Stat. de Carliſle. 3 H. 7. cap. 1. 23 H. 8. cap. 3, &c. In the preface to the fourth Book, and here before, Cap. 26.

It appeareth in Glanvils time, that the Juſtices admitted the parties, Per ſponſalem loco ſuo ad lucrandum vel perdendum, but then onely when the parties themſelves were preſent, for he ſaith, Verum oportet eum eſſe præſentem Glanv. li. 11. c. 1. Bract. lib. 5. fol. 353, 360. Mirror c. 2. § 21. Des Attornies.

See the first part of the Institutes, sect. 196.

in Curia, qui responsalem ita in loco suo ponit: & nota differentiam inter Responsalem & Attornatum.

And the Mirror speaking of the auncient Law before the Statute saith, Abusion est a receiver Attourney, ou nul poier est a ceo done per briefe en la Chauncery: Et abusion est a receiver Attourney ou le parol nest my attaine per presence des parties, &c.

Rot. Parl. 20 E. 1. De Attornatis.

4 H. 4. cap. 14.

33 H. 6. cap. 7.

After this in divers Parliaments it was thought good to decrease the number of Attourneys, finding them to be the causes of multiplication of suits. But though divers good Laws have bene made therein, yet the number of them daily increaseth, to great inconvenience in the Common-wealth, and to the no small blemish and discredit of that auncient and necessary vocation.

CAP. XLIII.

Pur ceo que les demandants sont sovent delayes de tout droit, pur ceo que ou sont plusors parceners tenants, dont nul puit respoign' sans auter, ou quil ad plusours tenants jointment feoffes, ou nul ne sciet son several, & ceux tenants sovent forchient per essoine, isint que chescun eit un essoine: Purview est desormes, que ceux tenants neient essoine, forsque a un jour, nient pluis que un sole tenant naveroit, isint que jammes ne puissent forcher, forsque tant solement aver un essoine.

¶ Forchient per essoine.] The true understanding, what it is to Fourch by essoin, doth open both what was the mischiefe before, and what is remedied by this Statute.

Bract. l. 5. fo. 342.

33 H. 6. 25.

2 E. 4. 19.

Fourcher by essoine, on the part of the Tenant, is when a Præcipe is brought against two or more Tenants, and after each of them have had one essoine, which is due to them by Law, they ever again delay the Demandant by successive essoines.

For example, a Præcipe is brought against A. and B. A. is essoined, and B. appears, and hath idem dies given him; at which day A. appears, and B. is essoined: this is lawfull, but then at that day B. is essoined again, and C. appears, & sic vicissim & alternis vicibus, this is called fourcher by essoine, and so it is explained in our books.

39 H. 6. 28, 29.

See hereafter verbo Tenantes.

Fleta lib. 6. cap. 9.

Britton fol. 184. i

This doth Fleta comprehend in few words, and rendreth to fourch by essoine Essoniare vicissim: for he saith, Si autem plures fuerint tenentes pro indiviso provisum est, quod non essonientur vicissim, sed simul ad' unicum diem, sicut fuissent unum corpus ratione unitatis juris, & hæreditatis.

To fourch in one of the significations is to divide, and because they divide themselves in delay of the Demandants by essoines and appearances interchangeably, it is called fourcher per essoine.

2 E. 4. 19.

Now this mischiefe was not that every one of the Tenants should not have one essoine, but that there should be a fourcher, a vicissitude of essoines after each of them have had one essoine. So as this Act doth onely prohibite the fourcher by essoine, which was used for delay, and not one onely essoine, as hath bene said, which is lawfull and necessary.

¶ Deman-

¶ Demandants.] This Act doth extend onely to reall Actions in respect of this word Demandant, which is proper to reall Actions; and the words be also, Where be divers parceners Tenants, or Tenants joyntly infeoffed, and those Tenants sourch by Essoine; so as this Act extendeth to Actions in the Realty. 20 E.2. Fourcher 1. 16 E.3. ibid. 9. 38 E.3.1. 12 H.4. 14 H.4. 37. 3 H.6.36. 8 H.6.15. 9 H.6. 21.44.

But this Statute extends not to an Action of Debt upon an Obligation, Covenant, or other like personall Actions.

¶ Tenants.] This Act is to be understood after Apparance, and so doth the Statute of Gloc' recite it, for there is no Fourcher but after former Essoins and reciprocall Apparance, as hath been said; and this doth also prove what Fourcher is. 22 E.3.5. 38 E.3 12.18. 48 E.3.20 Gloc'. ca.20.

This Statute being made for expedition of Justice, and for ousting of Delays is benignly interpreted; for in a Writ of Annuity against a Parson, he prayeth in aid of the Patron and Ordinary, and they, after each of them hade had one Essoin, would have fourched by Essoin, and could not by the Rule of the Court; and yet the prier in aid is no party to the Writ. 3 H.6.36. F.tit. Fourcher 3. 44 E.3.38. Dyer 28 H.8.26.

And this Statute is made against the Fourcher by Essoin of the Tenants, and not of the Demandants. Bract. ubi supra. 33 H.6. 25.

¶ Parceners & jointment feoffes.] This Statute speaking expresly of Parceners and Jointenants, extends not to Baron and Feme seised in the right of the wife, which is remedied by the said Statute of Glouc': but where Baron and Feme be joyntly infeoffed, they are within the purview of this Statute: All Jointenants are within this Statute, although their estate be created by any other conveyance then by feoffment. Fleta. ubi supra. Gloc'. cap.10. 6 E.1.

CAP. XLIV.

Pur ceo que multes des gentes se font fauxment essoine de oustre le mere, la ou ils fuerent en Engleterre le jour de le summons: Purview est desormes, que cel essoine ne soit pas de tout allow, si le demaundant le challenge, & soit prist daverrer quil fuit en Engleterre le jour que le summons fuist fait, & iii. semaignes apres: mes soit ajourne en cest forme, que si le demandant sue a tiel jour averment per pais, ou sicome la court le Roy agardre & soit attaint que le tenant fuist deins le quater meres *Dengleterre* le jour que il fuit summons, & trois semains apres, isint que il puit estre reasonablement garny de *la* summons, soit lessoine turne en un default, & ceo fait a entend' tantsolement devant les Justices le roy.

Of the diversity of Essoins, and amongst them, of this Essoin, called here Ultra mare; you have heard before in the exposition of the Statute of Marlebridge: for the better understanding of the mischief before this Act, and of the purview thereof, it is necessary to understand the diversity of Essoins Ultra mare; some of which, ancient Authors call Essoines de servitio regis æterni: Marlebridge, cap.12.

Bract. lib. 5. fol. 338, 339. Fleta lib. 6. cap. 8. Brit. cap. 123. Bracton / Britton / Fleta } ubi supra. 3 E. 3. 29. Acc.

and some, De servitio regis temporalis: **of the first sort were**, viz. ad terram sanctam. **And this was two-fold**, viz. Cum peregrinatio vel passagium generale fuerit ad terram sanctam, & tunc recedant partes sine die, quousque essoniator redierit, vel obierit, &c. Semper tamen non habet locum istud essonium, quia non nisi tempore transfretationis alicujus regis cum peregrinatione publica & generali, aut cum simplex fuerit, dabitur essoniato terminus unius anni & unius diei.

Mirror cap. 2. §. 20. de Essoins.

Et si simplex sit peregrinatio, & ultra annum & diem moram fecerit ultra mare, excusatur ejus absentia secundum quosdam per essonium simplex de ultra mare, & sic habebit spacium 40. dierum & unius Flud & unius Ebbe; & si adhuc moram longiorem protraxerit, habet essonium simplex de malo veniendi citra mare, per quod habebit ad minus spacium 15. dierum quod verum est ad minus habebunt essoniati tantum tempus & ex causa majus tempus secundum discretionem Justiciariorum. Et quid si tunc non venerit? procedatur ad defaltam contra eum, nisi forte contingat talem essoniari de morte ad cautelam.

Mirror. Bracton / Britton / Fleta } ubi supra.

Si quis autem essoniatus fuerit essonio de ultra mare citra mare Græcorum quod profectus sit in servitio Domini Regis æterni in peregrinatione alia quam ad terram sanctam, sicut apud Sanctum Jacobum, vel alibi, datur dilatio ad minus quadraginta dierum & unius Flud & unius Ebbe ad excusationem essoniati de simplici essonio de ultra mare, &c. **And after he saith**, In hoc casu induciæ sunt arbitrariæ dum tamen ad minus quadraginta dierum ut supra.

Fleta ubi supra. 7 E. 4. 27.

And Fleta **further saith**, Essonia autem ultra mare Hiberniæ & Scotiæ veniendi sunt in essonium de malo veniendi 1. per 15. dies.

Glanv. li. 1. c. 25.

And Glanvile, **who wrote before all these, saith**, Est aliud genus essoniandi & necessarium, cum quis essoniat se de ultra mare, & tunc si recipiatur essonium, dabuntur ipsi essoniato ad minus quadraginta dies, &c.

Idem li. 2. ca 29.

And speaking of Essoins, by reason of Peregrination, he saith, Si versus Jerusalem iverit is qui se essoniare facit, tunc solet ei dari respectus unius anni & unius diei ad minus, &c.

By these ancient Authors it appeareth, what delay this Essoine de ultra mare **wrought to the Demandant; and by the Law no averment could be had against it, no more then in a Protection, or in the** Essoine de service le roy **which (specially in those dayes when such** Essoins de ultra mare **were so frequent) was here mischievous; for some gained such a passage or Peregrination, and some went of purpose after the purchase of the** Præcipe, **which is well expressed by** Fleta: Sunt tamen quidam, qui cum fuerint brevia super ipsos impetrata, extra regnum se divertunt, ne summonitione sint præventi ut sic jus petentis per essonium de ultra mare deferri possit, & unde provisum est, quod si petens offerat verificare, quod tenens fuerit in Anglia die summonitionis, & per tres septimanas sequentes, adjournetur essonium, & introducetur calumnia petentis, & si alia die constare possit Justitiariis per inquisitionem, vel alio modo, quod tenens fuit in Anglia die summonitionis, & per tres septimanas sequentes, ita quod potuit rationabiliter præmuniri, vertatur illud essonium in defaltam, sed hoc observetur tantummodo coram Justitiariis.

ubi supra.

Mirror cap. 5. §. 1. & 4.

¶ Font fauxment essoine.] **All falshood is abhorred in Law, and therefore the** Mirrour **said well**, Abusion est que faux causes de essoine sont de cy que droit ne allowe fauxime en ascun case; **the Law alloweth no falshood in any case, which is a Maxime of the Common Law**, Contra veritatem lex nunquam aliquid permittit.

Maxim.

¶ Essoine de oustre mere.] **This Act doth extend onely to the** Essoine de ultra mare, **whereof we have spoken at large, and not to the** Essoine de servitio regis, &c. Vide 21 H. 6. fol. 20.

21 H. 6. 20.

¶ Et soit prist daverrer, &c.] **This averment, as hath been said, could not be taken by the Common Law, no more then in case of a Protection**

tection before the Statute of 33 E. 1. which giveth an averment in caſe of Protection; of which Statute you ſhall read in our Books, and how the Protection may be repealed; and in the common Eſſoine de malo veniendi, or de ſervice le roy, no ſuch averment can be taken againſt it. [a] But if the Tenant be eſſoined in any Action de ſervitio regis, where in truth he is not in the Kings ſervice, then the Demandant or Plaintife may ſue a [b] ſpeciall Writ out of the Chancery directed to the Juſtices, rehearſing, that he is not in the Kings ſervice, and commanding them to proceed; then the Eſſoin ſhall not be adjourned, but ſhall be quaſhed preſently.

Stat. de 33 E. 1. de Prot. 28 H. 6. 3 21 H. 6. 20. 39 E. 3. 35. 47 E. 3. 6. 1 H. 6. 6. 34 H. 6. 62. 35 H. 6. 5. 8. 19 H. 6. 35. 5 E. 4. 2. 21 E. 4. 20.

[a] Regiſt. fol. 18. F. N. B. 17. H.

[b] Gloc. cap. 8.

And ſo before this Statute in the Eſſoine de extra mare, if the party were in England, the Demandant might have purchaſed the like Writ, as is abovesaid; but for that many times that could not be obtained without great difficulty, this averment was given for avoiding of falſhood.

¶ Jour que le ſomons fuiſt fait, & per tres ſemaignes apres.] For the Summons alwayes is made upon the land by two Sumners, whether the Tenant, or any for him, be there or no.

The day of the Summons is not counted parcell of the three weeks, but it muſt be three weeks after that day; otherwiſe had it been, if the words had been, three weeks after the Summons made.

¶ Deins le quater meres D'angleterre.] Within the four Seas, is as much to ſay, as within the juriſdiction of the King of England; for all within the four Seas was either part or holden of the Crown of England, as by many ancient Records appeareth.

¶ Que il puit eſtre reaſonablement garny de *la* ſummons.] The three weeks after the day of the Summons were given as a reaſonable time, wherein by common intendment he might have notice of the Summons made upon his land.

¶ Soit leſſoine turne en un default.] This is the remedy given by this Act, for the benefit of the Demandant, who was unjuſtly delayed by this Eſſoin.

A woman Tenant in a Writ of Entre, &c. was eſſoined, for that ſhe was in terra ſancta, viz. from the time of the Eſſoin, for a yer and a day; and it was ſaid, that the Tenant ſhould loſe her land, if it be found by Inqueſt, that ſhe was in England the day of the Eſſoin; and there it is ſaid, that at the day that the parties have by the Eſſoin, the Demandant ſhall be received to aver his chalenge. Conſider well this Book, and the Book alſo of 28 H. 6. which expounds the Statute of 33 E. 1. Vide Raſt. Pl. fol. 297. See more for the antiquity of Eſſoins, and great variety of matter, both of this Eſſoin and of all other, in the Mirrour.

3 E. 3. 29.

28 H. 6. 3.

Mirror cap. 1. §. 3. cap. 2. §. 20. de Eſſoins. cap. 5. §. 1.

And though this kinde of Eſſoin is this day out of uſe, yet have I ſpoken of the ſame thus much for two cauſes: firſt, for that mine endeavour hath been, to explain theſe ancient Laws, and to make every word of them ſo to ſpeak, as they may be underſtood. Secondly, the ſeverall points of Learning that do riſe out of this Law (though the particular caſe be out of uſe) may ſerve to good purpoſes, you ſhall obſerve in this and many others of this nature, in this ſecond part of mine Inſtitutes.

Where the Text is evident, it were loſſe of time to make any expoſition.

CAP.

CAP. XLV.

DE delayes en touts maners des briefes, & des attachments eſt purview, que ſi le tenant ou le defendant, apres le primer attachment teſmoign', face default, maintenant ſoit le grand' diſtreſſe agarde. Et ſi Viſc' ne reſpoigne ſufficientment au jour, ſoit grevouſment amercie. Et ſil maunde que il ad fait lexecution en due maner, & les iſſues bailes as mainpernors, adonques ſoit maunde au Viſcount, que il al auter jour face venir les iſſues devant Juſtices. Et ſi lattachee veigne a ceo jour a ſaver ſes defaults, eit il ſes iſſues. Et ſil ne veigne, eit le roy les iſſues. Et les Juſtices le roy les facent liverer a la Gardrobe, & Juſtices del banke a Weſtminſter les facent liverer al Exchequer, & Juſtices en eyre, au Viſcount de cell' countie ou ils pledent, auxybien de cel countie, come des forreine counties, & de ceo ſoient charges en ſummons per rolles des Juſtices.

The miſchief appeareth by this ſhort Preamble, to be Delay, &c.

27 H.6.2. 7 H.6.9. Brit. ca.26. de Attachments.

¶ Attachment.] **The Attachment muſt be made by moveable goods, and meer perſonall, which may be forfeited by Outlawry, and not by goods which he hath as Executor or Adminiſtrator, nor by a clod of the earth, nor by any chattell reall, as Wardſhip, or the like.**

Regiſt. judic' fol. 1. Brit. fol 50. b. 48 E.3.26.

¶ Grand diſtreſſe.] Diſtrictio magna, **it is ſo called, not for the quantity, for it is very ſhort; but for the quality, for the extent is very great: for thereby the Sheriffe is commanded,** Quod diſtringat tenentem, ita quod ipſe, nec aliquis per ipſum ad ea manum apponat, donec habuerit aliud præceptum, & quod de exitibus eorundem nobis reſpondeat, & quòd habeat corpus ejus, &c.

This Writ lyeth in two caſes, either when the Tenant or Defendant is attached, and ſo returned, and appeareth not, but makes default, then by this Act a Grand diſtreſſe is to be awarded; or when the Tenant or Defendant hath once appeared, and after makes default, then this Writ lyeth by the Common Law in lieu of a Petit Cape.

Brit. ubi ſupra.

Britton **ſpeaketh of Diſtreſſes perſonall, which he intendeth of perſonall goods upon the Attachment, and Diſtreſſes reall, which concern the Realty; and a third may be added, viz. Diſtreſſes which do concern both the Realty and Perſonalty, as this Grand diſtreſſe doth.**

18 E.3. Iudgement. 120. f. 6 E.2. ibid. 230. 14 E.3. Default. 17.

In a ſecta ad molendinum, after Apparance the Defendant made default, whereupon a Grand diſtreſſe was awarded, and the Defendant made default again, and thereupon the Plaintiffe had judgement.

¶ Et ſi latachee veigne a ceo jour a ſaver ſes defaults, eit il ſes iſſues.] **Here the** Lattachee **is taken for him that is diſtrained, and appeareth upon the Grand diſtreſſe.**

¶ Et

¶ Et sil ne veigne eit le Roy les issues.] For then judgement is to be given against the Defendant, as hath been said before, and the King to have the issues.

¶ Et les Justices le Roy.] That is, the Justices of his Bench, so called, for that all the pleas there are coram Rege.

¶ Les facent liver a le Gardrobe.] There hath been an ancient Officer of the Kings Houshold of old time, called Custos magnæ Gardrobæ, Warden or Keeper of the great Wardrope or Wardrobe, of later times called Master of the Wardrobe, so called, because he hath the keeping and charge of the Royall Robes of former Kings and Queens, and for providing of Robes, &c. of the King: he hath also the charge of keeping and providing of hangings, bedding, &c. in standing Wardrobes in the Kings houses, and the delivery of Velvet and Scarlet allowed for liveries, &c. And many other things belong to his office, which are not necessary to be here repeated: he is accountable in the Exchequer. Ockham. 51 H.3. stat. de Scacc. Artic. super Chart 28 E.1. cap.2. Fleta l.2.cap.6.

De articulis porrectis coram Domino Rege per comitem Mareschallum pro hiis quæ ad officium suum in Curia Regis clamabat pertinere, Dominus Rex vult quod dicti articuli irrotulentur in Garderoba, & quod transcriptum eorundem liberetur præfato comiti, & quod nec ipse nec ministri sui aliquid habeant, seu sibi attrahant ultra ea quæ ibidem inveniuntur, &c. Rot. Parl. Pasch. 21 E.1. Rot.1.

Vide in the Exchequer, de anno 19 E.2. a privy seale bearing date 30 Junii, anno 19 E.2. concerning his account amongst others. Int' communia in Scac. de anno 19 E.2.

But here it may be demanded wherefore these issues were to be delivered into the Wardrobe: For the answering hereunto, it must be understood, that the Kings Justices of his Bench did in those dayes follow the Court (the retourne of the Processe of which Court to this day is coram Rege ubicunque fuerimus in Anglia) therefore it was fittest for them to make delivery of these issues to this Officer of Court. Art. super Chart. cap.5. Fleta l.2.cap.2.

¶ Les Justices del Banke al Westm'.] That is, the Justices of the Court of Common Pleas shall make their estreats, and these issues are part of the green ware.

¶ Al Viscount de cel Countie.] In this particular case of issues the Justices in Eyre delivered the estreats to the Sheriffe, vide before ca.18. which extendeth to fines and amerciaments. W.2.ca.18.

¶ Per Rolles des Justices.] That is, particularly, and not a totall. W.2.cap.18.

Vide more for estreats the Statutes of 51 H.3. W.2. cap.8. 42 E.3.cap.9. 7 H.4.cap.3.

CAP. XLVI.

PUrview est ensement, & per le Roy commaunde, que les Justices de Banke le Roy, & *Justices de Bank a* Westminster desormes per pledant les plees a terminer a un jour, avant que rien soit arraine, ou commence des plees del jour

jour ensuant, forspris que lour essoines soient entres, judges, & rendus, & per encheson de ceo nul home se affie, que il ne veigne au jour que don' luy est.

First, in some impressions both in French and English of this Act, these words [Et Justices de Bank al Westm'] be omitted, and towards the end these words, [forprise lour essoines] be likewise omitted, both which without question ought to be inserted as parcell of this excellent Law.

The mischiefe before this Statute was, in respect of preposterous or disorderly hearing of causes; for many times the Judges of the Kings Bench, and of the Court of Common Pleas would by importunacy of great men and others in the irregular time of H. 3. put off matters to be heard at one day untill another, and at that time heare some other matters appointed to be heard on a day following, whereby the parties, whose causes were then disappointed, were not onely delayed, and put to further charges, but many times, when their cause came to be heard, either were disappointed of their councell which they had instructed, or the day appointed not being come, had no councell instructed at all; and besides where witnesses were requisite, they many times failed of them: This Law therefore is made to remedy these preposterous and disorderly proceedings, and to give Judges a just cause of denyall of any such requests, though never so powerfully, or importunately made, and that this Law may serve for their buckler and shield, which Fleta rendreth in these words:

Fleta li. 2. ca. 29. Et provisum est, quod Justiciarii de utroque Banco placita ad unum diem adjournata perficiant, antequam placita diei sequentis quicquam placitare incipiant, hoc tamen excepto, quod essonium illius diei supervenientis admittatur, adjudicetur, & reddatur.

And hereby it appeareth that both the said clauses so omitted, as is aforesaid, ought to be inserted. Of this kinde of hearing of causes it is truly said, Merito hæc dicuntur præpostera, quia in hiis præsunt posteriora.

¶ Que Justices de Banke le Roy, & del Banke al Westm', &c.] This Statute being made in affirmance of common right doth extend to the Court of Chauncery, Court of Exchequer, and to all other Courts of Justice, for that all are within the same mischiefe, and therefore ought to be within the same remedy.

¶ A terminer a un jour.] Upon this Act this auncient conclusion of Law doth follow, Judicis officium est opus diei in die ipso perficere.

Mag. Chart. c. 29. And this agreeth with that excellent Law of Magna Charta, Nulli vendemus, nulli negabimus, aut differemus justitiam, vel rectum.

CAP. XLVII.

Mirror ca. 5. §. 4. PUrview est ensement, que si ul desormes purchase briefe de Novel disseisin, & celuy sur que le briefe vient, come principal disseisor mourge avant que laisise soit passe, que le pl' eit son briefe Dentre foundus sur disseisin, sur le heire, ou sur *les heires* les disseisors, de quel age que ils soient. En mesme le maner eit le heire, ou les heires le dis-

le disseisee lour briefes Dentre sur les disseisors *lour* auncestre, ou lour heires, de quel age que ils soient. Et si paraventure le disseisee mourge avant que il eit son purchase fait, isint que pur les nonages des heires dun part ne dauter ne soit le briefe abatus, ne le plee delay, mes en quant que lhom' poit sans ley offender, soit haste pur la fresh suit apres le disseisin. Et en mesme le maner soit en ceo point gard' en droit des prelates, gents de Religion, & auters, as queux terres & tenements en nul maner puissent devener apres auter mort, le quel que ils soient disseisees, ou disseisours. Et si les parties en pledant discendont en enquest, & lenquest passa encounter le heire deins age, & nosmement encounter le heire le disseisee, que il en ceo case eit lattaint de la grace le roy sans rien doner.

The mischiefe before this Statute was, that if a man had been disseised, and either the disseisee, or the disseisor had died, their heire being within age, in a Writ of Entre sur disseisin brought by the heire of the disseisee being within age, or by the disseisee or his heire against the heire of the disseisor being within age, the parroll had demurred until the full age of the heire respectively, which was a great delay, and is remedied on both parts by this Act. See the Custum. de Norm. ca. 43.

¶ Purchase briefe de Novel disseisin.] Albeit the disseisee purchased no Writ of Assise of Novel disseisin, yet the heire or heires of the disseisor are within this Statute; for seeing in this case here put by the makers of this Law, true it is, that notwithstanding the purchase of the Writ in a Writ of Entre sur disseisin brought by the disseisee against the heire of the disseisor, the heire should have had his age to the great delay of the Demandant, this is therefore for a mischiefe in this particular case, to perswade that the Law might be generall, though no Writ was brought, as by the body of the Act appeareth. 3 E. 3. age 71. 8 E. 3 71.

¶ Briefe de Entry fondus sur disseisin, sur le heire ou heires les disseisors.] This is to be understood of a Writ of Entry in the Per, and not in the Post, for the words of the Statute be Sur le heire le disseisor, which is a Writ of Entry in the Per, and therefore if the heire of the disseisor make a feoffement in fee, and the feoffee dieth, his heire within age, in a Writ of Entry against the heir, he shall have his age, for this Act extends but to the heir of the disseisor, who sitteth in his Fathers seat, and commeth to the land without consideration; but otherwise it is of him that purchaseth the land of the heir, for he and his heires are out of the letter and meaning of this Act: the same Law is of the Mowche and Pryse in alve within age. 12 E. 4. 17. 5 E. 3. age 70. 6 E. 3. 3. 22 E. 4. 15. 27 H. 6. 1. D. c. 4 Mar. 137.

If the sem' heire of the disseisor taketh husband, and hath issue within age, and dieth, the disseisee bring a Writ of Entry against the Tenant by the curtesie, he pray in alve of the heir within age, he shall have his age, for this is a Writ of Entry in the Post, being brought against the Tenant by the curtesie, and so out of the Statute. 17 E. 3. 61. 27 H. 6. 1.

If there be two brothers, and a sister, the elder brother disseiseth one, and dieth, and the land descendeth to his brother, and he enters and dieth seised, and the land descendeth to the sister within age: in a Writ of Entry brought by the disseisee against the sister, she shall be ousted of her age by this Statute: wherein three things are to be observed. First, that the mediate heire on the part of 24 E. 3. 25. 46, 47.

the disseisor is within this Statute. 2. That though the sisters to make her self sister and heire to the younger brother, and not to the disseisor, for that her younger brother entred, yet is she heire within the meaning of this Statute to the disseisor, and therefore to be ousted of her age. 3. That a Writ of Entry in the Per and Cui in this speciall case is within this Act.

Speciall heires, as in Gauelkinde, Borough English, and the sister of the whole blood are on both sides within this Statute. for though they be not heires by the Common Law, yet are they heires within the intention of this Law, which is to be taken benignly, being made for expedition of Justice, and to oust delay.

8 E.3.71.10 E.3.58. 21 E.3.27. 6 E.3.31.

¶ En mesme le maner eit le heire, ou les heires le disseisee lour brieues Deuere sur les disseisors ou lour heires.] This is to be understood as well of the mediate as of the immediate heire of the disseisor; and therefore if there be Grandfather, Father, and Son, and the Grandfather be disseised and dieth, and the Father of full age like wise dieth, the son is within age, and bringe his Writ of Entry against the disseisor, he is an heire within this Statute, for he maketh himself heire to the Grandfather, who was the disseised.

¶ Et si peraventure le disseisee murge avant que il eit son purchase fait.] Here by expresse words provision is made, though the disseisee die before the purchase of his Writ it, whereof somwhat hath been said before.

¶ Isint que pur les nonages des heires dun part ne daut', &c.] Where the Demandant or the Tenant shall have his age at the Common Law, you may reade at large in Markals Case abodesaid: It is there resolved, that the heire as well of the Demandant as the Tenant, should have had his age in this case.

¶ Ne soit le briefe abatus ne le plea delay.] Here abatement is taken for putting off the Writ and Plea without day until full age, but the Writ is not abated, that is, ouerthrown, non cadit breve, for so Bracton saith.

Bract. lib. 5. fol. & lib. 4. f. 218. b.

Minor ante tempus agere non potest infra ætatem, maximè iff causa proprietatis, nec etiam convenire, sed differetur usque ætatem, sed non cadit breve.

8 E.3.71. Dier 4 Mar. ubi supra.

¶ Pur la fresh suit apres le disseisin.] Statutum de W. 1, habetur intelligi, ubi hæres disseisiti facit recentem sectam, aliter non.

24 E.3.25,46,47 Lib.6. fol.4. Markals Case. 10 E.3.58.6 E.3. 11.9E.2.age 141. 24 E.3.25,46.

This fresh suit is not to be understood between the disseisee and the disseisor, although the disseisor continue in possession by the space of 30. or 40. yeares, &c. But when the disseisor dies, then is the fresh suit to be made, and that is regularly within a yeare and a day after the death of the disseisor, for within that time continuall claim may be made, which is in Law recens & continuum clameum, and within that time an appeale of death may be brought, which is recens insecutio, and sic in multis aliis similibus.

¶ En droit des prelats, gents de religion, & auters, &c.] This clause is to be understood of Ecclesiasticall persons that be regular, and not of Ecclesiasticall persons that be secular, for the regular are dead persons in Law, to whom no lands (as this Statute speaketh) can descend after the death of any other: but to the secular, as to Bishops, Parsons, Vicars, and the like lands may descend, and therefore they are not within this clause, but within the former branches of this Act for such lands as they are seised of to them and their heirs in their naturall capacity.

¶ Eit lattaint.] Of the Writ of Attaint, see before the Statute of Marlebridge cap. 14. and here Cap. 37.

CAP.

CAP. XLVIII.

SI gardein ou chiefe ſeignior enfeoffe ul home de la terre que eſt del heritage del enfant (que eſt deins age & en ſa garde) a le diſheritance del heire: Purview eſt, que le heire eyt maintenant ſon recoverie per briefe de *Novel diſſeiſin* vers ſon gardein, & vers le tenant. Et ſoit la ſeiſin baille per Juſtices (ſi el ſoit recover') al prochein amy lenfant, a que le heritage ne purra my diſcend', pur approver al oeps lenfant, & a reſponder des iſſues al heire quant il viendre a ſon pleine age. Et le gardein perde a tout ſa vie la garde de meſme la choſe recover', & tout la remainder del heritage, quel tient en noſme del heire. Et ſi auter gardein que chiefe ſeigniour le face, perde le garde de tout cel choſe *a cel foits* & ſoit en grieve peine envers le roy. Et ſi lenfant ſoit eſloigne, ou diſturbe per le gardein, ou per le feoffee, ou per auter, per que il ne puiſſe ſa Aſsiſe ſuer, ſue pur luy un de ſes prochein amies que voudra, & ſoit a ceo reſceve. *W.2. cap.15.*

The miſchief before this Statute was, that when the Gardein in Chivalry made a feoffment in fée, the Judges, for the ſaving of the Warranty betwéen the Feoffor and the Feoffée, and that the right of each might be ſaved, allowed that a Writ of Entry in the Per did lye for the heir before this Statute, as it appeareth by Bracton, and 15 H.3. nay, the Judges in ancient time did allow a Writ of Entry in the Per, as it appeareth by the old Regiſter, of a Feoffment made by a Baillie; but this opinion, or errour rather, was holpen by the reſolution of the Judges; and the alienation of the Gardein (after this Act) to be made is holpen by this Act, by enacting and declaring, that an Aſſiſe of Novel diſſeiſin doth lye againſt the Gardein and his feoffée; therefore of a feoffment made by the Gardein after the Statute, no Writ of Entry in the Per doth lye, but an Aſſiſe of Novel diſſeiſin: and the Statute hath adjudged the feoffment a Diſſeiſin; but of an alienation by the Gardein before this Statute, a Writ of Entry in the Per doth lye after this Act, becauſe this Act doth extend to feoffments made afterwards, as appeareth by the letter thereof; but if the Tenant alien, and the Gardein and his Feoffée dye, or if the heir dye, ſo as no Aſſiſe can lye by this Act, then of ſuch an alienation after this Act a Writ of Entry doth lye: and all this is approved by the authority of our Books, and upon theſe diverſities all the Books are reconciled.

Bract. l.5. fo.324
15 E.3. Bre 878.
19 E.2. Aſſ.400.
4 E.2. Bre 790.

19 E.2. Aſſ.400.
7 E.3.69. 8 E.3. 63. 8 Aſſ. 28.
14 E.3. Feoffmts 67. 10 E.4.18.
Vide W.2.ca.25.

This Statute ſpeaketh onely of a Gardein in Chivalry, therefore Tenant for yéars, Tenant by elegit, Statute Merchant, &c. ſhall be reſerved till we come to the Statute of W.2. cap. 25.

West.2. cap.25.

¶ Enfeoffe.] The feoffment at theſe times was the generall aſſurance of the Realm, but a Fine is within this Act, for that is a feoffment of Record.

¶ Maintenant ſon recoverie per brieſe de Novel diſſeiſin vers ſon gardein, & vers le tenant.] Here two things are to be obſerved, 1. upon this word Maintenant, that is, preſently without any delay: And this is the 7. Act made at this Parliament for expedition of Juſtice, and for the ouſting of delayes; for as it is commonly ſaid, the devill deviſeth delayes: wherein this noble King followed the ſteps of that good King Alfred, in whoſe time the Law of England was as followeth; En ſon temps puiſſoit cheſcun pl'aver commiſſion, ou brieſe a ſon Vic' al Seigniour de fee, ou a certein Juſtices aſſignes ſur cheſcun tort; En ſon temps ſe haſta droit de jour en jour, iſſint que ouſter 15. jours neſtoit nul default, ne nul eſſoine adjornable.

Mirror. cap. 5. §. 1.

2. By this Act, not onely the Gardein is a diſſeiſor, but the Feoffe alſo; and ſo both Fleta render it, Et apud Weſtm' fuit proviſum quod cuſtos, qui alienat terras hæredis, habeatur pro diſſeiſitore, &c. and ſoon after he ſaith, Habeantur pro diſſeiſitoribus tam cuſtos, quam emptor.

Fleta li. 1. ca. 11. 10 E. 4. 18. W. 2. cap. 25.

¶ Et ſoit le ſeiſin baille per Juſtices, &c. al prochein amy del infant, a que le heritage ne purra my diſcend'.] This clauſe Fleta rendreth in this manner, Et cum terra fuerit recuperata, tradatur propinquiori amico, cui hæreditas deſcendere non debeat, qui reſpondeat puero de exitibus, cum ad ætatem ſuam pervenerit.

Fleta ubi ſupra.

And where the Statute ſaith, Soit, &c. baille per Juſtices, the meaning is no more but this, that the Juſtices before the recovery was had, ſhall charge the next of the kin, to whom the land cannot deſcend, to take accounting to this Act the cuſtody of the lands, and to yeild a true account to the heir at his full age, and to enter an order of Court thereof accordingly.

And he is neither a Gardein in Chivalry, nor in Socage, but a Statute Gardein in lieu of the Gardein in Chivalry by force of this Act.

And if this Gardein dye before the full age of the heir, his Executors ſhall not have the cuſtody, but the next of kin, to whom the land cannot deſcend; for this Act hath annexed it to the next of blood, to whom the land cannot deſcend.

¶ Et le gardein perde a tout ſa vie la garde, &c.] This branch is to be underſtood of a Gardein in Droit, that is to ſay, of the chief Lord, for he is not onely to loſe the cuſtody of the land alienes, and of all the reſidue of the heritage which he had in Ward; but alſo to loſe all benefit of Wardſhip of that tenancie, by the letter of this Law, during his life, for that againſt the office and duty of a Gardein, he hath ſought the diſheriſon of the heir which he had in his cuſtody: and Fleta tranſlateth this clauſe in theſe words, Et ſi ſit capitalis Dominus qui hoc faciat, amittat cuſtodiam tota vita ſua tam de reſiduo, quam de terra alienata; but in this caſe the Lord by his feoffment of the tenancie, or any part thereof hath extinguiſhed his Seigniority for ever, whether the feoffment be made of all the tenancie, or but of part, by the Common Law: and theſe words (during his life) being in the affirmative, reſtraineth not the operation of the Common Law in this caſe.

Fleta li. 1. ca. 11.

Vide 1. part Inſtit. ſect 968.

¶ Et ſi auter gardein que chiefe Seigniour.] This is intended of a Gardein in fait: as where the Lord aſſigneth over the cuſtodies to another, he is called a Gardein in fait; hereof Fleta ſaith, Et ſi alius fuerit cuſtos, quam capitalis dominus feodi illius, amittat cuſtodiam rei recuperatæ, &c.

Fleta ubi ſup. a.

¶ Perde le garde de tout cel choſe.] The feoffment made by the Gardein in fait is a forfeiture of his eſtate by the Common Law of the whole, if the feoffment were made of the whole; and if of part, then of that part onely by the Common Law; but this Statute giveth the forfeiture of the whole land in Ward; but it ſeemeth in this, the Wardſhip of the body is not loſt,

loſt, becauſe this branch extendeth to the land onely; no more then upon the Statute of Glouc' in caſe of waſte done to the diſheriſon of the heir, the Statute ſaith, Perdra le garde, yet ſhall he not loſe the cuſtody of the body: and in both theſe caſes, the Seigniory, which is the cauſe of the Wardſhip, continueth; but where the Seigniory is extinct, there the heir ſhall be out of Ward, both for body and land. Gloc'. cap. 5. Mich. 28 H. 8. Benloes.

¶ Sue pur luy un de ſes prochein amies.] Before the making of this Act, the Gardein or his feoffée, or ſome other would eſloigne or diſturb the Infant, ſo as he could not take his remedy by Law, and by attorney he could not appear, therefore this Act in this particular caſe doth give the Infant to purchaſe and follow his Writ of Aſſiſe upon this Act by prochein amy, albeit he be not preſent in Court; and ever ſince the Statute of Weſtm. 2. which is generall, the common rule is holden, that an Infant ſhall ſue by prochein amy, and defend by Gardein. See before, c. 2. 42 E. 3. 16. W. 2. c. 2. 15. vide Wood's Inſt. 13.

¶ Prochein amy.] Amicus propinquior; In our Books the names of Gardein and Prochein amy are ſometimes taken the one for the other, becauſe the Gardein and Prochein amye are oftentimes all one, as the Gardein in ſocage is alſo Prochein amy, &c. And now aſwell the Gardein, as the Prochein amy are allowed by the Judges to be ſome of the Officers of the Court, and both in reſpect of their place and skill are in troth the beſt Prochein amyes for the good and furtherance of the Infants cauſe.

Fleta rendreth this clauſe in theſe words, Et ſi hæres impeditus fuerit ad ſequendum, ſequatur unus de propinquioribus amicis, & admittatur; and this admiſſion is by the order of the Court, but the Gardein muſt put in a Warrant. Fleta ubi ſupra. 40 E. 3. 16. 48 E. 3. 10. 33 E. 3. Attorney 94. 19 Aſſ. 10. 27 Aſſ. 53. 34 Aſſ. 5. 28 Aſſ. 2. 29 Aſſ. 67. 35 H. 6. 12. 20 E. 4. 2. 16 H. 7. 5. F. N. B. 27. I. 13 E. 3. Attorney 76.

In an Action of waſte, brought by an Infant againſt the Abbot of R. as Gardein in Chivalry, quas tenet, the Infant came not in perſon, but one came as Prochein amy by the Statute, which is intended by the ſaid Statute of Weſt. 2. and prayed to be received to ſue, for that the Infant was eſloined; againſt which this objection was made, that it appeared not judicially to the Court that the Infant was eſloined, and that ſuch a ſuggeſtion in the caſe of Aſſiſe and Mordanceſter had uſed to be made, becauſe the eſloyning, which is the cauſe that the Statute ſetteth down, might be enquired of, being a jury, the firſt day, but otherwiſe it was in the caſe at the barre being an Action of waſte; but it was reſolved, that the Prochein amy ought to be admitted upon the ſaid ſuggeſtion in this caſe, for that the Writ is brought againſt the Gardein, which peradventure had eſloined the Infant, and he of his own wrong ſhall not take advantage, and therefore the Court did award that the Prochein amy ſhould be admitted to ſue, &c. Which caſe I have remembred here, becauſe it may ſerve for an expoſition aſwell of this Act of Weſtm. 1. as of the ſaid Act of Weſtm. 2.

CAP. XLIX.

EN briefe de Dower dont dame riens nad, ne ſoit le briefe abatus per exception del tenant, pur ceo que el avera reſceive ſon dower de auter home avant ſon briefe purchaſe, ſil ne puit monſtre que el eit reſceive part de ſa dower de luy meſme, & en meſme la ville avant ſon briefe purchaſe.

The

Bract. lib. 4. fol. 311. b.

The miſchief before this Act doth notably appear by Bracton, who treating of this Writ, Unde nihil habet, ſaith, Ad hoc autem quod dicit mulier in intentione ſua (& unde nihil habet) ſi quidem partem dotis habuerit, licet minimam, ſi hoc dedicere non poſſit, vel cum hoc probatum fuerit, cadit breve, nec de reſiduo quod ei defuerit poterit ſibi proſpicere niſi per breve de recto de dote, nihil igitur recipiat de dote ſua ante brevis impetrationem, ita quod breve contineat omnes deforcientes ubicunq; fuerint in uno comitatu, vel in diverſis. Et cum omnes contineantur, tunc primo recipiat, & ſi recipiat ante judicium, etiam ſine judicio non obſtabit ei exceptio, quod aliquid habuerit, quia reſpondere poterit, quod ſatisfactum eſt ei ante judicium, &c. ſi petens dicat quod exceptio, &c. ei nocere non debet, quia nihil habet in tali villa, vel in alia tali villa, non valebit talis ſua replicatio, quia id quod dicitur (unde nihil habet) non debet referri ad villas, ſed ad dotem: hereby doth the miſchief before this Act manifeſtly appear.

Fleta li. 5. ca. 25.

And Fleta rehearſing the effect of this Statute, ſaith, In brevi autem de dote unde mulier petens nihil habet, non cadit breve per exceptionem tenentis petentis judicium de brevi, deficut ſupponit eam nihil habere, cum aliquid habeat, vel dotem ſuam de aliquo receperit pro parte ipſam contingente, niſi partem dotis receperit a ſeipſo in eadem villa ante brevis impetrationem.

Brit. fol. 258. 13 E. 1. Bre 863. 8 E. 2. ibid. 809. 18 E. 2. ibid. 833. 6 E. 3. 257. 7 E. 3 308. 8 E. 3. 384. 10 E. 3. 509. 11 E. 3. Bre 475. 13 E. 3. ibid. 242. 16 E. 3. ibid. 657.

¶ Per exception del Tenant.] Regularly Tenant is taken for him that is Tenant of the frée-hold, but in the caſe of Dower, it lyeth againſt Gardein in Chivalry, becauſe in that caſe he is to anſwer for the heir, but not againſt the Gardein in Socage. Sée hereafter in this Chapter, where this exception ſhall lye in the mouth of the Vouchée being Tenant in Law.

4 E. 3. 42.

¶ De luy meſme.] Firſt, it muſt be of the ſame Tenant, and not of another, though it be in the ſame Town; as if the husband infeoffeth A. of Whiteacre, and B. of Blackacre, both in Dale, and the wife receiveth Dower of A. ſhe notwithſtanding ſhall have a Writ of Dower (unde nihil habet) againſt B. by the expreſſe purview of this Act, for he is not the ſame Tenant of whom ſhe received her Dower.

Brit. fol. 257. 12 E. 3. Dower 89.

Secondly, if A. having a wife doth infeoffe the husband of one acre, and the wife of another, and both in Dale; A. dyeth, the husband aſſigneth Dower of his acre, yet doth the Writ of Dower (unde nihil habet) lye againſt the husband and wife, for they are not the ſame Tenant.

2 E. 2. Dower 124. 12 E. 3. Dower 86.

Thirdly, if the Baron be ſeiſed of Blackacre and Whiteacre in Dale, and after the coverture maketh a leaſe for life of Blackacre, and granteth Whiteacre and the reverſion of Blackacre to A. & his heirs, to whom attornment is made, and dyeth; the wife receiveth Dower of A. of Whiteacre, and after the Leſſée for life dyeth, the wife ſhall have a Writ of Dower (unde nihil habet) to be endowed of Blackacre; for albeit it be againſt the ſame Tenant, and in the ſame Town, and before the Writ purchaſed, which are the three points required by this Act, yet is there another property neceſſarily implyed, and that is, that he be ſuch a Tenant of both the one land and the other, at the time of the receit of Dower, as ſhe might have had her Writ of Dower (unde nihil habet) againſt him, of both which ſhe could not have in this caſe, in reſpect the Leſſe for life was Tenant of the frée-hold at that time, and ſo no default in her.

3 E. 3. Dower 76. 3 E. 3. Voucher 196. Kelw. 128.

The Baron is ſeiſed of a carue of land holden by Knights ſervice, and of Whiteacre in Dale, and after the coverture infeoffeth A. of Whiteacre with Warranty, and dyeth, his heir within age, the Gardein aſſigneth Dower of the carue of land, and then the wife brings her Writ of Dower againſt A. who voucheth the heir in the cuſtody of the Gardein, the Gardein pleads the receit of Dower of the ſaid carue in the ſame Town, and adjudged a good plea, and the Writ of Dower (unde nihil habet) abated.

The ſame Law it is, if the Gardein that aſſigned the Dower dyed, and the heir had been vouched in the guard of his Executors, his Executors in the caſe abovelaid ſhould plead the ſame plea.

And

And so if the heire in that case had been vouched of full age, he might have pleaded as vouchée, an assignement of Dower by himselfe in the same Towne. First part of the Inst. sect. 39.

¶ En mesme la ville.] Writt of Dower unde nihil habet, doth lie in an Hamlet, but yet if the Demandant have received Dower out of the Hamlet, and in the same Town, the Writt shall abate: otherwise it is, though it be in the same Parish. If it be in another Town, for the words of the Statute be, En mesme la ville. 18 E.2.bre 829. 4 E.3.Ibid.745. 4 E.3.52.8 E.4.6.

¶ Avant son briefe purchase.] Of this clause Fleta saith thus, Si partem dotis suæ receperit post breve impetratum, quamvis ab ipso tenente, non propter hoc cadit breve mulieris, cum dicere poterit ante judicium, quod de residuo, vel omissione est ei satisfactum, and so it appeareth by Bracton, it was, as to this point, at the Common Law. Fleta ubi supra. Bracton ibi supr. 3 E.3.Vowch.196 12 E.3.Dower 86 Regist.171.

CAP. L.

ET pur ceo que le Roy ad fait cel chose al honour de Dieu, & saint Esglise, & pur le common profit de people, & pur le allegeance de ceux queux sont greves, il ne voit my que auterfoits puissent turner a prejudice de luy, ne de sa corone: Mes que les droits, que a luy appertaign', luy soient saves en touts points.

This is a saving to the King of the Rights of his Crowne.

¶ Cel chose.] That is, that this Statute of W.1. which hath bên made for foure excellent ends, viz. the honour of God, the honour of the Church, for the Common-wealth, and for the remedy, disburdening, and ease of them, that be grieved, should not be prejudiciall to him, or to his Crown, but that the rights, which to him appertain, should be saved.

¶ Allegeance de ceux queux sont greves.] This should be Alleviance de ceux, &c. That is, disburdening, remedying, and easing of such as be grieved.

¶ Mes que les droits queux a luy appertain'.] That is to say, the Kings Rights, or the Kings Rights of his Crowne, or the Rights of the Crown, for so these, which since are called prerogatives, before this time were called Jura Regia, or Jura Regia Coronæ, or Jura Coronæ; Bracton cals them Privilegia Regis and Britton, Droit le Roy. Regist.fol.61. Bracton. Britton fol.1.

But since this Act jus Regni, &c. hath bên commonly called Prærogativa Regis, which is all one with this, that this Act calls Droit le Roy. 17 E.2. Prærog. Regis. 26 E.3. Quar. Imp.95. 18 E.3.Scire fac' 10. 8 H.4.2. 9 H.4.6. 15 E.4. 12,13.

See the first part of the Institutes, sect. 3. Lex Coronæ.

CAP.

CAP. LI.

ET pur ceo que graund charitie ſerra de faire droit a touts en tout temps, ou meſtier ſerroit: Purview eſt per aſſentment des Prelates, que Aſsiſes de Novel diſſeiſin, Mortdaunceſter, & de Darrein preſentment fuiſſent priſes en le Advent, en Septuageſime, & en Quareſme, auxibien come *le home* prent lenqueſts, et ceo pria le Roy as Eveſques.

The cauſe of the making of this Statute doth manifeſtly appeare by Britton, who being B. of Hereford, and expert both in the Common and Canon Law, in his Chapter De challenge de Jurors, ſaith thus, Et fils yſoient aſſers des Jurors uncore purrount aſcuns eſtre removables per verie challenges des parties, & auxi pur le temps en caſe: Car heures ne ſont pas meures: Car per Canon eſt defendu de ſaint Egliſe ſur peyne de excommengement, que de la ſeptuageſme jeſque al Utas de Paſche, ne del comencement de Advent jeſque al Utas de la Epifayne, ne en jours del quatre temps, ne en jours de major Letanies, ne en jours de Roveyſouns, ne eſſe ſemaigne de Pentecoſt, ne en temps de ſcier blees, ne de vendenges que durent de la S. Margaret jeſque al 15. de ſainct Michael, ne en ſoleinne jours de feſtaints de ſaints, nullyy ne jurge ſur le Euangelies, ne nul ſecular plea ne teigne, ne ſummonts ne face en temps avandits, iſſint que touts ceſt temps ſoit done a Dieu prier, & de peſer concles, et de accorder ceux, que ſont a diſcord, et pur coiller les biens del terre, dont le people doit vivre. Britton fo. 53.

Which in reſpect of ſome difficulty I have thought good to tranſlate; "And "if ſufficient Jurors appeare, ſome are removable for juſt challenges of the par- "ties, and alſo for the time in caſe; for all houres are not fit for all ſeaſons: "for it is forbidden by the Canon of holy Church upon paine of Excommuni- "cation, that from the Septuageſme untill eight dayes after Eaſter, and from "the beginning of Advent untill eight dayes after the Epiphany, (or Twelfth "day) or in the dayes of the foure times (that is, the Ember dayes appointed for "publike Faſts foure times in the yeare) or in the dayes of the great Letanies, "or in Rogation or Grange dayes, or in the week of Pentecoſt, or in time of "Harveſt, or of Vintage which dureth from the Feaſt of S. Margaret (which is "the thirteenth of July) untill 15. dayes after the Feaſt of S. Michael the Arch- "angell, or in the ſolemne Feaſts of the Acts of Saints, no man be forced upon "the holy Euangeliſts, nor any ſecular plea be holden in the times aforeſaid, "but that all theſe times be given for prayer to God, and to appeaſe debate, and "to accord them that be at diſcord, and to gather the fruits of the earth, whereof "the people may live, which were works of pietie and charity. Harveſt, *Arvi veſtis.*

This Act beginneth with a Maxime of Law, Summa charitas eſt facere juſtitiam ſingulis in omni tempore, quando opus fuerit, and therefore prohibeth that the three Aſſiſes, viz. of Novel diſſeiſin, Mordaunc', and of Darrein preſentment ſhould be taken in Advent, Septuageſme, and Quareſme. Maxim

¶ Tout temps.] Here is underſtood Covenable in Ley, for in the Common Law there be Dies juridici, & dies non juridici; dies non juridici ſunt dies Dominici, the Lords dayes throughout the whole yeare, ſo called, becauſe the Lord and Saviour of the world did ariſe again on that day: and this was the ancient Law of England, and extended not onely to legall proceedings, but to contracts, Inſt' leges Edw. Regis, anno Dom. 924.

contracts, &c. Dacus si die dominico quicquam fuerit mercatus, re ipsa, & oris præterea duodecim mulctator, Anglus triginta solidos numerato; And it is truly said, Reges, qui serviunt Christo, faciunt Leges pro Christo. 2. In Easter Terme the day of the Ascension of the Lord Jesus Christ. 3. Before the Statute of 32 H. 8. Trinity Terme extended into the time of Harvest, and then in that Terme the day of the Nativity of S. John Baptist was not dies juridicus, but by that Statute that Terme is so abbreviated, as that day falls not within the same, onely dies Dominici are not dies juridici in that Terme. In Michaelmasse Terme the day of All Saints, and the day of All Soules; And in Hilary Terme, the day of the Purification of the blessed Virgin Mary, are not dies juridici. 27 H. 6. cap. 5.

And it should seem by Fortescue, that there be also horæ juridicæ, for he dedicating his booke to the Prince saith, Scire te etiam cupio, quod Justiciarii Angliæ non sedent in Curiis Regis, nisi per tres horas in die, scilicet ab hora octava ante meridiem, usque horam undecimam completam, quia post meridiem Curiæ ille non tenentur, sed placitantes tunc se divertunt ad perviſum, & alibi consulentes cum servientibus ad legem, & aliis consiliariis suis. Quare Justiciarii postquam se refecerint, totum diei residuum pertranseunt studendo in legibus; sacram legendo scripturam, & aliter ad eorum libitum contemplando, ut vita ipsorum plus contemplativa videatur, quam activa, &c. Forteſcu cap. 51. fol. 66. b.

And the Mirror saith, Abusion est que tient pleas per Dimenches (i. Sabbath dayes) ou per auters jours defendus, ou devant le soleil levie, ou noctantre, ou in dishonest lieu. Mirror ca. 5. § 1.

¶ Purview est per assentment des Prelates.] Which is expressed, not that the Prelates assented alone, but that it was enacted by the King with the whole assent of Parliament, which is implied by these words, Purview est, and this Act is entred into the Parliament Roll with the rest made in this Parliament. But per assent des prelates is added to manifest that this Act concerning the crowning of a Canon of the Church was enacted by their assents.

And here it is worthy of observation, that albeit divers Judges of the Realme were men of the Church, as Britton, Martin de Patteshull, William de Raleighe, Robert de Lexinton, Henricus de Stanton, and many others; and that the honourable Officers of the Realme, as Lord Chancellor, Lord Treasurer, Lord Privie Seale, Master of the Rolls, &c. were in those dayes men of the Church, yet they ever had such honourable and true-hearted courage, as they suffered no incroachment by any forein power upon the Rights of the Crowne, or the Lawes and Customes of the Realme, as in Cawdryes Case in the fifth part of my Reports is partly shewed, and much more (if it were requisite) may be said in that behalfe. See the first part of the Institutes, sect. 524. Li. 5. fol. 1. Cawdries Case.

¶ En Assise de Novel disseisin, Mordaunceſter, & Darrein presentment.] Hereof Britton saith, Les Eveſques nequident & Prelats de saint Eſglise fount dispensations que Assises, & Juries sont prises en tiels temps per reasonable encheſons. Brit. ubi supra.

¶ Advent.] Adventus Domini in carne, et incipit die Dominica proxim' ante festum Sancti Andreæ, vel ipsa die Sancti Andreæ, si in Dominica venerit; and endeth eight dayes, after Twelfe-tide, or the Epiphany. 7 ass. p. 7. 14 ass. 4.

¶ Septuagesime.] Septuagesima beginneth on the third Sunday before Shrovesunday, and endureth till eight dayes after Easter.

¶ Quaresme.] Quadragesima beginneth the first Sunday in Lent, and endureth all Lent.

¶ Et ceo pria le Roy as Evesques.] Faire and good words many times further, but never hinder any good work.

How the Canon abovesaid take no place in other Actions not named in this Act (if you observe the times forbidden by the Canon) is manifest by our Bookes, and common experience in all ages since the making thereof.

STATUTUM

Statutum de Bigamis,
Editum Anno 4 Edw. I.

IT is called Statutum de Bigamis of the Fift Chapter of this Parliament, wherein thoſe that be Bigami, are barred of the priviledge of Clergie.

IN præſentia venerabilium patrum quorundam Epiſcoporum Angliæ, & aliorum de conſilio Regis, recitatæ fuerunt conſtitutiones ſubſcriptæ, & poſtmodum coram domino Rege & Conſilio ſuo auditæ & publicatæ, quia omnes de conſilio, tam Juſticiarii, quam alii concordaverunt, quod in ſcripturam redigerentur ad perpetuam memoriam, & quod firmiter obſerventur.

Here may you obſerve the ancient order of proceeding in Parliament for paſſing of Bills; firſt a ſelect Committée of certain Biſhops, Barons, and ſome of the Commons, with the Judges aſſiſtants (who after are expreſſly named) expreſſed here under theſe words, Et aliorum de conſilio regis, (for at this time the Lords and Commons ſate together) and after the Committée of both Houſes had reſolved hereupon, then to Report it to the whole Councell here expreſſed under theſe words [Auditæ & publicatæ:] which order in the ſeverall Houſes is continued to this day.

Shard beholding the manner of the penning of this Act, was of opinion that it was no Act of Parliament; but the contrary is holden by many expreſſe authorities both before, and after him. And theſe words in the firſt Chapter [Concordeſt per Juſticiarios & alios ſapientes de conſilio regni] do prove it to be by authority of Parliament, for Concilium regni is the Lords and Commons legally called Commune concilium regni.

30 Aſſ. 5. 8 E. 2. Dower 169. 5 E. 3. 65. 9 E. 3. 33. 10 E. 3. 26. 39 E. 3 12, 13. 2 H. 7. 7. 4 H. 7. 1 2. tit. Aide le roy 33.

¶ Quia omnes de conſilio, tam Juſticiarii, quam alii concordaverunt, &c.] And becauſe this was done by the advice of the Juſtices, and was but a declaration of the Common Law concerning aid prier of the King, and Warranties, as by the words of the Act it appeareth, therefore they are inſerted into the Act with this addition, Qui conſuetudines & uſum judiciorum hactenus habuerint; And Sir Ralph de Hengham was chief Juſtice of the Kings Bench, and Sir Thomas de Weyland chief Juſtice of the Court of Common Pleas at this Parliament.

CAP. I.

DE placitis ubi tenens excipit, quod sine Rege respondere non possit: Concordatum est per Justiciarios, & alios sapientes de consilio Regni domini Regis, qui consuetudines & usum judiciorum hactenus habuerunt, quod ubi feoffamentum factum fuerit per Regem, & charta super hoc confecta, tantum se habeat, quod si alia persona per consimile feoffamentum et consimilem chartam teneretur ad warrantiam, Justiciarii ulterius procedere non potuerunt, nec hucusque processerunt, nisi super hoc præceptum à Rege habuerint, nec videre possunt quod procedere possint.

¶ Per Justiciarios, et alios sapientes de consilio regni domini regis.] Here was used the ancient stile of Parliaments, when the Acts were Rex ex consilio sapientum, &c.

Inter leges Inæ, An. dom. 727. At a Parliament holden by King Inas, anno Domini 727. the Statutes began thus, Ego Inas Dei beneficio rex fuasa & institutò Genteli patris mei, Heddæ & Erkenwaldi episcoporum meorum, omnium senatorum meorum, & aliorum majorum sapientum populi mei in magna servorum Dei frequentia, &c. Here is the Parliament expressed, as it continually to this day.

Inter leges Aluredi regis, Anno dom. 900. Has ego Aluredus rex sanctiones in unum collegi, &c. multa tamen quæ nobis minus commoda videbantur ex consulto partim antiquanda, partim innovanda curavi.

And again, Hæc sunt senatus consulta ac instituta, &c. quæ à sapientibus recitata sapius, atque ad communem Regni utilitatem ampliscata sunt.

Inter leges Æthelstani, anno dom. 940. Decreta actaque sunt hæc omnia in celebri Grantaleano concilio, cui Wolstanus interfuit Archiepiscopus, & cum eo optimates & sapientes ab Æthelstano evocati frequentissimi; this is that Grandcester in Cambridge-shire, of which the Poet said,

Olim Granta fuit multis urbs inclyta rebus,
Nunc etenim magnum nil nisi nomen habet.

Inter leges Ethelredi, anno dom. 1016. And that great Parliament which Ethelred held, is called Sapientum concilium: and more of this kinde might be remembred.

¶ Qui consuetudines & usum Judiciorum hactenus habuerunt.] For of ancient, and at this time many of the Nobility and of the Clergie were expert in the Laws and Customes of the Realm, and had judiciall places, as partly hereby, and more at large may appear in the first part of the Institutes.

See the first part of the Institutes, sect. 534.

¶ Tantum se habeat, quod si alia persona per consimile feoffamentum et consimilem chartam teneretur ad warrantiam, Justic' ulterius procedere non potuerunt.] By this branch, if the King give lands with clause of an expresse warranty, yet the Patentee, &c. shall

‖ M. 56. sic adjudicatur tempore. E. 1.

shall not have or recover in value against the King, without speciall words that the King shall yeild lands in value upon eviction, &c. and nevertheless, in that case he shall have aid of the King by the generall purview of this Law, for it is for the honour of the King, that he aid the Patentée with any Records or evidence that he hath for maintenance of the estate which he hath granted and warranted to him. a But if the King exchange lands with another by this warranty in Law, the King is bound to Warranty, and to yeild in value, and so it was adjudged Hil. 6 E. 1. in communi banco Rot. 2. William Brewses case, Wallia.

b If the King give lands to one in fee, by this word Dedi, this bindeth not the King to Warranty, and yet the Patentée shall have aid of the King by the letter of this branch, because in that case another person should be bound to Warranty by this word Dedi: And so it is, albeit the tenure by the Patent is to hold of the chief Lords.

c If it appear to the Court, that the Letters Patents, or other causes of aide prier be void, against Law, or insufficient in Law, no aid shall be granted, for the Law will not suffer those things to be aided or maintained by the countenance of Law, which appear to the Court to be void, against Law, or insufficient; Ubi lex aliquem cogit ostendere causam, necesse est quod causa sit justa & legitima.

d And according to former authorities of Law, so was it adjudged 43 Eliz. in Foxleys case, and that aid prier ought not to be used for delay of Justice, see notable and ancient Records; and where Feoffamentum and Charta mentioned in this Chapter must be taken for lawfull Feoffments and Charters, as in other cases.

e And as it hath been said in the case of aid prier, so it holdeth in all points, in the case when the Tenant or Defendant prayeth not in aid, but a Writ de Domino Rege inconsulto is brought and directed to the Judges; if it appear to the Court, that the cause is not available or sufficient in Law, the Court ought to disallow the Writ, and to proceed in the cause, and if the cause appear to the Court to be just and lawfull (as in our Books it appeareth to be, and not brought for delay) then the Judges ought to surcease, &c. and so it was resolved, Mich. 34 & 35 Eliz. in Communi banco, between Giles Blofeild Pl'in ejectione firmæ of the demise of Reighnold Earl of Kent Plaintife, and Thomas Havers Farmor of the Earl of Arundell Defendant, of the Mannour of Winfarthinge in Suffolk.

f Upon the aide prier, or Writ, the award is Quod tenens sive defendens sequatur penes Dominum Regem, and the Tenant or Defendant ought to remove the Record into the Chancery, and in case of the aide prier the plea is not put without day.

¶ Nisi super hoc præceptum à rege habuerint.] This Præceptum is by the Kings Writ of Procedendo, whereof there be two sorts, viz. in loquela & ad judicium; for the Kings Commandments in judiciall proceedings are eyther by Writ, according to the course of the Common Law, wherein you may read in the g Register, F.N.B. and our Books; and which Writs the King, Ex merito justiciæ, in due time ought to grant; for the King himself by the great Charter is pertained in Law to sit in Court, and to say Nulli vendemus, nulli negabimus, vel differemus justiciam, vel rectum; but if a Title doth appear for the King to the petition, then no Procedendo shall be granted.

a 17 E. 3. 12. H. 6 E. 1. Rot. 2. in banc' Wallia.
b 8 E. 3. 10. 18 E. 3. tit. Aide. 31. & 142. 2 H. 7. 7. & 15 H. 7. 10.
c 28 Ass. 19. 39. 28 E. 3. 94. b. 24 E. 3. 34. b. 26 E. 3. 58. 31 Ass. 2. 7 E. 3. 7. 39 E. 3. 12. 7 H. 4. 43. 11 H. 4. 86. 13 H. 4. 14. 4 H. 6. 29. 7 H. 6. 36. 8 H. 6. 25. 11 H. 6 12. 8 H. 7. 9. 11.
d Lib. 5. fol. 106. 111. Foxleys case. Tr. 18 E. 1. Coram rege Rot. 43. Wilts. 27 E. 1 Coram Just. ad Ass. in Com' de Suff. Radulphus de Mounthering comes Gloc.
e Pasch. 10 E. 3. Corã rege Rot. 86. Wilts. Tr. 11 E. 3. Coram rege Rot. 101. South. 21 E. 3. 24. 44. 22 E. 3. 6. 25 E. 3. 48. 2 R. 3. 13. tit. Aide le roy 33. 9 H. 7. 15. 4 H. 7. 1 F.N.B. 153. f. & 154. d. e. Regist. 220, 221, 227 lib. 9. fol. 16. Anna Bedingf. case.
f Lib. 9. fol. 16. Anna Bedingf. case. 10 E. 3. 61. 22 Ass. p. 5.
g Regist. 220, &c. F.N.B. 153, &c. 26 E. 3. 58. 12 H. 4. 28. 11 H. 4. 72. 13 H. 4. 3. 9 H. 6. 40. 12 H. 6. Proc. 9. Dier. 1. Mar. 103. 4 Eli. 209. 9 Eliz. 256. 13 Eliz. 310.

CAP.

CAP. II.

IN certis autem casibus, utpote ubi rex confirmaverit, vel ratificaverit factum alicujus in rem alienam, vel rem aliquam alicui concesserit, quantum in ipso est, vel ubi charta profertur, quod rex tenement' aliquod reddiderit, nec clausula aliqua in ea contineatur, per quam warrantizare debeat, & in consimilibus casibus, non erit supersedendum occasione confirmationis, ratificationis, concessionis, seu redditionis, aut aliorum consimilium, quin postquam hoc regi fuerit ostensum, sine dilatione procedatur.

30 Ass. p. 5. 8 E. 3 33. 39 E. 3. 12. 35 H. 6. 56. 9 H. 6 50, &c.

¶ Ubi rex confirmaverit, vel ratificaverit.] Here be three cases where aid, &c. ought not to be granted of the King, nor the Court forceth by force of a Writ De domino Rege inconsulto: whereof the first is, when the King confirms or ratifies, &c. which must so be understood, when the confirmation giveth no estate, and if it giveth any estate, where no rent or service is reserved, or where in like case (as hath been said) another person were not bound to Warranty; but if a rent or service be reserved, and by the Action brought (if the Demandant prevail) the rent or service should be defeated, then there is good cause of aide prier, &c. or if a common person were in that case bound to Warranty, then is the confirmation in nature of a Feoffment, and within the first Chapter: what hath been said in case of confirmation, the same holdeth in case of release.

¶ Alicui concesserit, quantum in ipso est.] Here is the second case where no aide ought to be granted, for the King granteth but his own estate without any Warranty.

¶ Quod Rex tenementum aliquod reddiderit, nec clausula aliqua in ea contineatur, per quam warrantizare debeat, &c.] This is the third case where no aide shall be granted, in case of a restitution.

¶ Postquam hoc regi fuerit ostensum, sine dilatione procedatur.] Here some have supposed, that in these three cases aide should be granted, but by force of these words, that no search should be granted, wherein two errours be committed: 1. That aide should be granted, which is against the expresse letter of the Statute, Non erit supersedendum, &c. and against the Book of 39 E. 3. ubi supra. 2. That in case of aide prier of the King, or of the Writ De domino Rege inconsulto, no search ought to be granted, but onely in a petition of Right.

2 H. 7. 7, 8. 39 E. 3. 12, 13.

14 E. 3. cap. 14. 9 E. 4. 32. Dier. 15 Eliz. 320.

And if aid had been in any of these three cases erroniously granted, the Tenant or Defendant should have a Procedendo sine dilatione, that is, without delay, and of course, which is the sense of these words.

CAP.

CAP. III.

DE dotibus mulierum ubi aliqui cuſtodes hæreditat' maritorum ſuorum cuſtodias habent ex dono vel conceſsione Regis, ſive cuſtodes rem petitam teneant, ſive hæredes dictorum tenementorum vocentur ad warrant', ſi excipiant, quod ſine Rege reſpondere non poſsint, non ideo ſuperſedeatur, quin in loquela prædict', prout juſtum fuerit, procedatur.

This Statute having not bẽn put in print untill towards the latter part of the raigne of H.8. and thereby, as it ſeemeth, not commonly known; there have divers aide prayers been graunted directly againſt both the points of the purview of this Statute, as well when the Writ of Dower hath been brought againſt the Kings Grauntee or Committee, as where the heire came in as Nowchee in his cuſtody; and the like rule Brian gave in 4 H.7. but when Juſtice Townelend remembred him of this Statute of Bigamis, the aide was over-ruled.

8 E.3.15. 18 E.3. 38. 19 E.3. aide le Roy 64. 39 E.3 8. 46 E.3.19. 13 R.2. bſe. 646. 11 H.4.39. 5 H.5. 13. F.N.B. 154.d. 4 H.7.1,2. 8 E.2. Dower 169. Li.9.fol.15,16. Anna Bedingfields Caſe.

And at the Parliament holden in 18 E.1. an Act is in the Parliament Roll thus entred, Quod viduæ recipiant dotem de terris in cuſtodia Regis exiſtentibus, Dominus Rex præcepit Juſticiariis de Banco, quod viduæ poſt mortem virorum ſuorum petant dotem ſuam, &c. & quod in placitis illis procedant ſecundum communem legem Regni, & quod partibus faciant debitum Juſticiæ complementum.

Ad Parliam. tent' poſt feſtum S. Hil. 18 E.1. fol.6.

So as ſeeing the letter of this Chapter of 4 E.1. extends but where the King hath graunted the cuſtody over, or where the heire came in as Nowchee, this Act of 18 E.1. made about fourteen yeares after, addeth, that theſe Widowes ſhall recover Dower againſt the heire in the cuſtody of the King, where the King graunteth not the cuſtody to any, but keepeth the lands in his owne hands. And I am verily perſwaded, that ſeeing the graunting of aide, where no aide was grauntable, was not any Error (whereby the judgement might be reverſed) ſome Judges either for that cauſe, or for feare, have graunted aide of the King in many caſes, where it was not to be graunted by Law, and the rather, for that in ancient times aides of the King were little or no delay at all; for Writs of Procedendo were ſpeedily graunted, whereas of later times aides prayers, and ſpecially Writs De Domino Rege inconſulto are uſed meerly for delay of Juſtice, and that for no ſmall time.

CAP. IV.

DE purpreſturis, ſeu occupationibus quibuſcunque factis ſuper regem, ſive in libertatibus, ſive alibi: Concordatum eſt quod tempore regis H. diffinitum erat & concordat', quod ubi occupatores ſuperſtites fuerint, Rex de plano reſumat

17 E.2. cap. 13.

ſumat *ſibi* rem taliter occupatam de manibus occupantium, quod etiam de cætero in regno obſervetur. Et ſi aliquis de hujuſmodi reſumptionibus conqueratur, prout juſtum fuerit, audiatur.

This Act is but a confirmation of a former Statute made in the raigne of King H. 3.

¶ De purpreſturis.] Purpreſtura commeth of the French word Purpriſe, or Pourpris, which ſignifieth an incloſure or building, and in legall underſtanding ſignifieth an incrochment upon the King, either upon part of the Kings demeſne lands of his Crown, which are accounted in Law as res publicæ, & ſemper favorabile fuit in omni republica principis patrimonium; or in the high-wayes, or in common rivers, or in the common ſtreets of a City, or generally when any common nuſans is done to the King and his people, endeavouring to make that private, which ought to be publique, which Glanvill very aptly deſcribeth in theſe words, Dicitur autem purpreſtura, vel porpreſtura proprie, quando aliquid ſuper Dominum Regem injuſte occupatur, ut in dominicis Regis, vel in viis publicis obſtruct', vel in aquis publicis tranſverſis à recto curſu, vel quando aliquis in Civitate ſuper regiam plateam aliquid ædificando occupaverit, & generaliter quoties aliquid fit ad nocumentum Regii tenementi, vel Regiæ viæ, vel Civitatis.

Glanv. li. 9. ca. 11

Cap. Itineris.

It was an Article of the Eyre before this Act to enquire De purpreſturis factis ſuper Dominum Regem, ſive in terra, ſive in mari, ſive in aqua dulci, ſive infra libertatem, ſive extra.

It appeareth alſo by Glanvill, that there be alſo purpreſtures done to Subjects, but this Chapter treateth onely of purpreſtures done to the King and his people.

¶ Seu occupationibus.] Here occupationes are taken for uſurpations upon the King, and it is properly, when one uſurpeth upon the King by uſing of Liberties and Franchiſes, which he ought not to have: and as an unjuſt Entry upon the King into lands or tenements is called an intruſion, ſo an unlawfull uſing of Franchiſes or Liberties is ſaid an uſurpation, but occupationes in a large ſenſe are taken for purpreſtures, intruſions, and uſurpations.

¶ Seu in libertatibus, ſive alibi.] That is to ſay, within liberties, or places that have franchiſes, or privileges, or without.

¶ Ubi occupatores ſuperſtites fuerint.] This was a Law of great equity, for it extended not but to the wrong doers themſelves.

¶ Rex de plano reſumat.] That is, may clearly reſeiſe. But this is to be intended upon due conviction, for ſo ſaith Glanvill, Et qui per Juratam ipſam aliquam hujuſmodi feciſſe purpreſturam convictus fuerit, in miſericordia Domini Regis remaneat, &c. & quod occupavit, reddet.

Glanv. ubi ſupra.

¶ Et ſi aliquis de hujuſm' reſumptionibus conqueratur, &c.] And yet ſuch reſeiſures ſhall not be finall, but the party grieved may complaine of ſuch reſeiſures, Et prout juſtum fuerit, audiatur.

CAP.

CAP. V.

This Act abrogated 5 Ed. 6.

DE Bigamis quos dominus Papa in concilio ſuo Lugdunenſi omni privilegio clericali privavit, per conſtitutionem inde editam, & unde quidam Prælati illos qui effecti fuerant Bigami ante prædictam conſtitutionem, quando de felonia reſtati fuerunt, tanquam clericos exegerunt ſibi liberandos: Concordatum eſt & declaratum coram rege et concilio ſuo, quod conſtitutio illa intelligenda ſit, quod ſive effecti fuerint Bigami *ante* prædictam conſtitutionem, ſive poſt, de cætero non liberentur prælatis, immo fiat eis juſticia ſicut de laicis.

¶ De Bigamis.] Bigamus is he that either hath maried two or more wiues, or that hath maried a widow, as it appeareth in the Statutes of 18 E.3. cap.2. & E.6. cap. 12.

Mirror cap.3. de except. de Clergy, Britton fol. 11.b. Fleta lib.1.ca.32. 11 H.4. fo.38 E.3. cap.3. 2 E.6.c.12 Stam.Pl.Co.135

¶ Concilium Lugdunenſe, &c.] The conſtitution here mentioned is in theſe words, Altercationis antiquæ dubium præſentis declarationis oraculo decidentes Bigamos omni privilegio clericali declaramus eſſe nudatos, & coertioni fori ſecularis addictos, conſuetudine contraria non obſtante; ipſis quoque anathemate prohibemus deferre tonſuram, vel habitum Clericalem.

Per decret. Epiſtol' Gregor. 9. lib.6. decretal. a Bonifacio 8. in Lugdunenſi conc' edit.

This conſtitution is hereafter in this Chapter explained.

This Councell was holden at the City of Lyons in France, Bonifacius the eight being Pope.

At the Councell of Lyons, Britton and Fleta ſay, at Lateran ſaith Bracton, the Pope endeavoured to take away the preſentations from Princes and Lay Patrons to preſent by Laps, for that the conſtitution ſaith, Quod collatio beneficii eſt res ſpiritualis, & aliter credentes eſſent hæretici, &c. and the Common Law ſaith, that a preſentation to a benefice is temporall, and ſo it is declared by diuers Acts of Parliament.

Britton fol.225. Fleta li.1.ca.32. Bract.l.4.fo.247.

At this Councell after ſixe moneths the Dioceſan ſhall preſent: The Regiſter ſaith, that to preſent by Laps was Dioceſanis ſpecialiter indultum after ſixe months, and yet if after the ſixe moneths the Patron preſent before the Dioceſan collate, he ought to receiue his Clerk, notwithſtanding the generall Councell.

Regiſt. 18 E.3.21.38 E.3 2. 27 E.3.8. 5 E.3.26.11 H.4. 80. 13 E.43. Doct.et Stud.116 F.N.B.38. f. & 35.a. See W.2. ca.5. verbo ſemeſtre.

But when the Kings turn came to preſent Jure Coronæ by Laps, the Regiſter ſaith, Nullum tempus occurrit Regi ex conſuetudine hactenus obtent' in Regno Angliæ, ſo as the Councell did not binde the right of the King, nor could the Dioceſan preſent by Laps until it was ei indultum; that is, until it was allowed to him by conſent of the Realme with ſuch limitations and reſtrictions, and with binding him in many caſes to giue notice, as was thought iuſt and reaſonable in ſubjects caſes, for the better ſeruice of God and inſtruction of the people. But the King, who is Supremus Dominus, loſeth not his preſentation by any Laps at all the ſaid conſtitution notwithſtanding.

¶ Unde quidam Prælati, &c.] Certain Prelates did interpret the ſaid generall Councell to extend onely to ſuch as became Bigami after the

Councell, and they challenged such Clerks, as were bigami before that Councell, when they were arraigned for felony, and required to have delivery of them.

See Art. Cler. cap. 15.

But hath the Parliament power in these cases to make Declarations? Yea, and in greater, for by authority of Parliament it was declared, that Urban the sixth was duly elected, and ought to be accepted Pope; the truth is, that the Cardinals forsook Urban, and elected Clement the seventh, therefore it was enacted that all Benefices and Possessions of Cardinals rebels within England should be seised, &c.

2 R. 2. cap. 6.

This Schisme betwixt these two Popes continued 39. years, till the Councell of Constance, one cursing and warring with another, in so much, that by reason of this Schisme, above 200000. Christians were miserably slain, this Urban poysoned, five Cardinals slew the Bishop of Aquitane, gave authority to Spencer Bishop of Norwich against Clement the Anti-pope.

Theorike, Crentz.

¶ Concordatum est et declaratum coram Rege et concilio suo quod constitutio illa intelligenda sit.] Here the King by advise and counsell of his high Court of Parliament doth expound and explain this constitution made at the said generall Councell, and declareth where Clergy should be taken away in respect of Bigamy.

And this interpretation of the Parliament was against the practise of the Prelates, as before it appeareth, and contrary to the custome before used, as by the constitution it self appeareth.

But the true cause of this declaration by Act of Parliament was, that seeing the Judges of the Common Law were Judges of allowance or disallowance of Clergy to him that was arraigned of felony, and that the said constitution take away the priviledge of Clergy, and by consequent the life of man, the Judges, before they allowed of the said constitution, would have it declared by authority of Parliament.

12. E. 3. Cor. 117. 34 H. 6. 42. 9 E. 4. 29. 22 E. 4. Coron. 44. 15 H. 7. 9

This Law to deprive men that were bigami of the priviledge of their Clergy was complained of in Parliament, in 51 E. 3. and by King E. 6. in the first yeer of his raigne wholly abrogated and taken away.

Rot. Parl. 51 E. 3. nu. 63. 1 E. 6. c. 12

It fell out at this Councell of Lyons mentioned in our Act (as our Histories report) that the Popes Wardrobe in that City (wherein was that detestable Charter which King John made to the Pope to bring the Crown of England in servage to the See of Rome) then was wholly consumed with fire; a divine and very revocation of that most unjust and forcelesse Charter, as was unanimously resolved both in Parliament and elsewhere.

William Thorn, Thomas Sprotte, &c.

Rot. Parl. anno 40 E. 3. nu. 8. Rot. claus. 3 E. 1. memb. 9. in schedula.

CAP. VI.

IN Chartis autem ubi continentur (Dedi et concessi tale tenementum sine homagio, vel sine clausula quæ continet Warrantiam, et tenend' de donatoribus et hæredibus suis per certum servitium) Concordat' est per eosdem Justiciar', quod donatores et hæredes sui teneantur ad Warrantiam. Ubi autem continentur (Dedi et concessi, &c.) tenendum de capitalibus dominis feodi, aut de aliis, quam de feoffatoribus, vel hæredibus suis, nullo servitio sibi retento, sine homagio,

magio, vel ſine dicta clauſula *Warrantiæ*, hæredes ſui non teneantur ad Warrantiam. Ipſe tamen feoffator in vita ſua ratione doni proprii tenetur warrantizare. Prædict' autem conſtitutiones editæ fuerunt apud Weſtmonaſterium in Parliamento poſt feſtum ſancti Michaelis, Anno Regni Regis E. filii Regis H. quarto, et extunc locum habeant.

There be two branches of this Act, and two conſequents thereupon, the firſt branch is, that where Dedi is contained in a Déed (albeit there be no other warranty) to hold of the Donor and his heires (as at the making of this Act, viz. in 4 E.1. a man might have done) there the feoffor and his heires had beene bound to warranty, and this was the Common Law; for where Dedi is accompanied with a perdurable tenure of the feoffor and his heirs, there Dedi importeth a perdurable Warranty for the feoffor and his heires to the feoffée and his heirs; and herewith agréeth Glanvill, Tenentur autem hæredes donatorum donationes & res donatas ſicut rationabiliter factæ ſunt, illis quibus factæ ſunt, & hæredibus ſuis Warrantizare. Glanv.l.7. ca.1.

And Bracton herewith agréeth ſaying. Et ſciendum eſt quod ad omnes Chartas de ſimplici donatione competit tenenti Warrantizatio, & tenentur donatores & eorum hæredes ad Warrantiam, ſi hora congrua, & modo debito cum proſecutione competenti vocati fuer' ad Warrantiam, niſi forte in Charta de feoffamento contrarium exprimitur. Bracton lib.5. fol.388.b.

And in thoſe dayes regularly the donée did hold of the donor, unleſſe there were a ſpeciall limitation to the contrary. 31 E.1. Vowcher 290.

And when the feoffement was made by this word [Dedi] to hold of the donor and his heires, then he and his heires are bound to Warranty.

The conſequent is, that although there be an expreſſe Warranty contained in the Déed, yet that taketh not away the Warranty that is wrought by force of Dedi, but the feoffée may take advantage either of the one, or the other at his pleaſure. 20 E.3.Count. de garr.7. 31 E.3.Vow.286. Li 481. Nokes Caſe.

The ſecond branch is, that where Dedi is contained in the Déed, to hold of the chiefe Lord, and not of the feoffor, there, although there were no other Warranty in the Déed, the feoffor ſhall be bound to Warranty during life. Britton ſaith, Si le purchaſor ſoit del done challenge in ſa ſeiſin, ſi ert le donor tenu de garranter auter ſon done tant come il vivera, tout ne ſoit a ceo oblige per eſpecialtie de eſcript tout face le purchaſor de ceo homage a auter que al donor, ſicome al chiefe Seignior. Britton fol.88.b.

If the gift be made to hold of the chiefe Lord of the fée, then Dedi bindes none to Warranty, but him that made the gift. 31 E.1. Vowcher 290.

And it is to be known that ſince the Statute of Quia emptores, 18 E.1. the feoffée in fée ſimple doth hold of the Chiefe Lord, and therefore at this day in that caſe the feoffor is onely bound to Warranty during his life; but if a man at this day give lands in taile by the word Dedi, the Donor and his heires are bound to Warranty; and ſo it is of a leaſe for life, reſerving a rent, though it be without Déed.. 6 E.2.Vowch.258 39 E.3 26. 2 H.7 7. 6 H.7.2. 20 E.3. Count. de garr. 7. 6 E.3.11. 22 Aſſ. 52. 18 E.3.8. 14 H.6.25. 6 H.7.2. 10 H 7. F.N.B.134.h.

The conſequent hereupon is, that albeit there be in this caſe of the ſecond branch an expreſſe Warranty, the feoffée may take advantage of the one or the other, as upon the firſt branch hath béen ſaid. See for this Nokes caſe aboveſaid. 5 Eliz. Dier 221. Nokes Caſe, ubi ſupra.

¶ Sine homagio.] The Law was generally holden in thoſe dayes, that homage being parcell of the tenure reſerved to the feoffor and his heires, imported a Warranty to the feoffée and his heires, and ſo much is implied by theſe words in this Act, Sine homagio, that is, without any Warranty by reaſon of homage; but that was ever intended, ſo long as the Tenancy conti- Bract.l.5. fo.389. Fleta li.6.ca.23. Britton. fol.170. The firſt part of the Inſtitutes, Cap. Homage Auncell. ſect.143.

ned by descent in blood of the first purchaser, for if the Tenement were transferred out of his blood by feoffement, or any other translation, in that case the Tenant should vouch his Feoffor or his heirs, if he had any Warranty, but not in respect of the Homage: And that this was the ancient Law, appeareth by Glanvile, who saith, Si aliquis alicui donaverit aliquod tenementum pro servitio & homagio suo, quod postea alius versus eum dirationaverit, tenebitur quidem dominus tenementum id ei warrantizare, vel competens excambium ei reddere. Secus est tamen de eo, qui de alio tenet feodum suum sicut hæreditatem suam, & unde fecerit homagium, quia licet is terram illam amittat, non tenebitur dominus ad eschambium; and this is signified in the doing of Homage, Homagium si dominus recipere voluerit, tunc in signum warrantiæ acquietationis & defensionis manus tenentis infra manus suas tenere debet, dum tenens profert verba homagii. And this day it holdeth in case of Homage Auncestrell.

Glanv. li. 9. ca. 4. 14 H. 6. 25.

Vide the first part of the Institutes ubi sup.

¶ De donatoribus & hæredibus suis.] So it is if a body Politique or Incorporate had by Déed, wherein Dedi was contained, inclosed another to hold of him and his successors, this had created a like Warranty, as in this Act is mentioned.

31 E. 1. Voucher 290.

¶ Concordatum est per eosdem Iusticiarios.] That is (as hath bén said before) enacted according to the advice, and resolution of the Justices.

¶ Ipse tamen feoffator in vita sua.] The letter of this Act extends but to the Feoffor upon a Feoffment made, but if Dedi doth enure by way of release or confirmation, it importeth a Warranty during the life of him that makes the Déed; so it is if a reversion expectant upon an estate for yéars, life, or in tail be granted by this word Dedi, and Attornment had, here Dedi doth import a Warranty, though the Estate passeth not by way of feoffment; so it is of a Rent, of an Advowson, or the like.

Bract. ubi supra. 48 E. 3. 2. a. 14 H. 6. 25.

Bracton saith, Si vero charta fuerit de confirmatione, non sequitur inde warrantizatio, nisi in se contineat donationem; ut si dicatur, do, & confirmo tali & hæredibus suis, &c. If a man by Dedi letteth land for life, by this the Lesse shall vouch the Lessor (though the reversion be granted away) and yet the Lessor is not properly Feoffator.

¶ Ratione doni proprii tenetur warrantizare.] Albeit in two places before in this Act Dedi & Concessi are coupled together, yet these words Ratione doni proprii do appropriate the Warranty to Dedi onely; and agréable to this exposition in our Books is the common and constant opinion of learned men at this day.

11 H. 6. 41. 11 H. 4. 41. 14 H. 6. 25. 6 H. 7. 2. F. 134. h.

Two Jointenants make a feoffment in fée by this word Dedi, the one dyes, the survivour shall be vouched, and render in value for the whole; for though the Estate passed from both, and the Statute saith, Ratione doni proprii, yet each of them did warrant the whole by this word Dedi, otherwise the survivour ought not to have yélded the whole in value, as it hath bén adjudged; and the reason is, for that the heir of the Jointenant that dyeth cannot be bound by the Warranty created by this word Dedi.

39 E. 3. 26.

11 H. 7. 13

But if two Jointenants make a Feoffment in fee, with an expresse Warranty for them and their heirs to the Feoffée and his heirs, and the one of them dyes, the survivour shall not be vouched alone, but the heir also of the other, and the recompence in value shall lye equally upon them; but if the one of them have nothing, the other shall answer the whole; for it is a Maxime in Law, Quando de una & eadem re duo onerabiles existunt, unus pro insufficientia alterius de integro onerabitur. But in the said case of Dedi, the survivour was onely chargeable with the Warranty.

Maxim.

Statutum

Statutum de Gloceſter,

Editum Anno 6 Edw. I.

This Parliament was holden at Gloceſter bordering upon Wales, for the better preſervation of peace in Wales, Llellin Prince of Wales, and the Welſh-men being a little before this Parliament brought to quietneſſe.

LAn du grace M. C.C. lxvii. & del raigne le roy Ed. fits le roy Henry, vi. a Glouceſtre le moys Dauguſt, purview ante meſme le roy, pur amendement de ſon roialme, & pur plus pleiner exhibition de droit ſicome le profit doffice demaunde, appelles les pluis diſcreetes de ſon roialme, auxibien des greinders come des meinders. Eſtablie eſt et concordantment ordaine, que come meſme le roialme en pluſours divers caſes, auxibien des franchiſes, come dauters choſes, en les quels ley avant fallit, et a eſchever les treſgreves damages, et les nient numerables diſherisons, les quels icel maner default de ley fiſt a la gent du roialme, eit meſtier de divers ſuppletions de ley, & de novels purveiances: Les eſtatutes, ordeinments, & purveyances ſuis eſcriptes de tout la gent de la roialme deſormes ſoient firmement gardes, come Prelates, Countees, Barons, & auters del roialme clament daver divers franchiſes, & les quels examiner & judger, le roy a meſmes les Prelates, Countees, Barons, & auters, avoit done jour. Purview eſt, & concordantment grante, que les avantdits Prelates, Countees, Barons, & auters cel maner de franchiſe uſent, ſi ſint que rien ne lour accreſer per uſurpation, ou occupation, ne rien ſur le roy occupient, jeſque al prochein venue ceo roy pet le countie, ou a le procheine venue des Juſtices errants, as common plees en meſme le countie, ou jeſques le roy commande auter choſe: ſave le droit le roy come il en voudra parler, ſolonque ceo que il eit contenue en le briefe le roy. Et de ceo ſoient maundes briefes as Viſcontes, Bailifes, ou auters pur cheſcun demandant. Et ſoit la forme del briefe

change,

change, solonq; la diversitie des franchises, les quels chescun claime daver. Et les viscontes per touts lour baillies ferront communement cryer, cestascavoire, en cities, burghes, & villes merchandes, & aylors, que touts ceux que ascuns franchises claiment aver per les charters les predeceſſors le roy, royes Dengleterre, ou en auter maner, soient devant le roy, ou devant Justices en Eire a certaine jour & lieu, a monstrer quel manner de franchises ils claimant daver, & per quel garrant. Et les viscont mesmes donques ferront illonq; personalment, ou lour bailifes et minister a certifier le Roy sur les avantdits franchises, et auters choses que celles franchises touchent. Et cest crie destre devant le roy conteigne garnisement de iij. semaignes. Et in mesme le maner ferront les viscont crier en oyer de Justices. Et in mesme le maner serront ils personalment, ou lour bailifes, et lour ministers, a certifier les Justices de tiel maner de franchises, et des auters choses que celles franchises touchent. Et cest crie conteigne garnisement de quarante jours, sicome le common summons contient: isint que si la partie, que claime daver franchises, soit devant le roy, ne soit paz mis en defaut devant les Justices en Eyre, pur ceo que le roy de sa grace especiall ad grant, que il gardera la partie de dammage quant a cel ajornement. Et si cel party soit impled' sur tiels maners de franchises, devant un payer de Justices avantdits, mesmes les Justices, devant les queux la partie est en plee, garderent le partie de dammage devant auters Justices, & devant le roy luy mesme, mesq; il sache per les Justices, que le partie suit en plee devant eux, sicome il est avantdit. Et si ceux que tiels franchises claiment aver, ne veignent paz al jour avantdit, donques soient les franchises en nosme de distresse prises en la maine le roy per le viscont del lieu, issint quils tiel manner de franchises ne usent, jesques ils veigne a receiver droit. Et quant ils veignent per cel distres, lour franchises eux soient replevies sils les demand, les quels replevies respoignent maintenant in la forme avantdit. Et peradventure les parties exceptent, quils ne debuient nient de ceo respondre sans briefe original, donques sil puisse estre sure que eux de lour proper fait, eient usurpe ou occupy ascuns franchises sur le roy, ou sur ses predeceſſors, dit lour soit que maintenant respoignent sans briefe, & puis resceivent

vent judgement, ſicome le court le roy agardera. Et ſils dioint ouſter, que lour anceſter, ou lour anceſters de meſmes les franchiſes morront ſeiſies, ſoient oyes, & maintenant ſoit le verity enquiſe, & ſolonque ceo aillent les avant en le beſoigne. Et ſil ſoit trove que lour anceſters ent moruſt ſeiſie: donques eit le roy brieſe original de ſa Chancery en forme fait de ceo. Le Roy mande ſalute au viſcount: Summones per bone ſummonours un tiel, que il ſoit devant nous a tiel lieu en noſtre prochein venue en cel countie, ou devant nous Juſtices a primer aſſiſes, come ils en celles parties veindront, a monſtrer per quel grant il claime daver quitance de torn' pur ſoy ou pur ſes homes per tout noſtre roialme per continuation apres la mort tiel jadis ſon predeceſſor. Et eiets les ſummonours & ceo brieſe. Et ſi les parties veignont al jour, reſpoignent, & ſoit reply & judge. Et ſils ne veignent, ne ſoy eſloinent devant le roy, & ſi le roy demurra ouſter en cel county, ſoit commande au viſcont que il le face vener al quart jour. A quel jour ſils ne veignent, & le roy demurr' ouſter en cel county, ſoit fait ſicome en Eyre de Juſtices. Et ſi le roy depart del countie, ſoient les parties ajornes a brieſe jour, & eient reaſonables delaies, juxte les diſcretions des Juſtices, ſicome en actions perſonal. Et les Juſtices en Eyre facent de ceo en lour oyers ſolonque lordeinment avantdit, & ſolonque ceo que tiel maner de plees debuient eſtre deduct. En oyer de pleints faits & affaires des bailifes le roy, & dauters bailifes, ſoit fait ſolonque lordeinment avant fait de ceo, et ſolonque les enqueſts de ceo avant priſes, et de ceo ferront les Juſtices en Eyre ſolonque ceo que le Roy lour ad enjoynt, & ſolonque les articles que le Roy lour ad livere. Vide tout ceo in latin pluis plaine 30 E. 1. leſtat' de *Quo warranto* tit. Franchiſes 5.

¶ L'an du grace, 1267.] This ſhould be 1278. for that was Anno 6 E. 1. this Parliament being holden in Auguſt, anno 6 E. 1. for 1267. was in 51 H. 3. Vet. Mag. Chart. fol. 130.

This Chapter concerning Liberties and Franchiſes, and the Quo warranto, (and intituled Statutum de quo warranto) hath been ſuppoſed by many to be enacted in Latin, Anno 30 E. 1. and therefore ſome have omitted to inſert it in the 6. peare; but it is utterly miſtaken: for the King in the 30. peare did publiſh and proclaime this Act under the great Seale, and doth recite it to be made, Anno Dom. 1278. and in the 6. peare of his raigne. Vide 14 E. 1. Inter original' de Anno 14 E. 1. Breve de libertatibus allocandis, and there is another Statute made in Lib. 9. fol. 28. In the caſe of Strata Marcella.

in 18 E. 1. called Statutum de quo warranto novum, so called, in respect of this former Statute.

And besides, the Statute in French differeth from the rectitall thereof in 30 E. 1 which, for that it agreeth with the Record, we will follow it when we come to the body of the Act.

¶ Pur amendement de son Realme, & pluis plenier exhibition de droit.] Which by the said Proclamation in 30 E. 1. is rendred thus. Ad Regni sui Angliæ meliorationem, & exhibitionem Justiciæ pleniorem: two excellent ends of a Parliament, Regni melioratio, that is for the common good of the Kingdome, the Parliament being Commune concilium, and exhibitio Justiciæ plenior, for nothing is more glorious, and necessary, then full execution of Justice.

And it is added, Prout Regalis officii exposcit utilitas; and accordingly at this Parliament many profitable and just Laws were made, as one speaking of this Parliament saith truly, In quo quædam de Regni statu decreta sunt, quæ nunc ut jura, & æquitate plena maxime usurpantur. And that I may speak once for all, it is worthy of observation that the Statutes made in this noble Kings time are so agreeable to common right and equity, as few or none of them have been abrogated, but being founded upon these two pillars, (the amendment of the Kingdome, and the due execution of Justice) remaine and continue as just and constant Laws to this day.

Pol. Virgil.

Vide Ver. Magna Charta. fol. 130. Stat. de Quo Warranto. Pol. Virgil.

¶ Hujusmodi libertatibus utantur, &c.] For the better understanding of this Act it shall be necessary out of History to shew the cause of the making hereof.

The truth is, that the King wanting money, there were some innovatores in those dayes, that perswaded the King, that few or none of the Nobility, Clergy, or Commonalty, that had franchises of the graunts of the Kings predecessors, had right to them for that they had no Charter to shew for the same, for that in troth most of their Charters either by length of time, or injury of wars & insurrections, or by casualty were either consumed, or lost: whereupon (as commonly new inventions have new wayes) it was openly proclaimed, that every man, that held those liberties, or other possessions by graunt from any of the Kings Progenitors, should before certain selected persons thereunto appointed shew, quo jure, quove homine ill' retinerent, &c. whereupon many that had long continued in quiet possession, were taken into the Kings hands, Eo quod nulla tabella constarent: Hereof the Story saith, Visum est omnibus edictum ejusmodi post homines natos longe acerbissimum: Qui fremitus hominum? quam irati animi? quanto in odio princeps esse repente cœpit?

Mag. Charta. cap. 1, 9, 38.

The good King understanding hereof, and finding himselfe abused by ill counsell, and considering the Statute of Magna Charta, at the Parliament holden in the end of his fourth yeare by Proclamation, and at the petition of the Lords and of the Commons now at this Parliament, by authority of Parliament provideth remedy, as hereafter you shall heare: This is fully agréed upon in all our Histories, onely the time in some of them (as oftentimes in other cases it falleth out) is mistaken, which by this Act shall be rectified according to true Chronologie.

¶ Provisum est & concorditer concessum.] It was rightly said concorditer concessum, for that the said innovation was like to have béene a cause of great discord betwéene the King and the better sort of his Subjects.

¶ Quod dicti Prælati, Comites, Barones, et alii hujusmodi libertatibus utantur in forma brevis subscripti.] This

This forme of a Writ is more ſatisfactory, then any other forme is, and this was the auncient uſe.

¶ Cum nuper in Parliamento noſtro apud Weſtm'.] That is, in the laſt Parliament holden after Michaelmas, towards the end of the fourth year of his raigne, & therefore the great grievances aboveſaid muſt be before that Parliament, for the cure was after the diſeaſe, and the remedy after the grievance.

¶ Proviſum ſit et Proclamatum.] But this was never (that I can finde) recorded: Now by this Act it is provided that a Writ ſhall be graunted.

¶ Quibus hucuſque rationabiliter uſi ſunt.] See the Regiſter 162, 163. De libertatibus allocandis, & F.N.B. 229, 230.

¶ Uſque ad adventum noſtrum per Comitatum prædictum, vel uſque proximum adventum Juſticiariorum Itinerantium, &c.] That is, untill the Court of Kings Bench came thither, or the next comming of the Juſtices in Eyre: So all men ſhould quietly enjoy their franchiſes, which they had reaſonably uſed, untill the Court of Kings Bench, or untill the Juſtices in Eyre came into that County: Here it is to be obſerved, that this good King and his Councell in Parliament referred the party grieved to a legall proceeding, which implieth, that a contrary courſe was holden before. But you will demand, What remedy was this for him, that could not produce his Charter, to be left to the Law? I anſwer, that this was a full and perfect remedy according to Juſtice and right; for the better apprehenſion whereof theſe diſtinctions are to be obſerved: Firſt, theſe franchiſes intended by this Act be of two ſorts, The one may be claimed by uſage and preſcription, as Wreck of the Sea, Waifs, Stray, Faires, Markets, and the like, which are gained by uſage, and may become due without matter of Record: And Felons goods, outlawes goods, and the like, which grow not due but by matter of Record, and therefore cannot be claimed by uſage in pais, but by Charter: And yet all theſe at the firſt were derived from the Crowne. 8 E.3.18. 17 E.3. 11. 26 Aſſ.24. 30 Aſſ.31.34 Aſſ. 14. 38 Aſſ.1. 1 H.4.3. 12 H.4. 23. 8 H.6.8. 2 E.4.22. 7 H.6. 33. 9 H.7.12. 10 H.7.14.16 H.7 16. 20 H.7 7. Kelwey 189, 190. 8 H.8.

Secondly, Judicis officium eſt, ut res, ita tempora rerum Quærere; All theſe were graunted either before the time of memory, or after the time of memory: if before the time of memory, then for the former ſort, ſuch as might be claimed by preſcription, the party grieved might preſcribe, and by Law he ought to be relieved. And for ſuch as lay in point of Charter graunted before time of memory, the party grieved had two remedies, either by allowance, or confirmation; by allowance in the Kings Bench, or before the Juſtices in Eyre, and in ſome caſe before the Juſtices of the Court of Common Pleas, and in the Exchequer; or by confirmation of the King under the great Seale: and theſe were ſufficient for him without ſhewing the Charter, and the equity of the Law herein was notable, for that no Charter before time of memory was pleadable by Law.

If theſe Franchiſes either of the one ſort or other were graunted within memory, yet if the ſame had been allowed, as is aforeſaid, the ſame might alſo be claimed by force of the Charter and allowance, without ſhewing the Charter, becauſe it had been adjudged and allowed of Record. And it is to be knowne that all Franchiſes, which any man had either by preſcription or by Charter, ought to be claimed before Juſtices in Eyre, or elſe for non-claime the ſame might bee loſt, as hereafter ſhall bee ſaid. So as the remedy provided by this Act was plenary and perfect to give reliefe to them that right had. 18 H.6. preſcript. 45. 2 E.3.29. 8 H.8. Kelwey 189. Stat. de 18 E.1. De quo warranto novum. Lib.9 fol.29. in caſe de Strat' Marcella.

34 Ass. pl. 14. 40 Ass. 21. 6 E. 3. 54, 55. 7 E. 3. 40, 41 18 E. 3. Consuf. 39 12 H. 4. 12. 14 H. 6. 12. 33 H. 6. 22. 35 H. 6. 54. 9 H. 7 11. 10 H. 6. 13. 16 H. 7. 9. * Regist. 158. 5 E. 3. 50, 51. 6 E. 3. 18 20 H. 6. 34. 34 H. 6. 36. Dier 8 El. 245. a 3 E. 6. c. 4. 13 El. ca. 6. lib. 5. fo. 52, 53. Pages case.

To this for the time may be added, that ancient Charters, whether they be before time of memory, or after, ought to be construed, as the Law was taken when the Charter was made, and according to ancient allowance. * Now what time of memory is, see the first part of the Institutes, sect. 170.

2 But now by the Statutes of 3 E. 6. and 13 Eliz. there is further remedy given: for albeit the Charter or Letters Patents be lost, yet the exemplification or constat of the Roll may be shewed forth, &c. And when any claimed before the Justices in Eyre any Franchises by an ancient Charter, though it had expresse words for the Franchises claimed; or if the words were generall, and a continuall possession pleaded of the Franchises claimed, or if the claim was by old and obscure words, and the party in pleading, expounding them to the Court, and averring continuall possession according to that exposition; the Entry was ever Inquiratur super possessionem & usum, &c. which I have observed in divers Records of those Eyres, agreeable to that old Rule, Optimus interpres rerum usus.

¶ Habeant præmunitionem per 40. dies.] This was by Writ of the common Summons of the Eyre, by the space of 40. dayes before the sitting of the Justices in Eyre.

Now leaving all that is evident, and needeth no exposition, let us come to the next that is worthy of observation.

Bract. ll. 1. fo. 5. & 171. 6 E. 3. 50. 22 E. 3. 3. 24 E. 3. 1 23. 43 E. 3. 22. 11 H. 4. 86. 9 H. 6. 58. * Magna Charta, cap. 29. 25 E. 3. cap. 4. Stat. 5. 28 E. 3. ca. 3. 42 E. 3. ca. 3

¶ Et si forte exceperint quod non tenentur sine brevi originali respondere.] Here is an ancient Maxime in the Law implyed, that regularly no man ought to answer for his Freehold, Franchises, or other thing without originall Writ secundum legem terræ; and that the * Statutes to that end provided are but declarations of the ancient Common Law, as here it is to be seen in case of Franchises in the Kings own case.

Stat. de 18 E. 1. de quo war' nov. 6 E. 35. 8 E. 3. 10, 11. 16 E. 4 6. 3 H. 7. 15. Stanf. Prærog. 74.

¶ Et si ulterius dicunt quod antecessores sui inde obierint seisiti, statim audiantur, & statim veritas inquiratur, &c.] By this it appeareth that a descent of Franchises doth put the King to his Writ of Quo warranto, which Writ is here expressed; and note that the Quo warranto is in nature of the Kings Writ of Right for Franchises and Liberties, wherein judgement finall shall be given either against the King for the point adjudged, or for the King; and the Salvo jure for the King serveth for any other title then that which was adjudged; and therefore William de Penbrugge the Kings Attorney, for prosecuting of a Quo warranto against the Abbot of Fischamp for Franches within the Mannour of Steynings sine præcepto, was committed to the Gaole.

Pasch. 9 E. 1. Coram rege Rot. 17. Sussex.

¶ Et si non venerint, &c. præcipiatur vicecom' quod faciat eos venire, &c. quo die si non venerint, &c. fiat sicut in Itinere Justiciariorum.] If before the Justice in Eyre the party came not, the Franchise should be seised into the Kings hands nomine districtionis, which the party in the same Eyre might replevy; but if he did not replevy them while the Eyre sate in that County, the Franchises were lost and forfeited for ever.

2 E. 3. 29. 6 E. 3. 5. 15 E. 4. 6, 7.

Therefore if the party now upon the Venire facias (which this Act doth give) come not while the Eyre sit in that County, the Franchises be lost for ever.

And so it is in the Kings Bench, if the party come not in upon the Venire facias during that term, and replevy his Franchises, they be lost for ever. And therefore we concurre not with that chief Justice that said, that Non-claim of Liberties before Justices in Eyre lost the Liberties, for that (saith he) was but of the Kings Grace to grant a Replevy of them, and not of Right; for this opinion

Pl. Com. 372. in le Signior Zouches case.

opinion is against the authority of our Books, and the continuall practice before the Justices in Eyre.

See the Statutes of 18 E. 1. De quo warranto novum, and De tallagio non concedendo.

¶ De querimoniis factis & faciendis de balivis regis & aliorum fiat secundum ordinationem prius inde factam. That is, according to the Articles of the Justices in Eyre called Capitula Itineris collected and authorised amongst other things, as here it appeareth, by ordinance of Parliament, and entred into the Parliament Roll, which you may see in old Magna Charta, fol. 150, 151, &c.

¶ Juxta articulos eisdem Justic' nostris tradit'.] The French saith, Solonque les articles que le roy lour ad livere. These Articles were delivered by the King to the Justices in Eyre to be enquired of, heard, and determined by them through all the Counties of England, which afterwards were increased, as by the same may appear.

CAP. I.

COme avant ces heures damages ne fueront agardes en Assises de novel disseisin forsque tantsolement vers les disseisors: Purview est, que si les disseisors aliont les tenements, & nient dont les damages puissent estre levies, que ceux a que maines ceux tenements deviendront, soient charges des dammages, issint que chescun respoign' de son temps. Purview est ensement, que le disseisee recover' damages en briefe Dentre foundue sur disseisin, vers celuy que est trove tenant apres le disseisor. Purview est ensement, que la ou avant ces heures damages ne fueront agardes en plee de Mortdancestor, forsque en case ou tenements fueront recoveres devers chiefes seigniors [ceo fuist per statut' Marlbr. cap. 16.] que desormes damages soient agardes en touts cases, ou home recover per Assise de Mortdancestor, sicome est avantdit en Assise de Novel disseisin. Et in mesme le maner recover' home damages en briefe de Cosinage, Ayel, & Besayel. Et la ou avant ces heures damages ne fueront taxes, forsque a le value des issues de la terre: Purview est, que le demandant puit recover vers le tenant les costages de son briefe purchase, ensemblement ovesque les damages avantdits. Et tout ceo soit tenus en touts cases, ou home recover damages. Et soit desormes chescun tenus a render damages, la ou home recover vers luy de sa intrusion demesne, ou de son fait demesne.

See the first part of the Institutes. 685. 37 H. 6 35.

Before this Statute no damages were recovered in Assise of Novel disseisin, (which then was frequens & festinum remedium) but onely against the Disseisor, and not against the Tenant that came to the lands or tenements after the Disseisin; for no damages could be recovered by the Common Law, but against the wrong doer by him, to whom the wrong was done.

Now the mischief was, that many times the Disseisor was insufficient, and not able to satisfie the damages, and by that means the Disseisée recovered damages in shew against the Disseisor (who was the wrong doer to him) but had not the effect thereof; now this branch doth remedy this mischief, as by the same it appeareth.

¶ Alienont les tenements.] The letter of this Law extendeth onely to them, that came in by title, as by feoffment, or fine after the Disseisin; but by equity it extendeth to them, that came in by wrong, and to them also, whose estate was before the Disseisin; for example, if the Disseisor were disseised, the second Disseisor is within this Statute, for if he that comes in by title shall be within the remedy of this Law, à fortiori, he that comes in by wrong; and so it is of all others, that come in under the Disseisor, though it be not by alienation.

14 H. 7. 28. per Wood.

9 Ass. p. 3. 9 E. 3. 24.

Also if the Lord distraineth for his rent, and a stranger without the privity of the Tenant maketh Rescous, the stranger is onely the Disseisor, and though the Tenant claim not under him, but his estate is before, &c. yet in Assise against the Disseisor and the Tenant, if the Disseisor be found insufficient, the Plaintife by force of this Statute shall recover damages against them both.

And yet in some cases the Tenant that claimeth under the Disseisor shall not for the insufficiencie of the Disseisor be answerable to yeld damages by this Statute; As if the Disseisor of lands holden in Capite alien the same to another, the Alienée dyeth, his heir within age, upon office found the King committeth the custody to A. who taketh the whole profits, the Disseisor is insufficient, the heir within age is no Tenant within this Statute, for that he never did, nor could take any profit: But if the Disseisor alien to an Infant, who taketh the profits, he is a Tenant within this Statute; or if the Infant coming in as heir had been out of Ward, and had taken the profits, he had been a Tenant within this Statute.

22 Ass. 28.

48 E. 3. 17.

If the Disseisor infeoffe the Villein of the Disseisée and a stranger, and the Disseisor is insufficient, in this case either the Disseisée must lose his damages, or infranchise his Villein.

No Lessée for years, or Tenant by Statute Staple, or Merchant, or the like, that have but a chattell, shall be accounted a mean occupier within this Statute, but he that hath the Inheritance or Free-hold at the least; otherwise he is not said to be a Tenant of the land; and so much is implyed in this word alien, which cannot be intended of a Lessée for years, &c. where he, that bringeth the Assise, hath right to the Inheritance or Free-hold: But where Tenant by Statute Merchant, or Staple, &c. brings an Assise, there Lessée for years, or Tenant by Statute Merchant, &c. may be a mean occupier, because the Plaintife in the Assise hath right but to a chattell.

¶ Et nient dont les damages poient estre levies.] Hereupon do follow three conclusions in Law: 1. That if the Disseisor be sufficient to yeeld the whole damages, he is solely to be charged therewith; for then this Statute extendeth not to the Tenant; and, as it appeareth by the Preamble, he was not answerable by the Common Law.

The 2. conclusion is, that for the insufficiencie of the Disseisor the Tenant shall answer the damages by this Act.

The 3. conclusion is, that if the Disseisor be able to yeeld part, and not the whole damages, both shall be charged, and therefore Judgement is ever given aswell against the Disseisor (though he be found insufficient) as against the Tenant generally.

¶ Chescun

℄ Cheſcun reſpondra pur ſon temps.] The ground hereof is, Quod bonæ fidei poſſeſſor in id tantum, quod ad ſe pervenerit, tenetur.

Hereupon ſeven Concluſions are grounded:

1. Albeit the mean occupiers are neither Diſſeiſors nor Tenants, yet unleſſe they be named in the Aſſiſe, no Judgement can be given againſt them, neither can they be charged for the time they take the profit. 16 E. 3. Damages. 82.

2. Though they be named, yet, as hath been ſaid, the Diſſeiſor muſt be found by th'Aſſiſe to be inſufficient, and the mean occupiers muſt be found to take the profits; for if they be omitted, and none but the Diſſeiſor and Tenant named, and the Diſſeiſor is found inſufficient, and no further enquired of, the Tenant ſhall be charged for the whole.

3. If th'Aſſiſe be brought againſt the Diſſeiſor and the Tenant, and it is found by th'Aſſiſe, that the Diſſeiſor is inſufficient, and that the Diſſeiſor infeoffed A. who infeoffed B. who infeoffed the Tenant, and that A. had it one yeer, and B. half a yeer, and the Tenant two yeers; upon this ſpeciall finding, the Tenant ſhall anſwer damages but for his time, for Cheſcun reſpondra pur ſon temps, and the Plaintife hath loſt his damages againſt A. and B. for that they were not named in the Writ. 35 Aſſ. 5.

4. If the Diſſeiſor, A. and B. and the Tenant in the caſe before be all named, and the Diſſeiſor, A. and B. are all found inſufficient, the Tenant ſhall anſwer for the whole; for although the letter of this Law is, where the Diſſeiſors have nothing, &c. yet theſe words, Cheſcun reſpondra, &c. do imply (If they have ſufficient) for otherwiſe they cannot anſwer, that is, they cannot ſatisfie; for in that ſenſe [Anſwer] is here taken. 35 Aſſ. p. 5.

5. It ſhall never be enquired of the Tenants inſufficiencie, for againſt the Diſſeiſor and him muſt th'Aſſiſe of neceſſity be brought.

6. Upon theſe words, Cheſcun reſpondra pur ſon temps, ſeverall Judgements ſhall not be given, but one Judgement is to be given intirely againſt all, and ſo was it ever uſed ſince this Statute; but the Sheriſe upon the execution may uſe ſuch indifferencie, as Juſtice requireth. 18 E. 2. tit. Execution. 14.

And it is ſaid, that if the Aſſiſe be brought againſt the Diſſeiſor and the Tenant, and Judgement given for the Plaintife, and a Writ iſſueth to the Sheriſe, and he returns, that the Diſſeiſor is inſufficient, the Plaintife ſhall have Proces to levie it of the Tenant. 18 E. 2. ubi ſup.

Vide the Statutes of Weſtm. 1. 34 E. 1. 1 H. 4. & 8 H. 6. &c. where double and treble damages are given in Aſſiſe, there alſo every mean Tenant, that came in to be Tenant of the Free-hold under the Diſſeiſor, ſhall for the inſufficiencie of the Diſſeiſor anſwer every one for his time the treble or double damages. Weſt. 1. cap. 24. 34 E. 1. de plead de Ioint. 22 Aſſ. 1. 9 H. 6. 1, 2. 1 H. 4. ca. 8.

7. Laſtly, this giveth no damages where none was recoverable in the Aſſiſe at the Common Law, but giveth damages againſt the Tenant for the inſufficiencie of the Diſſeiſor, as hath been ſaid. 8 H. 6. cap. 3 E. 6. cap. 3.

As if he in the reverſion upon a term for yeers, or Tenant by Statute Staple, &c. be diſſeiſed, he ſhall have an Aſſiſe to recover the ſtate of the land, but ſhall recover no damages for the profits of the lands, becauſe they belonged not to him.

If the Diſſeiſor committed the diſſeiſin with force, and infeoffeth A. who infeoffeth B. who infeoffeth C. an Aſſiſe is brought againſt them all, and treble damages for the inſufficiencie of the Diſſeiſor ſhall be levyed upon all, according to this Act Cheſcun reſpondra pur ſon temps, that is, what damages ſhould be recovered againſt the Diſſeiſor, if he were ſufficient, ſhall be recovered for his inſufficiencie againſt the mean occupiers and the Tenant, and for inſufficiencie of the mean occupiers, againſt the Tenant onely. 12 E. 4. fol. 1. 22 Aſſ. p. 1.

℄ Purview eſt enſement, que le diſſeiſee recovera damages en brieſe Dentre foundue ſur diſſeiſin vers celuy que eſt

eſt trove tenant apres le diſſeiſor.] Regularly in perſonall and mixt Actions damages were to be recovered at the Common Law, but in reall Actions no damages were to be recovered at the Common Law, becauſe the Court could not give the Demandant that which he demanded not, and the Demandant in reall Actions demanded no damages, neither by Writ, nor count: Judex non reddit pluis, quam quod petens ipſe requirit, & it is a Maxime in Law, Que droit ne done pluis que ſoit demaunde; and therefore in reall Actions, where damages are given by this Act, the Demandant ſhall recover damages pendente brevi, becauſe the old form of the count remaineth. The words of the Act are, Vers celuy que eſt trove tenant; he may be Tenant by title, by wrong, or by Act in Law; and of theſe in order.

Regula. 33 H.6.47.7 E.4.5 16 H.7. 5, &c. See li.10.fo.117. Pilfords caſe.

42 E.3.7. 39 E.3 Dam. 66. 20 E.3.ibid.101. 22 E.3.2. 12 E.3 Dam.95. 3 E.3. ibid.120. 19 E.3. ibid. 99. 4 E.3.39,40,36. 23 Eliz. Dier 320

If the Diſſeiſor make a feoffment in fee, and the Diſſeiſée dyeth, the heir of the Diſſeiſée ſhall not recover damages by this Act againſt the Alienée; for this branch of the Act provideth for the Diſſeiſée, and not for his heirs.

* But if a man be diſſeiſed, and the Diſſeiſée dye, his heir ſhall recover damages againſt the Diſſeiſor, but not by this branch, but by a latter branch of this Act, viz. Et ſoit deſormes cheſcun tenus a render damages la ou home recover vers luy de ſa intruſion demeſne, ou de ſon tort demeſne: and by this diſtinction the Books that ſeemed prima facie to differ are well reconciled; but by the intention of this Law, the heir in his Writ of Entry againſt the Diſſeiſor ſhall recover damages but from the death of his Anceſtor.

22 E.3.2.

16 E.3.Dam.82. 8 E.3.23. 23 El. Dier 320.

The Diſſeiſée ſhall recover damages by this Act in a Writ of Entry ſur diſſeiſin in the Poſt: As if the Tenant cometh to the land by Diſſeiſin, Intruſion, or Abatement, or when by alienation it is out of the degrées; for the words be, Vers celuy que eſt trove tenant apres le diſſeiſor, within which words he that comes in the Poſt is included. Note the Writ of Entry in the Poſt is given by the Statute of Marlebridge, cap. ultimo; for the Diſſeiſee was driven to his Writ of Right at the Common Law.

19 E.3.Dam.99. 3 E.3. ibid. 120. 39 E.3. ibid.66. 26 Aſſ. p.4.

And in this ſecond branch the Tenant is onely charged with the whole damages, though there were divers mean Tenants, for Cheſcun reſpondra pur ſon temps is onely in the caſe of an Aſſiſe upon the firſt branch; neither ought the Writ of Entry to be brought againſt any, but againſt him, that is the Tenant of the land: but in ſome caſe another then the Diſſeiſée ſhall recover damages by this branch; as the ſucceſſor of an Abbot, but otherwiſe of Biſhops, or other ſole ſecular bodies politique.

If the Tenant cometh to the land by Act in Law, which he cannot withſtand, and where there is no Act, or default in him; in that caſe he ſhall not be charged: As if the Diſſeiſor alien to A. and his heirs, and A. dyeth without heir, the Law (that there may be a Tenant to a ſtrangers Præcipe) doth caſt the land upon the Lord; in this caſe, if the Lord doth not take any profits of the lands, in a Writ of Entry in the Poſt brought againſt him for the land, the Lord may plead the ſpeciall matter, and how that he never took any profits of the lands, and ſo diſcharge himſelf of the damages; for albeit he be a Tenant of the land, yet is he no Tenant againſt his will within the meaning of this Law, becauſe there is no wrong nor default in him.

But if the Lord by Eſcheat doth enter, and take the profits of the land, then ſhall he be charged as a Tenant within this Act, for albeit he could not withſtand the Eſcheat, which made him Tenant in Law, yet might he have refrained to take the profits, which in right belonged to the Diſſeiſée, but his rent or valuable ſervices ſhall be recouped in damages.

And ſo it is in all reſpects, when the Alienée of the Diſſeiſor dye ſeiſed, and the land deſcend to his heir, he may refrain from the taking of the profits, and plead the like plea, and diſcharge himſelf of the damages.

First part of the Inſtitutes, ſect. 685.

In like manner, if the Diſſeiſor make a Deed of Feoffment, by the which he infeoffeth A. and B. and maketh livery of ſeiſin to A. in the name of both, B. never agreeing to the feoffment, nor taking any profit of the land, A. dyeth; in this caſe

case by the Law the freehold and inheritance is vested in B. by survivor; And in a Writ of Entry in the Per brought by the disseisée against B. he may, as is aforesaid, plead the speciall matter, and that he never agréed, nor took any profits, and discharge himselfe of the damages for the cause aforesaid.

Et sic in casibus consimilibus: for nemo punitur sine injuria, facto, seu defalta; and Actus legis nemini est damnosus. *Regula.*

The Statute saith, Ce' que est trove tenant, and yet if a Writ of Entry be brought against two joynt-tenants, and the one disclaime, and the other take the whole tenancy upon him, and plead in barre, and it is found against him, the Demandant shall recover damages for the whole against him, because he tooke upon him the whole Tenancy.

A disseisor infeoffeth A. which infeoffeth B. the disseisée brings a Writ of Entry in the Per and Cui against B. which voucheth A. who pleads and loseth; judgement for the damages shall be given against the vouchée, for he is found Tenant in Law. 8 H.4.5. 29 E.3. 49. 8 E.3.61. 9 E.3.30.25 E.3. 51. 30 E.3.6.

¶ Purview est ensement que lou avant ceux heures damages ne fuer' agardes en plea de Mordaunceſter forſque en caſe, &c.] This plea of Mordaunc', and the other pleas hereafter in this Act named are pleas reall, and Aunceſtrel, and therefore no damages are recoverable (as hath been ſaid) in them by the Common Law.

But yet it is to be obſerved nice for all, that theſe Actions in this Act named, are Actions Aunceſtrel poſſeſſarie, and not Actions Aunceſtrel droiturel. Lib.6. cap.3. Markals caſe.

¶ De Mordaunc'.] Of this Writ you ſhall reade plentifully in our auncient Authors, and other Books. Glanv.li.13. c.2. 3,4, &c. Bract.l 3, fol.282,283,253, 254. Brit.fo.180.

¶ Recoveres de vers chiefe Seigniors.] This was by the Statute of Marlebridge cap.16. Fleta l 5.c.1,2,&c

In auncient time not onely the references, as here, were ever generall, but alſo the citing of authorities in Law were in like manner; Eſt tenus in noſtre livres.

¶ Damages ſoient agardes en touts caſes, &c.] This purview being generall muſt be taken in a particular ſenſe, that is, in all caſes in the Mordaunc', as in the Aſſiſe, having regard to the time of the damages, viz. from the wrong done, for in the Mordaunc' the Plaintiffe ſhall not recover damages againſt the meane occupiers for the inſufficiency of the abator, as in the Aſſiſe for the inſufficiency of the diſſeiſor; for in conſtruction of generall references in Acts of Parliament, ſuch reference muſt be made onely as may ſtand with reaſon and right: And therefore ſeeing the Writ of Mordaunc' muſt of right be brought againſt the Tenant of the land onely, and not againſt the meane occupiers (as hath been ſaid in the former clauſe concerning the Writ of Entry) the meane occupiers cannot be charged in the Mordaunc', but the Tenant ſhall be charged for the whole damages.

If a man hath iſſue two ſonnes, and the Father dieth ſeiſed of lands in fée ſimple, the eldeſt ſon dieth, the ſecond ſon ſhall have an Aſſiſe of Mordaunceſter, and he ſhall make himſelfe heire to his Father, and he ſhall recover damages, not onely from ſuch time as the right accrued unto him from the death of his brother, but from the death of his Father, becauſe he hath not the right of this land as heire to his brother, but as heire to his Father. More ſhall be ſaid hereof when we come to ſpeake of the Writ of Coſinage &c. 3 E.3.damag.121 Doct. & Stud. lib.2. cap.12.

In a Mordaunc', if the Tenant vouch, and the Vouchee pleads and loſe, in this caſe the Plaintiffe ſhall recover againſt the Tenant the land, and the Tenant in value againſt the Vouchee, and the Plaintiffe ſhall recover his damages againſt 9 E.3.30.

21 E.3.57 28 E.3 damag.61 13 E.3 ibidem 97.

against the Wowchee. And by this Act damages shall be recovered in a Nuper obiit.

¶ En meſme le maner recover' home damages en briefe de Coſinage, Aiel, et Beſaiel.] In a Writ of Coſinage, of the ſeiſin of the Treſaiel, de ſeiſina Tritavi, ſeu Atavi, &c. it is to be ſéne for what time the Demandant ſhall recover damages by force of this Act, and ſo of the Writ of Beſaiel, breve de Proavo, and of the Writ of Aiel de Avo.

For this Writ ſee all the auncient Authors ubi ſup. 6 E.3.34. 7 E.3. 46, &c.

2 E.3.9. 3 E.3. dam.122. 17 E.3. 45. 2 H.4.13. 2 E.3.dam.118.

And it is a rule upon this Statute, that in none of theſe Writs the Demandant ſhall recover damages but from the death of his next immediate auncеſter, whoſe heir he is: As if there be Grandfather, Father, and Son, the Grandfather dieth ſeiſed, an eſtranger abate, the Father dieth, the Son in a Writ of Aiel muſt make his reſort as ſon and heire of the Father, Son and heire of the Grandfather, therefore he ſhall in that caſe recover damages, but from the death of his Father, becauſe he is his next immediate auncеſter, and from him the right deſcended: and ſo in the Writ of Beſaiel, and Coſinage; but in the caſe before, if the Grandfather had ſurvived the Father, the Son ſhall recover damages from the death of his Grandfather, becauſe he is his immediate auncеſter, and the right immediately deſcended to him; Et ſic de cæteris.

45 E.3.10. 35 H.6.23.

If a man hath iſſue two daughters, and dieth ſeiſed of lands, an eſtranger abate, one of the daughters hath iſſue and dieth, the Aunt and the Niece ſhall joyne in an Aſſiſe of Mordaunc', and the Aunt onely ſhall recover damages till the death of the ſiſter, and both of them from her death, which ſtandeth upon the reaſon aforeſaid.

If there be Grandfather, Father, and Daughter, the Grandfather dieth ſeiſed, an eſtranger abate, the Father dieth, his wife being privement enſeint with a ſon, the ſon is borne, he ſhall recover damages in a Writ of Aiel from the death of the Father, for now hee is immediate heire to the Father.

¶ Vers le tenant les coſtages de ſon briefe purchaſe enſemblement oveſque les damages avandits.] Before this Statute at the Comũ Law no mã recovered any coſts of ſuite either in plea real, perſonall, or mixt: by this it may be collected that Juſtice was good cheap of auncient times, for in King Alfreds time there were no Writs of grace, but all Writs remedialls were graunted freely, and Fleta ſaith, Ne clerici ſuperflua petant ſtipendia pro ſcriptura ſua; Conſtitutum eſt, quod tam clerici Juſticiar', quam cancellar' de ſolo denario pro ſcriptura unius brevis ſe teneant contenti. This Statute was the firſt that gave coſts.

Mirror l.5.§ 1. Glanv.li.1.ca.32. Fleta li.2.cap.12. 14 H.6.13.

¶ Coſtages de ſon briefe purchaſe.] Here is expreſſe mention made but of the coſts of his Writ, but it extendeth to all the legall coſts of the ſuit, but not to the coſts and expences of his travell and loſſe of time, and therefore coſtages commeth of the verb conſter, and that againe of the verb conſtare, for theſe coſtages muſt conſtare to the Court to be legall coſts and expences.

9 E.4.6. 13 H.4. Execution 118. 21 H.6.9 Livre de entres Raſt.382. Lib.10.fol.10. Jentlemans caſe.

If a Writ doth abate by the Act of God, In a new by Journies Accounts, he ſhall have coſts for the firſt Writ and the proceedings thereupon; but if the firſt Writ be faulty in default of the Demandant or Plaintiffe, in the ſecond Writ the Demandant or Plaintiffe ſhall have no coſts for ſuch an inſufficient or faulty Writ.

¶ Enſemblement ove les damages.] For coſts are in Law ſo coupled together, as they are accounted parcell of the damages. And therefore if the Plaintiffe in Treſpaſſe declare to the damages of twenty marks, and the Jury give twenty marks for damages, and twenty marks for coſts, yet ſhall the Plaintiffe recover in all but twenty marks, for damages and coſts muſt not

13 H.7.16,17.

exceed

ceed the damages, which the Plaintiffe demaunds by his count, and the entry reciting both the damages and costs, Quæ damna in toto se attingunt ad, &c.

In an Action reall, personall, or mixt, where double or treble, &c. damages are given by any Statute, it hath been controverted in books, whether the Demandant or Plaintiffe shall recover costs, and whether the same shall be also doubled or trebled; which doubt and variety of opinions hath grown in respect the right reason of the diversity of the Law in those cases hath not been observed, which is, that whensoever any Statute doth increase damages to the double or treble value, &c. where damages before were given, there the Demandant or Plaintiffe shall recover his double or treble damages and costs also, and the costs also as parcell of the damages shall be trebled.

But where damages double or treble are in an Action newly given, where no damages were formerly recoverable, there the Demandant or Plaintiffe shall recover those damages onely, and no costs. For example, In an Action upon the Statute of forcible Entry upon the Statute of 8 H. 6. which giveth treble damages, in this case the Plaintiffe shall recover his damages and his costs to the treble, for that he should have recovered single damages at the Common Law, and the Statute increased them to treble. 22 H.6.57. 14 H.6 13. 19 H.6.6,7,32 27 H.6.10.12 E.4 1. F.N.B.248.c.

But upon the Statute of 1 & 2 Phil. & Mar. for chasing of distresses out of the Pundred, &c. whereby 5 l. is given and treble damages, the Plaintiffe shall recover no costs, because this Action and penalty is newly given. Dier 2 Eliz. 177.

And so in the Quare impedit no costs, for that no damages were given at the Common Law. 27 H.6.10.

In an Action of Waste against Tenant for life, or yeares, the Plaintiffe shall recover the place wasted, and treble damages given at this Parliament, Cap. 6. but no costs, because no Action lay against them at the Common Law, but the Action and damages are newly given: But against the Gardein, or Tenant in Dower, &c. there the Plaintiffe shall recover treble damages and costs also, for that an Action lay against them at the Common Law, and for the Waste damages should be recovered; and so are all the books, that seeme prima facie to be at variance, well reconciled. 30 E.3.27. 5 E.3. dam. 114. 2 H.4. 17. 9 H.6.66. nota 14 H.6.13. Mich. 29 H.6. in Communi Banc. Rot. 103. 5 E.4.7 12 E.4.1.

¶ Et tout eeo soit tenus en touts cases ou home recover damages.] Before the making of this Statute no Demandant recovered damages in any reall Action, but onely in a Writ of Dower, unde nihil habet, by the Statute of Merton cap. 1.

This clause doth extend to give costs, where damages are given to any Demandant or Plaintiffe in any Action by any Statute made after this Parliament: Ubi damna dantur, victus victori in expensis condemnari debet. *Regula.*

¶ Soit desormes chescun tenus a render damages, la ou home recover vers luy de son intrusion demesne, ou de son fait demesne.] This is a generall and a beneficiall branch, which we have partly expounded before in our expositions upon the second branch of this Chapter; generally this branch giveth damages to him that right hath and his heires against the Intruder, Abator, Disseisor, or other wrong doer himselfe.

And de son fait demesne, is interpreted de son tort demesne, of his owne wrong. And therefore if a coparcener refuse to make partition in a Writ of partition against her, the Plaintiffe shall not recover damages, for this Writ is a Writ of Right in his nature, and she hath a right per my & per tout to take the profits. 33 E.3. dam.6. 28 E.3. ibid.61. 13 E.3. ibid.57. 4 E.3.39,40. 21 E.3 57.7 H.6. 35,36.3 E.3.fo.48

If a man make a lease for life, the Lessee dieth, an estranger intrudes, the

Lessor or his heire shall have the Writ of Intrusion against the Intruder himselfe, and recover damages by this Act, Et sic de similibus.

And that I may observe it here once for all concerning these ancient Statutes both of those that are past, and those that are to come, how necessary it is not onely to know the Law, but also the words and reason, out of which the Law dependeth his life, viz. whether from the Common Law, or from some Act of Parliament, lest if he taketh it to spring from the Common Law it may lead him into error in like cases.

CAP. II.

SI enfant deins age soit tenus hors de son heritage apres la mort son pier, cosin, ayel, ou besayel, per que il covient que il purchase briefe, & son adversary veigne en court, et en respoignant alleage feoffement, ou auter chose dit, per que Justices agardent lenquest, la ou lenquest fuit delay jesque al age lenfant, cy passa ore lenquest auxy come il fuit de pleine age.

First it is good to cleare this Chapter, which is a very beneficiall Law made for avoyding of delay, that great enemy to Justice.

Justiciam non Justiciam vult juris amicus,
Justiciam non Justiciam vult juris inimicus.

For the very Text of this Law in two maine points hath been falsified or mistaken.

First of ancient time some Manuscripts of this Chapter before printing came to us were apres le mort son cosin, aiel, ou besaiel, omitting these words, son pier; which being shewed to the Judges in 8 E. 3. they were of opinion that a Writ of Mordauncester was not within this Law. And Fleta following that error rehearsing this Chapter saith, Apud Gloc' provisum fuit, si hæres infra ætatem petat seisinam consanguinei, avi sui, vel proavi, & excipitur contra eum, &c. omitting patris sui.

8 E. 3. 23.
8 Ass. 12.

See the books in 3 E. 2. age 133. 42 E. 3. 13. 18 E. 3. 23, &c.

But in the print the former error is amended, and accordeth with our latter Bookes.

And it is not to be thought, that the wisdome of the Parliament would provide for the seisins of them that were so farre remote, as in the Writ of Besaiel and Cosinage, and leave unprovided the seisin that was in the next auncester of all, as of the Father, &c.

And therefore the rule is good, Satius est petere fontes, quam sectari rivulos.

The other error, and that continueth still in the print, was, the words of the Record be, Per que les Justices agarderent le age, and in stead of le age, it is in the print lenquest, which is oppositum in subjecto, for in the Writ of Aiel, Besaiel, and Cosinage, there sould be no enquest awarded before an issue joyned, neither could any enquest in those Writs enquire of circumstances (as in the Assise of Mord, or Assise) but of the issue joyned onely, and this also may well be collected by our Bookes.

But

And theſe words next following, [Ou lenqueſt fuit delay jeſque al age lenfant] are to be referred to the Mordanceſter onely, becauſe in that Writ there appeareth a Jury the firſt day, as in the Aſſiſe of Novel diſſeiſin; but ſo it is not in the Writ of Ayel, Beſaiel, or Coſinage, unleſſe you will take Enqueſt for Triall, and then the ſenſe is, where Triall is delayed untill the age of the Infant, and then it may have reference to all the Writs named in this Chapter. 18 E.4.23.8 E.3. 23. Dier 3. & 4. Ph.& Mar.137. Li.6. fo.3. Markhalls caſe.

Now theſe clouds being removed, we ſhall more clearly peruſe the Text.

Before the making of this Act, albeit the anceſtor dyed ſeiſed of the lands, ſo as a Free-hold in Law was caſt upon the heir; if an ſtranger abated, in a Mordanceſter, Ayel, Beſaiel, or Coſinage, the Tenant might have ſhewed, that the Demandant was within age, and have prayed that the Parol might demurre untill the age of the heir, as he may do when the Action is Auncеſtrell droiturell, that is, when the anceſtor hath but a right, and no poſſeſſion, that is, no Free-hold and Inheritance at his death, ſo as no Free-hold and Inheritance deſcend to the heir, but a bare right; and ſo note a diverſity between an Action Auncеſtrell droiturell, and an Action Auncеſtrell poſſeſſary. But at the Common Law, if in a Mordanceſter, Ayel, Beſaiel, or Coſinage, the Tenant did plead a feoffment, or a releaſe from a collaterall anceſtor with Warranty in barre, &c. there, leſt the Infant for want of intelligence might receive prejudice by tryall thereof during his infancie, the Law in his favour at the firſt gave him the benefit of his age, which when it was uſed for delay to his prejudice, this Act was made for his relief therein.

¶ Apres le mort ſon pier, Couſin, Ayel, ou Beſaiel.] After the death of his father. By this is neceſſarily implyed the Aſſiſe of Mordanceſter; and the caſe of the father is here put for an example, for it extendeth to the caſes of the mother, brother, ſiſter, uncle or aunt, nephew or niece, after the dying ſeiſed, of all which perſons a Writ of Mordanceſter doth lye; for all the ſaid caſes are in equall miſchief with the caſe of the father, and therefore are within the ſame remedy. Bract. fol. 253, 254. Brit. fo. 180. Fleta lib. 2. cap. 1, 2, 3, &c.

But in a Formedon in the deſcender brought by an Infant, if the feoffment of his anceſtor be pleaded in barre with Warranty and Aſſets, or a collaterall Warranty without Aſſets, this caſe is not within this Statute for two cauſes; firſt, for that is an Action Auncеſtrell droiturell, for nothing deſcended but a right, and therefore had not any Free-hold and Inheritance at the time of his death, and therefore out of the letter and meaning of this Act. 2. The Formedon in the deſcender is in nature of his Writ of Right, for the iſſue in tail can have no Writ of an higher nature, and therefore not within this Statute; for ſeeing this Act gave the Infant a tryall during his minority, it gave it him in ſuch Actions as he might not be foreclоſed of his right; but though he were barred in any of the ſaid Actions during his minority, he might at his full age have recourſe to his Writ of an higher nature, ſo as he ſhould not be remedileſſe, or any finall Judgement given againſt him during his infancy. 3 E.2. Age 133. 33 E.3. Age 153. 8 E.3.9. 42 E.3. 13. 34 H.6. 3,4. 18 E.4. 23. Dier 3.& 4. Ph.& Mar. 137. Lib. 2. fol. 3. Markhalls caſe.

By this it appeareth, that the Writs of Formedon in the Reverter, or Remainder, Dum non fuit compos mentis, Dum fuit infra ætatem, Sur cui in vita, In caſu proviſo, Caſu conſimili, and all Actions of like nature are neither within the miſchief, nor within the letter or meaning of this Act, for that none of them are Actions Auncеſtrel poſſeſſary, as hath been ſaid. 12 E.2. Age 145. 8 E.3. 36, 59. 3 E.3. Age 72. 34 H. 6. 3, 4. Markhalls caſe ubi ſupra.

¶ Alledge feoffment ou auter choſe.] A feoffment with Warranty from the ſame anceſtor is a barre to the Aſſiſe, and no barre in the Aſſiſe of Mordanceſter; and therefore this is to be intended of a feoffment of a collaterall anceſtor with Warranty, or a releaſe with Warranty from ſuch an anceſtor, or ſuch other matter, whereunto the Infant during his minority could not anſwer, as hath been ſaid, at the Common Law: and the Rule of Glanvile is good, Generaliter verum eſt, quod de nullo placito tenetur reſpondere is, qui infra ætatem eſt, per quod poſſit exhæredari, nec ipſi minori ſuper recto reſpondebit donec plenam 30 Aſſ. p. 25. 43 Aſſ. p. 20. 9 E.2. Age 145. 19 E.2. Mord. 45. 8 E.3.23.8 Aſſ. 12 6 E.4.11. 43 E.3.5.18 E.4. 23. Glanv. lib. 13. cap. 15.

Bract. lib. 5. nam habuerit ætatem. And that of Bracton, Quod minor ante tempus agere non poteſt maxime in caſu proprietatis, nec etiam convenire, differetur uſque ætatem, ſed non cadit breve.

¶ Si paſſa ore lenqueſt come il fuit de plein age.] So as now ſuch pleading, tryall and proceeding ſhall be in theſe four Actions, as if the Plaintiffe were of full age.

CAP. III.

* Cuſtumer de Norm. cap. 119. fol. 138.

EStablie eſt enſement, que ſi home alien tenement, que il tient per le *ley Dengleterre, ſon fits ne ſoit pas forbarre per le fait ſon pier (de que nul heritage luy diſcend') a demander & recoverer per briefe de Mordanceſter de la ſeiſin ſa mier, tout face le charter ſon pier mention que luy & ſes heyres ſont tenus a la garrant. Et ſi heritage luy diſcend' de part ſon pier, donques ſoit il forcloſe de le value del heritage, que luy eſt diſcendus. Et ſi en tiel cas apres la mort ſon pier, heritage luy ſoit diſcendus per meſme le pier, donques avera le tenant vers luy recovery de la ſeiſin ſa mier, per briefe de judgement que iſſera hors de rolles des Juſtices, devant queux le plee fuit pleade, a reſom' ſon garrantie ſicome avant ad eſtre fait en auters caſes, ou le garrantie vient en court, & dit que riens ne luy eſt diſcend' de luy per que fait il eſt vouche. Et en meſme le maner eit liſſue le fits recover' per briefe de Coſinage, Ayel, & Beſaiel. Enſement & en meſme le maner ne ſoit l'heire la feme apres la mort le pier & la mier barr' daction a demander le heritage ſa mier per briefe Dentre, que ſon pier en temps ſa mier aliena, dont nul fine neſt levie en court le roy.

Before the making of this Statute, when the heir demanded Inheritance on the part of his mother, the Warranty of the Tenant by the courteſie, whole both provide, that it ſhall not be a barre without Aſſets. This Statute

Bract. lib. 4. fol. 321, 322. Fleta lib. 5. ca. 34. See the firſt part of the Inſtitutes. ſect. 197. 724, 726 727. 32 E. 3. Gar. 30.

But at the Common Law, if the heir had been within age, and his entry congeable, though he had not entred in the life of the anceſtor, the Warranty bound him not, but that he might enter and avoid the Warranty; but if he were driven to his Action, the Warranty had bound him, and ſo it was in caſe of a Feme covert.

Temps E. 1. 87. 31 E. 1. ibid. 95. 7 E. 3. 53. Bract. lib. 4. fol. 228.

¶ Alien tenements.] This extendeth to alienations made after the Statute, and not before, for it is a Rule and Law of Parliament, that Regularly Nova conſtitutio futuris formam imponere debet, non præteritis.

This

This word (alien) doth properly signifie a transmutation of possession, but not a release or confirmation of the Tenant by the courtesie with Warranty, where no transmutation of possession is, is within the same mischief, and therefore is within the remedy of this Statute; for otherwise the Statute should serve to little purpose. See before cap. 1. W.2. cap.41. Temps E.1. gar. 87. 27 E.3.80. 14 E.4. gar.5. 17 E.3.83. Dier 4 Mar.148.

¶ Tient per la ley Dangleterre.] If the heir demand the heritage of the part of his father, and the Warranty on the part of his mother be pleaded, this case is not holpen by this Statute, as in the first part of the Institutes it appeareth; for this Act by this branch provideth onely for the case of the Tenant by the courtesie, and therefore Tenant for life, or Tenant in Dower is not within the case or clause of this Act: but as concerning the case of the Tenant by the courtesie, which is the case of this Act, this Statute is taken by equity, as heretofore hath been partly touched, and hereafter shall appear. First part of the Institutes, sect. 724,725. See the Statute of 11 H.7.c.20. Temps E.1.gar. 86. 12 Ass.p.9.

¶ Son fits ne soit pas forbarre.] This doth not onely extend to the son, but to the daughter, and to any other heire immediate, as here the example is put, or mediate, as cosin and heire, be they never so remote. 11 E.3.gar.83.

¶ De que nul heritage luy descend.] That is to say, from whom no lands or tenements in fee simple of the yearly value of the inheritance of the part of the mother doth descend to the heire, for the warranty is no barre without such assets.

And by the equity of this Statute the warranty of Tenant in taile is no barre unlesse there be assets in fee simple descended. 11 E.2.garranty. Statham. 21 E.3. 28. 38 E.3.23. Pl.Com. 10.

Albeit the word heritage be generall, yet hath it in construction a speciall signification, for the assets must respect the essentiall quality of the inheritance, whereof the heire is to be barred, and that is, that it be a locall, possessary, and certaine inheritance, as lands, rents, commons, and the like: and therefore an Annuity, that is a personall inheritance, and lieth in Action, nor any right of Action of inheritance is no heritage within this Statute, untill it be reduced into possession, Et sic de similibus. Lib.8. fol.53. Syms case. Doct. & St.fo.76 Kelwey 124,125.

¶ Per briefe de Mordaunceſter.] And after the Writs of Aiel, Besaiel, and Cosinage are also named. 11 E.2. gar.83. 8 E.2.ibid.81.

The intendment of the makers of this Act is, that the Warranty of him that held by the courtesie should not be a barre to the heir of his wife, unlesse he left assets; and the makers of the Statute could not put all the cases that might happen, but did put the strongest cases, and by construction the lesser shall be included, and therefore in all Actions, as the Writ of Right, the Formedon in the descender, the Writ of Entry in the Per, the Writ of Entry ad communem legem, and the like are within this Statute. 46 E.3. age 76. 4 E.3. gar.63. F.N.B.208. b.

¶ Heritage luy descend de meſme le pier.] If a Seignior of homage and fealty descend to the heire, this is no assets, but if a tenancy doth escheat to the heire, although it were never in the Father, this shall be accounted assets, because the seignior that came from the Father was the means to bring it to the heire, Et sic de similibus. 16 E.3. age f.41. Br.5. 6 H.4.1. Kelwey 104.b. Pl.Com. Chapmans case.

¶ Donques avera le tenant vers luy recovery de la seisin ſa mere.] By this Act the Warranty of a Tenant by the courtesie being pleaded with assets descended is a bar to the heire of the mother; but if assets be not then descended, but after it descend from the same Father, then the Tenant shall have recovery of the inheritance of the mother by a Writ of judgement, as this Act appointeth: And by the equity of this Act it is taken, that in a Formedon in the Descender, if the Warranty of Tenant in taile be pleaded, where no assets is then descended, but after assets doth descend to the issue, there the Tenant Hil. 9 E.2.62. b. in Entr. sur dis. 43 E.3.16. 46 E.3.29. Pl.Com.fol.110.

nant ſhall have a Scire facias to have the aſſets, and not the land in taile, for if he ſhould have the land in taile, it was conſidered, that if the iſſue alienes the aſſets, his iſſue might recover the land tailed in a Formedon: wherein is to be obſerved the great wiſdome of the Sages of the Law in auncient times, ever ſo to reſolve, and give judgement, Ut ſit finis litium. But in none of the bookes that treat of this matter is expreſſed how the Tenant ſhall demeane himſelfe in pleading to take advantage upon this Statute of the aſſets, which after deſcended.

And therefore if in a Mordanc', &c. the Tenant plead the warranty of the Tenant by the curteſie with aſſets (as in ſome of the books it is ſaid) or in a Formedon the Tenant plead a lineall warranty with aſſets, and the Demandant take iſſue upon the aſſets, and it is found that nothing deſcended, and thereupon the Demandant recover, and after the recovery aſſets deſcend, the Tenant ſhall never have a Scire facias to take benefit of this Act, for he that will take benefit of this Act muſt not begin with an untruth, but muſt plead the warranty, and confeſſe the title of the Demandant, and pray the advantage of this Act, when aſſets ſhall deſcend, and upon this Record when aſſets deſcend, he ſhall have a Scire facias; for our Act ſaith, Per briefe de judgement que iſſera hors de rolles des Juſtices; And this expoſition agreeth with the words of this Act, A reſummon ſon garrantie ſicome avant ad eſtre fait en auters caſes ou le garrantee vient en court, & dit, que riens ne luy eſt deſcend' de luy, per quel fait il eſt vouch: For there without queſtion after aſſets ſhall deſcend, upon the Record a Scire facias ſhall be awarded.

Pl. Com. 110.

Lib. 8. fol. 53. Syms Caſe.

¶ Enſement et en meſme le maner ne ſoit le heire la fem, &c.] This is the laſt branch of this Act.

¶ Barre daction a demander le heritage ſa mere, &c.] By the firſt branch the Act provideth remedy againſt the warranty made by Tenant by the curteſie after the deceaſe of his wife; this branch provideth remedy againſt the alienation of the husband with warranty during the life of his wife: upon theſe words ſome have conceived, that this warranty ſhall not binde, albeit aſſets doth deſcend from the Father, becauſe aſſets is not mentioned in this branch, as it is in the former. But theſe words, enſement & en meſme le maner, doe ſo couple this branch by reference to the former, as if in this caſe aſſets doth deſcend, by the warranty and aſſets the heire is barred.

8 E. 2. gar. 81. Hil. 9 E. 2. ubi ſup. 17 E. 3. 51. 27 E. 3. 89.

If the husband make a feoffement in fee of the wives land with warranty, and hath iſſue by her, and they both die, in a Writ of Entry Sur diſſeiſin brought againſt the feoffee he voucheth the heir of the husband, who is alſo the heire of the wife, he may upon this Statute devolve the ten' of the warranty, for that the husband left no aſſets, and that he hath an Action as heire to his mother to recover the land, and if he ſhould enter into the warranty, he ſhould forclose himſelfe of his Action, and therefore by the rule of the Court he entred not into the warranty.

Hil. 9 E. 2. ubi ſup. Thomas de Mertons caſe.

¶ Briefe Dentre.] That is a Sur cui in vita, but if the lands were entailed to the wife, and after the Statute of Donis condic' de W. 2. the heire brought a Formedon, the collaterall warranty of the husband ſhall barre in that Action.

See the firſt part of the Inſtitutes, Cap. gar. ſæpe.

¶ Dont nul fine eſt levie en court le Roy.] This is to be underſtood, whereof no fine is lawfully levied, that is by the husband and wife, for then her heire claiming a fee-ſimple is barred; But a fine levied by the husband alone was a wrong, and at that time a diſcontinuance, and therefore ſuch a fine was not within the intention of this Act.

27 E. 3. 89. Pl. Com. 57. Firſt part of the Inſtitutes, ſect. 729, 730, 731.

CAP.

CAP. IV.

ENſement ſi home leſſa ſa terre a ferme, ou a trovet eſtovers en viver, ou en veſture, que amount a la quart part de la veray value de la terre, & celuy que la terre tient iſsint charge la leſſeſt giſer freſh, iſsint que home ne puit trover diſtreſſe per deux ans, ou per trois, a faire le ferme render, ou a faire ceo que eſt contenue en leſcript ou leas: Eſtablie eſt, que apres les deux ans paſſes eit le leſſor action a demander la terre en demeign' per briefe que il avera en le Chancery. Et ſi celuy vers que la terre eſt demande, veigne avant judgement, & render les arrerages et les damages, et trova ſuerty tiel come la court verra que ſoit ſuffiſant a render en apres [ſolonque] ceo que eſt contenue en leſcript du leas, ci reteign' la terre. Et ſi l demurr' tanque ele ſoit recover per judgement, ſoit il forcloſe a remnant. *W.2. cap.21. & cap.41.*

What the Common Law, or ſome cuſtoms was before the making of this Statute, you may reade in Bracton who wrote a little before this Statute; Item poterit intervenire juſtum judicium ab initio, ut in diſtrictionibus faciendis, & vertitur ex poſt facto in diſſeiſinam, ſicut in burgagiis, terris, tenementis, & tenuris exterioribus. Ut ſi Dominus per conſiderationem curiæ ſuæ pro defectu ſervitii ceperit tenementum tenentis ſui in manum ſuam, ſicut ſimplex namiū, donec de redditu fuerit ſatisfactum; ſed cum talis, cujus ten' fuerit, obtulerit de ſatiſfaciend' de redditu & arreragiis, reſtitui ei debet poſſeſſio, & ſi Dominus hoc recuſaverit, tunc erit manifeſta diſſeiſina. And afterwards in another place he ſaith; Item ſi propter paupertatem poſſeſſionem dereliquerit, & ita quod Dominus capitalis pro defectu ſervitii tenementum ſuum in manum ſuam ceperit & retinuerit, vel alio excolend' dederit, &c. ſatis moritur tenens ſeiſitus.

Bract. lib. 4. fol. 205. b.

Fol. 262.

And I reade amongſt auncient Records, that a ceſſavit was brought in the raigne of King John, but this Act is the firſt Statute that was made by authority of Parliament concerning the ceſſavit; After this came the Statutes of Weſtm. 2. and 10 E. 2. De Gamletto; And note that the Writ framed upon this Act doth recite this Statute.

Int' Record 17. Regis Johannis. W. 2 c. 21. & 41. 10 E. 2. Stat. de gamletto. Ver. Mag. Cha. fo. 132. Paſch. 17 E. 3. coram Rege. Rot. 139. London. First part of the Inſtitutes, ſect. 45 E. 3. 27. 33. 6 53. 13 E. 2. Ceſſavit 51. F. N. B. 209. g. See Mich. 9 E. 1. in Banco Rot. 30. Canc. Hil. 13 E. 1 in Banco Rot. 7. Paſch. 16 E. 1. Rot. 5.

¶ Leſſa ſa terre a ferme.] Leſſa, demiſe, nota' dimittere is a good word of a feoffement, and therefore if a man let or demiſe lands to a man and his heires, and make livery of ſeiſin, this is a good feoffement, and ſo is this word here to be intended, for a ceſſavit lieth not againſt Tenant in taile, or Tenant for life, unleſſe the remainder be limited over to another in fee, ſo as he is Tenant to the Lord, as Tenant by the curteſie is.

¶ Eſtovers en viver ou veſture.] That is to ſay, Eſtovers in victu et veſtitu, Of this ſufficient hath been ſaid in the expoſition upon the ſeventh Chapter of Magna Charta.

¶ A

¶ A la quart part de la verie value.] Vide for ſée ferme the expoſition upon the twenty ſeventh Chapter of Magna Charta. And ſuch rent or other profit, as was anſwered to the owner of the land, was accounted the verie value.

¶ Celui que la terre tient.] So as there muſt be a tenure betweene the feoffor and the feoffée in fée-ſimple, for a ceſſavit lieth not upon a reſervation without ſuch a tenure, and ſo was it adjudged in 11 E.2.

21 E.2. ceſſav. 50. 21 E.3. 23. 45 E.3 15, 27. 21 H.6. 50 33 H.6. 53. F.N.B. 209. 11 H.4. 3. 27 H.8. 28. Kel. 104, 105.

At the making of this Act all eſtates of inheritance were in fée ſimple, and therefore the donor upon an eſtate in taile (created by a Statute made after this Act) ſhall not have a ceſſavit againſt the donée in taile, nor againſt Tenant for life; neither for the ceſſer of the meſne a ceſſavit lieth, for he holdeth not the land as this Act ſpeaketh, which ought to be overt, and ſufficient to the diſtreſſe of the Lord, which is a good plea in a ceſſavit.

Paſc. 16 E.1. in Ban. Rot. 5. *Non potuit excolere propter duras diſtrictiones.* Regiſt. 237. F.N.B. 210. a. 6 E.3. 45. 8 E.3. 46, 47. 10 E.3. 6. 21 E.3. 20, 21. 30 E.3. 22. 43 E.3 15. 8 H.6. 17. 33 H.6. 8.

And in this Writ the tenure between the Demandant and the Tenant is traverſable, becauſe this Writ is grounded upon the tenure by force of this Act; but in this Writ the ſeiſin is not traverſable, becauſe it is not grounded upon the ſeiſin, neither is the quantity of the ſervices traverſable, but to be taken by proteſtation; for whether he hold by more, or leſſe, the ceſſavit lieth; but in an Avowry the ſeiſin is traverſable, for that is grounded as well upon the ſeiſin, as the tenure: Alſo in the ceſſavit the land is to be recovered, and not the ſervices, and it is in his nature a Writ of Right, and the Jury ſhall meaſure in their conſciences the quantity of the ſervice.

Neither is hors de ſon fee a good plea in a ceſſavit, becauſe (as hath béene ſaid) the tenure is traverſable.

¶ La leſſeſt giſer freſh.] The Tenant of the land is called Tenant per availe, becauſe it is preſumed, that he hath availe and profit by the land, and therefore the Law never expected, that he would let the land lie freſh, that in his proper ſenſe is as much, as unmanured, or unoccupied.

It is ſaid in Law to lie freſh, not onely when there is no cattle, or other thing diſtrainable upon the land of the value of the rent, or other profit behinde; but alſo, though there be a ſufficient diſtreſſe to be taken, yet by conſtruction upon this Act, if the land be ſo immured or incloſed about, as the Lord cannot come to take and carry away the diſtreſſe to the pound, it is ſaid to lie freſh, that is, without profit as to the Lord, for though it be ſufficient, yet it is not ſufficient to his diſtreſſe, ſo as the land muſt lie open and ſufficient to the diſtreſſe of the Lord; or elſe it is ſaid in Law to lie freſh within this Statute, which conſtruction is worthy of obſervation.

Temps E.1. ceſſavit 58. 10 E.4. 1. 2 30 E.3. 22. 11 E.3 ceſſavit 21. 35 H.6 ibid. 7. F.N.B. 208, 209.

¶ Per deux ans.] Per biennium; So as by theſe words is implied, that it lieth onely for annuall ſervices, and not for homage, fealty, or the like. And upon theſe words, Rien arere, &c. is a good plea in this Action.

12 E.3. ceſſavit. 8 E.3. 46, 47. 17 E.3. 57. 27 E.3. 17. 14 H.4. 44. 33 H.6. 44. 6 H.7. 7. 8 H.7. 2. 30 E.3. 22. 14 E.3 ceſſavit 20. 19 R.2. ſurety 27. 35 H.6 ceſſavit 7. F.N.B. 209.

This Act ſaith, if the Tenant let the land lie freſh, yet if a ſtranger wrongfully occupy the ground by putting in his cattle and féeding of it, or otherwiſe by manurance of the ground, this is ſufficient to the diſtreſſe of the Lord within this Act, for the Lord may diſtrein them, which is the end of this Act; otherwiſe it is in this caſe, if cattle eſcape, and the owner freſhly follow to take them.

¶ Ou a faire choſe que eſt contenue en leſcript.] By theſe words the ceſſavit did lie for non-payment of a fée ferme contained in the déed.

¶ Eyt le leſſor action a demaunder terre en demeign'.] Five doubts were conceived upon this Act:

1. Whe-

1. Whether the heires of the Lord might have a ceſſavit, because the words be Eyt le leſſor. Regiſt. 237.

2. Upon the same words whether the graunte of the Seignory with attornement, or Tenant by the curteſie, Tenant in dower, &c. might have a Ceſſavit.

3. Whether against the alienee of the Tenant or his diſſeſſor, &c. a Ceſſavit did lie upon this Act, because the letter of this Law extended but to the feoffee.

4. Whether the Ceſſavit should be against the heires of the feoffee. 45 E. 3. 15.

5. Whether it extended to Rents and Services created without Deed, for as much as this Act speaketh of such onely, as were reserved by Deed.

These doubts were conceived upon that notable rule delivered in our Bookes in the case of Ceſſavit, Ou recoverie eſt done en eſpeciall caſe per eſtatut, il coveit que home aver touts voies accord al ſtatut.

As to the first Britton saith, Fee fermes ſont terres tenus en fee a reſponder pur eux per an le verie value, ou pluis, ou meyns, de quel rent ſi les feoffees ceſſent a reſpondre per deux ans enſemble per tant accreſt action as feoffors et lour heires a demaunder les tenements en demeane. But notwithstanding this point and the residue of the doubts are briefly and excellently remedied by the Statute of W. 2. made seven yeares after this Act, as we shall shew when we shall come to it. W. 2. cap. 21.

¶ Demaunder ſa terre in demeign'.] Upon these words it is concluded that a ceſſavit doth not lie of a meſnalty consisting of rents and services, but this Writ lieth against the Tenant per availe. 13 E. 3. gard 38. 21 E. 3. 44. 27 H. 8

It is holden that a ceſſavit doth lie of an advowſon, and yet it is not in demeine, and overt, and sufficient to his diſtreſſe cannot be pleaded. 28. 1 H. 4. 3. 12 R. 2. ceſſav. 46

¶ Per briefe que il avera en la Chauncery.] Hereupon also great queſtion grew for the forme of the Writ, but in the end a Writ was conceived upon this Act, as it appeareth in the Regiſter, and F.N.B. 5 H. 7. 37. 43 E. 3. 15. 31 E. 3. ceſſavit 24. 33 H. 6. 34 Regiſt. 237. F.N.B. 210.

¶ Avant judgement, & tender les arrerages & damages, &c.] After verdict and before judgement, the Tenant may tender the arrerages, &c. He ought to tender the arrerages in proper person, though he be a Lord of Parliament, for the words of this Act be, Celuy vers que le terre eſt demande vient, &c. and he ought to finde ſurety. 45 E. 3. 27. 29. 21 E. 3. 23. 33 H. 6. 19. 7 E. 3. 58. 13 E. 3. ceſſavit 29. 15 H. 7. 10.

In a ceſſavit after the enquest joyned, the Tenant made default, and at the retourne of the petit cape, the Tenant appeared, and offered to pay the arrerages with damages, and to finde such surety as the Court would award, which was received, because he came before judgement, and found surety, that is, three pledges, which bound their lands to the diſtreſſe of the Lord in the same forme as the Tenant his land is bound. Tr. 9 E. 2. fol. 65. in libro meo in. ceſſavit.

He ought to tender all the arrerages, for so are the indefinite words to be taken as well before as after the two yeares, and damages to be allowed of by the Court, but if the Demandant doe not alledge how much is behinde over and above the two yeares, &c. and that he found by the Jury that findes the iſſue, the Tenant need not tender more then for the two yeares, because it appeare not of Record, or by neceſſary conſequence as such arrerages, as incurre hanging the Writ; and for any arrerages incurred before this tender, the Lord shall not avow, because the Tenant ought to have paid all. 5 E. 3. 30. 7 E. 3. 58. 21 E. 3. 23. 25 E. 3. 42. 6 E. 2. ceſſavit 49. 17 E. 3. 57.

The Court may aſſeſſe the damages by their discretion. 13 E. 3. ceſſav. 20.

Where this Act saith, that he shall tender the arrerages, it is to be understood of such things as may be yelded, as rent, &c. but of suit, divine service, and such like which cannot be yelded, damages shall be paid for the same. 13 E. 3. ubi ſupra. 14 H. 4. 3. 4. 40 E. 3. 40. 31 E. 3 ceſſav. 23. F.N.B 209. 2. Mic. 31 E. 3

If two Joyntenants be impleaded in a ceſſavit, and the one make default, &c. the other cannot tender the arrerages but for the moity, for the other joyntenant fo. 50. & 51. in lib. meo in ceſſavit

hath power to alien and loſe his moity, the words of the Statute be, Celuy vers que la terre eſt demaund, and the land is demaunded againſt both.

But if A. and B. be ſeiſed to them and the heires of A. and B. make default, A. may tender for the whole in reſpect of his remainder.

6 E.2.tit ceſſavit 49. In a ceſſavit, the Jury in Anno 6 E.2. found the ceſſer, and that the rent was behinde by 30. yeares, part of which time was before the Statute wherevpon the Writ was grounded, and yet the Demandant ſhall recover all the arrerages, as is well warranted by the Statute.

If the Demandant in the ceſſavit be out-lawed in a perſonall Action, this outlawry may be pleaded in barre of the Action, becauſe the arrerages are due to the King.

¶ Et trovera ſuertie come le Court verra ſufficient, &c.] This ſurety is referred to the diſcretion of the Court, for herein upon theſe words there is a rule conceived, Suretie eſt al Court d'ordeiner, & al Tenant daſſent & affirme. And therefore being referred to diſcretion, in divers caſes ſeverall ſureties have bin ordained upon due conſideration had in reſpect of the ſtate of every particular caſe.

25 E.3.42.

50 E.3.23. 19 E.4.5.17 E.3. 57.21 E.3.23. 29 E.3.33. Vet.N.B.138. Sometime in reſpect of the quality of the Demandant, as if he be a body politique or corporate, Eccleſiaſticall or Temporall for feare of a Mortmain, therefore their collaterall ſurety is to be found, &c. Vide 15 Martini, Anno 4 E.3. Coram Juſtic' Itin' apud Duſtable, ſurety was graunted to the Prior of D. Demandant in a ceſſavit, that he ſhould diſtrain for the rent in other lands.

a 10 E.4.5. Temps E.1.ceſſavit 55,56. 19 R.2.ſurety 27 15 E.2.ibid.20. 19 E.2.ibid.21. 4 E.3.42. 13 E.3. ceſſavit 29.21 E.3 23. Doct. & Stud. lib.2. a Sometime in reſpect of the quality of the Tenant in reſpect he is a body politique or corporate, or a feme covert, or an infant.

b 41 E.3.29. 19 E.4.5. b Sometime in reſpect of the Tenancy it ſelfe, as if it be a houſe, &c. leſt the Tenant ſhould waſte it, and ſo make it not ſufficient to pay the rent.

Though the Statute referreth the surety to the diſcretion of the Court, yet will it be good to follow precedents of former times, for diſcretio eſt diſcernere per legem quod ſit juſtum.

c 50 E.3.23. 19 E.4.5 d 41 E.3.29. 19 R.2 Scire fac' 134. c Albeit it is for the benefit of the Demandant to have surety, yet he cannot waive it, becauſe it is made parcell of the judgement.

d But what if the surety be a judgement of the Court, that if he ceſſe againe by one or two years, que la tre incurgera la remnant, that is, that he ſhall have judgement to hold the land, &c. for ever, wherein the Tenant ſhall never tender any more, and his remedy, that after ſuch ceſſer again, he ſhall have a Scire facias upon the Record, and if the Tenant be warned and make default, &c. the Demandant ſhall have judgement againſt him for ever.

If the Tenant after a judgement given againſt him in a ceſſavit, that if he ceaſe againe, Que la terre incurgera le remnant, in that caſe if the Tenant alien, the alienee ſhall not be bound by the ſaid surety or judgement, becauſe it bound him that was Tenant in the ceſſavit onely, and upon a new ceſſer a new ceſſavit muſt be brought. But if the surety or judgement be, that if he or his aſſignes doe ceſſe again, &c. then the aſſignes is bound thereby, and upon a Scire facias the matter ſhall come in queſtion.

¶ Soit forcloſe a remnant.] That is, ſhall be forcloſed or barred for ever, for this Writ is a Writ of Right in his nature; by this Act if the Lord recover by default, judgement ſhall by theſe words, [Soit forcloſe del remnant] ſhall be given, and ſhall be a barre in a Writ of Right; otherwiſe it is of a Judgement by verdict.

6 E.3.45. 4 E.3.droit 41.

See more of the Writ of ceſſavit in our expoſition upon the Statute of W.2. cap. 21.

CAP.

CAP. V.

ENſement eſt purview, que home eit deſormes briefe de Waſt en le Chancery vers home que tient per le ley Dengleterre, ou en auter maner a terme de vie, ou des ans, ou feme que tient en dower. Et celuy que ſerra attaint de Waſte, perde le choſe que il aver' Waſte: Et ouſter ceo face gree del treble de ceo que le Waſte ſerra taxe. Et en Waſte fait en gard', ſoit fait ſolonque ceo que contenue eſt en le graund Charter cap.4. Et per la ou il eſt contenue en la grand Charter, que celuy que avera fait Waſte en garde, perdr' le garde: Accorde eſt, que il rendra al heire les damages del Waſte, ſi iſsint ſoit que la garde perdue ne ſuffiſt mie a le value des damages, avant lage del heire de meſme le garde. *W.1. cap.21. Articuli ſuper chartas cap.18.*

At the Common Law Waſte was punishable in three perſons, viz. Tenant in Dower, Tenant by the Curteſie, and the Guardien, but not againſt Tenant for life, or Tenant for yeares; and the reaſon of the diverſity was, for that the Law created their eſtates and intereſts, and therefore the Law gave againſt them remedy; but Tenant for life, and for yeares came in by demiſe and leaſe of the owner of the land, &c. and therefore he might in his demiſe provide againſt the doing of Waſte by his Leſſee, and if he did not, it was his negligence and default. 12 H.4.3. 21 H.6. 28.Doct.& Stud. lib.2.cap.1. Regiſt.72. Firſt part of the Inſtitutes, ſect.67.

There is alſo an Action of Waſte by cuſtome, as in London, &c.

Now the remedy at the Common Law was in two degrees: Firſt, if the that had the inheritance did feare (for example) that Tenant in Dower would doe Waſte, he that had the inheritance might before any Waſte done have a prohibition directed to the Sheriffe, that he ſhall not permit her to doe Waſte in this forme. 7 H.6.35.& H.6. 34. 32 H.6. Bract.l.4.fo.315. Doct.& Stud.l.2. c.1. F.N.B.55.c. W.2.cap.14.

Rex Vicecom' Salutem. Præcipimus tibi quod non permittas quod talis mulier faciat vaſtum, vel venditionem, vel exilium de terris, hominibus, redditibus, domibus, boſcis, vel gardinis, quæ tenet in dotem de hæreditate talis in tali villa, ad exhæredationem ipſius talis ne amplius, &c.

And Bractons advice hereupon is as followeth:

Et hoc faciat tempeſtive, ne per negligentiam damnum incurrat, quia melius eſt in tempore occurrere, quam poſt cauſam vulneratam remedium quærere. *Regula.*

And the Sheriffe having the Warrant of this Writ may, as in caſe of a Writ of Eſtrepement, take poſſe Comitatus, and withſtand the doing of any Waſte. Lib.5.fol.115. Foljambes caſe.

And this was the remedy that the Law appointed before the Waſte done by the Tenant in Dower, Tenant by the curteſie, or the gardien, to prevent the ſame, and this was an excellent Law, for Præſtat cautela quam medela, and preventing Juſtice excelleth punishing Juſtice. And this remedy may be uſed at this day. Now after Waſte done there lay an Action of Waſte at the Common Law in this forme. Rex Vicecom'. Salutem. Si talis fecerit te ſecurum de clamore ſuo proſequendo, tunc pone per vad', & ſalvos plegios *Regula.* Vide W.2.c.14.

talem mulierem, &c. quod sit coram Justiciariis nostris, &c. ostensura quare fecit vastum, venditionem, et exilium de terris, hominibus, redditibus, boscis, vel gardinis, quæ tenet in dotem de hæreditate talis, in tali villa, contra prohibitionem nostram, et habeas ibi nomina plegiorum, et hoc breve, teste, &c.

Where in this Writ it is said Contra prohibitionem nostram, the Plaintiffe should have well maintained his Writ, albeit no Writ of prohibition of Waste had been sued out before, for that the Common Law was a prohibition of it selfe, and so saith Bracton speaking of the Waste done by a Guardien, Dominus vastum emendabit sic, quod damna restituet, sive vastum fecerit ante prohibitionem, sive post.

4 H.3. Waste 129. ibid. 140. 8 R.2. tit. Attachment sur prohib. 15. Bract. l. 4. fo. 285. Vide W. 2. ca. 14.

By this Writ of Waste the Plaintiffe, if the Waste were done in woods,

Bract. fo. 315, 316

Et mulier inde per inquisitionem convincatur, talis erit ei pœna infligenda, et in tantum erit coarctanda, quod de cætero nihil capiat in bosco illo, nisi (per visum * forestariorum hæredis) rationabile estoverium suum, et talis servitus imponetur ei ad pœnam, et de forestario apponendo fiat tale breve (which there you may reade at large) Si custos de vasto convincatur, amittit custodiam, et restituet damna, et det Domino Regi misericordiam, quod non est in muliere, si de dote sua fecerit vastum, quia dotem suam non amittit, sed custos vel curator ei adjungatur, qui impediat ne faciat, et damna debet refundere.

* *Forestarius* in ancient Authors, is taken for *custos boscorũ*, a Woodward

So as the Tenant in Dower (and likewise the Tenant by the curtesie) had two punishments, viz. to yeild damages to the value of the Waste, and a Keeper or Curate to be appointed to them, who should withstand any Waste to be afterwards done by them.

And the Guardien had three punishments. 1. He should lose the custody. 2. He should yeeld damages to the value of the Waste: and 3. He should be fined to the King, for that contrary to the trust in him reposed by reason of his Guardienship he did Waste to the disherison of the heire, and this did hold as well in case of a Guardien in droit, as a Guardien in fait.

10 H.3. Waste 138. 20 H.3. ibid. 139. 34 E.3. Waste 146.

And the reason wherefore at the Common Law the Action of Waste did lie against the Tenant in Dower, or Tenant by the Curtesie, albeit they had assigned over their estates, was, because no Action of Waste by the Common Law lay against the assignée for Waste done after the assignment, therefore the Action of necessity did for such Waste (after the assignement) lie against the Tenant by the Curtesie, or Tenant in Dower, which Law continueth to this day.

Temps E. 1. Waste 132. 30 E.3. 16. 38 E.3. 23. 40 E.3. 33. 11 H.4. 18. Doct. & Stud. l. 2. ca. 1. F.N.B. 56.

But if the heire granted away the reversion and the Tenant attorned, the Action failed at the Common Law, as hereafter shall be shewed more at large. Hereby it appeareth how necessary it is for the understanding of this Act, to know what the Common Law was, and the reason thereof, before the making of our Statutes, whereof you shall reade more largely in Bracton both concerning the points abovesaid, and other matters concerning Waste, worthy of your reading and observation.

Bract. ubi supra. First part of the Instit. sect. 67. F.N.B. 56. b.

But at the Common Law if the Guardien in droit had assigned over his estate and interest, the heir should have had an Action of Waste for Waste done after the assignement against the assignée, for he was Guardien in fait, and so within the rule of the Common Law.

¶ Home eyt desormes, &c.] Here the persons are not named who shall have the Action of Waste, but that is left to the Common Law to judge thereupon, of which matter you shall reade plentifully in our books, and it were too long to be here inserted, neither doth it tend to the exposition of this Act being left to the Common Law.

¶ Briefe de Waste.] Breve de vasto. Of this word vastum you may reade in the first part of the Institutes, sect. 67. onely this may be added that neither this Act, nor the Statute of Marlebridge doth create new kinde of Wastes, but

but doe give new remedies for old wastes; and what is Waste, and what not, must be determined by the Common Law.

¶ Home que tient per la ley D'angleterre.] Here Tenant by the curtesie is named for two causes: 1. For that albeit the common opinion was, that an Action of Waste did lie against him, yet some doubted of the same, in respect of this word tenet in the Writ, for that the Tenant by the curtesie did not hold of the heire, but of the Lord Paramount, and after this Act the Writ of Waste grounded thereupon doth recite this Statute. 20 H.6.11. 21 H.6.38.

2. For that greater penalties were inflicted by this Act, then were at the Common Law.

¶ Ou en auter maner a terme de vie.] If a lease be made Quam diu sola fuer', or quam diu se bene gesserit, or quousque promotus fuerit, &c. in all these and like cases they are in judgement of Law leases for life within this Act. 37 H.6.26.

Upon these words there be many conclusions worthy of observation.

First, albeit the assignée of the Tenant by the curtesie, or Tenant in Dower, is within the letter of this Law, for he holdeth in some manner for life, yet no Action of Waste shall be brought by the heire against the assignée, but onely against the Tenant by the curtesie, or Tenant in Dower; for in construction of Statutes, the reason of the Common Law giveth great light, and the Judges, as much as may be, follow the rule thereof. Temps E.1. Waste 122. 4 E.3.25. 18 E.3.3.30 E.3. 16. 38 E.3.23. 11 H 4.18. F.N.B.56. f.

But if the heire granteth away the reversion, and the assignée attorne, there the grauntee by this Statute shall have an Action of Waste against the assignee, and the Plaintiffe must declare upon this Statute: for (as hath been said) in that case there lay no Action of Waste at the Common Law, so as in this point our Act is introductory of a new Law. Regist.72. lib.3. fol.23.b. Walkers Case. li.11.fo.84. Bowles case.

2. If the heire had granted his reversion expectant upon an estate in Dower or by the curtesie, the grauntee should not have had an Action of Waste against Tenant in Dower or by the Curtesie at the Common Law, for that the privity was destroyed, therefore the grauntee in an Action upon this Statute doth recite the Statute. Regist.72. 11 H.4 3. 5 H.7.17. Lib.11. fol.83. Bowles case.

3. A lessee for his own life, or for another mans life, is within the words and meaning of this Law, and in this point this Act introduceth that which was not at the Common Law. Marlb. cap.23.

4. If a lease for life be made to A. the remainder for life to B. he in the reversion shall have no Action of Waste against the first lessee, for then the estate of him in the remainder should be destroyed, and such construction must be made to preserve the estate of an estranger, in whom there is no fault or default. But if he in the remainder for life dieth, then the Waste is punishable as well before, as after his death. 33 E.3.Waste 144 11 E.3.graunt 13 11E.3.receit 118 4 E.3.18.50E.3.3 10 E.4.9.l.5 E.4. 89. Regist. F.N.B. 59.

* 5. If a lease be made to A. for his life, the remainder to A. for the life of B. if A. doth Waste, an Action of Waste doth lie against him, for the wrong doer hath both the States in him, and of that opinion was Sir James Dier Chiefe Justice of the Common Pleas, Pasch. 18 Eliz. Lib.5.fol.76.b. Pagets case. 8 E.3.26. *17E.3.68.39E.3 25. 6 E.3.19.

6. If a lease for life be made, the remainder for years, an Action of Waste shall lie against the lessee, for the recovery therein shall not destroy the terme for yeares. 4 E.3.18.3E.3.18 F.N.B.59.h.

7. Feme lessee for life taketh husband, the husband doth Waste, the wife dieth, the husband shall not be punished by this Law, for the words of this Act be, Home que tient, &c. par vie, and the husband held not for life, for he was seised but in the right of his wife, and the estate was in his wife. 46 E.3.32. 46 tit. Waste Statham. Lib.10.fol.11. Southcots case.

8. An occupant is within this Law, for the words of this Act (as hath been said) are Home que tient, which are more liberall words then if the Statute had spoken of a lease or demise, and certain it is that the occupant holdeth for life, so it is of the Lord that entreth on his villein Tenant for life. 48 E.3.19. l.6. fol.3. Le D. de Worcesters case. Lib.10.fol.98.

9. The

* Hil. 16 E. 1. in Banco Rot. 63. Buck. & Rot. 73. Hereford.

9. He that hath an eſtate * for life by conveyance at the Common Law, or by limitation of uſe, is a Tenant within this Statute.

10. A leaſe for life is made, the remainder over in taile or in fee, he in the remainder ſhall by this Act have an Action of Waſte; for the words of the Statute are generall.

Temps E. 1. Waſt 126. 39 E. 3. 16. 45 E. 3. 25. Li. 11. fol 83. Ewens caſe 27 H. 6. Aide Statham. 29 E. 3. 1. b. Doct. & Stud. li. 2. ca. 1.

11. Albeit Tenant in taile apres poſſibility of iſſue extinct doth hold but for life, and ſo within the letter of this Law, yet is he out of the meaning thereof in reſpect of the inheritance which was once in him, in reſpect whereof his eſtate is by Law diſpunithable of Waſte, but his aſſignee ſhall be puniſhed for Waſte by this Statute.

12. It is to be obſerved that ſuch remedy as the heire had againſt the Tenant in Dower, and Tenant by the Curteſie, &c. by the Common Law, ſuch remedy had the leſſor and his heires againſt the Farmors for life or yeares by the Statute of Marlebridge, which remaineth to this day.

Marlb. c. 23. l. 11. fo. 81. b. Bowles caſe.

Regiſt. 72. 16 E. 3. Waſt 100. 21. E. 3 26. Doct. & Stud. fol. 66. b. F. N. B. 58. h. li. 6. fol. 37.

¶ Ou des ans.] Vide before the Statute of Marlebridge cap. 23.

Tenant by Statute Merchant, or Staple, or Elegit, are not within this Act, for albeit they have but a Chattell, yet are they not Tenant for yeares.

Although the words of the Act be Tenant for yeares in the plurall number, yet Tenant for a yeare, or halfe a yeare, &c. is within this Act.

First part of the Inſtitutes, ſect. 67

Executors or Adminiſtrators of a Terme for yeares, though they hold in auter droit, ſhall be puniſhed for Waſte done in their time, but not in the time of the Teſtator, or Inteſtate.

38 E. 3. 17. 10 E. 4. 1 23 H. 8. Waſt. Br.

Two Executors be of a Ward, the one doth Waſte, the Action lieth againſt him onely. Vide more hereof hereafter, and note the diverſity.

3 E. 2. Waſte 3.

Tenant for yeares graunts his eſtate upon condition, the leſſee doth Waſte, the graunter enters for the condition broken, the Action of Waſt is to be brought againſt the graunte, and ſo it is in caſe of leſſee for life.

30 E. 3. 16.

Tenant by the curteſie, or other Tenant for life maketh a leaſe for yeares, he in the reverſion confirmeth it, Tenant by the curteſie dieth, an Action of Waſte lieth againſt the leſſee.

8 E. 3. 26.

Tenant for yeares of a moity, third, or fourth part pro indiviſo holdeth a term for yeares, he is within this Act; and ſo it is of a Tenant by the curteſie, or other Tenant for life of a moity, &c. In like manner if two be Plaintiffes, and one of them is ſummoned, and ſevered, a moity ſhall be recovered.

10 E. 3. 32. 44 E. 3 34. 45 E. 3. 35. 9 H. 6. 11. 12 E. 4. 2. 21 H. 7. 40.

Tenant for yeares or for life aſſignes over his leaſe for yeares, or eſtate for life, excepting the timber trees, and after Waſte is done in felling downe the trees, the Action of Waſte is maintainable againſt the aſſignee, for as to the leſſor they are not ſevered from the land.

Lib. 5. fol. 12. Foljambs caſe.

Tenant for yeares, or for life aſſignes over his eſtate, and notwithſtanding takes the profits, an Action of Waſte lieth againſt the firſt leſſee, and ſo it is of meane aſſignes, the Action lieth againſt him that taketh the profits, but this is by the Statute of 11 H. 6. cap. 5. for in that caſe the perſon of the profits did not hold the land.

Lib. 5. fol. 78. Booths caſe.

Two Joyntenants for yeares, or for life, one of them doth Waſte, this is the Waſte of them both, as to the place waſted, and yet the words of the Act are, (home que tient) but treble damages ſhall be recovered againſt him that did the Waſte onely.

33 E. 3. p. 6. 6 E. 3. 54. 34 E. 3. retorn 111.

Tenant for yeares or for life doth Waſte, and after aſſigneth over his eſtate, now the words be (home que tient) &c. he that holdeth for life or for yeares, and after the aſſignement he holdeth not the land, yet ſhall the Action of Waſte be brought againſt him in the tenet, becauſe in the eye of the Law he is Tenant as to the Action of Waſte, and againſt him that was the wrong doer did the Action accrew, which he cannot avoid by his aſſignement, and againſt him ſhall the treble damages be recovered and the place waſted, and ſo it is of the meane aſſignes; a juſt interpretation that he that did the wrong ſhould anſwer the ſame, and this is the cauſe that generall nontenure is no plea in an Action of

40 E. 3. 33. 41 E. 3 27. 43 E. 3. 15. 48 E. 3. 19. F. N. B 56. a. Temps E. 1. Waſte 126.

40 E. 3. 33. 43 E. 3 8. 44 E. 3. 5.

of Waſte, but ſpeciall non-tenure may be pleaded, as the granting over of his eſtate, before which graunt no Waſte was done.

¶ Ou feme que tient en dower.] This is to be underſtood of all the five kindes of Dowers whereof Littleton ſpeaketh, viz. Dower at the Common Law, Dower by the Cuſtome, Dower ad oſtium Eccleſiæ, Dower ex aſſenſu patris, and Dower de la plus beale, and againſt all theſe the Action of Waſte did lie at the Common Law. Tr. 7 E. 1. in Communi Banco Ro. 21. Norff.

¶ Et celuy que ſerra attaint de Waſte.] As it hath béne ſaid, if one Joyntenant doe the Waſte, both ſhall be attainted of the Waſte, &c.

In an Action of Waſte brought againſt Tenant by the curteſie, Tenant for life, Tenant for yeares, or Tenant in dower, which before hath béen named in this Act, the entry of the plea of the Tenant is quod prædict' (talis) non fecit vaſtum, and yet all theſe by conſtruction of Law ſhall anſwer for the Waſte done by any ſtranger, for he in the reverſion cannot have any remedy but againſt the Tenant, and the Tenant ſhall have his remedy againſt the wrong doer, and recover all in damages againſt him, and by this meanes the loſſe ſhall light upon the wrong doer; for voluntary Waſte and permiſſive Waſte is all one to him that hath the inheritance. But if the Waſte be done by the enemies of the King, the Tenant ſhall not anſwer for the Waſte done by them, for the Tenant hath no remedy over againſt them. The ſame Law it is if the Waſte be done by tempeſt, lightning, or the like, the Tenant ſhall not anſwer for it. It is adjudged in 9 E. 2. that if théves burn the houſe of Tenant for life, without evill keeping of leſſee for lives ſire, the leſſee ſhall not be puniſhed therefore in an Action of Waſte; Nota the caſe of fire, &c. 32 E. 3. Waſt 30. 19 E. 3. ibid. 30. 41 E. 3. ibid. 81. 33 H. 6. 1. F. N. B. 59. b. Dier 28 H. 8 33. 29 H. 8. 36. 14 Eliz. 314. Paſch. 9 E. 2. 63. b In libro meo, Un brieſe de Waſte.

A. ſeiſed of land in fee acknowledgeth a Statute Merchant, and infeoffeth B. who letteth the ſame for life, the land is extended upon the Statute, B. bringeth an Action of Waſte againſt the leſſee, he may plead this execution, &c. before which execution no Waſte done, for the poſſeſſion of the land is lawfully taken from him by courſe of Law, which he could not withſtand, and if he ſhould be puniſhed for Waſte, he ſhould have no remedy over. 19 E. 3. Waſt 31.

So it is if a man make a leaſe for yeares, and put out the leſſee, and make a leaſe for life, the leſſee enter upon the leſſee for life, and doth Waſte, the leſſee for life ſhall not be puniſhed therefore for the cauſe aforeſaid.

If Tenant in dower be of a Mannor, and a Copiholder therof commit Waſt, an Action of Waſte lieth againſt Tenant in dower. 32 E. 3. Waſt 104.

If an infant be Tenant by the curteſie, or leſſee for life, or yeares, he ſhall anſwer for the Waſte done by a ſtranger, and have his remedy over, though ſome have holden the contrary, for in that caſe alſo the loſſe ſhall be upon the wrong doer; and ſo it is in caſe of a feme covert, for the priviledge of infancy and coverture in this caſe ſhall not prejudice againſt the wrong and diſherſion done to him that hath the inheritance, eſpecially when they have their remedy over, and the eſtate is of their owne purchace or taking. And ſo it is if a leaſe be made to the husband and wife, and the husband doth Waſte and dieth, if the wife agreeth to the eſtate, ſhe ſhall be puniſhed for the Waſte done by her husband in like manner, as if a ſtranger had done the Waſte, and after the death of her husband ſhe is in from the leſſor, and if the Action had been brought againſt the husband and wife, the Writ ſhould have been quod fecerunt vaſtum, ſo as it was as well the Waſte of the wife, as of the husband. Doct. & Stud. Temps E. 1. Waſte 128. 3 E. 3. 13, 46. 9 E. 3. 42. 11 Aſſ. 11. 10 E. 3. 17. 42 E. 3. 21. 46 E. 3 25. 2 H. 4. 3. 2. 7 H. 6. 2. b. 2 H. 6. 24. b. 33 H. 6. 31. 19 E. 3. bre 246. 10 E. 4. 18. 15 H. 3 Waſte 133.

¶ Perdra le choſe que il aver Waſte.] That is, theſe foure Tenants before named ſhall loſe the thing which he hath waſted, but it is ever rendred amittet locum vaſtatum. * Temps E. 1. Waſte 127. 8 E. 2. Waſte 112. 4 E. 3. 32. 15 E. 3. Judgement 134.

*If Waſt be committed in a houſe ſparſim in divers ſeverall parts, the whole houſe ſhall be recovered, although all be not waſted. In auncient time it was holden 15 E. 3. Waſt 108. 34 H. 6. 44. 15 H. 7. 11.

holden by ſome, that if the hall were waſted, the whole houſe ſhould be recouered, for that in thoſe dayes the hall was the place of greateſt reſort, and uſe, in ſo much as the whole houſe was called by the name of the hall, as Dalehall, &c. but the parview of this Act is, that he ſhall loſe the thing that he hath waſted.

4 E.6. Waſte Br.136. 18 H.8.1

So it is of a wood, if Waſte be done ſparſim, though all the wood be not waſted, the whole wood ſhall be recouered: and the reaſon of both theſe caſes was, for that if Waſte were done ſparſim in houſes or woods, that by the conſtruction of thoſe woods, the whole ſhould be recouered, for that otherwiſe the houſe that was for the habitation of man, or the woods that ſo many wayes were for many neceſſary uſe, could not be enjoyed, neither by him that had the inheritance, nor by the Tenant without continuall treſpaſſing the one to the other, Et boni judicis eſt cauſas litium dirimere; But if Waſte were done in one part of the wood that might be conueniently diuided from the reſt, that part onely is locus vaſtatus, and ſhall be recouered.

And ſo it is of bank meadow, if the Tenant plough it up ſparſim (as hath been before ſaid.)

7 H.3. Waſt 141. Pl.Com.in Caſe de Mines. 5 R.2. Waſte 97. Tepſe E.1. waſt 128

A Tenant for life or yeares of a parke, diuary, warren, or dou-houſe, if he deſtroy the deere, or the fiſh in the diuary or ponds, or the game in the warren, or the doues in the doue-houſe, it is Waſte, and hee that hath the inheritance ſhall recouer the park, diuary, warren, or doue-houſe, and therefore the makers of this Act meaning to include all kinde of Waſts, uſed this generall word [choſe.]

And ſo it is if the Tenant kill ſo many of the deere, fiſh, game or doues, as there be not left ſufficient for ſtore having regard to the number that were there when his eſtate or intereſt was created or made, this is Waſte, and ſo it was holden, Paſch. 15 Eliz. in Communi Banco, & ſic de ſimilibus.

Exile and deſtruction of villeins by tallage and oppreſſion is Waſt, and this Act ſaith [perdra le choſe.]

3 E.2. Waſte 2. 9 E.2. Waſte 2. 16 H.3. ibid. 135. 9 H.6.42.22 H.6. 10,11. 11 H.7. per Fineux. 8 E.2. Waſt 113. 17 E.2 ibid. 118. 15 H.3. ibid. 130. 2 H.6.10 F.N.B.60.o. Lib.5. fol.115. Poliambes caſe. Regiſt.72.

¶ Et ouſter ceo face gree de treble de ceo que le Waſte ſerra taxe.] Concerning coſts in this Action ſufficient hath been ſpoken, ca.1.

The Plaintiffe ſhall not recouer damages for any Waſte done hanging the Writ, and therefore the Plaintiffe may haue a Writ of Eſtrepement in this Action, Et ſic de ſimilibus.

Leſſee for yeares committeth Waſt, and the yeares doe expire, yet ſhall the leſſor haue an Action of Waſte for the treble damages, although he cannot recouer the place waſted, and though the Statute be in the conjunctiue, perdra le choſe, &c. & ouſter ceo face gree, &c. for as there was at the Common Law two formes of Actions of Waſte, viz. in the tenet, as againſt Tenant by the curteſie, &c. and in the tenuit againſt the Gardein after full age, ſo upon this Act the like kinde of formes is framed by equall conſtruction, viz. in the tenet to recouer the place waſted, and treble damages, and in the tenuit to recouer treble damages only.

46 E.3.25.

But this is to be underſtood when the terme expires by effluxion of time, as in the caſe of a leaſe for years, or when the eſtate determines by the Act of God, as when ceſti que vie dieth, or when the eſtate is ended or defeated by the act or wrong of the Tenant, as when he makes a feoffement in fee, or commits any other forfeiture, and the leſſor enters, yet the leſſor ſhall haue his Action of Waſte; but when the Tenant commits Waſte, and after ſurrendreth to the leſſor his eſtate for terme, and he in the reuerſion agreeth thereunto, he ſhall not haue an Action of Waſte in the tenuit, for he cannot by his owne Act alter the forme and nature of his Action from the tenet to the tenuit, and he cannot plead, Devant quel ſurrender nul Waſte fait.

19 E.2. Waſt 190. 8 H.6.10.45 E.3.9

8 H.5.3.4 E.3.33 14 H.6.14 19 H.6 41.66. 12 H.4.5. 3 H.6. Waſte 35. 32 E.3. barre 262 21 R.2. Waſt 99.

An Action of Waſte is brought againſt the leſſee for yeares, or againſt Tenant pur terme dauter vie, and hanging the Action the terme expires, or ce' que vie dieth, yet the Writ ſhall not abate, for that an Action of Waſte (as hath been ſaid) lieth onely for the damages in thoſe caſes, which he ſhall recouer in that action then depending.

In

In an Action of Waſte againſt a leſſée for life for Waſte done in three acres, the Defendant claimeth fée, whereupon iſſue is joyned, the Jury findes againſt the Defendant that he hath but an eſtate for life, and enquired further of the Waſte, and found the Waſte done in one acre onely, the Plaintiffe cannot have judgement for the whole land, in reſpect of the forfeiture and treble damages, for that judgement is not according to this Act, that is to ſay, of the place waſted, and treble damages in reſpect of the place waſted, wherefore he had judgement according to the Statute of the one acre and treble damages. 33 E 3. Judgement 255.

Upon this branch it hath been received for a certain rule, that if Waſte be committed, and he in the reverſion dieth, that the Action of Waſte faileth, for that the heire cannot recover damages for the Waſte done in the life of the anceſtor, and the Waſte was not done by the diſheritance of the heire, and yet the Law doth extend the Action of Waſte favourably as much as with conveniencie may be, leſt Waſte which is hurtfull to the Common wealth ſhould remaine unpuniſhed; and therefore if two coparceners be, and they make a leaſe for life or yeares, and the leſſée commit Waſte, and one of them hath iſſue and dieth, and after the leſſée commit Waſte againe, albeit the Writ ſhall ſay that both the Waſts were done to the diſheritance to the aunt and neece, yet ſhall the Action be maintained, and the judgement ſhall be ſeverall, though the Action be joynt, for judgement ſhall be given for them both for the place waſted, and the damages treble for the Waſte done in their owne time, and the aunt ſhall have a ſole judgement for the whole damages for the Waſte done in the time of her ſiſter by ſurviver, which is a leading caſe, and worthy of great obſervation. 8 E.2. Waſt 110. 11 E.2. ibid. 115. 41 E.3 3.20 E.3. Quar. Imp. 63. 35 H.6.23. F.N.B 5. r. Kelwey 105.

¶ Et en Waſte fait en garde.] There is Gardein in chivalry, and Gardein in ſocage: again Gardein in chivalry is twofold, Gardein in droit, and Gardein in fait of the graunt of the King, or of the Subject; alſo both theſe are either Gardeins by right, or Gardeins by claime and poſſeſſion without right: Likewiſe Gardein in ſocage is two-fold, viz. Gardein by right, who is called tutor proprius, and Gardein by poſſeſſion and claime, who is called tutor alienus. *a Glan. l. 7. c. 9. 10 Bract. li. 4. fol. 28. & 316, 317. Britton 53, 54. Fleta l. 1. cap. 11. 7 H. 3. Waſte 141. 9 H. 3. ibid. 136. 10 H. 3. ibid. 142. 20 H. 3. ibidem. 2 E. 2. ib. 1. 4 E. 2. Account. 107. 16 E. 3. Waſt 100 13 E. 3 account 77 32 E. 3. ibid. 59. 41 E. 3. ibid. 35. 40 Aſſ. 22. 44 E. 3 27. 5 R 2. Waſte 97. 11 R. 2 ib. 98. 28 H. 6. ibid 9. 10 H. 6. 7. 32 H. 6. 7 F.N.B. 59. b.

*a Against all theſe both a prohibition of Waſte, and an Action of Waſt lie at the Common Law, but none of theſe Gardeins ſhall be charged but for the voluntary or permiſſive Waſte, and not for the Waſte done by a ſtranger. But if there be two Joyntenants of a ward, and the one doth Waſte, this is the Waſte of both, for he is no ſtranger, 3 E.3.18.

If the Gardein ſuffereth a ſtranger to cut down timber trées, or to proſtrate any of the houſes, and according to his name of Gardein doth not endeavour to kéep and preſerve the inheritance of the Ward in his cuſtody and kéeping, nor to forbid and withſtand the wrong doer, this ſhall be taken in Law for his conſent, for in this caſe, Qui non prohibet quod prohibere poteſt, aſſentire videtur. *b And if ſuch Waſte and deſtruction be done without the knowledge of the Gardein, or with ſuch number as he could not withſtand, then ought the Gardein to cauſe an Aſſiſe to be brought againſt ſuch wrong doers by the heire, wherein he ſhall recover the freehold and damages for ſuch wrong and diſherſion: So note a diverſity betwéen the intereſt of a Gardein created by Law, for there in an Aſſiſe the heir ſhall recover damages, but otherwiſe it is in the caſe of a leaſe for yeares, which is the leſſors own Act. *b 40 Aſſ. 12. Temps E. 1. Waſte 116. 27 E. 3. 81. F.N.B 60. g. 26. E. 3. Waſte 10.

*c The Gardein doth Waſte, and after aſſigneth over his intereſt, an Action of Waſte lieth againſt the grantor in the tenet. *c Regiſt. 72.

*d Note that the Action of Waſte againſt the Gardein is generall, Fecit vaſtum, &c. de terris, &c. quas habet vel habuit in cuſtodia de hæreditate prædict', which Writ doth extend as well to the Gardein in ſocage as in chivalry. *d F.N.B. 59. e. 2 E. 2. Waſte. 1.

¶ *e Perdra la gard, & rendra al heire les damages del Waſte.] So as if the heire bring his Action of Waſte within age, the judgement by this Act is, that he ſhall loſe the whole wardſhip, not locum vaſtatum onely, *e Mag. Chart. c. 4. 19 E. 2. tit. Waſte 117. Temps E. 1. ib. 127. See Mich. 7 E 1. in Communi Banco Eſſex. Picors caſe. Hil. 8 E. 1. ibid. Rot. 52 North Lovers caſe. 48 E. 3. 16. F.N.B. 60. c.

and yéeld to the heire single damages, if the wardship be not sufficient to satisfie the damages; sée before what the judgement was at the Common Law.

But then it may be demanded, What if the Gardein commit Waste, and the heire did not, or perhaps could not bring an Action of Waste, being done so neare his full age, or having no notice thereof, what remedy hath the heire after his full age, for the Gardein cannot lose the wardship, for his estate is ended, and it seemeth by the letter of the Law that he must bring his Action upon this Statute within age, for the words bee [Perdra la gard.] To this it is answered that the heire at his full age shall have an Action of Waste, and recover treble damages by this Act, for the wardship cannot bee lost, and the wrong and disherison done to the heire ought to be fully recompenced, and the Statute hath annexed treble damages to the Action of Waste, as if it were enacted by Parliament, that an Action of Waste should lie against Tenant in taile apres possess. therein treble damages should be recovered as incident or annexed by this Law to the Action of Waste.

3 E.2. Waste 3. 7 E.3.12,13. 43 E 3.38. Regist.72.F.N.B 59. c. & 60.c. Coram Rege per bre de errore placita apud Dublin. Coran Johanne, Justic. Hibern Pasc.30E.1.

And wheresoever the Common Law gave single damages against any, this Act doth give treble, unlesse there be any speciall provision made by this Act. Also in an Action of Waste, the Jurors shall have the view of the place wasted, &c. as an incident to the Action of Waste, for in the Action at the Common Law the Jurors should have had the view.

Bract.l.4.fo.316. F.N.B. 60. c.

The Law appointeth not of what value the Waste shall be, neither in the case of the foure Tenants first before mentioned, nor in the case of the Gardein, who is to lose all for Waste done in any part. Herein the rule of Bracton is good, Vastum erit injuriosum, nisi vastum ita modicum fuerit, propter quod non sit inquisitio faciend, and de minimis non curat lex; for Waste done to the value of 11.d. (which now is 5.s.) the Gardein lost the whole Wardship.

Bract.l.4.fo.316. 38 E.3.7. 14 H.4. 11,12. 8 E.2. Waste 111. 34 E.3 ib 146. 12 H.4.3. F.N.B.60.p.

If a feme Seignioresse take husband, the Tenant holding by Knights service dieth his heire within age, the husband doth Waste and dieth, the Action of Waste lieth against the wife. So if an infant be Gardein in Chivalry, and doth Waste, an Action of Waste lieth against him, for he is within the letter and meaning of this Law made against waste and destruction.

Pl. Com. in Stowels Case.

¶ Si le gard' perdue ne suffist a la value des damages, avant le age de mesme le gard.] See a notable Record upon this branch in the same yeare that this Statute was made.

Mich. 6 E.1. in Banco Rot.47. Essex Petrus Picots Case.

A. hath the Wardship of Blackacre, and the heire of B. and Whiteacre and the heire of C. per cause de gard, A. doth Waste in Blackacre, he shall lose but Blackacre, for that Waste is done onely to the disherison of that heire; and so it is if he doth Waste in Whiteacre, he shall onely lose that acre for the Waste done there to the disherison of that heire.

At the Common Law in case of Tenant by the Curtesie, Tenant in Dower, or Gardein, the heire, &c. might have entred into the houses and lands to sée if Waste were done, to the end that if he found any Waste done, he might bring his Action, and to that end might the heire or he in reversion send any other to that intent; now this Act giving an Action of Waste against Tenant for life, and Tenant for yeare, doth impliedly give authority to him in the reversion either by himself, or by another to enter into the houses or lands so letten for life or yeare, to sée if any Waste be done, Quia quando lex aliquid concedit, concedere videtur & id, per quod devenitur ad illud, and therefore he in the reversion may lawfully enter, to sée if any Waste be done, whereupon he may ground an Action upon this Statute.

11 H.4 75.12 E 4 10. 15 H.7.4. Lib.8.fol.146. Les Carpenters Case.

An Action of Waste lieth not upon this Act in the Court of ancient demesne, because that Court fails of the incidents to an Action of Waste, viz. to award a Writ to the Sheriffe to enquire of the Waste, &c.

28 H.6.25. 7 H.6.35. 8 H.6. 35. 22 H 6.18. 20 E.3. Waste 32. 38 Ass.p.1. 42 E.3.22.

If a Tenant for life or yeares commit Waste, so as he in the reversion is intituled

tituled to his Action of Waſte, yet if the Tenant repaire the ſame before any Action brought, he in the reverſion cannot have an Action of Waſte, but the Tenant muſt plead it ſpecially: But if the Tenant doth repaire it after the Writ brought, and before he hath day to plead, he cannot plead it in barre of the Action.

Upon the conſtruction of this Act, whether in this miſt Action the place waſted is the principall, or the damages, ſome queſtion hath bẽn made, and in divers reſpects the one is more principall then the other, for in reſpect of the antiquity againſt Tenant in Dower, and the Tenant by the Curteſie, the damages are the principall, as hath bẽn before ſhewed; and therefore they ſhall be ſometime preferred, viz. the Plaintiffe to have execution of the damages before the plate waſted. But in reſpect of the quality, the realty is ever preferred before the perſonalty, and therefore in Waſte, if the Defendant confeſſe the Action, the Plaintiffe may have judgement of the land, and releaſe his damages, which proveth the realty to be the principall, and an accord is no plea in an Action of Waſte in the tenet, for Omne majus dignum trahit ad ſe minus.

40 E.3.37.38 E.3 27. 13 E.4.15.

34 H.6.7. tit. Waſte 50.48 E.3. 19. per Finchd. 11 H.7.13.13 H.7 20. Lib.6.fo.43, 44. Blaks caſe.

And in an Action of Waſte there ſhall be ſummons, and ſeverance, for the Writ is ad exhæredationem, and the Action of Waſte is a plea reall: In an Action of Waſte brought by two in the tenuit, a releaſe of the one is a barre to both, but otherwiſe it is in the tenet, for there it barreth but himſelfe.

6 E.3.47.9 H.5.15 30 H.6.barre 39.

Thus have we endeavoured to expound this excellent Law enacted pro bono publico, for preſervation of buildings for the habitation of mankinde, and of woods and timber, ſometime one of the beautifull, and profitable ornaments of England, and generally againſt all waſte and deſtruction by particular Tenants, which Law being very penall, and ſhortly and artificially penned hath bẽne with great wiſdome and judgement expounded in our Bookes, and may be a light to many other like caſes. Vide Magna Charta cap.4. Marlebridge cap. 23. W.1. cap. 21. W.2. cap.14.21. 20 E.1. Vet. Magna Charta 124. 28 E.1. ca.18. See the firſt part of the Inſtitutes, ſect.67,71,380,381,382,492,570,573,574,577, 585,586,666,667,668,674,675.

CAP. VI.

Purview eſt enſement, que ſi home mourge, & eit pluſors heires, dont lun eſt fits ou file, frere ou ſoer, nephew ou niece, & les auters ſont en pluis longe degree, touts les heires deſormes eyent recoverie per briefe de Mortdaunceſter.

It appeareth by our auncient Authors that this Act is made in affirmance of the Common Law, for Bracton ſaith, Cum ſit Aſſiſa mortis anteceſſoris conjungenda cum conſanguinitate, non erit poſt recurrendum ad Præcipe de conſanguinitate, ſed ad Aſſiſam mortis, quia perſona quæ propinquior eſt, & facit Aſſiſam, & trahit ad ſe perſonam & gradum remotiorem, ut ibi potius procedat Aſſiſa, quam Præcipe, quia illud quod eſt majus remotum non trahit ad ſe quod eſt majus junctum; ſed è contrario in omni caſu, & bene poterit quælibet iſtarum conjungi cum alia actione, quia quælibet loquitur de ſeiſina ejus quam habuit die quo obiit, quod non eſt in brevi de Recto, & quælibet de poſſeſſione & non de proprietate.

Bract l.4.fo.254. 283. Britton fol.181.b. Fleta.lib.5.cap.2.

So as it appeareth by Bracton that the aboveſaid rule doth not hold onely in caſe of Mordaunceſter, but in the Writ of Aiel and Beſaiel, which is

Temps E.1. joyndre in Action 35. 32 E.1. ibid. 34. 19 E.2. ibid. 31. 13 E.3. ibid. 29. 19 E.3. ibid. 31. 12 E.3. ibid. 11. 7 E.3. 34. 24 E.3. 13, 18. 48 E.3. 14. 27 E.3. 89. 30 E.1 Joyndre en Action 36. 19 E.2. Judgement 239.

alſo a proofe of the Common Law, for this Act nameth the Aſſiſe of Mordaunc' onely, and his opinion is approved by our Books.

Alſo this Act extends to dying ſeiſed after the Statute, and yet like joyning ſhall be in the Writ of Mordaunc', Aiel and Beſaiel of dying ſeiſed afore the Statute, which is another proofe of the Common Law. And the ſame Law it is in a Formedon in the Deſcender, and in Writs of Entry Sur diſſeiſin to the common anceſtor, and in a Sur cui in vita, Writs of Entry In caſu proviſo, Conſimili caſu ad communem legem, and the like, the Aunt and the Neece ſhall joyne at the Common Law.

To know what the Common Law was before the making of any Statute, (whereby it may be known whether the Act be introductory of a new Law, or affirmatory of the old) is the very lock and key to ſet open the windowes of the Statute, as partly appeareth by that which hath been ſaid, and particularly in the expoſition of this Act ſhall appeare.

5 E.3.185.

¶ Si home mourge.] Hereby it appeareth that one right muſt deſcend from one anceſtor, or elſe the caſe is not within this Law.

37 H.6.8. 35 H.6.23.

If two coparceners die ſeiſed, and a ſtranger abate, the Aunt and the Neece ſhall not joyne in a Writ of Mordaunc', but have ſeverall Writs, the one a Mordaunc', and the other a Writ of Aiel.

In like manner if two coparceners be diſſeiſed, the one hath iſſue and die, the Aunt and the Neece ſhall not joyne, for they have not one right, but ſeverall, and therefore they muſt have ſeverall Actions, but when they have recovered they ſhall hold in coparcenery.

¶ Pluſors heires.] Divers heires either in Gavelkinde by the cuſtome, or heirs females coparceners by the Common Law, for this Act extends to both of them.

¶ Dont lun eſt fits ou file, &c.] By this it appeares that this Act extends as well to heires by the cuſtome, as by the Common Law.

10 H.6.10. 19 H.6.45. 31 H.6. Entry cong. 54. Firſt part Inſt. ſect. 696.

The Aunt and the Neece bring a Writ of Mordaunc' of the dying ſeiſed of the Father, the Aunt is ſummoned and ſevered, yet the Neece ſhall proceed and recover the moity (although ſhe alone could never have a Writ of Mordaunc' of the dying ſeiſed of the Grandfather) becauſe the Writ was rightly and duly commenced, and when the Neece hath recovered, the Aunt may enter, and enjoy that moity with her; for the rule of the Law is, that in all caſes when coparceners, or Joyntenants may joyn in Action, and have one and the ſame remedy, there if one be ſummoned and ſevered, and the other ſueth forth and recovers the moity, the other may enter with her; but when they are driven to ſeverall Actions, or where their remedies are not equal, there if one recover or continue the one moity, the other cannot enter with her, and yet when both have recovered they ſhall be coparceners again.

See the auncient Authors, ubi ſup. F.N.B. 195. c.

¶ Frere ou ſoer, nephew ou niece.] Here is implied the Uncle and Aunt being relatives, and then here be all the perſons that may have an Aſſiſe of Mordaunc', and ſo there be one that may have an Aſſiſe of Mordaunc', it maketh no matter how remote the other is.

¶ Deſormes.] So as this Law extends to the future, and not to the time paſt, and yet being made in affirmance of the Common Law, the ſame Law that guideth in futuro, ruleth alſo in præterito.

See cap. 1. 45 E.3.3. 35 H.6.23.

¶ Eyent recoverie per briefe de Mordaunc'.] Theſe words are generall, but they have a ſpeciall intendment, for as to the damages, the Aunt alone ſhall recover damages untill the death of her husband, and both of them damages from the death of her father, and ſo it is in the Writ of Aiel, and Beſaiel and

and all this is according to the course of the Common Law before the making of this Act, see the exposition upon the first Chapter of this Parliament.

CAP. VII.

ENsement si feme vende, ou done en fee, ou a terme de vie tenement que el tient en dower: Establie est, que le heire, ou auter, a que la terre deveroit reverter apres le decease la feme, eit maintenant son recoverie per briefe Dentre, fait de ceo en la Chauncerie. Custumier de Norm. cap. 118. fol. 138.

The mischief before the making of this Statute was not, where a gift or feoffement was made in fee, or for terme of life by Tenant in Dower, for in that case he in the reversion might enter for the forfeiture, and avoid the estate: But the mischiefe was that when the feoffee, or any other did seised, whereby the entry of him in the reversion was taken away, he in the reversion could have no Writ of entry ad communem legem until after the decease of Tenant in Dower, and then the warranty contained in her Deed (as in those dayes all Deeds of feoffement for the most part comprehended warranty, and specially when she intended to barre her heir that had the reversion) barred him in the reversion, if he were her heir, as commonly he was, and for the remedy of this mischief this Statute gave the Writ of Entry in casu proviso in the life time of Tenant in Dower, which is implied by this word [maintenant, &c.] The purview of this Act Fleta renders thus. Est autem quoddam breve provisum de ingressu, per quod habens statum, recuperabit dotem alienatam per formam statuti, quod tale est; si mulier alienet dotem suam in feodo, vel ad terminum vitæ donatoris, hæres vel alius ad quem spectat reversio, statim ipso facto habeat actionem petendi dotem illam in dominico. Regist. 237. Mirror ca. 5. §. First part of the Instit. sect. 483. Fleta li. 5. ca. 36.

¶ Fem', &c. que tient en dower.] The Tenant by the curtesie, or the lesse for life is not within the case of this Statute, but he in the reversion upon their alienation shall have a Writ of Entry in consimili casu by that excellent Statute of W. 2. cap. 24. quotiescunque evenerit in cancellaria, quod in uno casu reperitur breve, & in consimili casu cadente simili indigente remedio, &c. concordent clerici de cancellaria in brevi faciendo, as we shall shew more at large when we come to that Statute. 22 Ass. 37. 29 Ass. 54. 3 E. 2. entry 8. F.N.B. 207. f. 5 H. 7. 31. 14 H. 7. 13, 14. 38 H. 6. 3. 30. 14 H. 4. 28.

Tenant in Dower taketh husband, the husband aliens in fee, he in the reversion during the husbands life may enter for the forfeiture, but he cannot have a Writ of Entry in casu proviso, for the husband hath nothing but during the coverture in the right of the wife, and our Act saith, Fem' que tient en dower vient done, so as the alienation of the husband is not within the case of the Statute, and to it is in consimili casu when Tenant for life take husband and he alien. 16 Ass. 11.

¶ Done en fee ou a terme de vie.] At this time all estates of inheritance were fee-simple, and here (for terme of life) is intended of a state for terme of the life of a stranger, and not for the life of the Tenant in Dower her selfe, for such an estate wrought no wrong.

The words of the Writ grounded upon this Statute are generall, Et quæ post dimissionem factam ad præfatum B. reverti debet, without expressing any estate, and doth count that the Tenant in Dower did alien in fee, and the Tenant saith that the Tenant in Dower did not alien in manner and forme, &c. if it be found that the Tenant in Dower did alien in fee taile, or for life, the Demandant shall recover, See the first part of the Institutes, sect. 483, 205. F.N.B. 206. g. Bract. fol. 323.

recover, as it appeareth by Littleton, for auncient formes of Writs or Counts cannot be altered.

Fleta ubi ſupra. 31 E.1.Entry 64. 12 E.2.ibid.60. 20 E.2 bře 149. 7 E.3.54. 8 E.3. 48. 21 E.3.11. F.N.B.205.n.

¶ A que le terre deveroit reverter.] If a man hath the reverſion in fée, in taile, or for life, either upon his own gift or leaſe, or by aſſignation, he ſhall have a Writ of Entry upon this Statute (and in like caſe à conſimili caſu) for the words of this Act are generall (to whom the land ought to revert) and the words of the Writ grounded upon this Statute are, Quam clamat eſſe jus & hæreditatem ſuam, but yet an eſtate for life, as hath béen ſaid, is within this Statute. And this Act providing againſt the alienation of Tenant in Dower, ſpeaketh onely of him in the reverſion, becauſe there can be no remainder limited upon her eſtate, otherwiſe it is of the Writ of Conſimili caſu, as we ſhall ſhew when we come to the Statute of W.2. cap.24.

Pl.Com. Colthirſts caſe.

And this Act ſpeakgth onely of land which lieth in livery, for the feoffement or eſtate for life made by Tenant in Dower devеſteth the reverſion, otherwiſe it is of rents, and other things that lie in graunt.

¶ Eyt maintenant.] That is, preſently after the alienation made in the life of Tenant in Dower, which Writ he could not have, as hath béen ſaid, at the Common Law in the life of Tenant in Dower.

Bract.l.4.fo.324.

¶ Son recovery per briefe Dentre.] This Writ of Entry goeth by the name of a Writ of Entry in caſu proviſo, ſo called, becauſe it hath the words of the Writ of Entry, ad communem legem (mentioned by Bracton) with this addition, by force of this Act, Et quæ poſt dimiſſionem per ipſum C. (viz. tenentem in dotem) præfato D. contra formam ſtatuti de Gloc', de communi concilio Regni noſtri inde proviſi ad præfatum B. reverti debet per formam ejuſdem ſtatuti ut dicit, and of theſe words, inde proviſo, it taketh his name of the Writ of Entry in caſu proviſo, and by theſe words this Writ differeth from the Writ of Entry, ad communem legem, becauſe this Writ lieth during the life of Tenant in Dower by the reference it hath to this Act, which giveth the Writ maintenant, &c. as hath béen ſaid.

Fleta ubi ſupra.

16 E.3.bře 661.

But the Writ of Entry ad communem legem lieth not during the life of Tenant in Dower, and the Writ of Entry ad communem legem doth not make mention of the death of the Tenant for life, but that muſt be expreſſed in the Count.

CAP. VIII.

Purview eſt enſement, que les viſconts pled' en counties les plees de treſpas, auxy come ils ſoilent eſtre pledes. Et que nul neit deſormes briefes de treſpaſſe devant Juſtices, ſil ne affirme per foy, que les biens emportes vailent 40. s. al meins. Et ſil ſe pleint de batery affirme per foy que ſa pleint eſt veritable. Des plaies, & des maihemes, eit home briefe ſicome home ſoleit aver. Et graunt eſt, que les defend' puiſſent faire attorneies en tiel plees, ou appell' ne giſt mie, iſsint que ſils ſoient attaints *du treſpas* en lour abſence, ſoit maund' al viſc', que ils ſoient priſes, & eient adonques

ques la peine, que ils averont ſils uſſent eſtre preſents quant le judgement fuit rendus. Et ſi les pleintiffes deſormes en tiel treſpas ſe facent eſſoine apres la primer apparans, ſoit jour done jeſques a la venue des Juſtices errants, & les def. en dementires ſoient en peace en tielx plees, & en auters plees, ou attachments, & deſtre giſent. Si le defend' ſe face eſſoine del ſervice le Roy, & ne port ſon garrant au jour que done luy eſt per ſon eſſoine: eſtablie eſt que il rendra al plaintife les damages de la tourne de xx. s. ou de pluis, ſolonque le diſcretion des Juſtices, & jademains ſoit en le greve mercy le Roy.

This Act is divided into two branches.

The firſt branch is in affirmance of the Common Law.

The ſecond branch concerning the Affidavit, this is new, and made in favour of the County Court, but experience taught, that this courſe was ſo full of danger and trouble, that it was forborne, and the Defendant left to take ſuch exceptions as the Common Law gave him.

℄ En Countie Courts.] This is put for an example, for the Hundred Court, and the Court Baron being no Courts of Record are alſo within this Law.

℄ Briefes de treſpas devant Juſtices.] Writs of Treſpaſſe are here put but for an example, for Debt, Detinue, Covenant and the like: But if the Treſpaſſe be vi & armis, where the King upon the conviction of the Defendant ſhall have a fine, there the Sheriffe in his County cannot hold plea of it, for no Court can aſſeſſe a fine but a Court of Record, becauſe a Capias to take the body is incident to it: for it is a rule in Law, Quod placita de tranſgreſſione contra pacem Regis in Regno Angliæ vi & armis factis ſecundum legem & conſuetudinem Angliæ ſine brevi Regis placitari non debent. Regiſt.fol.111. F.N.B.47.a.239.d Regiſt.11. F.N.B.47. Regula

Neither ſhall he hold plea of Treſpaſſe for taking away of Charters concerning inheritance or frée-hold, for it is a Statute in Law Quod placita concernent' Chart', ſeu ſcript' liberum tenementum tangentia in aliquibus Curiis quæ recordum non habent ſecundum legem & conſuetudinem Regni Angliæ ſine brevi Regis placitari non debent. Regiſt.11. F.N.B.47. Maxim

℄ Vaillent 40. s. al meyns.] For as the inferiour Courts which are not of Record regularly cannot hold plea of debt, &c. or damages, but under 40. s. ſo the ſuperiour Courts that are of Record cannot hold plea of debt, &c. or damages regularly, unleſſe the ſumme amount to 40. s. as above. Now the ounce of ſilver was at the time of making of this Act but 20. d. and now it is above thrice ſo much; for the wiſedome of the Common Law was, that men ſhould not be troubled for ſuits of ſmall value in the Kings Courts, but that they ſhould be heard and determined in the Country with ſmall charge, and little or no travell or loſſe of time, for it was then accounted againſt the dignity and inſtitution of thoſe high Courts, to hold plea of ſmall or trifling cauſes. Ne dignitas curiarum illarum vilеſceret, & ne materiam ſuperaret opus; otherwiſe the Law that was inſtituted for the quiet of men, and for his defence, might be abuſed to his charge, vexation, and offence.

Now as the ſuperior Courts ought not to incroach upon the inferiour, ſo the inferiour Courts ought not to defraud the ſuperiour Courts of thoſe cauſes that belong Regiſt.146. F.N.B.46.

belong to them. For example, if in the County Court, or other inferiour Courts, they shall divide a debt of 11.l. into several pleints under 40.s. in this case the Defendant may plead the same to the jurisdiction of the Court, or may have a prohibition to stay that indirect suit, for as an ancient Record saith, Contra jus commune est, petere integrum debitum excedens summam 40.s. per diversas querelas, per parcellas, scilicet, 39.s. 11.d. ob. q.

Pasch. 20 E. 3. Coram Rege. Rot. 164. Cestr.

The Statute of the Common Law is, Quod placita de catallis, debitis, &c. quæ summam 40.s. attingunt, vel eam excedunt, secundum legem & consuetudinem Angliæ sine brevi Regis placitari non debent.

Regist. 146. F.N.B. 46. Brit. ca. 28. fo. 61.

And these words, sine brevi Regis are materiall words, for by the Kings Writ the Sheriffe in the County Court may hold plea of goods, debts, &c. above the value of 40.s. and by force of the Kings Writ of Justicies, he may hold plea of an Obligation of what summe soever, for example of 1000. marks, the which Writ is in nature of a Commission to the Sheriffe to hold plea of debt above, &c. s. the words of which Writ are, Rex Vicecom' salutem: Præcipimus tibi quod justicies A. quod juste & sine dilatione reddat B. mille marcas, quas ei debet, ut dicit, &c. ne amplius inde clamorem audiamus pro defectu Justiciæ. By force of which Writ he may hold plea of the same, and the proces therein is attachment by his goods, &c. but no Capias, and although the power of the Court by this Writ is in this particular inlarged, and the words of the Writ to the Sheriffe are, Quod justicies, &c. yet is not the jurisdiction of the Court as concerning the judicature thereof, altered, for those words of the Writ do not, nor can make the Sheriffe Judge of that Court in that particular case, for that were to alter the jurisdiction and judicature of the Court, whereof by the Common Law the suitors be Judges, which cannot be altered but by Act of Parliament: The Plaintiffe may remove this plea without cause shewed, but the Defendant cannot without shewing of cause.

3 H. 6. 54, 55. Glanv. l. 12. c. 18. Brit. fol. 53, 54. Fleta l. 2. c. 55. Brac. l. 3. fo. 105. b F.N.B. here afterwards.

Also by force of a Justicies to the Sheriffe, he may hold plea of a Trespasse Vi & armis. Vide Register, & F.N.B. divers formes of Writs of Justicies in many Actions.

Brast. ubi supra. Brit. ubi supra. 8 E. 4. 5. 14 H. 8. 15 F.N.B. 86. b. c. d. 85. g. 86. a. 7. a. 117. a. c. 119, 123, 125, 128, 132, 135 137, 139, 148, 161 184, 151, 152.

The Sheriffe may also hold plea in a replevin of goods and chattels above the value of 40.s. for if it be by Writ, the words of the Writ be, Rex Vicecom', &c. Præcipimus tibi quod juste, & sine dilatione replegiari facias B. averia sua, or bona & catalla sua, quæ D. cepit & injuste detinet, ut dicit, &c. ne amplius inde clamorem audiamus pro defectu Justiciæ. By force of which Writ, which is in nature of a Commission, the Sheriffe may deliver the beasts, or goods and chattels of what value soever. And if the Replevin be by pleint in the County Court, the Sheriffe by the Statute of Marlebridge may hold plea of what value soever.

The like Writs in the nature of a Commission directed to Sheriffes are the Admeasurement of pasture, Recaption, Nativo habendo, and many others.

Britt. c. 28. fo. 61. 19 H. 6. 8. b.

The said words, Vaillent 40.s. al meins, have received this construction, that the same must so appeare to be of value in the Plaintiffes count, for it is not sufficient that it appeares by verdict that the summe is under 40 s. For example, if the Plaintiffe count in Trespasse, Debt, Detinew, Covenant, &c. to the damage of 40.s. and the Jury finde the damages under 40.s. yet the Plaintiffe shall have no judgement, albeit in truth the cause de jure belonged to the inferiour Courts.

This shall suffice for the exposition of this branch of our Act, the residue shall be referred to the treatise concerning the jurisdiction of Courts whereunto this matter properly belongeth.

¶ Des playes et des mayhems eyt home briefe sicome home soiloit aver.] This is the third branch of this Act, and hereby it appeareth that the County Court hath no jurisdiction to hold plea De plagis & maihemiis, of wounds and maihems, but those pleas must be determined in the Kings higher Courts, but of battery (without wounding or maihemming) this Act proveth that the County Court hath jurisdiction.

What in Law is adjudged a maihem, and whereof the word is derived, you shall reade in the first part of the Institutes, sect. 194.

¶ Et

℄ Et graunt eſt, que les defend' puiſſent faire attornies en tiels plees, ou lappeale ne giſt, &c.] See before W. 1. cap. 41. Merton cap. 10. W. 1. cap.

Some have thought that this clauſe concerning making of Attourneys is generall, and extendeth to all Actions reall and perſonall, but it ſeemeth to be particular, for in ancient manuſcripts the former branch, viz, des playes & des mayhems, &c. is a diſtinct Chapter by it ſelfe, and this branch is parcell of that Chapter, ſo as theſe words, en tiels pleas, ſuch pleas muſt be referred to pleas of treſpaſſe, battery, wounding, and mayhemming; unleſſe it be in appeal of mayheme, which being felonice maihemavit, the Defendant ſhould not make an Attorney no more then he could at the Common Law: and the words ſubſequent (iſſint que ſils ſoient attaint de treſpaſſe en lour abſence) prove that this branch is not generall, but referred to the clauſe next precedent: and note that neither the Plaintiffe nor Defendant at the Common Law could make an Attourny in any appeale untill triall, acquitall, judgement, &c.

Regiſt. 19. b. this extends to Juſtices in Eyre.

6 H. 7. 1.

3 H. 7. cap. 1.

40 Aſſ. 17. 40 E. 3. 42. 11 H. 4. 11. 8 E. 4. 3.

But it may be objected that againſt this expoſition the booke in 21 H. 7. is, Que home ferra Attorney in appeale de maiheme, quod vide de common courſe 16 H. 7. in Caworths Caſe; which Caſe is incertainly reported, for it appeareth not whether it be meant of the Plaintiffe or Defendant; but of the Defendant it cannot be intended, for that ſhould be againſt our Bookes, the true interpreters of this Act. And of the Plaintiffe (it ſeemeth it was intended) he cannot be by Attourney, and that was Caworths Caſe mentioned in the Report of 21 H. 7. the Record whereof being found out is againſt the report thereof; which very point came in queſtion in my time in the Kings Bench in an appeale of mayheme brought by Hudſon againſt Marwood, the Plaintiffe appeared by Attourney, and declared againſt the Defendant, the Defendant prayed that the Plaintiffe might be demaunded, for that he could not appeare by Attourney, and if the Plaintiffe appeared not, that he might be nonſuited; againſt which the Councell of the Plaintiffe objected, that the Plaintiffe in an appeale of mayheme might appeare by Attourney, for that it might be, that he was ſo wounded as he could not appeare, and for authority cited the ſaid booke in 21 H. 7. whereunto anſwer was made by the Councell of the Defendant, and reſolved by the whole Court, that the Plaintiffe could not appeare by Attourney, for the Defendant may demand oyer of the mayhem, &c. which ſhall be peremptory to him being a triall of the mayheme, which is a triall which the Law giveth him.

8 E. 3. Attourney 93. 2 R. 3. 13. 6 H. 7. 1. F. N. B. 26, 27. Vet. N. B. 19, 20.

M. 25. & 26. Eliz. Coram Rege Rot

And albeit it may be hard and difficult in ſome particular caſe in reſpect of the grievouſneſſe of the mayheme for the Plaintiffe to appeare in perſon, as it was in 16 H. 7. where the mayheme was hainous and horrible, tho legges of the Plaintiffe being broken over a threſhold, yet that muſt not change the Law, nor take from the Defendant his full defence and triall, for ſo upon the like ſurmiſe the Defendant might be barred thereof in all caſes.

And Sir Chriſtopher Wray Chiefe Juſtice ſaid that the Record of Caworths caſe had been ſeen, and that the Record thereof was againſt the Report, and thereupon the Plaintiffe was called, and by the rule of the Court was non-ſuit, and I was of councell in this caſe, which I have the rather reported the more at large, for that no man ſhould bee deceived by the ſaid Report of 21 H. 7.

℄ Soit maund al Viſc' que ils ſont priſes.] This is the fourth branch of this Act.

Albeit this Statute ſpeaketh onely of the execution of the body, yet might he have had at the making of this Act a Fieri fac': And afterwards by the Statute of W. 2. cap. 45. he may have an Elegit, for this branch being in the affirmative doth not reſtrain the Plaintiffe to take any other remedy.

¶ Si les Plaintifes deſormes en tiel treſpas, &c. ſe facent eſſoine, &c. ſoit jour done tanq; al venu des Juſtices errants, &c.] This is the firſt branch of this Act, and is to be intended of an eſſoine de ſervice le Roy, and extendeth to Actions of Treſpaſſe, and not Actions of Debt. Touching common eſſoines, which were uſed for delay onely, former proviſions haue been made. By matter ſubſequent this branch is become of no uſe, for ſeeing the authority of Juſtices in Eyre is ceaſed, when the Plaintiffe is eſſoined of the ſervice of the King, the Court cannot give day before the Juſtices in Eyre, and therefore it remaineth, as it was before the making of this Act.

45 E.3.10.b. Marleb.c.13, 19. W.1.ca.41,42, 43, &c.

Note that when the Demandant or Plaintiffe is eſſoined de ſervice le Roy, and at the day brings not in his Warrant, this ſhall be adjudged a non-ſuit.

Tr.18 E.3. 21 E.3.37.b.

¶ En tiels pleas & en auters pleas, ou attachments & diſtres giſont.] That is to ſay, in perſonall Actions, where the proceſſe is by attachment and diſtreſſe. This is the firſt branch of this Act.

27 E.3.81.12 H.4 14. per Skrene.

¶ Eſſoine de ſervice le Roy.] Herein the delay is great, viz. for a yeare and a day, therefore he that caſt the eſſoine muſt appeare in perſon in Court, to the end he may be ſworne, &c. and that day may be given to bring in the warrant for the eſſoine.

Marl.c.19 12 H.4 14. 2 E.4.16. 1.5 E.4.70.

¶ Et ne port ſon garrant.] A Warrant under the priby ſeale is not ſufficient, but it muſt be by Writ under the great Seale directed to the Juſtices; alſo the warrant muſt teſtifie that he is in the Kings ſervice, &c. which commonly is upon certificate made to the Lord Chancellor by the Captains of the Hoſt under whom he ſerves.

34 H.6.1.35 H.6.2

And this is the firſt Act, that concerned the eſſoine de ſervice le Roy.

¶ Il rendra al Plaintife les damages de la journey de 20.s. ou de pluis ſolonque le diſcretion les Juſtices.] The Statute ſpeaketh where there is one Defendant, &c. he ſhall pay 20.s. and if there be divers Defendants, and they are eſſoined de ſervice le Roy, and at the day bring in no warrant, every one of them ſhal pay 20.s. for they are in Law ſeveral eſſoins.

4 E.2. eſſoine 79. 28 E.3.98. Kelwey 106. & 107.

And the Court by their diſcretion may by force of the Act increaſe it to a greater ſumme, as ſometime to 40.s. &c.

29 E.3.13,36.

And albeit this branch doth not by expreſſe words determine what ſhall be further done, yet if the eſſoine were caſt after iſſue in a perſonall Action, and ſeeing the eſſoine for want of a Warrant is turned to a default, it followeth that by the Common Law the enqueſt ſhall be awarded by default, and therefore in that caſe he ſhall have the * 20.s. pur la journey by the Statute, and by the enqueſt recover his damages and coſts by the Common Law; for Statutes made for the ouſting of delayes are ever conſtrued liberally and beneficially.

29 E.3.36. 21 E.3.37.

In a reall Action if an eſſoine be caſt for the Tenant de ſervice le Roy, and no warrant is brought in at the day, he ſhall not pay the * 20.s. &c. for this Act extends not to reall Actions; but a petit Cape, or a graund Cape ſhall lie as upon a default, as the caſe ſhall require.

* Hil.16 E.1. in Banco 75. Buck. & Rot.73. Hereford.

* Hil.16 E.1. ubi ſupra. 20.s. in Action de Waſte vers Tenant pur vie.

CAP. IX.

PUrview eſt enſement, que nul briefe ne iſſer' deſormes de le Chauncerie pur mort de home, denquirer ſi home occiſt auter per miſadventure, ou ſoy defend', ou en auter manet ſans

ſans felony, mes celuy ſoit en priſon jeſque al venue des Juſtices errants, ou aſsign'a gaole deliverie, & ſe miſt en pais devant eux de bien & male. Et ſi ſoit trove per pais que il le fiſt ſoy defend', ou per miſadventure, donques fra les Juſtices aſſavoier au roy, & le roy luy en fra ſa grace, ſi luy pleiſt. *W.* 1. *cap.* 11. Purview eſt enſement, que nul appell' ſoit abatue ci legierment come avant ad eſte, mes ſi lappellour counte le fait, lan, le jour, le heure, le temps le roy, & la ville ou le fait fuiſt fait, & de quel arme il fuiſt occiſe, ſe eſtoia la appell', & jammes ne ſoit lappell' abatus per default de freſh ſuit puis que home ſue dedeins lan & le jour apres le fait.

Before the making of this Statute, for that men were detained long in prison before they were called to answer, which was ever odious in Law, Writs De odio & atia issued out of the Chancery for their relief (as it appeared before in the exposition upon the Statute of Magna Charta) specially where the fact was either by Misadventure, or se defendendo; and therefore this Act restraining those Writs, doth prescribe a course for their speedy calling to answer in those two cases. But now the Writ De odio & atia is revived by the Statute of 42 E. 3. cap. 1. as it appears in the exposition upon the 5t and twentieth Chapter of Magna Charta. See the Mirror cap. 5. § 5. Magn. Chart. cap. 26, 29. See W. 2. cap. 29. Regist. 134.

And where the Statute of Marlbridge has determined, that killing of a man by Misadventure should not be any offence for the which the delinquent should dye, this Statute maketh the killing of a man se defend' in the same degree, where by the Common Law he should have dyed for it. Marlb. cap. 26. 21 E. 1. 17. b.

Lastly, where the Statute of Marlbridge took an order for the parties speedy delivery out of prison in case of Misadventure, this Act provideth for the same both in case of Misadventure and of se defendendo.

¶ Per misadventure ou soy defendant, ou en auter manner sans felony.] Of this matter somewhat hath been said in the exposition upon the Statute of Marlbridge: an Indictment or a Verdict that A. killed B. se defendendo is not good, but the speciall matter must be set down, to the end the Court may adjudge it to be upon inevitable necessity; whereof you shall read a notable Record in the Parliament Rolls of 3 R. 2. John Imperials case; Note the words here, Sans felony, vide Marlbridge ubi supra, and in our Books it is said to be no Felony; and the reason is, because neither of them is done felleo animo. Marlbr. cap. 25. 43 Ass. p. 3. 3 E. 3 Coron. 302, 354. 15 E. 3. ibid. 116. 2 H. 4. 18. 11 H. 7 23. Fleta lib. 1. cap. 31. Rot. Parliam. 3. R. 2. nu. 18. John Imperials case.

If a man kill another in his own defence, if he escape, &c. the Town shall be amerced, as an ancient mark of the Common Law, that made it Felony.

¶ Soit en priſon jeſque al venue des Juſtices errants ou aſsign' a gaole deliverie.] Hereby it appeareth what expedition ought to be used for avoiding of long imprisonment, viz. untill the next coming of the Justices; see for this Magna Charta. Magn. Chart. cap. 26. & 29.

And here it is to be observed, that the Law of England is a Law of mercie, Lex Angliæ est lex misericordiæ, for three causes:

First, that the innocent shall not be worn and wasted by long imprisonment, but (as hereby, and by the Statute of Magna Charta appeareth) speedily come to his triall.

Secondly, that prisoners for criminall causes, when they are brought to their triall, be humanely dealt withall; for * Severos quidem facit Justicia, inhumanos non * *Regula.*

Bract. lib.3. fol. 137.a.Brit.f.17.b. non facit. And therefore it is said, Cum autem captus coram justiciariis producendus fuerit, produci non debet ligatis manibus (quamvis aliquando compedibus propter periculum evasionis) & hoc ideo, ne videatur coactus ad aliquam purgationem suscipiendam. And Fleta saith, Cum autem capti in judicio produci debeant, non producantur armati, sed ut judicium recepturi, nec ligati, ne videantur respondere coacti.

Fleta lib. 1.ca.31.

Note: Thirdly, the Judge ought to erhort him to answer without fear, and that justice shall be duly administred to him.

It is to be observed, that Justices of Gaole delivery may take an Indictment of killing of a man se defend', because their authority is generall, but Justices of Peace cannot take such an Indictment, because their Commission is limited, and it is taken not to be within their Commission.

¶ Et si soit trove per paiis que il soy fist soy defendend' ou per misadventure, &c.] This may be two wayes, either when he is indicted of Murther or Homicide, and the Jury finde it se defendendo, or when he is specially indicted, that he killed a man se defendendo, whereunto (for safeguard of his goods) he may plead Not-guilty; and if he be found guilty se defendendo, he forfeiteth his goods, if not guilty, he saveth them.

37 H.8. Appeal. B.122. 26 Ass.32. 29 Ass.23. Stamf. Pl.Cor. 15. Pl.Com.101. 25 E.3.42. 29 E.3 94. Here is implyed a Parime of the Common Law, that the life of a man is of so precious regard in Law, that the death of a man cannot be justified, as in this case the Defendant in the appeal cannot justifie the death se defendendo, but must plead Not-guilty, and as our Act speaketh, Si soit trove per paiis, &c. the Jury may finde veritatem facti, the truth of the fact.

And herein note a diversity between an appeal of Death, and an appeal of Mayhem; for in appeal of Mayhem, if the Defendant plead Not-guilty, he cannot give in evidence that it was se defendendo, for that he ought to have pleaded it by way of justification in barre of the Action.

19 H.6.31.21 H.6 27. 41 Ass. 21. 9 E.4.28. 22 H.6 48. There is also another diversity between an appeal of Mayhem, or an Action of Trespasse for wounding, or mannas of life and member; and an Action of Trespasse of Assault and Battery for a man in defence, or for the preservation of his possession of lands or goods; for in that case he may justifie an Assault and Battery; but he cannot justifie either mayheming, or wounding, or mannas of life and member: and so note a diversity between the defence of his person, and the defence of his possession or goods.

3 E.3. Coron. 286. See Marlbr. cap.25. If a man be indicted before the Coroner of the death of a man se defendendo, and that he fled for the same, he shall forfeit his goods, which favoureth of the Common Law.

15 E.3. Coron. 116. No man can be accessary to one that killeth another se defendendo.

If a man be indicted for killing of a man by Misadventure, or se defendendo, and is out-lawed thereupon, he shall forfeit no lands, but goods and chattels onely.

¶ Ferra les Justices assavoir au roy, & le roy luy ferra grace sil luy pleist.] To the King, that is, in the Court of Chancery the Pleas whereof be Coram domino Rege in Cancellaria; and there the Lord Chancellor, upon the the Record certified to him in the Chancery by force of a Writ of Certiorari, shall of course by force of this Act grant him his pardon without speaking hereof to the King, for that speaking is intended judicially in Court, as hath been said: And note this Clause is generall, and extendeth aswell to an Appeal, as to an Indictment; and therefore if a man be appealed of Murther, and it is found that he did it se defendendo, or by Misadventure, the King is to pardon it, for the offender cannot be put to death, which is the end of his suit, and an Appeal lyeth not for such a killing; otherwise it is where the Appellee is to have judgement of death, for there the King cannot pardon it.

3 E.3.Coron.261 44 E.3.44. 2 H.4 18.Stamf.Pl.Cor. fol.16.

¶ Ferra

¶ Ferra grace ſi luy pleiſt.] Are but words of reverence to the King, for the King is obliged Ex merito juſticiæ, to grant the pardon, albeit ſome opinion is to the contrary; otherwiſe the Lord Chancellor could not do it without warrant from the King. 3 E. 3. Coron. 361 iiid. 354. 29 E. 3. 42. 44 E. 3. 44. Stamf. Pl. Cor. 16. b. Kelwey 108.

¶ Purview eſt enſement que nul appeale ſoit abatu ey ligerment come avant ad eſtre.] The miſchief before this branch of this Act, was, that there were ſo many exceptions to abate the appeal, eſpecially being ever allowed learned Counſell to defend them; and the miſchief was the greater, for that the appeal being once abated, never any other appeal (in favour of life) could be brought afterward. Brit. fol. 40. b.

At the Common Law, theſe Exceptions were allowed to the Plaintiffe in the appeal of death:

1. That the Plaintiffe was not preſent at the mortall blow given, or Felony done; for Glanvile ſaith, Ita ut de morte loquatur ſub viſus ſui teſtimonio mulier auditur accuſare aliquem de morte viri ſui ſi de viſu loquatur. And Bracton ſaith, In omni vero caſu criminali, quæ ſub ſe continet feloniam, in appello debet fieri mentio de anno, de loco, de die, de hora, loqui etiam oportet de viſu & auditu. And the concluſion of the Writ of Appeal then was, Offert ſe diſrationare, &c. ſicut ille, ſeu illa, qui vel quæ præſens fuit, & hoc vidit. Glanv. lib. ult. cap. 2, 4, 5, &c. Bract. lib 3. fol. 138, &c.

And in another place he ſaith, Non autem habet appellum fœmina, niſi de morte viri ſui inter brachia ſua interfecti, &c. And Britton ſaith, Des femes volons nous que nul ne puiſſe appeale de felony de mort de home, forſque de mort ſon baron tue deins lan & jour enter ſes braches. Lib. 3. fol. 125. Brit. ubi ſupra.

Theſe words, Infra brachia, have this ſignification, that the muſt not onely be his wife de jure, but alſo de facto, that is, in poſſeſſion; for the wife in poſſeſſion without lawfull matrimony ſhall not have the Appeal, but the muſt be his wife both in right and in poſſeſſion without elopement from her husband, &c. or divorce, &c. Many other exceptions were before this Act, as appeareth by our ancient Authors, to be taken, and another manner of count made before this Act, now this Act hath retained all that was certain, and rejected the reſt, as hereafter ſhall appear. Mirror cap. 2. §. 7 7 E. 4. 15. 14 E. 4 7 22 E. 4. 39 50 E. 3 15. 28 E. 3. 91. 27 Aſſ. 3. Ubi ſupra.

If the Writ of Appeal doth comprehend the ſpeciall matter, viz. that the husband or anceſtor was ſlain ſe defendendo, or by Miſadventure, the Writ of his own ſhewing ſhall abate; for an Appeal, as hath been ſaid, lyeth not of ſuch a killing, becauſe the end of the Appeal of death is, that the Appellee may have judgement of death, viz. death for death.

¶ Purview eſt que nul appeale ſoit abatu, &c.] This clauſe, if it be taken by it ſelf, is generall, and literally as ſome hath taken it, extendeth to all Appeals, as of Death, Robbery, Rape, Felony, Mayhem, &c. but Ex antecedentibus & conſequentibus fit optima interpretatio, and all the antecedent clauſes do concern the death of man; nay in this very ſentence theſe words are contained, Et de quel arme il fuit occiſe, which manifeſtly do prove that this Act is onely intended of the Appeal of the death of man. And therefore the Appeals of Robbery, Rape, and of other Felony and Mayhem are not within this Act, for the miſchief was, as hath been ſaid, in the caſe of the death of man. See 1. part. of the Inſtit. ſect. 500, 501. Brit. fol. 45, 46. 22 Aſſ. p. 97. 7 H. 4. 38. Stamf. Pl. Cor. 62.

¶ Lappellour counte le fait, lan, le jour, le heure, le temps le roy, & la ville ou le fait fuiſt fait, & de quel arme il fuit occiſe.] By this Act the count of the Appellant muſt comprehend theſe ſeven things: 1. The fact, 2. the yer, 3. the day, 4. the hour, 5. the time of the King, 6. the Town where the fact was done, and laſtly, with what weapon. See the Statute of 4 E. 1. de offic. Coronatoris.

¶ Le

Brit. fol. 7. lib. 5. fol. 120, 122. Longs caſe. See hereafter Heydons caſe.

¶ Le fait.] The fact: Herein muſt be ſet forth, firſt, whether it was by wound, or without wound; if by wound, 4. things are neceſſary to be rehearſed in the ſetting out of the fact, beſides the circumſtances mentioned in the Act, viz. 1. In what part of the body the wound was: 2. of what length & depth the wound was, where the wound is of ſuch a quality, ſo as it may appear to the Court that the wound was mortall; but if his arm were cut off, or the like, there the length or depth cannot be ſhewed: 3. that the party wounded dyed of that wound; and laſtly, that it may appear that he dyed of that wound within the yéar and day after the giving of the wound; If without wound, either by weapon or without; If by weapon, as by a blow or bruiſing, or by putting up a hot Iron in the fundament or the like, then as many of the circumſtances before mentioned in the declaration of the fact as do agrée therewith, and the reſt of the circumſtances required by the Act are to be ſet forth: If without weapon, as by poyſoning, drowning, burning, ſuffocating, ſtrangling, or the like, the manner of the fact muſt be ſet forth, and ſo many of the circumſtances required by the Act as agrée therewith, namely, all the circumſtances, ſaving with what weapon the Felony was done, becauſe no weapon was uſed in committing of this Felony: but notwithſtanding, this Act extendeth to all Homicides, though they were not done with any weapon.

¶ Lan.] That is, the yéar of the Raign of the King.

Bract. li. 5. fo 359

¶ Le jour.] The day here is taken for the naturall day, comprehending both the Solare day, and the night alſo, containing 24. hours, and therefore if it be done in the night, it is ſaid In nocte ejuſdem diei.

Lib. 4. fol. 41, 42. Heydons caſe. 22 E. 3. Coron. 244. 11 H. 4. 12. Pl. Com. 401.

If a man be feloniouſly ſtrucken the 10. day of December, &c. whereof he dyed the 10. day of January, he cannot alleage the killing the 10. day of December when the ſtroke was, but he may alleage the killing to be the day that he dyed; but the ſureſt concluſion is; and ſo he killed him in manner and form aforeſaid: for though to ſome purpoſe the death hath relation to the blow, yet this relation being a fiction in Law maketh not the Felony to be then committed.

¶ Le heure.] Hora conſtat ex 40. momentis. The hour, as for example to ſay, 10. die Decembris, viz. in hora decima in nocte ejuſdem diei.

Bract. ubi ſupra. Heydons caſe, ubi ſupra. Lib. 9. fol. 62. Seign' Zanchars caſe.

There are divers diverſities between the alleaging of the hour, and the day, or yéar; 1. In the count upon the Appeal one may ſay, Circa horam 10. ante meridiem, &c. or, Inter horam decimam & undecimam ante meridiem; but the like cannot be done either of day, yéar, or part of the body: as the fact cannot be alleaged to be done circa 10. diem Decembris, &c. or, inter decimum & 11. diem Decembris, or circa annum ſextum domini Regis nunc, or inter ſextum & ſeptimum dicti domini Regis nunc, or alleage the wound to be given circa or circiter pectus: and the reaſon of this diverſity is, that it is more difficult to alleage the true hour, then the true day or yeer; and yet the Plaintife in the Appeal is not bound to prove in evidence, neither the preciſe hour, nor the very day that he alleageth in his count: another diverſity is between the Appeal and the Indictment, for in the Indictment the hour needs not to be alleaged.

And although the day be alleaged, yet if the Jury finde him guilty at another day, the verdict is good, but then in the verdict it is good to ſet down on what day it was done, in reſpect of the relation of the Felony; and the ſame Law is in the caſe of an Indictment.

Paſch. 32 Eliz. reſolved by the Juſtices.

At the Seſſions of the peace holden for the County of Norff. one Syer was indicted of Burglary, 1. Auguſti, 31 Eliz. and upon not guilty pleaded, it fell out in evidence that the Burglary was done 1. die Septembris in eodem anno, ſo as primo Auguſti there was no Burglary done, and thereupon he was found not guilty, and afterwards he was indicted againe 1. Septembris, &c. and it was reſolved by Wray and Periam Juſtices of Aſſiſe, and by the greateſt part of the

Vide: Sayer's Caſe 2 Rep: 140 : 141

Judges,

Judges, that he ought not to be tried again, for he mought have béene found guilty upon the firſt indictment, for the day is not materiall; but it is neceſſary for the Jury in that caſe to ſet down the day, and ſo in caſe of appeale.

¶ Le temps le Roy.] The yeare being already named, it might ſéem that the time of the King, which is the yeare of the raigne of the King, is néedleſſe, but it is here againe added, to the end, that not onely the yeare ſhall be alledged wherein the blow, &c. was given, but alſo the yeare when the death enſued thereupon, to the end that it may appeare, that he died of that blow, &c. within the yeare and day; and whenſoever the yeare of the King ought to be alledged, it draweth with it time and place, that is, the day and time, when and where the death enſued.

Vide Machallis Caſe here following, and Heydons Caſe, and Longs Caſe ubi ſupra.

¶ La ville.] This muſt be underſtood, if the murder or homicide were done in a Towne, but if it were done in a place knowne out of any Towne, then may it be alledged in that place knowen in ſuch a County.

And ſo in a City it may be alledged in a Pariſh, &c. becauſe ſuch a Pariſh is in lieu of a Towne.

But in the Country if a Pariſh contain divers Towns, the murder or homicide cannot be alledged in ſuch a Pariſh, for that this Statute requireth, that the fact be alledged in a Towne.

¶ Et de quel arme fuit occiſe.] With what weapon the wound was given: And albeit one certain weapon muſt be alledged in the Count, yet upon the evidence, if it be proved that the wound were given with any other weapon, the offender ſhall be found guilty; as if it be alledged in the indictment that the wound was given with a Dagger, and it is proved in evidence, that it was given with a Sword, Rapier, Hooke, Hatchet, Bill, or any like weapon with which a wound may be made; for it were unreaſonable to drive the Plaintiffe in the appeale to prove the ſelfe ſame particular weapons whereof many times he cannot have notice; But upon ſuch a count, or an indictment in evidence it cannot be proved, that the party was poyſoned, or drowned, or burnt, ſuffocated or ſtrangled, or the like, where no weapon at all was uſed; for that evidence doth not maintain the count in the appeale or the indictment, becauſe it is murder or homicide of another kinde, and not under the ſame claſſis that is alledged in the count or indictment, and thereof the Plaintiffe by ſuch as viewed the body may have notice.

Lib. fol. Machallis Caſe.

And albeit this Statute requireth, that it be alledged in the count of the appeale, with what weapon he was killed, it is to be underſtood in caſe where he is killed with a weapon, for albeit (as hath béen ſaid) there was no weapon at all, as in caſe of poyſoning, drowning, &c. yet doth the appeale lie for ſuch a murder or homicide; and the weapon is in this Act mentioned for example.

¶ Pur default de freſh ſute.] At the Common Law if the Plaintiffe in the appeale of death had not made freſh ſuit, he ſhould not have maintained his appeale: for freſh ſuit recens inſecutio, that is, a ſpéedy and continuall purſuit of the felon for his apprehenſion and conviction, and that is for two ſeverall purpoſes, one to have reſtitution of his goods, as in the appeale of robbery and the like, and the other for the maintenance of the appeale it ſelfe, as here in the caſe of death, where no reſtitution of goods is to be had, but puniſhment of the offendor by death, and that freſh ſuit which the Plaintiffe in the appeale of death is to make, is here intended. What this freſh ſuit was at the Common Law doth notably appeare by Bracton, Qui appellare voluerit & bene ſequi, debet ille cui injuriatum erit, ſtatim quam cito poterit hutéſium levare, & cum hutéſio ire ad villas vicinas & propinquiores, & ibi manifeſtare ſcelera & injurias perpetratas, & continuo accedere debet ad ſervientes Domini Regis, ſi inveniri poſſint

Bract. l. 3. fol. 139. Brit. fol. 43. Acc'.

possint, & deinde ad coronatores, & sic inde sine intervallo ad proximum Comitatum &c.

¶ Deins l'an & le jour.] Here the yeare is to be accounted for the whole yeare according to the Kalender, and not according to 28. dayes to the moneth, and the day is intended of the naturall day, and by this Act if the appeale of death be commenced within the yeare and the day, it is sufficient fresh suit, but after the yeare and day the appeale of death cannot be commenced.

27 E.3.83.32 E.3 age 57.45 E.3.21 13 Ass. 10.21 Ass. 24. 21 E.3.23. 11 H.4.94.17 E.4 2.b.27 H.8.11.a. Stamf. Pl. Cor. fol. 60.c.d. 15 E.2. Cor. 385.

If the next heire of the dead be within age, he must bring his appeale of death within the yeare and the day according to this Act, but it hath been holden in many Books that the parell should demurre untill his full age; and the reason yelded therefore is, that the Defendant cannot wage battell, &c. But it hath beene often adjudged and approved by continuall experience of latter times that it shall proceed during his minority, and the reason of saier of Battell is of no force, for that a man above seventy yeares of age shall have an appeale, &c. and yet the Defendant shall be ousted of battell, and so if the Plaintife in an appeale be mayhemed, &c. the Defendant shall be ousted of battell, and yet the appeale shall proceed.

Stamf. Pl. Cor. fol. 63.a.

¶ Apres le fait.] That is, after the felony by homicide committed.

If a man be mortally wounded, &c. the first day of May, and thereof dieth the first day of July, some doe hold that the appeale is to be brought within the yeare and day after the blow given, for that the death ensuing hath relation to it, and that is the cause of the death, and the offender did nothing the day of the death.

See the fourth part of the Inst. Cap. Justices in Eyre, and all the auncient Authors quoted there. See the fourth part of the Inst. Cap. the Courts of the Forest. * Heydons Case ubi supra.

Here the Law hath made a limitation in the appeale of death: By the ancient Law Justices in Eyre did ride from seven yeare to seven yeare, and before them no plea of the Crown could be inquired of for any offence committed before the last former Eyre: So the Justices in Eyre in the Kings forests may hold a Justice seat from three yeare to three yeare. But no offence in the forest can be at the Justice seat inquired of before the last former Justice seate.

*But the yeare and the day shall be accounted from the death, for before that time no felony was committed, and thus it hath been often resolved and adjudged, and the reason abovesaid grounded upon relation, which is a fiction in Law, holdeth not in this case.

26 Ass. p. 52.

If an appeale of murder be brought, and hanging the suit, and after the year and day is run out, one become accessary to the appellee, the Plaintife shall have an appeale against him after the yeare and day past after the death, but it must be brought within the yeare and day after this new felony as accessary, for that in this case [apres le fait] is understood after this new felony as accessary done.

Thus much shall suffice for the exposition of this Law, more shall be said concerning appeales in the treatise of Pleas of the Crowne, whereunto it properly belongeth.

See the Statute of 3 H. 7. cap. 1.

CAP. X.

W. 1. cap. 43.

COme il soit contenue en lestatute le Roy que ore est *W. 1. cap.* 43. que deux parceners, ou deux queux teigne en common, ne puissent fourcher per essoine, del heure que

que ils ount un foits apparus en courte : Purview eſt, que meſme ceo ſoit tenus & garde per la ou home & ſa feme ſont enpledes en la court le Roy.

The miſchiefe before this Statute was, that notwithſtanding the Statute of W.1. the husband and wife (unleſſe they were joyntly enfeoffed) might Fourch by eſſoine, for that Statute extended but to Parceners and Joyntenants: See in the expoſition upon the Statute of W.1. cap.43. 39 E.3.29.

This Statute extendeth to common eſſoines, and not to eſſoine de ſervice le Roy. 13 E.3. eſſoine 5. 3 E.3.29.12H.43

Alſo this Statute extendeth onely to reall Actions, and therefore in perſonall Actions baron and feme may Fourch by eſſoyn. 38 E.3.18.39E.3. 29. 12 H.4.1.

Moreover this Act extendeth to eſſoynes after appearance, that is, that all the Tenants have appeared, and therefore baron and feme may Fourch by eſſoyne before appearance notwithſtanding this Act; hereby it appeared that eſſoynes, at the firſt allowed upon juſt cauſe, were afterwards uſed merely for delay. 22 E.3.5. b. & 14. 2 E.4.*

CAP. XI.

PUrview eſt enſement, que ſi home bailla en la Citie de Londres ſon tenement a terme des ans, & celuy a que le franktenement eſt, ſe face empled' per colluſion, & face default apres default, ou veigne en court, & la voile render pur faire le termour perdre ſon terme, et le demandant eit querele, iſsint que le termour puiſſe aver recover per brieſe de covenant, le Maire et les Bailifes puiſſent enquirer per bone viſne en la preſence del termour, & del demandant, le quel le demandant moveſt ſon plee per bon droit quel avoit, ou per colluſion et per fraude pur faire le termour perdre ſon terme. Et ſi trove ſoit per enqueſt, que le demaundant moveſt ſon plee per bon droit quil avoit, ci ſoit le judgement performe maintenant. Et ſi trove ſoit per enqueſt, que il luy empleda per fraud' pur toller le termour ſon terme, ci demurge le termor en ſon terme, & lexecution del judgement pur le demaundant ſoit ſuſpendus, jeſques apres le terme paſſe. Et en meſme le maner ſoit fait de equitie en tiel eaſe devant Juſtices, ſi le termour le challenge devant judgement rendus.

The generall miſchiefe before this Statute was, that the Tenant for terme of yeares was ſubject to the pleaſure of him that had the freehold, for if he had ſuffered a recovery in a reall Action, though in truth it were by colluſion (ſuch

credit the Common Law gave to recoveries in reall Actions) the intereſt of the termour was overthrown, becauſe he could not falſifie the recovery of the freehold, for that by the Common Law none could falſifie a recovery of a freehold, but he that had a freehold. This Act provideth a twofold remedy: 1. for the City of London by Writ in nature of a Commiſſion to the Mayor and Bayliffes grounded upon this Statute, &c. 2. generally by receit before judgement, which Act Fleta doth render in theſe words, Conſtitutum eſt, quod ſi quis in hujuſmodi locis (viz. Civitatibus & Burgis privilegiatis) tenementum dimiſit ad terminum annorum, & ille cujus liberum eſt tenementum permiſerit ſe implacitari per colluſionem, & defaltam fecerit poſt defaltam, (and ſo to the end) Vide Fleta.

Fleta lib. 2. ca. 48.

Another miſchiefe was, that after ſuch a recovery had by colluſion, and the leſſee ouſted thereupon, he ſhould have his Action of Covenant (at the leaſt upon this word dimiſit, &c.) againſt the leſſor, and ſo the termour loſt his poſſeſſion, and was driven to his Action, which was a cauſe of multiplication of ſuits, Et boni legiſlatoris eſt lites dirimere.

19 E. 3. Aſſ. 82. 10 E. 3. 46. 22 E. 3 8. 16 E. 3. receit 100. 7 H. 4. 12. a. & b. 30 H. 6. Fauxer de recovery 9. 30 H. 6. 16. 9 E. 4. 38. 1 H. 7. 9. 7 H. 7. 12. Pl. Com 83. Kelwey 108. F. N. B. 198. Lib. 6 fol. 135. Bredimans Caſe. Lib. 9. 85. Aſcoughs Caſe. 21 H. 8. cap. 15. 24 E. 3. 27. 7 H. 4. 12. Kelwey 128.

¶ Bailla a ſon tenant a terme des ans.] At the making of this Statute there was neither Tenant by Statute Merchant, nor Staple, nor Elegit, for theſe executions againſt lands were given by Acts of Parliament made afterwards, and yet having but Chattels, they could not falſifie (as hath beene ſaid) no more then Tenant for yeares. And though in our books there be a Conceſſum that Tenant by Statute Merchant might falſifie, yet the reaſon yelded there doth weaken the authority thereof, for there they give the reaſon, for that he was not made party, which he could not be in the Præcipe he having but a chattell: And latter authorities are againſt it, and a judgement in Parliament alſo, yet being in equall miſchiefe, though they be created ſince our Statute, yet are they within the remedy of this Act, for upon the matter they are but termours. But otherwiſe it is holden in caſe of a Gardein in Chivalry, that he is not within this Act, for he commeth not in by any contract betweene the parties, as leſſee for yeares, and Tenant by Statute Merchant, Staple, or Elegit originally doe, but meerly by Act in Law.

33 H. 6. 41. b. Priſot. 9 E. 4. 30. 19 E. 3. receit 15. 9 Eliz. Dier. Britton 93. b. Tr. 3 Jacobi in Communi Banco 21 H. 8. cap. 15.

This termour for yeares intended by this Law muſt be by Deed by the expreſſe words of the body of this Act, Iſſint que le termour eyt recoverie per brieſe de covenant; which muſt be by Deed, as in thoſe dayes few were made otherwiſe, and ſo it was reſolved by the Court of Common pleas, and this Act required a Deed, leſt it might be uſed for delay. But now by the Statute of 21 H. 8. cap. 15. Tenant for yeares by Deed or without Deed may falſifie, and ſo by that Law may Tenant by Statute Merchant, Staple, or Elegit doe, which Act being a beneficiall Law is conſtrued favourably.

Lib. 11. fo. 33. b. Powlters caſe.

¶ En la Citie de Londres.] That is in the Court of the Huſtings, the greateſt and higheſt Court in London; it is called Huſtingum or Huſtings of two Saxon words, viz. Huſ. i. domus, & ðing. i. placitum, ſo Huſtingum is as much to ſay, as domus placitorum, or forum contentioſum, where cauſes are pleaded; and other Cities have the like Court, and ſo called, as York, Lincoln, Wincheſter, &c.

Here the City of London is named, but it appeareth by that which hath been ſaid out of Fleta, that this Act extends to ſuch Cities and Boroughs privileged, that is, ſuch as have ſuch privilege to hold plea as London hath.

Fleta ubi ſupra.

But London was named for excellency, for that in thoſe dayes it excelled in freedome and fulneſſe of trade and Merchandizing (with order, but without monopolizing) like the good Bayliffes of the Kingdome exporting our native, neceſſary, and weall commodities, and importing profitable and neceſſary commodities. And in thoſe dayes the exportation farre exceeded the importation, whereby the Realme flouriſhed in all opulency and in multitude of

of Ships, Merchants, and Mariners, aſwell in war as in peace, inſomuch as taking one example that was next my hand, in time when England was deeply ingaged in a long and chargeable war, the native Commodities exported (as taking one peer for example) amounted to the value of Two hundred and twelve thouſand, three hundred thirty and eight pounds, the Ounce of Silver then being 5s. 6d. and the goods imported to the ſum of Thirty and eight thouſand fourſcore pounds, and nine pence; whereby it may be concluded what money was brought into the Realm, and how much the exportation exceeded the importation. 28 E. 3. in Scaccar'.

And to the end, that Merchants and others might enjoy the houſes which they held for years, for the advancement of Trade and Traffique, London was particularly named.

¶ Et celuy a que franktenement eſt.] These words are ſtronger then if the Statute had ſaid Tenant, and yet the vouchée is taken within this, and the other branch alſo, as in the expoſition upon the ſecond branch ſhall be ſhewed.

¶ Se face implead per colluſion.] But the Termor that is to be received by the ſecond branch, which referreth to this, muſt not onely alledge the Colluſion, but alledge matter for the ſafeguard of his intereſt, as there ſhall be ſhewed.

¶ Face default ou voille render.] Faint pleader is not taken to be within this Act: ſee the laſt clauſe of this Act.

¶ Et le demandant eyt querel'.] That is, if the Demandant have Execution, and the Termor ouſted, ſo as he may have his Action of Covenant.

¶ Le Maire & les bailifes puiſſent inquirer, &c.] And this enquiry muſt be done by Writ in nature of a Commiſſion grounded upon this Act, directed to the Maior and Bailifes, reciting the Leaſe, the bringing of the Action by colluſion, and this Statute, and concluding thus, Ideo vobis mandamus, quod convocatis partibus coram vobis, & inquiſita ſuper hoc plenius veritate, eidem A. (that is, the Termor) de prædict' meſſuagio terminum ſuum quod juſtum fuerit, ſecundum formam ſtatuti prædict' habere faciatis. And ſo regularly, when any like authority is generally given by any Act to do juſtice, it ought to be done by force of the Kings Writ grounded upon the Act, and the Writ grounded upon this Act is called, Breve de inquirendo veritatem ſuper ſtatutum Gloc'. Regiſt. 179. a.

¶ Execution del judgement pur le demandant ſoit ſuſpendus.] So as the Lord and his heirs in the mean time having the reverſion, notwithſtanding the Judgement, ſhall have the Rent, and ſhall punish Waſte, &c. 17 E. 3. fol. 29. Kelw. 108. b.

¶ En meſme le manner ſoit fait de equitie in tiel caſe devant Juſtices, ſi le termor ceo challenge devant judgement.] This Termor muſt be by force of a leaſe by Deed, as it was reſolved Trinit. 3. Jacobi ubi ſupra. 4 E 2. Receit 159 10 E. 3. 45. 21 E. 3. 1. 17 E. 3. 29.

This is the firſt Act that gave receit in any caſe, and by force of this Act the Termor before Judgement may pray to be received to defend the right and intereſt of his term upon the Default, or Render, or Nient dedire of the Tenant, but not upon Faint pleader: and Tenant by Statute Merchant, Staple, and Elegit are taken within this branch, aſwell as within the former branch of this Act. 22 E. 3 8. 19 E. 3 Receit 112. 9 E. 4 30. 7 H. 7. 11, 12. 21 H. 7. 25. 14 H. 8. 4. 45 E. 3. 7. 27 H. 8. 7. 19 Eliz.

And it is not ſufficient for the Termor to alledge Colluſion, but he muſt alſo traverſe Dier 263. b.

traverse the point of the Demandants Writ, or plead some barre to his title, for this Law that giveth him to be received, enableth him to plead for the safeguard of his interest.

19E.3. Receit. 15 The Termor must be received before Judgement, and albeit he doth defend his term, he shall not arrest Judgement, but suspend Execution during the term; for these words, En meisme le manner, maketh this branch in equipage with the former.

14 H.8.4. 27 H. 8.7. If the Tenant vouch, and the Vouchée enter into Warranty, and after make default, the Termor shall be received; for albeit the first branch (whereunto this doth refer) is when he that hath the franktenement make default, yet in as much as the Vouchée is Tenant in Law (this Law being beneficiall for safeguard of the interest of the Termor) he shall be received, for it is within the same mischief.

CAP. XII.

PUrview est ensement, que si home soit implede de tenement en meisme la citie, & vouch forrein' a garrantie, quel veigne en la chancery & eit briefe de sommons son garrantor a certe jour devant Justices du banke, & un auter briefe au Maire & as Bailifes, que ils surceissent en le parolle que est devant eux per briefe, jesques a taunt que le paroll' de le garrantee serra termine devant Justices du bank: Et quant le parol de la garrant' serra termine devant Justices du bank, donques serra dit au garrant' que il veigne en la citie de Londres a respoign' de chiefe plee. Et le demandant per sa suit eit brief de Justices de bank, au Maire & as bailifes, que ils voilent avant en le plee. Et le si demandant recover vers le tenant, veigne le tenant as Justices de bank, & eit briefe au Maire & as bailifes, que si le tenant eit la terre perdus, que ils facient extende la terre, & retorne lextent en bank a certe jour, & apres soit maunde au viscount du pais ou le garrantee fuist summons, que il luy face aver de la terre le garrantor a le value. *Vide Articul' Glouc. correct' Anno 9 Edw. 2.*

Regist. 2.b. 14 H. 4. 25. See how this is corrected by the Statute of 9 E.2. intitled, *Articulos Statuti Gloc' correctos, &c.*

The mischief at the Common Law, when the Tenant did vouch one to Warranty, and prayed that the Vouchée might be summoned in a forrein County, was the great delay that the Demandant had thereby, and specially in London, for that in London the Plea could not be removed neither by Tolt nor Pone; but the Plea was put without day, and the Record removed by the Kings Writ into the Court of Common pleas, &c. and some did hold, that at the Common Law the inferiour Court was put out of jurisdiction: but now by this Statute, and that of 9 E.2. the Demandant shall sue out of the Chancery a Writ of Summons ad warrantizandum against the Vouchée, returnable before the

the Justices of the Court of Common pleas at a certain day, and another Writ out of the Chancery called a Recordare to the Maior and Bailifes to remove the Record before the same Justices at the same day, and thereupon the Maior and Bailifes, being required thereunto by that Writ, to certifie the day of the return of that Writ to the parties to appear at the return of that Writ; and when the Court of Common pleas hath determined of the Warranty, then the Vouchée shall be commanded to go into London to answer to the chief Plea, and by a judiciall Writ the Court of Common pleas shall remand the Record, requiring them to proceed in the same Plea; and so forth, as it is contained in both these Acts.

¶ En la citie.] That is, the Citie of London specially named for the cause aforesaid, but extendeth by equity to all other priviledged places where a forrein Voucher is made, as to Chester, Durham, Salop, &c.

Ancient demesne is (as some do hold) within this Statute, because the Freehold is in the Tenants, and is within these words (Soit implead de tenement) but otherwise it is of a Tenant by copy Roll in a Court baron, because he hath no franktenement.

¶ Vouch forrein a garrantie.] De forinsecis vocatis ad warrantiam, that is, when one is vouched, and the Tenant prayeth that the Vouchée may be summoned in a forrein County.

a This Act being a beneficiall Law for furtherance of justice, and for ousting of delay is taken in this point also by equity, not onely to forrein pleas in reall actions, but also to pleas although they be not forrein, yet for default of power to proceed, the same shall be removed ut supra, and remanded ut supra: as if in an Action Auncestrell the Tenant plead bastardy in the Demandant, or in a Writ of Dower the Tenant plead unques accouple in loyall matrimony, neither b the Court in London, or any like inferiour Court cannot award a Writ to the Bishop for tryall thereof, for Nullus alius prater regem possit Episcopo demandare inquisitionem faciendam. And another treating of the plea of Ne unques accouple, in barre of a Writ of Dower, saith, Ac si alius quam Rex demandaret Episcopo quod inde inquireretur, Episcopus alterius mandatum quam Regis non tenetur obtemperare; and herewith agree our Books in all successions of Ages.

And therefore if such Pleas be pleaded in London, or such other inferiour Courts, the Record shall be removed, and after a Writ to the Bishop, and Certificate made by the Bishop, the Record shall be remanded: c and it appeareth that this Act doth extend to reall Actions wherein Voucher lyeth, and not to personall Actions: d and lest that forrein Vouchees should be used for delay, they must shew a Charter, &c. comprehending Warranty to the Court.

¶ Veigne en la chauncerie & eit briefe de summons, &c.] e This is corrected and altred by the said Article upon this Statute in An. 9 E. 2. for by that Statute the Maior and Bailifes shall adjourn the parties before the Justices of the Bench at a certain day, and shall send the Record thither, Et le Justices face summon le garrantee devant eux & pledent le garrantie, and hereby the Justices of the Bench shall award the Summons ad auxiliandum, &c. and f not fetch it out of the Chancery; and by the said Act of 9 E. 2. it is provided, that if at the day given in banke the Tenant make default, a Petit cape shall be awarded to the Maior and Bailifes, to give Judgement upon that default, if it cannot be saved, &c.

In a Præcipe in the Hustings in London, the Tenant voucheth one in London, and other forrein Vouchees in the County of Norfolk, &c. In this case aswell the Voucher within London as the forrein Vouchers shall be removed, for although the words of this Act be, Vouch forrein a garrantie, yet because Processe must be made against all the Vouchees at one time, and if Processe should be made

Flet. li. 2. ca. 48. Regist. 2. 7. 8 Ass. 22. 15 E. 3. Record 37. 49 E. 3. 9. 3 Ass. p. 10. 30 E. 3. 24. Record 13. 11 H. 4. 27, 28. 14 H. 4. 25. 18 H. 8. 1. 5 E. 6. Dier 69. 12 E. 3. Voucher 115. 21 E. 3. ibid. 122, 13 E. 1. ibid. 269. 35 E. 3. ibid. 316. 8 E. 4. 10. 34 H. 6. 42. 13 E. 4. Cause de remover plea 23. Temps E. 1. Gar. de Chartres 23. 1 H. 7. 30. 27 H. 8 12. Pasch. 15 H. 8 Rot. 343. in communi banco.

a 46 E. 3. Voucher 288. 3 H. 4 12. a. 32 H. 6 26. 34 H. 6. 42. F. N. B. 6. b.

b Bract. l. 3. f. 106. Brit. fol. 248. b. Flet. li 5. ca. 24. 8 E. 3 59. 14 E. 3. Trials 63. 24 E. 3. 33. 42. 40 E. 3. 2. 44 E. 3. 28. 35 H. 6 30. 36 H. 6. 33. 37 H. 6. 30. 14 H. 7. 21. 21 H. 7. 34. 35. 14 H. 4. 26. b. Iudgement cite per Hankford.

c 3 H. 4. fol. 12. 32 H. 6. 26.

d 35 E. 3. Voucher 316.

e 9 E. 2. ubi supra.

f See a notable case, Pasch 31 E. 3 fol. 31. a. & b. in libro meo.

49 E. 3. 9 & 10. 50 E. 3. Voucher 217. 29 Ass. 48.

made by the Court of Common pleas onely against the forein Vouchees, although they came in, they should not warrant, nor answer without the others before Process were determined against them in London; so as necessity requireth, that Process should be made against all at one time, and that ought to be done in the more worthy Court, and when the Warranty is determined in the Court of Common pleas, all shall be remanded.

¶ Que le parol del garrantie ſerra termine devant les Juſtices del banke.] This is the power given to the Justices of the Court of Common pleas, and this Act is in nature of a Commission to them, therefore it is good to be ſéen what is within their Commission, the words of the said Writ of Recordare are, Ut terminata warrantia illa coram præfat' Justic' eadem recordum & proceſs' vobis remittamus, &c.

18 E.3.1.49 E.3. 9, 10. Paſch. 15 H. 8. Rot. 343 in communi banc. 5 E. 6. Dier 69.

If the Tenant vouch a forein to Warranty, and the Record is removed into the Court of Common pleas to determine the Warranty, the Vouché may vouch over in a forein County, and that Vouché may vouch over, and if the Vouché make default, the Court may make Process against him, &c. Quia quando lex aliquid alicui concedit, omnia incidentia tacite concedantur; but none of the Vouchées can plead in chief, but that must be pleaded in the inferiour Court, for that is not within the said Commission given by this Act. But if the Demandant in Banke appear not, the Court may award a Non-suit as incident, and so the Tenant in Banke may be eſoined.

Kelw. 109. 13 E.3 Vouch. 18. 32 E.3 ibid. 101. 50 E.3 ibid. 217. 41 E.3. 31. 42 E.3.1. 49 E.3. Vouch. 223. 20 E.3. Eſſoin 28. 8 Aſſ 22. 16 E.3. Eſſoin 167. 28 H.8.1.

In Dower in the Huſtings in London against the husband and wife, who vouch a forein to Warranty, whereupon the Plea is adjourned into the Common pleas at a certain day, at which day the husband and wife sued out a Writ against the Vouchee; whereupon the Vouchee appeared, and the baron made default, and the wife prayed to be received upon his default; and by the rule of the Court she was received, and that it was within their Commission, for that the default was made in this Court, whereupon the land was to be lost if she were not received; for it is a Maxime in Law, Neceſſitas ſub lege non continetur, quia quod alias non eſt licitum, neceſſitas facit licitum, but yet others are of another opinion.

18 E.3.1.a.b. tit. Receit 106. 31 E.3. Receit 125.

Bract. lib. 2. fo 93 31 E.3. Receit 125.

¶ Un auter briefe al Maire & Bailifes que ils furceſs', &c.] That is, the said Writ of Recordare, whereby they are commanded quod recordum & proceſſum ejuſdem loquelæ cum omnibus ea tangentibus Juſticiariis noſtris de banco ſub ſigillo veſtro mittatis, &c. which to them is a Superſedeas in Law.

Regiſt. fol. 7.

¶ Et le demandant per ſa ſute eit briefe des Juſtices.] This is a Procedendo in loquela directed to the Maior, &c. to proceed, which you may read in the Judicial Regiſter.

Regiſt. judic. fol. 73.

¶ Que ils facient extender la terre, &c.] For the better performance of this Act, the Tenant must furniſe, that Execution is sued against him, and pray a Venire fac' recordum.

By force of this Act the Justices of the Common pleas upon that Record shall award a Writ of Extendi & appreciari fac', to the Maior and Bailifes, which Writs grounded upon this Act are ſufficient expoſitions of the same, and will resolve many doubts that may arise hereupon.

A notable Record you may read in libro G. in the Chamber of the Guild-hall in London, fol. 7. in Anno 24 E.3. whereby it appeareth that Thomas Drokenſfield and Emme his wife brought a Writ of Dower in the Huſtings, against Alice Colwell, to be indowed of a house in London, of the indowment of R. de Envil late her baron; the Tenant appeared, and vouched to Warranty Thomas son and heir of John de Colwell, and prayed that he might be summoned in the County of Middleſex, whereupon the Record saith, Dies datus eſt partibus coram

Hil. 24 E.3. in com' banc'. Raſt. Iiure de Entres. 240, 354. 615. Coke Pl. fo. 176. Note here the forein Voucher.

coram Juſticiariis Domini Regis de Banco apud Weſtm' in craſtino Purificationis, ut tunc fiat ibi juxta formam Artic' Gloc', pro Civibus London inde correcti.

And there it appeareth that the Juſtices of the Common pleas awarded the ſummons againſt the vouchée, who appeared upon the grand Cape, and entred into the warranty, Ideo loquela prædicta remittatur in Huſting' coram Majore & Vicecom', ut ibi ulterius fiat, prout hactenus de jure fieri conſuevit: whereupon a reſummons was awarded in the Huſtings againſt Alice the Tenant, & idem dies given to the Demandant, at which day the Tenant appeared and the vouchée alſo, and rendred Dower, and thereupon judgement was given againſt Alice the Tenant, Et dictum eſt per Curiam dictæ Aliciæ, quod ſequatur in Curia Domini Regis coram Juſticiariis de Banco ad habendum de terra dict' Thomæ de Colewell tenentis per warrantiam in Comitat' Midd', ſi ſibi viderit expedire. And after the Tenant came into the Court of Common pleas, and prayed her remedy againſt the vouchée ſurmiſing that execution was ſued againſt her, and a third part of the houſe delivered to the Demandant, whereupon a Writ iſſued out of the Court of Common Pleas, Ad venire faciendum recordum coram Juſtic' de Banco: by which it appeareth that in the Huſtings by the ſozein vouchee, Placitum prædict' ſine die remanſit, & partes prædict' ſecundum formam ſtatuti coram præfatis Juſticiariis noſtris apud Weſtm', ut eadem Alicia verſus prædict' hæredem de warrantia ſua habenda ſecundum formam ejuſdem Statuti proſequi poſſit, adjornat' fuiſſent, &c.

I have ſet forth this Record the more at large for that it ſetteth forth this Statute, and that of 9 E. 2. in their lively colours, ſo as a man may ſée that (as it were) acted, which by thoſe Acts is required. And I know that many have followed that Precedent; which is worthy to be ſéene at large: But he that is deſirous to reade this whole Chapter in a ſmall Map, let him reade Fleta who ſaith, De warrantis vocatis extra juriſdictionem hujuſmodi locorum privilegiatorum (viz. Civitat' & Burgorum, &c.) taliter ſtatutum eſt, quod ſi implacitati per breve de recto aliquem forinſecum vocarunt ad warrantum, tunc perquirant ſibi de Cancellaria duo brevia, viz. ad ſummon' warrant' coram Juſtic' de Banco ad certum diem, & aliud balivis Civitatis, quod placitum illud ſuperſedeant, donec de placito warrantiæ fuerit terminat', quando terminat', dicatur warrantis, quod adeant Civitatem & reſpondeant de placito principali, & habeant brevia judicialia ad balivos quod tenementa petita extendantur ſi fuerint amiſſa, & retornentur extentæ ad certum diem coram Juſtic', per quos mandetur Vicecom' quod faciat tenentibus habere ad valenciam eſchambium. Fleta lib. 2. ca 48.

And it is worthy the obſervation that at the Common Law in caſe of a ſozein vouchee in the Huſtings of London, the plea was adjorned before the Juſtices in Eyre, when they came to the Tower of London; for the Court of the Huſtings London was not derived out of the Juriſdiction of the Court of Common pleas, as other Courts that have power to hold pleas reall are, and therefore the adjornment was (as hath been ſaid) before the Juſtices in Eyre: For the antiquity of this Court of Huſtings amongſt the Laws of S. Edward, you ſhall reade, Debet enim in London, quæ caput eſt regni & legum, ſemper curia domini Regis ſingulis ſeptimanis die Lunæ Huſtingis ſedere, & teneri, &c. Int' leges Ed. Regis Lamb. 136. b.

CAP. XIII.

PUrview eſt enſement, que del heure que plee ſerra move en la Citie de Londres per briefe, que le tenant neit power de faire Waſte, ne Eſtrepement du tenement que

que eſt en demaunde pendant le plee, & ſil face, le Maire & les Bailifes facent garde a le ſuit le Demandant. Et meſme le ord' & Statute ſoit garde en auters Cities, Boroughs, et ailours per tout le Roialme.

Bract.fol.355. 4 H.3. Eſtrepement 12. 22 E.3.2 21 E.3.51.4 E.3. 32.6 H.4.1.5 E.2 Eſtrepement 11. 3 H.6.13.3 H.6.16 21 E.3.51.34 E.3 Eſtrepement 14. Lib.5.fol.48. Littletons Caſe Regiſt.126. F.N.B.61.

Before this Statute there lay at the Common Law a Writ of Eſtrepement after judgement, and before execution; and ſo an Eſtrepement doth lie for Waſte done after verdict, and before judgement.

There are two kindes of Eſtrepements prohibiting Waſte pendente placito, one originall, and may be ſued out of the Chauncery, either together with the originall Præcipe by which the land is demaunded, or at any time after pendant le plea directed to the Sheriffe, the party, or both; the other is judiciall to be graunted by that Court where the plea dependeth.

And ſome doe hold that the originall Writ of Eſtrepement did lie at the Common Law to prohibit any Waſte done pendente placito, for (ſay they) there lieth a Writ De bonis arreſtandis ne diſſipentur pendente placito, &c. à Fortiori in caſe of inheritance, wherein if Waſte ſhould be done, it ſhould be inconvenient, and againſt the Common-wealth: But certain it is, that the judiciall Writ is given pendente placito by this Statute.

Mirror fol.76.

℄ Que plea ſerra move.] Some doe hold that this is to be intended of reall Actions, wherein no damages are to be recovered, for that in reall Actions where the Demandant ſhall recover damages, he ſhall recover damages pendant le brieſe, and that is the reaſon, that in thoſe caſes the Demandant count to no damages, and therefore in thoſe caſes the Tenant might be doubly charged, once in the Eſtrepement, and again in the principall Action. To this it is by ſome anſwered. 1. That this Statute is generall to reall Actions. 2. There is no miſchiefe, for a recovery of damages in the one is a barre to the other. 3. It is (as hath been ſaid) inconvenient and againſt the Common-wealth that Waſte ſhould be done. But where damages are to be recovered, but not pendente placito, there without queſtion the Eſtrepement doth lie.

Lib.4. fol.115. Foſſambes Caſe.

Rot.Parl.28 E.3. nu.19.

Amongſt the petitions of the Commons in the Parliament holden in Anno 28 E.3. one was, that the Writ of Eſtrepement might lie in every Action where the party ſhould recover damages for Eſtrepement after the Writ purchaſed; And the anſwer was, the old Law ſhould be continued.

28 H.6.8.b. F.N.B.61.b.

℄ Que le tenant.] If the Tenant make a feoffement pendente placito, in Law he remaineth Tenant; and yet the Demandant may have an Eſtrepement againſt him and the feoffee alſo, and ſo againſt the Tenant and the Mowchee or Priee in aide.

22 E.3.2. F.N.B.61.p.

If there be two Tenants, the Demandant may ſue an Eſtrepement againſt the one of them; and after judgement a Writ of Eſtrepement lieth againſt the Tenant and ſtranger by the Common Law.

3 H.6.16.

In an Eſtrepement the Tenant ſhall not have his age, for it is in nature of a Treſpaſſe.

12 R.2. Eſtrepement.6. 32 E.3. ibid.7. 3 H.6.17. F.N.B. 61.h.

In the Eſtrepement pendente placito, the Demandant ſhall not recover damages before judgement be given in the principall.

If an eſtranger of his owne wrong without the privity of the Tenant doth Eſtrepement or Waſte after the Writ ſued out, the Tenant ſhall not be puniſhed for this Waſte.

2 H.6.13.33 H.6 6. 14 H.7.8.b. F.N.B.61.i. Dier 16 Eliz.315.

℄ Dun tenement que eſt en demaund.] In a Scire fac' to execute a fine or a recovery (though no land be demaunded thereby) yet may the Plaintiffe have a Writ of Eſtrepement, for it is in equall miſchiefe, and ſo it is in

in a Quid juris clamat, and in an Attaint an Eſtrepement doth lie, and yet no land is demaunded. 34 E. 3. Eſtrepement 15.

In an Action of Waſte no land is demaunded, and yet an Eſtrepement in that caſe lieth. 4 E. 3. 32. Foljambs Caſe ubi ſupra.

In a particione fac' no Eſtrepement doth lie, for both of them are in poſſeſſion, and there is no reaſon, that one ſhall be reſtrained, and not the other. 12 R. 2. Eſtrep. Br. 13. Paſch. 33 H. 8. Bendloes

If a Formedon be brought of a Manor, and the Demandant ſue out an Eſtrepement, and after that a Tenancy eſcheat, the Writ of Eſtrepement extends to the land eſcheated, becauſe it commeth in lieu of the ſervices, and yet that land was not demaunded. F.N.B. 61.

℣ Neyt power de faire Waſte.] The Tenant notwithſtanding the prohibition in the Writ of Eſtrepement may cut down corn, or graſſe, or underwood, or the like, ſo it be no Waſte or deſtruction. F.N.B. 61. c.

℣ Pendant le plea.] This is to be underſtood of a judiciall Writ of Eſtrepement granted out of the Court of Common pleas, &c. when the principall Writ is retourned, for before that it is not depending there, but the Demandant may have an originall Writ of Eſtrepement (as hath been ſaid) together with the principall Writ out of the Chauncery. 18 H. 8. 5. 2 H. 6. 13.

This Act is ſo conſtrued, that by a conſequent the party ſhall recover damages for Waſte done (pendente placito) after the Writ delivered, and therefore it is good policy to purchaſe the Writ of Eſtrepement together with the Writ. Note the Writ it ſelfe founded upon this Statute is but a prohibition, and upon the attachment the parties doe pleade, &c.

But note upon the Writ of Eſtrepement at the Common Law, viz. after judgement, the Plaintiffe ſhall recover damages for the Waſte done before without any prohibition formerly delivered. Regiſt. judic. 13. 22 E. 3. Eſtrepement 9.

And upon a Writ of Eſtrepement grounded upon this Act, the Sheriffe may reſiſt them that doe or offer to doe Waſte; and if otherwiſe he cannot doe it, he may lawfully impriſon them, or make a warrant to others to doe it, and if neceſſity require it, he may take poſſe Comitatus: ſo odious in Law is Waſte and deſtruction. Foljambs Caſe, ubi ſupra.

CAP. XIV.

LE Roy grant de ſa grace as Citizens de Londres, que la ou avant ces heures ceux queux fueront diſſeiſies de lour franktenement en meſme la Citie, ne poient recover lour damages avant le venue des Juſtices a la Tower: Que deſormes iceux diſſeiſies eyent lour damages per recogniſans de laſsiſe, per le quel ils recoveront lour tenements, & les diſſeiſors ſoient amercies devant deux Barons Dexchequer, queux un foits per an veindr' en le Citie a ceo faire. Et ceo ſoit maunde a Treaſorer & as Barons Dexchequer quels le facent faire chefcun an per ii. de eux a lour lever apres la Chaunceleure. Et les amercements per les ſummons del Eſchequer ſoient levies al oeps le Roy, et al Eſchequer deliveres.

Fleta li.2.cap.48. The miſchiefe before this Statute was, that in London if one were diſſeiſed of his freehold, he could not in the Aſſiſe of freſhforce recover damages, but the land onely, becauſe the Aſſiſe of freſh-force did not lie by originall Writ, but by Bill; and therefore if he would recover damages, he muſt tarry untill the Juſtices in Eyre came into the Tower, which came but once in ſeven yeares: And

Lib.intrat.Raſt. F.N.B.7,13. therefore this Statute doth give damages in the Aſſiſe of freſhforce, and by equity it extendeth to Gloceſter, and to other Cities and Boroughs which by uſage and cuſtome hold plea of Aſſiſe of freſhforce by Bill.

Bract.164. b. Note Bracton ſaith, Recognitio Aſſiſæ novæ diſſeiſinæ multis vigiliis excogitata & inventa recuperandæ poſſeſſ. gratia, ut per ſummariam cognitionem abſque magna juris ſolemnitate, quaſi per compendium negotium terminetur: And it was called [Aſſiſa novæ diſſeiſinæ] in reſpect of the delay before the Juſtices in Eyre.

℄ Citizens de Londres.] Note London is a Corporation by preſcription, and therefore may have divers names of Corporation, as namely here (Citizens.)

CAP. XV.

Purview eſt enſement, que le Maire et les Bailiſes avant le venue de ceux Barons enquergent des Vines vendus encounter laſsiſe, & le preſentent devant eux a lour venue, & donque ſoient amercies, la ou ils ſoilent attendre, jeſque a le venue des Juſtices errants. Dones a Glouceſtre le quart jour de October, lan du raigne le Roy Edward fits le Roy Henry. 6.

The like miſchiefe was concerning the enquiry of the breach of Aſſiſe of wines, as before in the former Chapter concerning the recovery of damages: Therefore this Act giveth power to the Mayor and Bayliffes to enquire of the breach of the Aſſiſe of wine, and not to tarry till the Juſtices in Eyre doe come.

Cap. 5. ℄ Des vines vendus enconter laſsiſe.] This Statute here intended is limited by the Statute De piſtoribus & Braciatoribus.

Aſſiſa vini ſecundum Aſſiſam Domini Regis obſervetur, ſcilicet fixtertium ad xij. d. & ſi Tabernarii illam Aſſiſam exceſſerint, per Majorem & Balivos oſtia claudantur, & non permittant vinum vendere, donec licentiam à Domino Rege obtinuerint. But this Act is repealed by 21 Regis Jacobi.

STATUTUM

Statutum de Weſtminſt' ſecundo,
Editum Anno 13 Edw. I.

The Preface of the Statute of W. 2.

CUm nuper Dominus Rex, in quindena Sancti Johannis Baptiſtæ, anno regni ſui ſexto, convocatis Prælatis, Comitibus, Baronibus, & concilio ſuo apud Glouceſtre: Quia plures de Regno ſuo exhæredationem patiebantur, eo quod in multis caſibus, ubi remedium apponi debuit prius, non fuit per prædeceſſores ſuos, aut per ipſum remedium proviſum, quædam ſtatuta populo ſuo valdè neceſſaria & utilia edidit, per quæ populus ſuus Anglicanus & Hybernicus ſub ſuo regimine gubernatus, celeriorem juſticiam, quam prius, in ſuis oppreſsionibus conſecutus eſt, ac quidam caſus, in quibus Lex deficiebat, remanſerunt indeterminati, & quidam ad reprimendam oppreſsionem populi remanſerunt ſtatuend'. Dominus Rex in Parliamento ſuo, poſt Paſcham, Anno regni ſui tertio decimo apud Weſtminſter, multas oppreſsiones populi, & Legum defectus, ad ſuppletionem dictorum Statutorum apud Gloceſter editorum, recitari fecit, et ſtatuta edidit, ut patebit in ſequent'.

IT is commonly called Weſtminſter the Second: Weſtminſter, because this Parliament was holden at Weſtminſter; and the Second, in reſpect of the former Parliament holden at Weſtminſter, called Weſtminſter the firſt.

CAP. I.

IN primis, de tenementis, quæ multotiens dantur ſub conditione, videlicet, cum aliquis dat terram ſuam alicui viro & ejus uxori, & hæred' de ipſis viro & muliere procreatis, adjecta conditione expreſſa tali. Si hujuſmodi vir & mulier ſine hæred' de ipſis viro & muliere procreatis obiiſſent, terra ſic data ad donatorem, vel ad ejus hæredem revertatur. In caſu etiam cum quis dat tenementum alicui in

liberum maritagium, quod donum habet conditionem annexam, licet non exprimatur in charta doni, quæ talis est. Quod si hujusmodi vir & mulier sine hæred' de ipsis viro et muliere procreat' obiissent, tenementum sic datum ad donatorē, vel ad ejus hæredem revertatur. In casu etiam cum quis dat tenementum alicui, et hæred' de corpore suo exeuntibus, durum videbatur, et adhuc videtur, hujusmodi donatoribus, et hæredibus donatorum, quod voluntas donatorum ipsorum in donis suis expressa, non fuit prius, nec adhuc est observata. In omnibus enim prædictis casibus post prolem suscitatam, et exeuntem ab ipsis quibus tenementum sic conditionaliter fuit datum, hucusque habuerunt hujusmodi feoffati potestatem alienandi tenementum sic datum, et exhæredandi exitum eorum, contra voluntatem donatorum, et contra formam in dono expressam. Et præterea cum deficiente exitu de hujusmodi feoffatis, tenementum sic datum ad donatorem, vel ad ejus hæredes reverti debuit per formam in charta de dono hujusmodi expressam, licet exitus (si quis fuerit) *obiisset* per factum *tamen* et feoffamentum eorum, quibus tenementum sic fuit datum sub conditione, excluſi fuerunt hucusque de reversione eorundem *tenementorum*, quod manifestè fuit contra formam doni: Propter quod dom' Rex perpendens, quod necessarium et utile est in prædictis casibus apponere remedium, statuit quod voluntas donatoris, secundum formā in charta doni sui manifestè expressam, de cætero observetur, ita quod non habeant illi, quibus tenementum sic fuit datum sub conditione, potestatem alienandi tenementum sic datum, quo minus ad exitum illorum, quibus tenementum sic fuerit datum remaneat post eorum obitum, vel ad donatorem, vel ad ejus hæredem (si exitus deficiat) revertatur, per hoc quod nullus sit exitus omnino, vel (si aliquis exitus fuerit, et per mortem deficiet) hærede de corpore hujusmodi exitus deficiente. Nec habeat de cætero secundus vir hujusmodi mulieris aliquid in tenemento sic dato per conditionem, post mortem uxoris suæ, per legem Angliæ: nec exitus de secundo viro et muliere successionem hæreditariam: sed statim post mortem viri et mulieris, quibus tenementum sic fuit datum, post eorum obitum ad eorum exitum, vel ad donatorem, vel ad ejus hæredem (ut prædictum est) revertatur. Et quia in novo casu

novum

novum remedium eſt apponendum: fiat impetranti tale breve. Præcipe A. quod juſtè, &c. reddat B. tale manerium cum pertinentiis, quod C. dedit tali viro, & tali mulieri, & hæred' de ipſis viro & muliere exeuntibus. Vel quod C. dedit tali viro in liberum maritagium cum tali muliere, & quod poſt mortem prædictorum viri & mulieris prædicto B. filio eorundem viri et mulieris deſcendere debet per formam donationis prædictæ, ut dicit: Vel quod C. dedit tali & hæred' de corpore ſuo exeuntibus, et quod poſt mortem ipſius talis, prædict' B. filio prædicti talis deſcendere debet per formam donationis, &c. Breve per quod donator habet recuperare deficiente exitu, ſatis eſt in uſu in Cancellaria. Et ſciendum eſt, quod hoc ſtatutum quoad alienationem tenementi contra formam doni impoſterum faciendam, locum habeat, et ad dona prius facta non extendatur. Et ſi finis ſuper hujuſmodi tenementum impoſterum levetur, ipſo jure ſit nullus. Nec habeant hæredes hujuſmodi, aut illi ad quos ſpectat reverſio, (licet fuerunt plenæ ætatis, in Anglia, et extra priſonam) neceſſe apponere clameum ſuum.

¶ In primis de tenementis.] What Inheritances may be intailed within this Act, you may read at large in the firſt part of the Inſtitutes, cap. Taile, ſect. 14. See the firſt of the Inſtitutes, ſect. 14.

¶ Multotiens dantur ſub conditione.] Before this Statute, all Inheritances were eſtates in fee, viz. either fee-ſimple abſolute, or fee conditionall, or a qualified fee, whereof you may alſo read in the firſt part of the Inſtitutes, Sect. 1. And Tenant of lands intailed, had before this Statute a fee-ſimple conditionall ſubſequent; for albeit Britton, who wrote before this Statute, ſaith, That if any purchaſe to him and his wife, and to the heirs of them lawfully begotten, the Donees have preſently but an eſtate of Free-hold for the term of their lives, and the fee accrueth to their iſſue, &c. taking the condition to be precedent, yet had the Donees at the Com non Law a fee-ſimple conditionall preſently by the gift. See the firſt part of the Inſtitutes, ſect. 13. Brit. cap. 36.

For if lands had been given to a man and the heirs of his body iſſuing, and before iſſue he had before this Statute made a Feoffment in fee, the Donor ſhould not have entred for the forfeiture, but this Feoffment has barred the iſſue had afterwards; which proveth that he preſently by the gift had a fee ſimple conditionall, and this agreeth with the authority of Littleton. ubi ſupra. 19 E. 2. Formd. 61 36 E. 1. ibid. 65. Plowd. often in the Lord Berkleys caſe.

Now for the better underſtanding of this Act, ſeeing that the eſtate was conditionall at the Common Law, it is neceſſary to be known when the condition was performed, and to what purpoſes. If the Donee had iſſue, he had not thereby a fee-ſimple abſolute, for if after he had died without iſſue, the Donor ſhould have entred as in his Reverter. But after iſſue had, the condition was performed to this purpoſe, that he might have aliened, and thereby have barred the Donor and his heirs from all poſſibility of Reverter for default of iſſue, for the heirs of his body (he having a fee conditionall) might have barred them alſo well before iſſue (as hath been ſaid) as after; and to what other purpoſes the condi- See the firſt part of the Inſtitutes, cap. Taile, ſect. 13.

condition by having of issue was performed, Vide the first part of the Institutes, ubi supra.

See the first part of the Institutes, sect. 1. & 14.

¶ Et hæredibus de ipsis.] For to a gift in tail made, this word [Heirs] is requisite, unlesse it be in case of a last Will, &c.

¶ Adjecta conditione expressa tali, &c.] If this condition expressed had not been added, the very gift would have implyed so much.

See the first part of the Institutes, sect. 17.

¶ In casu etiam cum quis dat tenementum alicui in liberum maritagium, &c.] By this clause it appeareth that an Inheritance passeth by these words Frank-marriage, whereof we have in another place written at large.

¶ In casu etiam cum quis dat tenementum alicui et hæredibus de corpore suo exeuntibus, &c.] This Act having put two examples of estates tail special, viz. the first to a man & to his wife, & to the heirs of their bodies; the second, of a gift in Frank marriage, a special case, and a special estate in tail; Here he putteth a case of an estate tail generall, not that the makers of this Statute meant to enumerate all the forms of estates in tail, but to put these as examples, so as all manner of estates tail, generall or special, are within the purview of this Act.

3 E. 3. 31, 32. 18 E. 3. 46. 33 E. 3 Tail 5. Dier 1. Mar. 96.

8 E. 3. 379. 44 E. 3. 3. 7 E. 3. 368. 5 E. 3. 141. 7 H. 4. 31.

¶ Potestatem alienandi, &c.] That is to say, by Fine, Feoffment, Release, or Confirmation.

But the Tenant in tail had not onely potestatem alienandi, but forisfaciendi, &c. also; for if after issue had, he had been attainted of Treason or Felony, the land entailed had been forfeited, and thereby the Donor barred of the possibility of Reverter, and forisfacere is alienum facere, and therefore in this Act is included in these words, potestatem alienandi. And so might the Tenant in tail, before the making of this Act, have charged the land with Rent, common, or the like, to have bound his issue, but by this Act he is restrained as well to charge as to alien.

3 E. 3. Formed. 46 See the first part of the Institutes, sect. 3.

In the first part of the Institutes, ubi supra.

But the having of issue before this Act did not alter the course of descent, as in another place we have said.

¶ Exhæredandi exitum eorum contra voluntatem donatorum.] Hereby it appeareth that there were two mischiefs before this Act, viz. first, the disherison of the issues in tail; secondly, that it was contra voluntatem donatorum, & contra formam in dono expressam, for the Donor and his heirs were barred of the possibility of Reverter: and both these were wrongs, for which at the Common Law there lay no remedy; for disherisons, and breaking the expresse will and intention of the Donor are wrongs which this Act doth remedy.

Pl. Com. 247. a.

¶ Per formam in charta de dono, &c.] It was said before, Deed or without Deed, it is all one to the intention of this Act, and the most usuall gifts in tail being of Inheritance, were by Deed.

¶ Propter quod dominus Rex, &c. statuit.] Albeit here be no mention made of the assent of the Lords and Commons (whose assents are necessary to the making of every Law) yet forasmuch as in the Preface of this Parliament it is said, Dominus Rex in Parliamento suo, &c. statuta edidit, and that this Act and the rest were entred into the Roll of the Parliament, and that this word [Statuit] implyeth the assent of the Lords & Commons, for it cannot be Statutum without their assents, therefore it hath (as many other of like form) been without question received for an Act of Parliament.

7 H. 7. 14. 11 H. 7 27. 39 E. 3. 7. For the divers forms of Parliaments, see lib. 8. the Princes case. Bro. tit. Parliament 76.

¶ 1. Quod

¶ 1. Quod voluntas donatoris, ſecundum formam in charta doni ſui manifeſte expreſſam, de cætero obſervetur; 2. Ita quod non habeant illi, quibus tenementum ſic fuerit datum ſub conditione poteſtatem alienandi tenementum ſic datum, quo minus ad exitum illorum, quibus tenementum ſic fuerit datum remanet poſt eorum obitum, vel ad donatorem, vel ad ejus hæredem (ſi exitus deficiat) revertatur, &c.] Upon theſe two branches, viz. that the will of the donor ſhould be obſerved, and that the donée ſhould not have power to alien, the Judges by a threefold conſtruction did not onely remedy all the ſaid former miſchiefes, but prevent all other that might ariſe.

1. Therefore in execution of the will of the donor, and that he ſhould have no power to alien either lands that lay in livery, or tenements that lay in graunt, they adjudged that the donee ſhould not have a fee-ſimple, but divided the eſtates, and created a particular eſtate in the donee, and a reverſion in the donor, ſo as where the donée had a fée-ſimple before, by this Act he had but an eſtate taile, and where the donor had but a poſſibility before, which after iſſue might be barred at the pleaſure of the donée, now by conſtruction upon this Act the donor had the fée-ſimple expectant upon the eſtate taile, which we call a reverſion; ſo as by this diviſion of the eſtates the donée after iſſue, or before could not barre or charge his iſſue, nor for default of iſſue the donor or his heirs, either by alienation, forfeiture, or any charge whatſoever. 1. 5 H. 7. 14. vide c. 4 verb. quando uxor dotata, &c. & verb. non habeant aliud recuperare, &c. 9 E. 3. 12.

Sir William Herle Chiefe Juſtice of the Court of Common pleas ſaid of them that made this Statute, Ilz fueront ſages gents queux fieront ceſt Statut; And I may ſay as truly, Que ils fueront ſages gents queux interpretont ceſt Act. And in another place he ſaith, Nous veiomus ceux queux fieront leſtatut, & auxi en temps de quel Roy leſtatut fuit fait, que fuit le pluis ſage Roy que unques fuit, & le cauſe del ſtatut fuit, a ſaver le heritage en le ſang ceux as queux le done ſe fiſt. 5 E. 3. 14.

The ſecond conſtruction was, that no lineall warranty ſhould barre the iſſue in taile, unleſſe there were aſſets deſcended in fee ſimple from the ſame auncеſtor, but a collaterall auncеſtor ſhould barre the iſſue in taile without aſſets, for that warranty is not reſtrained by this Act, whereof we have ſpoken at large in another place; and ſo likewiſe the collaterall warranty of the donee ſhall barre the donor, and is not reſtrained by this Act, as well as the warranty of the donor ſhall barre the donee, as there alſo it appeareth. 2. See the firſt part of the Inſtitutes, ſect. 712.

The third conſtruction was, that albeit Tenant in taile was reſtrained from power of alienations, yet of lands and tenements that lay in livery, his fine or feoffement ſhould worke a diſcontinuance, and barre the iſſue in taile to his Action: for ſeeing he had an eſtate of inheritance, the Judges compared it to the caſe where a man was ſeiſed in the right of his wife, or a Biſhop in the right of his Biſhoprick, or an Abbot in the right of his Monaſtery, Et ſic in ſimilibus; and of inheritances that lay in graunt, as of Rents, Advowſons, and the like, Tenant in taile could not make any diſcontinuance, no more then the others before recited might doe, which conſtruction was made according to the rule and reaſon of the Common Law in other like caſes. 3.

¶ Secundum formam in Charta doni ſui, &c.] This holdeth, though there be no deed, as before hath been ſaid.

¶ Non habeant illi quibus tenementum ſic fuerit datum.] It was adjudged by Bereſford, that the iſſues in taile ſhould not alien no more then 5 E. 2. Formedon 52. 4 E. 3. 29.

then they to whom the land was given, and that was the intent of the makers of this Act, and it was but their negligence, that it was omitted, as there it is said. In this case by way of purchase the land is given to the donees, and by way of limitation to the issues in taile, and therefore by a benigne interpretation the purview of this extends to the issues in taile.

Pl.Co.247. Sieg' Berklies Case.

¶ Nec habeat de cætero secundus vir, &c.] These are but consequents to the words of the purview, and are but explanatory, and not of substance, and might well have been omitted.

o E.1.Form.66. Vid: Pasc.18E.1 in Banco Rot.27. in Dower.

Yet was it adjudged some after the making of this Act, that where lands were given in frankmariage, and the husband died, and the wife took another husband, and had issue before this Act, that the husband should be Tenant by the curtesie, and the principall reason upon this branch of the Statute, Nec habeat de cætero secundus vir, &c. for that this restraint proved, as there it is said, that the Law before was, that he should be Tenant by the curtesie, and yet without question the issue should not inherit that land.

¶ Successionem hæreditariam.] In auncient time if land had been given to I. S. and his successors, hee had had a fee-simple, but otherwise it is at this day, as it appeareth in the first part of the Institutes, Sect. 1.

Regula.

¶ Et quia in novo casu novum remediũ est apponendum.] Ea quæ de novo emergunt, novo indigent remedio.

10 E.2. Formed. 55.4 E.2.ibid.50. 21 E.3 47.F.N.B 211.Pl.Com.240

Hereby it appeareth that a Formedon in the Descender lay not at the Common Law, but was given by this Act, and the forme of the Writ is here set downe.

Fleta li.5.ca.34. Regist.238,239. 5 H.7.17.b.

¶ Præcipe A. quod juste reddat B, &c.] Here is the forme of the Formedon in the Descender set downe, and therefore this Statute need not be recited, nor any Statute which giveth the forme of the Writ.

Regist.243. F.N.B. 217,218.

¶ Breve quod donator habeat recuperare deficiente exitu satis est in usu in Cancellaria.] The Formedon in Reverter did lie at the Common Law, but not a Formedon in Remainder upon an estate taile, because it was a fee-simple conditionall, whereupon no Remainder could be limited at the Common Law, but after this Statute a Remainder may be limited upon an estate taile in respect of the division of the estates.

¶ Sciendum est quod hoc statutum quoad alienationem tenementi contra formam doni imposterum faciendam locum habeat, et ad dona prius facta non extenditur.] This clause ought to receive a two-fold interpretation. 1. That [ad dona prius facta] must be intended of feoffements or alienations made by the donee or his issues, and not to guifts made by the donor, for to them this Act doth extend.

4 E.2.Formedon 50. 12 H.4.7. 21 E.3.45. Pl. Com. 246. First part of the Insti. sect.729,730.

2. Dona prius facta, that is, post prolem suscitatam, for then the alienation by the Tenant in taile, or his issues was good in Law: so as [dona] here are to be intended lawfull gifts, and made in due manner, and such as could not be avoided, for Law alloweth no wrong.

6E.3.20.8H.4.10 33 E.3. Estoppel 280.33H.6 18

¶ Et si finis super hujusmodi tenementum imposterum levetur, ipso jure sit nullus.] This Act doth not make the fine void, but ipso jure sit nullus, that is, it shall not binde the right, yet it shall (as hath been said) make a discontinuance.

But now by the Statutes of 4 H.7. cap.24. and 32 H.8. cap.34. a fine levied with

with Proclamations doth barre the issues in taile, but a fine without Proclamations is a discontinuance onely, and no barre.

¶ Nec habeant hæredes hujusmodi, nec illi ad quos spectat reversio, licet fuerint plenæ ætatis, in Anglia, et extra prisonã.] Here is Non compos mentis left out, and so is a Feme covert.

Hereby it may be gathered (as the Law was) that a fine at the Common Law did not binde a stranger that was within age, in Prison, or beyond the Seas.

See more for the construction of this Statute in the first part of the Institutes, sect. 21, 22, 23, 71, 362, 363, 441, 746, 747.

See the first part of the Institutes, sect. 440. Custumier cap. 48.

See the first part of the Institutes, sect. 441.

4 H. 7. cap. 24. Stat. de modo levand. finis 18 E. 1

CAP. II.

QUia domini feodorum distringentes tenentes suos pro servitiis & consuetudinibus sibi debitis multotiens gravantur per hoc, quod cum tenentes sui districtionem suam per breve, vel sine brevi replegiaverint, ac cum ipsi domini (ad querimoniam tenentium suorum) ad com', vel ad aliam curiam habentem potestatem placitandi placita de Vetito namio, per attachiament' venerint, & rationabilem et justam districtionem advocaverint, per hoc quod tenentes disadvocant nihil tenere, nec clamant tenere de eo qui districtionem fecit, et advocavit, remansit ille qui distrinxit in misericordia, et tenentes sui quieti, quibus pro illa disadvocatione per recordum Com', sive aliarum curiarum, quæ recordum non habent, pœna infligi non potest. De cætero provisum est & statutum, quod cum hujusmodi domini in com' vel hujusmodi curia justiciam de hujusmodi tenentibus suis consequi non possint, quam cito attachiati fuerint ad sectam tenentium suorum, concedatur eis breve ad ponend' loquelam *illam* coram Justiciariis, coram quibus *& non alibi* justicia hujusmodi dominis exhiberi poterit, & inferatur causa in brevi, quia talis distrinxit in feodo suo pro servic' & consuetud' sibi debitis. Nec per istud statutum derogat' Legi communi usitatæ, quod non permisit aliquod placitum poni coram Justic' ad petitionem defendentis: quia licet prima facie videatur tenens actor, & dominus defendens, habito tamen respectu ad hoc quod dominus distrinxit, & sequitur pro servitiis & cons. sibi aretro existen' realiter apparebit potius actor, sive querens, quam defendens.

Et ut in certo ſint Juſtic' de qua recenti ſeiſina poterint domini advocare rationabilem diſtrictionem ſuper tenentes ſuos: De cætero concordatum eſt, quod rationabilis diſtrictio poterit advocari de ſeiſina anteceſſorum vel prædeceſſorum ſuorum, à tempore quo breve Novæ diſſeiſinæ currit. *Vide W.* 1. *cap.* 38. Et quia aliquando contingit, quod tenens poſtquam replegiaverit averia ſua, averia illa vendit vel elongat, quo minus retornum poſſit fieri domino diſtringenti, ſi adjudicetur: Proviſum eſt, quod Vicecomes, vel Balivi de cætero non recipiant à conquerentibus ſolummodo plegios de proſequendo, antequam deliberationem faciant de averiis, ſed etiam de averiis retornandis, ſi adjudicetur retornand'. Et ſi quis alio modo plegios ceperit, reſpondeat ipſe de precio averiorum. Et habeat dominus diſtringens recuperare per breve, quod reddat ei tot averia, vel catalla. Et ſi non habeat balivus unde reddat, reddat ſuperior ſuus. Et quia aliquando contingit, quod poſtquam adjudicat' fuerit diſtringenti retornum averiorum, & ſic diſtrictus, poſtquam averia ſic retornata iterum replegiaverit, & cum viderit diſtringent' comparentem in curia paratum ſibi reſpondere, defaltam fecerit, ob quam iterum readjudicabitur diſtringenti retornum averiorum, & ſic bis, vel ter, & in infinitum replegiabuntur averia, nec habebunt judicia Curiæ Regis in hoc caſu effectum, ſuper quo non fuit prius remedium proviſum. Ordinat' eſt in hoc caſu talis proceſſus, quod quam cito adjudicatum fuerit retornum averiorum diſtringenti per breve de Judicio, mandetur Vicecomiti, quod retornum habere faciat diſtringenti de averiis, in quo brevi inſeratur, quod Vicecom' ea non deliberet ſine brevi, in quo fiat mentio de judicio per Juſtic' reddit': quod fieri non poterit, niſi per breve quod exeat de rotulis Juſtic', coram quibus deduct' fuerit loquela. Cum igitur *diſtrictus* adierit Juſtic', & petierit averia ſua iterum ſibi replegiari, fiat ei breve de Judicio, quod Vic' (capta ſecuritate de proſequendo, & etiam de averiis ſeu catallis retornand', vel eorum precio, ſi adjudicetur retornum) deliberet ei averia, vel catalla prius retornata: & attachietur ille qui diſtrinxit ad veniend' ad certum diem coram Juſtic', coram quibus placitum deducatur in præſentia partium. Et ſi iterato ille, qui

qui replegiaverit averia, fecerit defaltam, vel alia occaſione adjudicetur retornum diſtrictionis jam bis replegiat', remaneat diſtrictio illa in perpetuum irreplegiabilis. Sed ſi de novo, & de nova cauſa, fiat diſtrictio, de nova diſtrictione ſervetur proceſſus ſupradictus.

¶ Quia domini feodorum diſtringentes tenentes ſuos, &c.] In this Preamble is the miſchief ſet down, that was at the Common Law before the making of this Act. Fleta lib. 2. ca. 37.

The Mirror without cauſe doth finde great fault with this Act, which you may read, and being of no uſe need not here to be inſerted. Mirror cap. 5. § 5.

¶ Ad comitatum vel aliam curiam habentem poteſtatem placitandi de vetito namio.] De vetito namio, of a forbidden or unjuſt taking, and is not underſtood of a taking in Withernam, for that is a juſt and no forbidden taking, as in another place I have proved more at large. Vide Marlebr. cap. 21.

¶ Vel aliam curiam.] So as Lords of Hundreds, Wapentakes, &c. may have power to hold plea of Replevin, &c. Marlbr. ubi ſupra F.N.B. 73. b.

¶ Diſadvocant, &c.] That is diſclaim, whereof the Court being no Court could have no Conuſans, becauſe it concerned Free-hold. F.N.B. 70. b.

¶ Quod cum hujuſmodi domini in com' vel hujuſmodi Curia Juſticiam de hujuſmodi tenentibus ſuis conſequi non poſſunt, &c. concedatur illis breve ad ponend' loquel' illam coram Juſticiariis, &c.] Failer of Juſtice, is ever a good cauſe to remove the plea.

¶ Ad ponend' loquelam.] The Writ of Pone doth lye when there is a Replevin depending by Writ out of the Chancery, the Plaintife or Defendant may remove the Plea by a Pone; and if the Plea be depending in the County, the Plaintife may remove the ſame without cauſe, but the Defendant cannot remove it without cauſe, and that cauſe muſt be put in the end of the Writ. And if it be upon this Statute, the words be, Quia prædict' B. cepit averia prædict' in feodo ſuo pro conſuetudinibus & ſervitiis ut dicitur, which are the very expreſſe words of this Act. Fleta ubi ſupra. F.N.B. 69. in Regiſt. 84. a. Regiſt. ubi ſupra.

And when the plaint is in the County by Writ or without Writ, or in the Court of any other, the ſame may be removed by a Writ of Recordari fac' loquelam.

And if the plaint be in the County, the Plaintife may remove the ſame without cauſe, as hath been ſaid; but the Defendant cannot remove it (as hath been ſaid) without cauſe. But if the plaint be in the Court of any other, neither the Plaintife nor Defendant can remove the plaint without cauſe, for the preſudice that may come thereby to the Lord.

¶ Quod non permiſit aliquod placitum poni coram Juſtic' ad petitionem defendentis.] This muſt be underſtood without cauſe ſhewed, for by the Common Law, the Defendant for cauſe ſhewed might remove the plaint. F.N.B. 70. a. Regiſt. 83.

¶ Potius actor ſive querens quàm defendens.] In truth the Defendant by making Avowry doth become Actor, and ſhall have Judgement given for him, and after Avowry he ſhall not have a Protection caſt for him no

5 H. 5. 5. ...more then a Plaintife shall, because he is become an Actor, and not merely a Defendant.

¶ Et ut in certo sint Justiciarii, &c.] It was a doubt before this Act, within what limitation of time an Avowry might be made, and by this Act it is provided, Quod rationabilis districtio poterit advocari de seisina antecessorum, vel prædecessorum suorum a tempore quo breve novæ disseisinæ currit; which limitation in an Assise appeareth before in W. 1. cap. 38. which was Post primam transfretationem Regis H. 3. in Vasconiam, in the 5th year of his Reign. But this limitation, both in the Assise and in the Avowry, is altered by a later Statute.

5 H. 3. W. 1. cap. 38. 32 H. 8. cap. 3.

¶ Non solummodo plegios de prosequendo, &c. sed etiam de averiis retornandis, &c.] If the Sheriffe return insufficient pledges, they are no pledges within this Statute, and in that case the Sheriffe shall be charged by this Act, as if he had taken no pledges at all.

Fleta lib. 2. ca. 38. Regist. Judic. 4. 2 H. 6. 15.

If the return of pledges be upon a Writ of Replevin, then if the Plaintife be Nonsuite, &c. if upon the Writ De returno habendo, the Sheriffe return Averia elongata, &c. the Plaintife may have a Writ to have return of the beasts of the pledges. But if the deliverance were by plaint, because in that case the pledges do not appear to the Court, the Plaintife can have no such Writ.

8 E. 3. 72. 39 E. 3. 28.

And if upon the Writ to have return of the beasts of the pledges, the Sheriffe return Nihil, then may the Plaintife have a Scire facias against the Sheriffe, quod reddat ei tot averia, or tot catalla; and that which hath been said of the Sheriffe, is to be intended of the Bailife of a Franchise.

2 H. 6. 15. 9 H. 6. 42. & 48.

¶ Et si non habeat balivus unde reddat, reddat superior suus.] Vide Simile, 44 E. 3. 13. Vide 52 H. 3. Lestature del Eschequer. Vide 2 H. 6. cap. 10.

¶ Defaltam fecerint, &c.] At the Common Law, if the Plaintife in the Replevin had been Nonsuite either before or after Verdict, the Defendant that distrained should have had return, but not irreplevisable, so as the Plaintife after Nonsuite might have had as many Replevins as he would, which was vexatious and mischievous; for remedy whereof, this Act doth restrain the Plaintife from any more Replevin after Nonsuite, but giveth a Writ of second Deliberance, whereof we shall speak in his proper place.

34 E. 1. Judgment 244. 34 H. 6. 37.

19 E. 2. Repl. 85. 6 E. 3. 37. 24 E. 3. 71. 21 E. 4. 6.

If the Writ of Replevin doth abate for want of form in default of the Clerk, the Defendant shall not have return at all; but if it abate for matter apparent by misinformation, or other default of the Plaintife, the Defendant shall have return, but not irreplevisable.

11 E. 2. Ret. des avers 31. 10 E. 2. ibid. 5. 41 E. 3. ibid. 14. 21 R. 2. ibid. 29. 3 H. 6. 2. 3 27 H. 6. 3. 48 E. 3. 10. 49 E. 3 24. 2 H. 4. 23. 4 H. 6. 8, 9. 34 H. 6. 37. 12 H. 7. 4, 5. 13 H. 7. Retorne des avers Misreport per Fitzh. See the Authorities next before concerning these matters. Temps E. 1. Ret. des avers 33.

But if the Defendant doth plead a Plea to the Writ, and the Plaintife confesseth it, then the Plaintife shall have return, but not irreplevisable, for the Plaintife may have a new Writ of Replevin; for this Act onely giveth remedy in case of Nonsuite.

But if the Plea to the Writ, or any other Plea be tryed by Verdict, or judged upon a Demurrer, Return irreplevisable shall be awarded, and no new Replevin shall be granted, nor any second Deliberance by this Act, but (as it hath been said) upon a Nonsuite.

¶ Averia sic retornata.] Note neither Court Baron, nor County Court, nor any Court that is not the Court of the King before his Justices can award return irreplevisable.

¶ In infinitum.] Infinitum in jure reprobatur.

¶ Nec habebunt judicia, &c.] Here is a Maxime of the Common Law

Law implyed, viz. Judicia ſuum effectum habere debent. Judicium non debet eſſe illuſorium. *Maxims*

¶ Per breve de judicio, &c. quod exeat de rotulis Juſtic' coram quibus deducta fuerit loquela.] The Writ of ſecond Deliverance given by this Act is a Writ Judiciall, as here it appeareth, and iſſueth out of the Record of the Replevin in which the Nonſuite was; and Regularly the Judiciall Writ ought not to vary from the Record, out of which it iſſueth: and therefore if after Nonſuite the Sheriffe return Averia elongata, and the Defendant upon the Withernam hath other beaſts delivered to him, the Plaintiffe is to have his ſecond Deliverance of the firſt beaſts mentioned in the former Record. 17 E.2. Repl.21. 6 E.3.37. 20 E.3. Eſtopp. 186. 20 E.3. Avowry 125. 21 E.3.43. 16 E.3.Aide 131 3 H.6 9.12 H.7.4 21 H.7.28. 26 H. 8.6. Vide Mich. 31 E.3. fol.50. in lib. meo. Dier 36 H.8.f.59

¶ Fiat ei breve de judicio, &c.] The effect of the Writ of ſecond Deliverance is here ſet down, and appeareth in the Judiciall Regiſter. Regiſt.Judic. 58.

And this Writ is a Superſedeas in Law to the Sheriffe, that he make no return to the Defendant upon the former Nonſuite. 33 Avowry 256. Dier 30H.8.41.b.

¶ Et ſi iterato, ille qui replegiaverit averia, fecerit defaltam, vel alia occaſione adjudicetur retornum diſtrictionis jam bis replegiat', remaneat diſtrictio illa in perpetuum irreplegiabilis.] If the Plaintiffe in the ſecond Deliverance be Nonſuite, or if the Plea be diſcontinued, or the Writ abate, or if he prevaile not in his ſuite, return irreplevisable ſhall be granted. 5 E. 2. Ret. des avers 64. 10E.2. ibid.5. 33 E.3.ib. 34.8 R.2.ibid.35 6 E.3.37.17 H.8. Second Deliverance. Br.15. Pl. Com.82.b. 45 E.3.9. 14 H. 4.4. 33 H.6.27.

But if return irreplevisable be granted, the owner of the cattell or other goods diſtrained may come to the Defendant and offer the arrerages, &c. and if the Defendant refuſe to deliver the Diſtreſſe, the Plaintiffe may have an Action of Detinue, and by that means recover them, for they are in nature of a gage.

¶ Sed ſi de nova cauſa.] The ſecond Deliverance muſt be brought for the ſame Diſtreſſe, but if the ſame Lord diſtrain the ſame Tenant for a Rent, or other ſervice behinde at another day, or for another cauſe, there the Replevin doth lye, and ſuch proceeding as is aboveſaid.

CAP. III.

IN caſu quando vir amiſerit per defaltam tenementum, quod fuit jus uxoris ſuæ, durum fuit quod uxor poſt mortem viri non habuerit aliud recuperare, quam per breve de Recto: Propter quod dominus Rex ſtatuit, quod mulier poſt mortem viri ſui habeat recuperare per breve de Ingreſſu, cui ipſa in vita ſua contradicere non potuit, quod in forma ſubſcripta erit placitandum. Si contra petitionem mulieris tenens excipiat, quod habuerit ingreſſum per judicium, & compertum fuerit, quod per defaltam, ad quod tenens neceſſe habet reſponder', ſi ab eo quæratur, tunc ulterius habet neceſſe oſtendere jus ſuum, ſecundum formam brevis, quod prius impetravit ſuper virum & uxorem. Et ſi verificare poterit quod *Cui in Vita*

quod habuerit, vel habet jus in tenemento petito, nihil capiat mulier per breve suum. Quod si ostendere non poterit, recuperet mulier tenementum petitum: Hoc observato, quod si vir absentaverit se, & noluerit jus uxoris suæ defendere, vel invita uxore sua reddere voluerit, si uxor ante judicium venerit, parata petenti respondere, & jus suum defendere, admittatur uxor. Eodem modo si tenens in dotem, per legem Angliæ, vel aliter ad terminum vitæ, vel per donum in quo reservatur reversio, fecerit defaltam, vel reddere voluerit, admittantur hæredes, vel illi ad quos spectat reversio, ad responsionem, si venerint ante judicium. Et si per defaltam, vel reddition' reddatur judicium, tunc habeant hæred', vel illi ad quos spectat reversio, post mortem hujusmodi tenentium, recuperare per breve de ingressu: in quo observetur idem processus, sicut prædict' est in casu ubi vir amittat per defaltam tenementum uxoris suæ. Et sic in casibus prædict' duæ concurrunt actiones: una inter petentem & tenentem, & alia inter tenentem jus suum ostendentem & petentem. *Vide* 20 E. 1. *defensio juris fol.* 88.

¶ Vir amiserit.] This is to be understood of the husband and the wife, for the husband alone is not Tenant to the Præcipe, and therefore it was the opinion of Hankford, that if the land be recovered against the husband sole, that after the death of the husband the wife shall have an Assise; but Firzh. in abbreviating this case saith, that it is hard to be proved by Reason, because the wife cannot be disseised (during the coverture) but where the husband is disseised, but of such a recovery she cannot have a Cui in vita upon this Statute: but seeing the husband was not Tenant to the Præcipe, this can be no discontinuance, and therefore not like to a Feoffment, for that conveyance is compleat and good, but so is not the recovery, and therefore in that case the wife may enter after the death of her husband; but when the Præcipe is brought against the husband and wife, it may be said that vir amiserit, for it is principally his act or default; and therefore though the words of the Statute of 32 H. 8. be (suffered by the husband onely) yet a feined recovery against the husband and wife is within that Statute.

10 H. 4. Disseis. 7
30 E. 3. 6. Receit 128. 48 E. 3. Pl. Com. 57. b. 19 E. 2 Receit 176. 2 E. 2 ibid. 148.

32 H. 8. cap. 28.

49 E. 3. 23. 50 E. 3. 7. 47 E. 3. 13. See the first part of the Institutes, sect. 675.

¶ Per defaltam.] A recovery by Render is within the equity of this Statute, because it is within the same mischief; but a recovery by Action tryed is out of this Statute.

It is said, that a recovery by default in a Cessavit against the husband and wife, doth binde the wife; but I hold the Law to the contrary, unlesse the cause of the Action be just, and then it bindeth, as in all other cases; for this Act giveth no remedy, but where the recovery is without title.

In a Quid juris clam', Quod permittat, Assise of Rent, Scire facias, Attaint, &c. the wife upon default of the husband shall be received.

In a Quare Impedit against the husband and wife, the wife shall not be received upon the default of the husband; for the Record saith, Jusperta causa consessionis statuti manifeste liquet, quod non est in casu consimili; for the husband may present alone.

24 E. 2. Cui in vita. 29. F. N. B. 193. i.

36 H. 6. Fauxer Recovery 27. 2 H. 5 1. 7 E. 3. 15 19 E. 3. Receit 14. 34 Ass. p. 3. Pasch. 28 E. 1. Coram Rege. Cestria. Bract. lib. fol. 367. Fleta lib. 5. ca. 22. 7 E. 3 62. Lib. 6. fol. 8. Ferrers case.

¶ Quod

¶ Quod fuerit jus uxoris ſuæ.] This is intended of a fée-ſimple, for ſo is jus regularly taken; and this Act ſaith, that the wife had no recovery but by a Writ of Right, which none can have but Tenant in fée-ſimple, and ſo one part of this Act doth expound another; and for Tenant in taile (reduced formerly (as hath been ſaid) at this Parliament to a divided and particular eſtate) and for Tenant for life proviſion is made in the next Chapter by a Quod ei deforceat, as ſhall be declared when we come thereunto; for Tenant in taile, and Tenant for life are out of the letter of this Statute, becauſe they could have no Writ of Right; and yet if the husband and wife ſeiſed in the right of his wife for terme of her life loſe in a Præcipe quod reddat by default, and the husband die, the wife ſhall have a Cui in vita, for this is, as it were, a demiſe made by the husband, for otherwiſe ſhe ſhould be without remedy, for ſhe cannot have a Quod ei deforceat, as ſhall be ſaid hereafter.

If lands during the coverture be given to the husband and wife, and their heirs, this is jus uxoris within this Statute.

4 E.3.38,39. 5 E.3.4. 33 E.3. Avowry 255. 2 E.4.13. F.N.B. 156. 7 E.3.6. 4 E.3.19.

¶ Cui ipſa in vita.] Sir William Herle ſaid, that he had ſéene in auncient time, that where the husband alienéd the right of his wife, ſhe had no other recovery but by a Writ of Right, yet I finde in Bracton and Fleta, that a Cui in vita in their times lay upon the alienation of her husband.

5 E.3.58. See the firſt part of the Inſtitutes, ſect.594. Bract.li.4.321.b. Fleta l.5.c.34,36. Cuſtumier de Norm.cap.100.

¶ Quod in forma ſubſcripta erit placitand'.] If the Tenant doth plead in barre the recovery by default, he muſt avetre the title of his Writ, whereupon if iſſue be taken, and found for the Tenant, the Demandant ſhall take nothing by her Writ, and if it be found for her, ſhe ſhall recover the land.

21 E.4 65.21 E.4 30. 24 H.8. Pleadings Br.

¶ Hoc obſervato quod ſi vir abſentaverit.] This Act having before given the wife a Cui in vita after the deceaſe of her husband, doth by this branch give her a remedy upon the default, or reddition of her husband in his life time to defend her right, ſo as ſhe ſhould not be driven to a reall Action after the deceaſe of her husband, and this receit to the wife is given by this Act, which ſhe could not have at the Common Law.

[a] This Act doth extend to Courts that be not of Record; as if husband and wife be ſued in a Court baron by Writ of Right, &c. upon the husbands default the wife ſhall be received.

Upon feint pleder of the husband, the wife ſhall not be received by the opinion of Priſot: But it is reſolved in 8 E.2. to the contrary; yet I hold the Law with Priſot; upon a Nient dedire, and a Nihil dicit ſhe ſéme ſhall be received within the purview of this Statute, 4 E.3. receit 46.

a Regiſt. F.N.B. 19.g. Mich.18 E.1.in Banco Rot.222. Thomas de Maws Caſe. 33 H.6.21. Vide 13 R.2.c.17 8 E.2.receit 183. 4 E.3.receit 46. b 5 E.2.receit 165. See the firſt part of the Inſtitutes, ſect.668,669, 675. Lib.11.fol.39. Metcalfes Caſe. 12 Aſſ.31.12 E 3. receit 139.17 E.2 ibid.173. c 22 Aſſ.11.22. 24 E.3.29.2 H.4.2 d 10 E.3.27.12 E.3 receit 139.14 E.3 ib.139.29 Aſſ.36. 38 E.3.23.3 H.4. 18. 34 H.6 receit 73.22 H.6.1.2 E.4 16. 33 H.6.19. 37 H.6.1.3 H.6.58 20. 11 H.6.51.

¶ Si uxor ante judicium venerit.] [b] It is to be obſerved, Firſt, that the time of the receit is when judgement ſhould be given. 2. It is to be underſtood de principali judicio, as in an admeaſurement of paſture judgement is given that admeaſurement ſhall be made, and if after admeaſurement made and returned the baron maketh default, the wife ſhall be received before the principall judgement given.

[c] So in an Aſſiſe of Mordaunc' againſt the husband and wife, if the Aſſiſe be awarded by default, if after the baron make default before the principall judgement, the wife may bee received; and ſo in the Aſſiſe of Novel diſſeiſin.

[d] And albeit ſhe come not at the time of the default, yet if ſhe come before judgement ſhe ſhall be received, and ſo of him in the reverſion or remainder, and ſo if default be made at the Niſi prius, receit may be prayed in bank, for the Juſtices

11 H.4.3.3 H.4.13 22 H.6.1. 14 H.6.1.

ſtices of Niſi prius have no power to allow the receit, but the ſafe way is to pray it there.

7 H.4.16.

In an Aſſiſe the husband and wife plead a Record and faile thereof, the words of an Act made at this Parliament Cap. 25. be, Habeat' pro diſſeiſitore abſque ulla recognitione, and yet the wife ſhall be received in that caſe upon the default of her husband, for the words be Abſque ulla recognitione, that is, of the Recognitors of the Aſſiſe, and not Abſque ulla receptione, &c.

2 H.4.2.7 E.3.22. 28 E.91. 20 E.3. receit 16. 22 Aſſ. 27

Al briefe de inquirer pur Waſte le ſem ſerra receive, mes apres le Waſte trove ſur le briefe d'enquirer pur Waſte, el ne ſerra receive, car ſerra inconvenient que le ſem trier' le matter de novel.

9 E.3.12. 20 H 6.37. Firſt part of the Inſtitutes, ſect. 665, 668, 669.

¶ Parata petenti reſpondere.] And in reſpect of this word [parata] Tenant by receit ought alway to appeare, for upon any default made, judgement ſhall be given.

Littleton ſaith, that in every caſe that the wife is received for default of her husband, ſhe ſhall plead and have the ſame advantage in pleading to defend her right, as if ſhe were a ſem ſole (ſee the firſt part of the Inſtitutes, ſect. 665, 668, 669) But ſhe cannot after receit levy a fine, for that * were not to defend, but to give away her right, but he in the reverſion that is received may conteſſe the Action.

42 Aſſ.4. 3 E 3. receit 47. 19 E.3. ibid. 15. 10 E.3. 51. 9 E.4.16. 10 E.3.4.12 R.2. receit 97. 18 E.3. 32, 33. * 5 E.3. age 61. 24 E.3.68. 20 H.6.23.

* The wife after ſhe is received ſhall have her age, or pray in aide, though the words of this Act be parata petenti reſpondere, that is to be underſtood, that when ſhe ought to plead by Law, then ſhe ſhall be ready to plead.

10 E.3.27.10 E.3 32.33. 31 E.3. receit 126 11 E.3. ibid. 119. 48 E.3.25. 2 E.4.27.

The wife after ſhe be received ſhall vouch and plead all manner of pleas, and take all other advantages, which ſhe and her husband might have done, and ſpecially ſuch pleas, as trench to the miſchiefe of the warranty.

¶ Et jus ſuum defendere.] This right muſt be intended, which the wife had in the lands in demaund at the time when the Præcipe was brought againſt her husband and her, and not at the time of the receit, for if a Præcipe be brought againſt her and her husband, and after the husband and wife levy a fine, and after the husband make default after default, albeit the wife hath no right in the land at this time, yet may ſhe pray to be received for the right which ſhe had at the time of the originall purchaſed, which in judgement, and by preſervation of Law, as to the Demandant, ſhall be ſuppoſed to continue in uno & eodem ſtatu in the Tenancy as Tenant in Law without any change or alteration of the eſtate, notwithſtanding any Act done by the Tenant.

17 Aſſ. 41. 22 Aſſ. 13. 23 E.3.21. 9 E.3.17. 38 E.3. 10, 11. 12 Aſſ. 41. 25 E.3.40. 14 E.3 procedendo 4. 32 E.3. Quar. Imp. 2. 9 E.4.16. 5 E.2. receit 62. 8 E.2. ib. 181, 182, 183. 19 E.2. ibid. 176. 7 E.3. 44. 48 E.3.28.b. 31 E.1. receit 186. 9 H.5.10. 10 E.3.4. 12 R.2. receit 97. 18 E.3 32, 33.

This alſo is to be underſtood not onely of a Tenancy in Deed, but alſo of a Tenancy in Law, for if the husband and wife be vouched, the wife upon the default of her husband ſhall be received, and yet ſhe can have no Cui in vita in that caſe according as this Act limits.

The words be jus ſuum defendere, and therefore ſhe being not to all intents a ſeme ſole cannot conteſſe, nor render the Action, but he in the reverſion that is received may conteſſe, or render the Action.

See the firſt part of the Inſtitutes, ſect. 302.

¶ Eodem modo ſi tenens in dotem, per legem Angliæ, vel aliter ad terminum vitæ, vel per donum in quo reſervatur reverſio fecerit defaltam vel reddere voluerit, admittantur hæredes vel illi ad quos ſpectat reverſio ad reſponſionem, ſi venerint ante judicium.] It appeareth by Bracton who wrote before this Statute, that he in the reverſion ſhould be received by the Common Law, for he ſaith, Poterit etiam quis intrare in Warrantiam, & ſi non

Bracton lib. 5. fol. 393.b. nu. 14.

vocetur

vocetur ad warrantum ad proprii juris tuitionem, ut si quis tenuerit ad vitam suam, sicut mulier nomine dotis, vel alio modo, vel ad terminum terrarum aliquam, quæ post vitam vel terminum reversura esset ad dominum proprietatis, si se in fraudem & exhæredationem ipsius permiserit implacitari ab aliquo cum possit dominum proprietatis inde vocare ad warrantum ad defensionem suam, hoc omisso bene poterit dominus ille proprietatis, cum sibi viderit exinde periculum imminere, comparere per se, & si non vocetur, intrare in warrantiam ad sui proprii juris defensionem, quod melius & utilius sit in tempore occurrere, quam post causam vulneratam quærere remedium, & malitiis hominum obviare.

Upon the recovery against such a particular Tenant he in the reversion was driven to his Writ of Right, but he in the remainder was without remedy, if he never had seisin; See the first part of the Institutes.

See the first part of the Institutes, sect. 481, 482.

¶ Eodem modo.] Though it be said here Eodem modo, in the same manner, yet it is not in the same manner to all purposes, for the wife upon the default of her husband shall be received without shewing any cause. But so shall not he in the reversion, and therefore it is not eodem modo in that respect, and the reason of the diversity is this, that the feme is party to the Action, and sustaines Tenant by the bringing of the Præcipe, but he in the reversion is a meere stranger to the Action, and therefore ought to shew cause how the reversion is in him.

28 E.3.90. 12 E.3 issue 25. 22 E.3. lib. 20. 10 E.3 10. 4 H.6. 5. 8 H.16. 21 H.6.13. 32 H.6 12. 33 H.6.39, 41 9 H.5.3. 8 E.3.39

But as to age, he in the reversion shall have the like in the same manner, as the wife shall have it, the Demandant shall count of new against the wife that is received, and eodem modo against them in reversion or remainder.

18 E.3.32. 3 H.6.41. 21 H.6. 48. 22 Ass.17. 21 E.3.45. 33 H.6.52.

¶ Si tenens in dotem vel aliter ad terminum vitæ.] In a Writ brought against a feme Gardein in Chivalry and her husband, the wife shall not be received for the default of her husband, for it is out of the words of the Statute, and the husband hath power to alien or lose the chattell.

15 E.3. receit 124; 123. 19 E.2. ibid. 179. 8 E.2. ibid. 170. 32 Ass. 9 E.4.16.

¶ Vel per donum.] This is to be understood of a Tenancy in taile, apres possibilitie de issue exclus, and not of an estate in taile generall or speciall, for upon an estate in taile no receit is given by this Act, because it is an inheritance which may continue for ever.

2 E.2. receit 147. 5 E.2. ibid. 161. 11 H.4. 13. 39 E.3 18. 42 E.3. 12. 20 E.3. receit 17. 16 E.2. ibid. 104. 33 H.6.22. l. 10. fo. 44. Jenings case. Regist. 135. 2 E.2. receit 147.

¶ Admittantur hæredes.] By colour of these words, the heire apparent of Tenant in taile making default, &c. hath been admitted, Sed non est lex, quia nullus est hæres viventis.

20 E.3. receit 17.

¶ Ad quos spectat reversio.] He must have a reversion, and not onely a condition or possibility.

8 E.3.3. 45 E.3.19. 23 H.6 receit 156. 9 E.3. 61. 6 E.3.14.

A wife being Tenant for life is received upon the default of her husband, and after makes default, he in the reversion shall be received; and so note a receit upon a receit; and so if a baron and feme be received, and after the baron make default, the feme shall be received.

15 E.3. receit 124 5 H.5.11. 11 E.3. receit 117.

If an infant make a lease for life, though the lease be defeasible, yet upon the default of the lessee, he shall be received, and so it is of a lease by baron and feme.

10 H.6.24. 28 E.3.98. 33 H.6.52.

One may be received by Attorney by a speciall Writ affirming infirmity, and the words of the Statute are generall.

41 E.3.8. 22 H.6.1 19 H.6.46.

In a Præcipe the Tenant maketh default, &c. he in the reversion prayeth to be received, and sheweth that he let the land to the Tenant and another for life, and the Demandant was driven to maintain his Writ.

40 E.3.12.

If Tenant for life pray in aide of him in reversion, and he refuse to joyne, and after Tenant for life maketh default, &c. he in reversion shall not be received, because he refused to joyne, but if he had joyned, and after the Tenant make default, he should have been received.

4 E.2. receit 160. 18 E.3.13. 23 E.3 tit. receit 156.

4 E 4.14 18 E.4. 25,27.

Regularly for a reversion created hanging the Writ there shall be no receit: But if the lessee make the Writ good, there shall be a receit: As if a Præcipe be brought against B. that hath nothing, and the terre-tenant make a lease for life to B. he shall be received.

a 5 H.4.a.32 H.6. 12. 7 E.3.15. 18 E 3.13.47. 16 H 7.5.

a If Tenant for life be impleaded, and surrender hanging the Writ to him in reversion, he shall be received, and yet he hath no reversion in him, Et sic in similibus.

b 32 E.1. receit 185 9 E.4.40.10 E.4.9 13 E. 3. receit 17 E.2. ibid. 175. 24 E.3.33,35. 4 E.2. receit 160. 13 E.3. ibid. 145. 39 E.3. ibid. 121. 14 E.3. mesne des faits 6.29 E.3 48. Rot. Parliam. 29 E.3. nu. 11 H.4 15. 4 E.3.38. 25 E.3.47.

b If a rent be demanded against Tenant for life, he in the reversion or remainder shall be received by the equity of this Statute; albeit the words be, Ad quos spectat reversio, yet he in the remainder upon default of Tenant for life, shall be received, for he is in the same mischiefe.

The King shall not be received, for he cannot become Tenant, nec in loco tenentis. 4 E.3.28. 25 E.3.47.

c 11 E.3. receit 118 4 E.3. ibid. 160. 18 E.2. ibid. 174. 18 E.3. 12.42 E.3 12 b. 24 E.3 32. Lib. 10. fol. 44. Jennings Case. d 13 R.2.c. 17. 6 E.3 16. 4 E. receit 4. 22 E.3.10. 1 H.6.4 2 H 6.14 20 E.3. receit 18,19.

c It is not necessary, that he that prayeth to be received hath the immediate reversion; for if a lease for life be made, the remainder for life, he in the reversion shall be received; so it is where the reversion is granted for life, he in the reversion in fee may be received: But if he that hath the meane estate, and he in the reversion or remainder in fee prayeth to be received at one time, he that hath the immediate particular estate, in respect of the opportunity shall be received, but if he be received and make default, he in the reversion in fee shall not be received.

¶ Fecerit defaltam vel reddere voluerit.] d Feynt pleder was not (as hath been said) within this Act, but is remedied by a later Statute, in case of him in reversion.

c But a Nient dedire, and a Nihil dicit are (as hath been said) within the purview of this Act, both for him in the reversion, and the wife also, for they are in equall mischiefe.

If the appearance of the Tenant be recorded, and after he depart in despight of the Court, he in the reversion shall be received, for judgement is to be given upon the default.

¶ Ad responsionem.] e That is, when the time come when by Law he ought to answer, and therefore he shall have his age, or pray in aide, &c.

e 19 E.3, receit 11, 5 E.2. ibid. 163.

g Vide Statut de Anno 20 E.1. where he that prayeth to be received, before his receit shall finde surety, &c. and the Statute of 13 R.2. cap. 17. to that purpose, but those Statutes extend not to a feme, that is to be received in default of her husband, because she is party to the Writ, but to him in the reversion or remainder, that is a stranger to the Writ, Et venit a latere.

g 9 H 5.10 48 E.3. 13. 29 E.3.48. 34 E.3. receit 190 11 E.3. ibid. 117. 19 E.3. ibid. 112. 6 R.2. ibid. 94.

¶ h Post mortem hujusmodi tenentium recuperare per breve de ingressu, &c.] This is understood of a Writ of Entry ad communem legem, which is a speedier remedy, than a Writ of Right, and the Demandant shall count upon a demise according to the Writ and usuall forme, and if the Tenant traverse the demise, the Demandant shall maintain his count by the recovery by default.

b Vet. N.B 136. Regist. 235.

¶ Et sic in casibus prædictis duæ concurrunt actiones.] For in these cases the Tenant shall shew his right according to the forme of the Writ, whereupon he recovered, then as the Tenant shall vse in the Cui in vita, upon the former part of this Act, and therefore this branch saith, Duæ concurrunt actiones, viz. the Writ of Entry upon this Action, and the former Writ, whereupon the recovery was by default.

Regist. ubi supra.

CAP.

CAP. IV.

IN casu quando vir implacitatus de tenemento reddit tenementum peritum adversario suo de plano, post mortem viri, Justiciarii adjudicent mulieri dotem suam, si per breve petat. Sed in casu quando vir amittet per defaltam tenementum petitum, si mulier post mortem viri petat dotem, & compertum est, quod per aliquos Justiciarios adjudicata fuit dos mulieri petenti, non obstante defalta, quam vir suus fecit, aliis Justiciarriis in contraria opinione existentibus, & contrarium judicantibus, ut de cætero hujusmodi ambiguitas amputetur, et sit in certo: Ordinatum est quod in utroque casu audiatur mulier, quæ dotem petit. Et si excipiatur contra ipsam, quod vir suus tenementum, unde dos petita est, amisit per judicium, per quod dotem habere non debet, et si quæratur per quod judicium, & compertum fuerit quod per defaltam, ad quod tenens necesse habet respondere, tunc oportet tenentem ulterius respondere, et ostendere quod ipse *tenens* jus habuit, et habet in prædicto tenemento, secundum formam brevis, quod tenens prius super virum impetravit. Et si ostendere poterit, quod vir mulieris non habet jus in tenement', nec aliquis alius quam ipse qui tenet: recedat quietus, & uxor nihil capiat de dote. Quod si ostendere non poterit, recuperet mulier dotem suam. Et sic in casibus istis, & in quibusdam casibus subsequent'. s. quando uxor dotata amittat dotem suam per defaltam, & tenentes in libero maritagio per legem Angliæ, vel ad terminum vitæ, vel per feodum talliatum, concurrunt plures actiones. Quia hujusmodi tenentes, cum oporteat eos petere tenementa sua per defaltam amissa, & cum ad hoc pervent' fuerit, quod tenens necesse habeat ostendere jus suum, non possunt ipsi, sine his ad quos spectat reversio, de jure respondere: & ideo concedatur eis, quod vocent ad warrant' secundum tenorem brevis, ac si essent tenentes *in priori brevi* warrant' habeant. Et cum warrantus warrantizaverit, procedat placit' inter illum qui seisitus est & warrantum, secundum tenorem brevis, quod tenens prius impetravit, et per quod recupaverit per

defaltam. Et ſi ex pluribus actionibus ad ultimum perveniat ad unum judicium, videlicet ad hoc quod hujuſmodi petentes recuperent petitionem ſuam, vel quod tenentes eant quieti. Et ſi actio hujuſmodi tenentis, qui neceſſe habet oſtendere jus ſuum, mota fuerit per breve de Recto, licet magna aſsiſa, vel duellum jungi non poſſunt per verba conſueta, *jungi* tamen poſſunt per verba ſatis apta. Quia cum tenens in hoc quod oſtendat jus ſuum, quod ei competet per breve quod prius impetravit & ſit loco actoris, benè poterit warrant' defendere jus tenentis, qui loco petentis (ut dictum eſt) habet, & ſeiſinam anteceſſoris ſui offerre & defendere per corpus liberi hominis ſui, vel ponere ſe in magnam aſsiſam, & petere inde recognitionem fieri, utrum ipſe majus jus habeat in tenemento petito, an prædictus talis: vel alio modo jungi poterit magna aſsiſa, & ſic talis warrantus defend' jus, &c. Et cognoſcit ſeiſinam anteceſſoris ſui & ponit ſe in magnam aſsiſam, &c. & petit recognitionem fieri, utrum ipſe majus jus habeat in prædicto tenemento, ut in illo de quo feoffavit talem, vel quod talis remiſit, & quietum clamavit, &c. an prædictus talis, &c. Cum aliquando contingat, quod mulier non habens *jus* petendi dotem hæreditatis hæredis alicujus infra ætatem exiſten', impetret breve de dote ſuper cuſtodem, & cuſtos per favorem mulieri dotem reddiderit, vel defaltam fecerit, vel placitum ita fictum per colluſionem defenderit, per quod dos hujuſmodi mulieri (in præjudicium hæredis) adjudicata fuerit: Proviſum eſt quod hæres, cum ad ætatem pervenerit, habeat actionem petendi ſeiſinam anteceſſoris ſui verſus hujuſmodi mulierem, qualem haberet verſus quemcunque alium deforciatorem, ita tamen quod ſalva ſit mulieri verſus petentem exceptio oſtendendi, quod jus habet in dote ſua, quod ſi oſtendere poterit, recedat quieta, & dotem ſuam retineat, & ſit hæres in miſericordia, & amercietur graviter ſecundum diſcretionem Juſticiariorum. Sin autem recuperet hæres petitionem ſuam. Eodem modo ſubveniatur mulieri, ſi hæres vel alius eam implacitaverit de dote ſua, ſi dotem ſuam per defaltam amiſerit. In quo caſu ſua defalta non ſit ei ita præjudicialis, quin dotem ſuam (ſi jus habeat) recuperare poſsit, & fiat ei tale breve. Præcipe A. quod juſte,

juſte, &c. reddat tali, quæ fuit uxor talis tantam terram cum pertinentiis in C. quam clamat eſſe rationabilem dotem ſuam, vel de rationabili dote ſua, & quam prædictus talis ei deforceat. Et ad iſtud breve habeat tenens exceptionem ſuam, ad oſtendendum, quod mulier jus non habet in dote: Quod ſi verificare poterit, recedat quietus, alioquin recuperet mulier tenementum, quod prius tenuit in dote. Et cum temporibus retroactis aliquis amiſiſſet terram ſuam per defaltam, non habuit aliud recuperare quam per breve de Recto, quod eis competere non potuit, qui de mero jure loqui non potuerunt, veluti tenentes ad terminum vitæ, vel per liberum maritagium, vel per feodum talliatum, in quibus caſibus ſalvatur reverſio. Proviſum eſt quod de cætero non ſit eorum defalta eis ita præjudicialis, quin ſtatum ſuum (ſi jus habeant) recuperare poſsint per aliud breve quam per breve de Recto. De maritagio amiſſo per defaltam fiat tale breve. Præcipe A. quod juſtè, &c. reddat B. manerium de C. cum pertinentiis, quod clamat eſſe jus & maritagium ſuum, & quod prædictus A. ei deforceat. Eodem modo de tenemento ad terminum vitæ per defaltam amiſſo, fiat tale breve. Præcipe A. quod juſte, &c. reddat B. manerium de C. cum pertinentiis, quod clamat tenere ad terminum vitæ ſuæ, & quod prædictus A. ei deforceat. Similiter quod clamat tenere ſibi & hæredibus ſuis de corpore ſuo legitimè procreatis, & quod prædictus A. ei deforceat, &c.

¶ In caſu quando vir implacitatus, &c.] It appeareth by the Preamble of this Statute, that if a recovery had ben in a reall Action againſt the husband, and the husband did render the land to the Demandant, that notwithſtanding this recovery, the wife ſhould recover her Dower. But if the husband had loſt by default, it was a queſtion and a doubt, whether in that caſe ſhe ſhould recover or no; and ſome Judges would give Judgement for the woman, and ſome were in a contrary opinion. Here is to be noted, that a recovery by reddition of the husband, is not of ſo great account in Law as a recovery againſt the husband by default: But therein before this Act this diverſity was holden for Law, that if in a Writ of Dower the Tenant did plead the recovery in barre, the Demandant might reply, Que ceo fuit per fraud ou per colluſion, ou per gree le baron, as Britton ſaith, who wrote before this Statute; but if it were by default without covin, then the greater opinion was, it barred the feme. Brit. cap. 109. fol. 261. Fleta lib. 5. cap. 22.

But the reddition of the husband was holden for clear Law, as it was adjudged the yeer before the making of this Act, for that the wife was ready to maintain the title of her husband. 12 E. 1. Dower 173. 49 E. 3. 23. 12 H. 4. 21.

All

36 H.6. Fauxer de recovery 27.

All this is to be underſtood, where he that recovereth hath no right, for where he that recovered either by reddition or default had right, there neither the Common Law, nor this Statute extended thereunto.

47 E.3.13. 50 E.3.7. 36 H.6. ubi ſup. 14 H.4.32. 4 E.3. 52, 53.

If the recovery be had by Verdict, the feme ſhall not falſifie in the point tryed, but ſhe may ſay, that he might have pleaded a better plea, or confeſſe and avoid the recovery.

¶ Quando uxor dotata amittat dotem ſuam per * defaltam, & tenentes in libero maritagio per legem Angliæ, vel ad terminum vitæ, vel per feodum talliat', concurrunt plures actiones, &c.] By this Act the Writ of Quod ei deforceat is given; at the Common Law there lay no Writ of Quod ei deforceat, but by Cuſtome there did, as in Wales.

* Cuſtumier de Norm. cap. 28. fol. 56.

2 E.4.13. 33 H.6 46. 4 H.7.2. Lib. 5. fol. 85. li. 3. fo. 9

See the firſt part of the Inſtitutes, 481, 482, 674, 675

If Tenant in Dower, Tenant by the courteſie, or Tenant for life had loſt by default, they were without remedy, becauſe they could not have a Writ of Right. Another miſchief was, that ſeeing by the firſt Chapter of this Parliament it did alter the eſtate of Tenant in Frank-mariage, and Tenant to them and the heirs of their bodies, &c. from a fee-ſimple to an eſtate Tail, whereupon a reverſion in point of ſtate was in the Donor expectant; by reaſon whereof, if a recovery by default had been againſt Tenant in Frank mariage, or other Tenant in Tail, they had been alſo without remedy, becauſe their eſtate being ſo changed, they could not have a Writ of Right no more then the other Tenants for life here recited could have; therefore by this Act a Quod ei deforceat is given to them all, whereby it appeareth, that (as hath been ſaid) the makers of the Act intended a change of the eſtate Tail, and providently made proviſion for Tenant in Tail by this Act.

4 E.3.38. 5 E.3. 4, 8. 33 E.3. Avowry 255. 29 E.3.47. 41 E. 3.30. 2 E.4.13. F.N.B. 156. a.c.

It is agreed, that if a recovery by default be had againſt the husband and wife, Tenants in Frank-mariage, or Tenants for term of their lives, that they ſhall have a Quod ei deforceat upon this Act; but it is holden in ſome Books, that if the husband and the wife be ſeiſed, as in the right of the wife, for term of her life, and a recovery be had againſt them by default, that they ſhall not have a Quod ei deforceat for three reaſons:

1. That the husband is not within the words of the Statute, for he is not Tenant for life, but ſeiſed in the right of his wife, who is Tenant for life.

2. That the husband may diſpoſe of his wives eſtate, and alien the ſame during his life.

3. Proviſion is made by the next precedent Chapter, that the wife in this caſe may have a Cui in vita after the deceaſe of her husband.

But I take it that in this caſe, if the recovery be had meerly by default without the agreement of the husband, that the husband and wife may have a Quod ei deforceat by this Act; for as to the firſt reaſon, though the husband be ſeiſed but in the right of his wife, yet the wife is Tenant for life, and the husband is named but for conformity.

And if a Leaſe be made to a feme ſole, and ſhe taketh husband, and a recovery be had by default againſt them, they ſhall have a Quod ei deforceat by this Act.

As to the ſecond reaſon, the ſame may be ſaid, when the husband and wife are Donées in Frank-mariage, or Joyntenants for life; for in thoſe caſes the husband may diſpoſe of the lands during his life.

And as to the laſt reaſon, this Statute intended to give to the Tenants for life a preſent remedy to relieve themſelves, as in this caſe the husband and wife may during the life of the husband; for it is agreed, that after the death of the husband the wife ſhall have a Quod ei deforceat.

But if the recovery be had by the agreement of the husband, then he can never bring a Quod ei deforceat.

¶ Amittat

¶ Amittat dotem, &c.] This Statute doth also extend to Courts that be not of Record, as the Court Baron, as in a Writ of Right in a Court Baron, &c. 10 E.4.2.

¶ Per defaltam.] If A. and B. be seised of lands, and to the heires of A. a recovery is had against them by default, A. shall have a Writ of Right of his moity, and B. a Quod ei deforceat upon this Statute, and when they recover they shall be Joyntenants again. See the first part of the Institutes, sect. 674, 675. 46 E.3.21.

[a] Two coparceners in tayle lose by default, they shall joyne in a Quod ei deforceat, yet the default of the one is not the default of the other: [b] But if Tenant in tayle lose by default, &c. and die, the issue in tayle shall not have a Quod ei deforceat but a Formedon in the Descender. [a] 46 E.3.21. F.N.B.155.h. [b] 14 H.7.5.b. F.N.B.155.f.

[c] A departure in delight of the Court (unlesse it be in a Writt of Right after the mise joyned) is holden to be within this Act, for he makes default in that case when he is demaunded; But upon a Nihil dicit, no. Quod ei deforceat doth lie. 5 H.7. Quod ei defore' 9. [c] 15 E.3. Quod ei deforc' 9. F.N.B. 155.i.

[d] A Tenant for term of life makes default in a Præcipe, whereupon he in the reversion is received and plead to issue, and it is found against the Tenant by receit, and judgement is given for the Demandant, the Tenant shall have a Quod ei deforceat, for albeit there is a verdict given, yet the judgement is given upon the default. Pasch. 33 Eliz. Rot. 1125. in Banco Elimers Case. [d] 33 E.3. Quod ei deforc' 17.

But in an Assise, and in an Action of Waste, although the Tenant make default, yet there is a verdict given, and upon that verdict the judgement is given in both cases, and therefore there no Quod ei deforceat doth lie within this Act. F.N.B.155.e. 49 E.3.8.2 H.4.2 21 H.6.56. 9 E.4.16.

A woman brings a Writt of Dower against Tenant for life, and recover by default, the Tenant brings a Quod ei deforceat, and recover by default, the Demandant in Dower shall have a Quod ei deforceat by this Statute: And so note a Quod ei deforceat upon a Quod ei deforceat. 13 E.1. vowcher 286.

If the Tenant for life in a Præcipe vouch, and the vouchee will not appeare, by reason whereof the Tenant loseth by default, he shall have a Quod ei deforceat by this Act, albeit the judgement is not given for the proper default of the Tenant, for this Statute saith, per defaltam generally, and not per defaltam suam. F.N.B.156.b.

¶ Cum ad hoc perventum fuerit, quod tenens necesse habet ostendere jus suum, non possunt ipsi sine hiis ad quod spectat reversio de jure respondere: & ideo concedatur eis quod vocent ad warrant' secundum tenorem brevis ac si essent tenentes in priori brevi, warrant' habeant.] For the better understanding whereof the forme and order of the Entry of the Record and pleading (a window which letteth in light to many cases) is herein to be known, which is, that in the Quod ei deforceat, the Demandant count that he or she was seised of the land for terme of life, or in tayle, without the wing of whose lease or gift, for that the Action is brought of his owne possession, and alledgeth the esples in himselfe, and that the Defendant hath deforced him without making of any mention of the Record. And then the Tenant may defend the right of the Demandant, &c. and either shew how he recovered against the Demandant by Formedon or other reall Action, and in the purclose of his plea shall say, that ipse paratus est ad manutenendum jus & titulum suum prædict' per donum prædict', &c. unde petit judicium, whereby the Defendant in the Quod ei deforceat is become actor, and in effect revideth the former Action, and the Demandant in the Quod ei deforceat is become in manner of a Tenant to the former Action, and may vouch as if he were Tenant to the former Action, because 29 E.3.47. 10 E.4.2. F.N.B.156.d. 9 E.3 22. 41 E.3. 30. 48 E.3.8. 2 E.4.11.

becauſe if he hath but an eſtate for life, it is not ſafe for him to pleade in chiefe, but to vouch him in the reverſion, therefore he can vouch no other, but him in the reverſion; or if the Defendant notwithſtanding upon the title of the former recovery plead ſome other barre, then the Demandant in the Quod ei deforceat ſhall not vouch at all, becauſe the former Action is not revived. And if the Defendant plead the former recovery, the Demandant may traverſe the title, or plead any thing in barre of the title.

¶ Quod tenens neceſſe habet.] It is not of neceſſity that the Defendant in the Writ of Quod ei deforceat, doe plead the former recovery, but (as hath been ſaid) he may plead any other barre.

9 E.3.22. 33 E.3 Count Pl. de vouch. 101. 33 H.6.46. Lib. 11. fol. 62. D. Foſters caſe.

¶ Non poſſunt ipſi ſine hiis, &c.] By theſe words the Demandant in the Quod ei deforceat after the recovery pleaded cannot vouch any other but him in the reverſion.

¶ Concedatur iis quod vocent ad warrantum, &c. ac ſi eſſent tenentes in priori brevi.] Upon theſe words, two concluſions are to be obſerved.

Firſt, that albeit the Demandant in the Quod ei deforceat after the recovery pleaded cannot vouch, yet the Quod ei deforceat may be maintenable.

Secondly, if the recovery by default be in ſuch an Action where no voucher doth lie, yet the Quod ei deforceat is maintenable, and theſe words are to be intended, that ſuch Tenant ſhall vouch which might have vouched in the firſt Writ.

14 H.7.9.18.b. 41 E.3.30.44 E.3 42.li.11. ubi ſup.

And therefore if the judgement by default be in a Scire facias brought upon a recovery or fine, or in a Writ of Entry, or in the quibus brought againſt the diſſeiſor himſelfe, there lieth no voucher, and yet a Quod ei deforceat is given by this Act upon ſuch a recovery by default. And where the vouchée ſhould not have his age in the former Writ, hee

50 E.3.25.

ſhall not have his age in this Writ, for this Writ is of the nature of the other.

The Tenant in a Quod ei deforceat may vouch, &c. and ſo both Tenant and Demandant (as hath been ſaid) may vouch in this Act, ſeeing the Statute doth give a voucher, by conſequence he ſhall recover in value.

10 H.7.10.

10 H.7.29.2. 9 E.3.22.

But note this Act doth give but one voucher, and therefore the vouchée ſhall not vouch over, and Sir William Herle ſaid, that they were ſages gents qeux fieront ceſt ſtatut.

41 E.3.8,30. 50 E.3.25. E.N.B.155.f.

¶ Cum oportet eos petere tenementa per defaltam amiſſa.] Hereupon it is holden, that he that loſt by default may have a Quod ei deforceat againſt the alienée of the recoveror, becauſe the words of the Statute are indefinite; and unleſſe the Writ did lie againſt the alienée, the Demandant could not have the effect of his ſuit, viz. the reſtitution of the land.

See the firſt part of the Inſtitutes, ſect. 674, 675.

¶ Cum aliquando contingat.] By the purview of this Statute, if the wife having no right to be indowed, bring a Writ of Dower againſt the Gardein in Chivalry, and by favour the Gardein in Chivalry doe yeild Dower, or make default, or plead faintly, by means whereof the wife recovereth her Dower in prejudice of the heire, the heire after he commeth to his full age ſhall have a Writ of Mordaunc' againſt the wife, as he might have againſt any other deforceour.

See the Statute of Marlb. c. 16.

¶ Præcipe

¶ Præcipe A. quod juſte, &c.] Here the forme of the Writ of Quod ei deforceat for Tenant in Dower is ſet down, and it is ſo called, becauſe of theſe words in the Writ, Quod ei deforceat, and ſeeing the forme of the Writ is here expreſſed, the Statute that giveth the Writ needs not be recited, as before hath been ſaid. See before cap. 1. Formedon.

Note in none of theſe Writs it is ſaid injuſte deforceat (as commonly in Writs it is) becauſe this Act giveth the forme, and injuſte is not in the Statute. Regiſt. 171.

¶ Quod mulier jus non habet in dote.] Note, this is a good barre in a Quod ei deforceat.

¶ Non habuit aliquod recuperare quam per breve de recto, quod eis competere non potuit qui de mero jure competere non potuerunt veluti tenentes ad terminum vitæ vel liberum maritagium, vel per feodum talliatum, in quibus caſibus ſalvatur reverſio.] Upon theſe words foure things are to be obſerved,

1. Firſt that none ſhall have a Writ of Right, but he that hath a fée-ſimple, here called merum jus.

2. That Tenants in taile cannot have a Writ of Right.

3. This is an Expoſition of the firſt Chapter of this Parliament, that there, by the eſtate taile is of an eſtate in fée-ſimple become a divided and particular eſtate, whereupon the reverſion in fée is expectant.

4. Fourthly, albeit Tenant by the curteſie be not expreſſely named in theſe former Writs, yet is he within the miſchiefe and purview of this Statute, for he is tenens ad terminum vitæ. Regiſt. 171. b.

CAP. V.

CUm de Advocationibus Eccleſiarum non ſint niſi tria brevia originalia, videlicet breve de Recto, & duo de poſſeſsione, ſciz. Ultimæ præſentationis, & Quare Impedit, & hucuſq; uſitatum fuerit in Regno, quod cum aliquis jus præſentandi non habens præſentaverit ad aliquam Eccleſiam, cuius præſentatus ſit admiſſus, ipſe qui verus eſt patronus per nullum aliud breve recuperare potuit advocationem ſuam, quam per breve de Recto quod habet terminare per duellum, vel per magnam Aſsiſam, per quod hæredes infra ætatem exiſtentes per fraudem & negligentiam cuſtodum, hæredes etiam ſive maiores, ſive minores per negligentiam vel fraudem tenentium per legem Angliæ, vel mulierum tenentium in dotem, vel alio modo ad terminum vitæ, vel

annorum, vel per feodum talliatum, multotiens exhæredationem patiebantur de advocationibus illis, vel ad minus (quod eis melius fuit) ponebantur ad breve de Recto, & in casu omnino exhæredati fuerunt hucusque: Statutum est quod hujusmodi præsentationes non sint hujusmodi rectis hæredibus, aut illis ad quos post mortem aliquorum, hujusmodi advocationes reverti *debent* ita præiudiciales, quin quotiescunque aliquis ius non habens, tempore huiusmodi custodiarum præsentaverit, vel tempore tenentium in dote, per legem Angliæ, vel alio modo, ad terminum vitæ, vel annorum, vel per feodum talliatum, in proxima vacatione, postquam hæres ad ætatem pervenerit, vel advocatio post mortem tenentium in forma prædicta ad hæredem plenæ ætatis existentem revertetur, habeat eandem actionem & recuperationem per breve de advocatione possessorium, qualem haberet ultimus anteceſſor huiusmodi hæredis plenam habens ætatem, in ultima vacatione tempor' suo accidente ante mortem suam, vel antequam dimissio facta fuerit ad terminum vel ad feodum talliatum, ut prædictum est. Hoc idem observetur de præsentationibus factis ad Ecclesias de hæreditate uxorum, tempore quo fuerunt sub potestate virorum suorum, quibus per istud statutum subveniatur, per remedium supradictum. Viris etiam Religiosis, Episcopis, Archidiaconis, Rectoribus Ecclesiarum, & aliis personis Ecclesiasticis per istud idem statutum subveniatur: si aliquis ius præsentandi non habens præsentaverit ad Ecclesias domus sive prælatiæ, dignitati aut personatui spectantes, tempore quo vacaverint prælatiæ, dignitates, aut personatus huiusmodi. Nec tamen ita largè intelligatur istud statutum, quod personæ, ad quorum remedium statutum istud est editum, habeant recuperare supradictum, dicentes quod custodes, tenentes in dotem, per legem Angliæ, vel alias ad terminum vitæ, vel annorum, vel viri ficte defenderint placitum per ipsos, vel contra ipsos motum, quia iudicia in curia Regis reddita per istud statutum non adnihilentur, sed stet iudicium in suo robore, quousque per iudicium curiæ *Regis* tanquam erroneum (si error inveniatur) adnulletur, vel assisa ultimæ præ-

præſentationis, vel inquiſitio per Quare impedit ſi tranſierit per attinctam, vel per certificationem adnulletur, quæ gratis concedatur. Et de cætero una forma placitandi in brevibus ultimæ præſentationis, & Quare impedit, inter Juſticiarios obſervetur, quoad hoc, quod ſi pars rea excipiat de plenitudine Eccleſiæ per ſuam propriam præſentationem, non propter illam plenitudinem remaneat loquela, dummodo breve infra tempus ſemeſtre impetretur, quanquam infra tempus ſemeſtre præſentationem ſuam recuperare non poſsit. Et cum aliquando inter plures clamantes advocationem alicujus Eccleſiæ pax fuerit formata inter partes, & irrotulata coram Juſticiariis in rotulo, vel *in* fine ſub hac forma, quod unus primo præſentet, & in ſequente vacatione alius, & in tertia tertius, & ſic de pluribus, ſi plures ſint. Et cum unus præſentaverit, & habuerit ſuam præſentationem, quam habere debet per formam conventionis illius, & in proxima vacatione impediatur ille ad quem ſpectat ſequens præſentatio per aliquem qui fuit pars illius conventionis, vel loco ejus: Statutum eſt quod de cætero non habeat hujuſmodi impeditus neceſſe perquirere breve de Quare impedit, ſed habeat recurſum ad rotulum, vel ad finem. Et ſi in rotulo, vel in fine comperta fuerit prædict' pax, vel conventio, mandetur Vicecomiti, quod Scire faciat parti impedienti, quod ſit ad aliquem brevem diem continentem ſpacium xv. dierum, vel trium ſeptimanarum, ſecundum quod locus eſt propinquus vel remotus oſtenſ. (ſi quid ſciat dicere) quare ſic impeditus talem præſentationem ſuam habere non debeat. Et ſi non venerit, vel forte venerit, & nihil ſciat dicere, quare ſic impeditus præſentationem ſuam habere non debeat, ratione alicujus facti poſt pacem factam, vel irrotulatam, vel chirographatam, recuperet præſentationem ſuam cum damnis ſuis. Et cum contingat quod poſt mortem anteceſſoris ſui, qui ad aliquam Eccleſiam præſentavit perſonam, aſsignata fuerit illa advocatio in dotem alicujus mulieris, vel tenenti per legem Angliæ, & tenentes in dotem, vel tenentes per legem Angliæ præſentaverint, & verus hæres poſt mortem hujuſmodi tenentium per legem Angliæ, vel in dotem, impediatur præſentare, cum Eccleſia vacaverit: Proviſum eſt, quod de cætero ſit in electione impediti,

utrum perquirere velit per breve de Quare impedit, vel ultimæ præsentationis. Hoc etiam de cætero observetur de advocationibus dimissis ad terminum vitæ, vel annorum, vel ad feodum talliatum. Et de cætero in brevibus ultimæ præsentationis, & Quare impedit adjudicentur dampna, videlicet, si tempus semestre transierit per impedimentum alicujus, ita quod Episcopus ecclesiam conferat, & verus patronus ea vice præsentationem suam amittat, adjudicentur dampna ad valorem Ecclesiæ de duobus annis. Et si tempus semestre non transierit, sed disrationetur præsentatio infra tempus prædictum, tunc adjudicentur damna ad valorem medietatis ecclesiæ per unum annum. Et si impeditor nihil habeat, unde restituere possit damna, in casu quando Episcopus confert *Ecclesiæ* per lapsum temporis, puniatur per prisonam duorum annorum. Et si advocatio disrationetur infra tempus semestre, puniatur tamen impeditor per prisonam dimidii anni. Et de cætero concedantur brevia de Capellis, prædendis, vicariis, hospitalibus, abbatiis, prioratibus, & aliis domibus quæ sunt de advocationibus aliorum, quæ prius concedi non consueverunt. Et cum per breve Indicavit, impeditur rector alicujus Ecclesiæ, ad petend' decimas in vicina parochia, habeat patronus rectori sic impedit' breve ad petendum advocationem decimarum petitarum. Et cum disrationatum fuerit, procedat postmodum placitum in curia Christianitatis, quatenus disrationatum fuerit in curia Regis. Cum advocatio descendat participibus, licet unus bis præsentet, & usurpet super cohæredem, non propter hoc excluſus sit ille in toto qui fuit negligens, sed alias habeat turnum suum præsentandi, cum acciderit.

¶ Cum de advocationibus ecclesiarũ non sint nisi tria brevia originalia, viz. Breve de Recto, & duo de possessione, scil. Ultimæ præsentationis & Quare impedit.] An Assise of Darrein Presentment no man can have, without alleging a Presentment in his own time.

A Writ of Right of Advowson a purchaser cannot have, without alledging a presentation in his own time, but a Quare impedit a purchaser may have, and alledge a presentation in him, from whom he purchased the same; and to that end saith Bracton was the Quare impedit provided for remedy of such purchasers, but the Quare impedit is more ancient than the time of E. 1. as appeareth by Glanvile.

Brit. cap. 94. fol. 233. Bract. lib. 4. 246, 247. Fleta li. 5. ca. 12, 13, 14, 15, 16. Glanv. lib. 6. cap. 17. lib. 13. cap. 20, 21.

In 8 E.1. it appeareth, Quod ſunt tria brevia de Advocatione placitabilia, Breve de Recto, Quare impedit, & Ultimæ præſentationis; but yet the originall Writs of Dower and Ceſſavit, &c. do lye of an Advowſon, and ſo doth the judiciall Writ of Scire facias. Tr. 8 E.1. Rot. 26 Coram Rege. Bract. li. 4. fo. 246 247. Fleta lib. 5. cap. 17. 7 E. 3. 27. 43 E. 3. 15. 14 E. 2 Quare imp. 172.

¶ Et hucuſque uſitatum fuerit in regno, quod cum aliquis jus præſentandi non habens præſentaverit ad aliquam Eccleſiam, cujus præſentatus ſit admiſſus, ipſe qui verus eſt patronus, per nullum aliud breve recuperare potuit advocationem ſuam, quã per breve de Recto.] For theſe words, Advocatio, Præſentatio, Eccleſia, &c. whereof they are derived, and the ſeverall ſorts of them, ſee the firſt part of the Inſtitutes. See the firſt part of the Inſtitutes, ſect. 10, 180, 184, 643, 644, 645, 646, 647, 648.

¶ Præſentaverit.] By the order of the Common Law, if one had preſented to a Church whereunto he had no right, and the Biſhop had admitted and inſtituted his Clerk, this Incumbent could not be removed for divers reaſons. See lib 6. fol. 50. Boſwels caſe. Bro. tit. Preſent. al egliſe 46. 6 E. 3 38, 39.

Firſt, for that he came into the Church by a judiciall Act from the Biſhop (who the Law intended, ſcrutatis archivis, to do right) the Incumbent could not be removed, neither by Writ of Right of Advowſon, nor Aſſiſe of Darrein Preſentment, nor Quare impedit, onely the Patron ſhould recover his Advowſon in a Writ of Right of Advowſon, which by the uſurpation was deveſted from him. See the firſt part of the Inſtitutes, ſect. 648. 1.

Secondly, that by the Common Law in every Town and Pariſh there ought to be perſona idonea, & this appeareth by the words of the Writ of Quare impedit &c. Quod permittat præſentare idoneã perſon'. &c. And when the Biſhop had admitted him able, which implyed that he was Idonea perſona, then the Law had his finall intention, viz. that the Church ſhould be ſufficiently provided for, and then the Church was ſaid to be Plena & conſulta. 2. Regiſt. F.N.B. 36.

Thirdly, that the Incumbent having curam animarum might the more effectually and peaceably intend ſo great charge, the Common Law provided, that after inſtitution he ſhould not be ſubject to any Action, to be removed at the ſuit of any common perſon, without all reſpect of age, coverture, impriſonment or Non-ſane memory, and without regard of title, either by deſcent or purchaſe, or of any eſtate; wherein you may (as often it hath been) obſerve what inconveniences follow, when the right inſtitution of the Common Law is not obſerved. 3. Bract. li. 4. fo. 244 35 E. 1. Quare imp. 180. 1 E. 3. ibid. 41. 10 E. 2. Common 22. 6 E. 3. 52. 11 E. 3. Quare imp. 158. 39 E. 3. 24. 44 E 3 21. 35 H. 6. 64.

By this word Præſentaverit, it appeareth that no plenarty hath put the Patron that hath title to preſent, out of poſſeſſion, but onely plenarty by preſentation; but plenarty by collation hath put him that had right to collate out of poſſeſſion. Lib. 6. fol. 5. Boſwels caſe. 17 E. 3. 64 b.

¶ Pari jure & ratione jus præſentandi non habens.] If Tenant for years, or Gardein in Chivalry bring a Quare impedit, although the Defendant hath a Writ to the Biſhop againſt the Termor or Gardein, and his Clerk is admitted, inſtituted and inducted, notwithſtanding the Tenant of the free-hold of the Advowſon is not put out of poſſeſſion. Note a diverſity between a meer uſurpation, and him that comes in by courſe of Law. 50 E 3. 14. b.

¶ Ad eccleſiam.] This is intended of a Church preſentative.

¶ Cujus præſentatus ſit admiſſus.] Albeit that admiſſus in his proper ſenſe is, when the Biſhop upon examination findeth him able (that is) idonea perſona, yet here it is taken for Inſtitution; for here is implyed ad eandem eccleſiam, and therefore of neceſſity it muſt be here taken for Inſtitution, and

and the rather, for that before Institution the rightfull Patron is not put out of possession. And it is to be observed, that by the Institution the Church, as to all common persons, is Plena & consulta as to the spiritualty, that is to say, the cure of souls: for when the Bishop doth institute him, he saith, Instituo te ad tale beneficium, & habere curam animarum, & accipe curam tuam & meam; but before induction the Parson hath not the temporalties belonging to his Rectory.

33 H.6. 13. Boswels case ubi sup. Pl.Com.fol.528. lib.4.fo.79. Digby's case.

But the Church is not full against the King before induction, because in the Kings case plenarty is to be intended of a full and compleat plenarty, aswell to the Temporalties as to the Spiritualty. Nota, Presents Admissions and Institutions, &c. are the life of Advowsons; and therefore if Patrons suspect that the Register of the Bishop will be negligent in keeping of them, he may have a Certiorari to the Bishop, to certifie them into the Chancery.

18 Eliz. Dier. Giles case, lib. 9. fol.132. Holts case. Regist. 286. b. F.N.B. 246. m. 2 H.4. 17. 8 H 4. 20. 14 H.6.21. 1 H.7 19. 10 H.7 15.25 E.3.cap.3. 13 R.2. cap.1. 4 H.4. cap.21. F.N.B.36.k.143. & 34. k.

Any if there be an usurpation upon the King by a compleat plenarty, the King cannot present to the Church, before he hath removed the Incumbent by Quare impedit, lest contentions might grow in the Church between the severall claimers of the Benefice, to the disturbance or hinderance of Divine Service, and this was by the Common Law.

21 E.4.34. 43 E. 3.3.b. 22 H.6.27. 38 E.3.8,9.

But in that case the King is onely put out of possession, as to the bringing of an Action, but the inheritance of the Advowson is not devested out of him: See in the fourth part of the Institutes, cap. Ireland; when an * Incumbent is made a Bishop, either in England or Ireland, &c. who shall present.

* Pasch. 24 E.3. Coram Rege Cornub. Tr32 E.1 Corā Rege Rot. 75. 17 E. 3 40. 21 E.3. 40. 41 E. 3.5. 46 E.3.32. 6 Eliz. Dier 228. 45 E.3. Quare Imp.139. 43 E.3. 15. 43 Ass. 21. 5 E.3.60. F.N.B.34.35 H.6 54,60. 5 E.3.60. 19 H.6 40.

¶ Quam per breve de recto.] This is to be understood where the Patron that had a Fee simple, and that he or some of his Ancestors had presented: But if the Patron claimed the Fee-simple of the Advowson by purchase, and had never presented, there he could have no Writ of Right of Advowson, but before this Statute had lost the Advowson. And likewise if Tenant in Tail, or Tenant for life had suffered any usurpation, they had been remediless by the Common Law, because they could have no Writ of Right.

If a Bishop, Abbot or Prior, &c. purchase an Advowson, and suffer an usurpation before they present, they and their successors are barred for ever, unless by force of this Act the usurpation be avoided in a Quare impedit.

Therefore in perusing over the severall branches of this Statute, it shall appear what cases be remedied by this Act, and what remain at the Common Law.

¶ Per quod hæredes infra ætatem existentes per fraudem & negligentiam custodum, hæredes etiam sive majores sive minores per negligentiam, vel fraudem tenentium per legem Angliæ, vel mulierum tenentium in dotem, vel alio modo ad terminum vitæ vel annorum, vel per feodum talliatum multoriens exhæredationem patiebantur de advocationibus illis, vel ad minus (quod eis melius fuit) ponebantur ad breve de recto, & in casu omnino exhæredati fuerunt hucusq; &c. Here is the Preamble containing the mischief, let us therefore perule the words of the Act.

¶ Statutum est quod hujusmodi præsentationes.] The Preamble extendeth onely to heirs in Ward, per fraudem & negligentiam custodum, &c. and the words of the body of the Act are, Quod hujusmodi præsentationes, such presentations; but these words are to be expounded, Such presentations that be in the same mischief: and therefore this Act extends to heirs of Advowsons, though they be out of Ward.

44 E.3.21.lib. 11. fol.93. Powlters case. For this word *Hujusmodi*, see cap.4. & circumspecte agatis.

¶ Rectis hæredibus.] This Act relieveth onely Infants that have Advowsons by descent; for if an Infant have an Advowson by purchase, he remaineth at the Common Law, and is not remedied by this Act.

35 H.6.64.

And

And this being a Law that ſuppreſſeth wrong, and advanceth right, doth binde the King, though he be not named in the Act. 35 H. 6. ubi ſup. Lib. 21. fol. 72. Magd. Colledge caſe.

¶ Aut illis ad quos poſt mortem aliquorum hujuſmodi advocationes reverti debent.] Nota [illis] hoc eſt illis hæredibus, to thoſe heirs that have the reverſion of the Advowſon by deſcent; for the Preamble ſaith, Hæredes etiam ſive majores, ſive minores, &c. And the concluſe of this branch is, Qualem haberet ultimus anteceſſor hujuſmodi hæredis, &c. So as this Statute doth help the heir of him in the reverſion, and not the Anceſtor himſelf, but the heir of him in the remainder is not within the purview of this Act. P. com. 58. F. N. B 31. g. Bro. tit. Preſentment al egliſe 46

¶ Poſt mortem aliquorum hujuſmodi.] That is, of Tenant by the courteſie, Tenant in Dower, or otherwiſe for life, or for years, or in Fee tail.

¶ Pro termino annorum.] Tenant for term of half a year, or a year, and Grantee of the next avoidance are within the purview and meaning of this Act; Tenant by Statute Merchant, or Staple, or Elegit, are within the purview of this Statute. 34 H. 6. 30.

¶ Vel feodum talliatum.] Tenant in Tail of a Manor, whereunto an Advowſon was appendant, e before this Statute an eſtranger uſurped, and then the Statute of Donis condit' and this Act is made, Tenant in Tail dyeth, and the Manor deſcendeth to his iſſue; yet the heir in Tail hath no remedy, becauſe the Advowſon was ſevered by the uſurpation: and this Act extendeth not to uſurpations before this Act. 8 E. 2. Quare impedit. 167. 16 E. 3. ibid. 67.

But if Tenant in Tail ſuffer an uſurpation after this Act, and dyeth, his iſſue ſhall have remedy by Quare impedit within the purview of this Statute. 8 E. 2, ubi ſupra. 46 Aſſ. 4.

¶ In proxima vacatione poſt quam hæres ad ætatem pervenerit.] Note, albeit the heir hath the Advowſon by deſcent, yet if he ſuffereth an uſurpation, he hath no remedy by this branch, untill after he cometh of full age; this is to be intended when the heir is in Ward, for ſo this Act putteth the caſe: but if the heir be out of Ward, he may have his Quare impedit, or his Aſſiſe of Darrein Preſentment during his minority. 16 E. 3. Quare imp. 67. F. N. B. 31. b. Boſwels caſe, ubi ſupra.

¶ Per breve de advocatione poſſeſſorium.] This is by Quare impedit, or Aſſiſe of Darrein Preſentment.

¶ Qualem haberet ultimus anteceſſor, &c.] Then put caſe, that one purchaſeth an Advowſon in fee, and dyeth before any preſentation made by him, and this deſcends to his heir within age, the Church becomes void; if the heir be in Ward, the heir may have his Quare impedit at his full age, and if he be within age, and out of Ward, he may have his Quare impedit, and count of a preſentation made by himſelf whom the purchaſe was made; but he can have no Writ of right of Advowſon, becauſe his Anceſtor, or he never preſented.

Note it is not ſaid here, Qualem habuit, but Qualem haberet, as the Anceſtor ſhould have had if the Church had become void in his time, and his title to preſent had accrued unto him, for there the right, or at leaſt the poſſibility of Action doth deſcend.

One ſeiſed of an Advowſon in fee, preſenteth to the Church being void, and granteth the ſame to A. for life, and after granteth the reverſion to K. and his heirs; A. Tenant for life ſuffereth an uſurpation to the Church, the heir of K. having the right of this Advowſon by deſcent, dyeth, after the death of A. the Church becoming void, preſent, and yet K. could not have had a Quare impedit 2 E. 3. 10, 11.

impedit: but if A. had dyed before the usurpation, then might K. have had a Quare impedit, and therefore his heir shall have at the next avoidance that remedy which by possibility he might have had: and herewith agreeth the authority of the Book in 2 E. 3. for there Tond taketh this exception, but durst not demur.

¶ Vel antequam dimissio facta fuerit ad terminum vel ad feodum talliatum.] Hereof sufficient hath been said before.

¶ Hoc idem observetur de præsentationibus factis ad ecclesias de hæreditate uxorum.] If a Feme covert hath an Advowson by purchase, she is not within the remedy of this Act, and that for two reasons:

1 E. 2. Quare imp. 43. 5 E. 3. 30. 43 E. 3. 15. Thorp. F.N.B. 34, 5. Bro. tit. Presentment al eglise 46.

First, here it is said, Hoc idem observetur; but an Infant having an Advowson by purchase is not holpen by this Act, Et hoc idem observetur in case of a Feme covert.

Secondly, De hæreditate uxorum, is here intended of an Advowson by descent; for this word Hæreditas, see the first part of the Institutes, sect. 9.

See the first part of the Institutes, sect. 443. F.N.B. 34. m. Br. Presentment al eglise 46.

¶ Viris etiam religiosis, &c.] By this presentation and usurpation in time of vacation, albeit the free-hold and inheritance is in abeiance in gremio legis, yet the usurper gaineth a fee-simple in the Advowson; like as if one entereth into lands during the vacation, and claim the same as his inheritance, he gaineth an inheritance by wrong; but yet as the dying seised of lands in

See Marlbr. c. 28. that case during the vacation shall not take away the entry of the successor, no more shall the usurpation during the vacation take away his right of presentation, when the Church becomes void, and if he be disturbed, he shall have his Quare Impedit.

¶ Nec tamen ita large intelligatur, &c. ficte defenderint.] So great regard the Law hath to Judgements, as this Act provideth, that by any generall words of this Act they shall not be avoided by pretence of Feint defence: Quia judicia in curia Regis reddita pro veritate accipiuntur, & judicia sunt tanquam juris dicta.

¶ Quia judicia in curia Regis reddita.] Here is one of the Maxims of the Common Law.

"Judicia in curia Regis reddita non adnihilentur, sed stent in suo robore, quoq; usque per errorem, aut attinctam adnullentur.

"Nihil tam conveniens est naturali æquitati, unumquodq; dissolvi eo ligamine, quo ligatum est.

"Interest reipub. res judicatas non rescindi.

¶ Et de cætero una forma placit' in brevib' Ultimæ præsent' & Quare impedit inter Justic' observetur, quoad hoc, quod si pars rea excipiat de plenitudine Ecclesiæ per suam propriam præsentationē, non propter illam plenitudinē remaneat loquela, dummodo breve infra tempus semestre impetretur. By the

Brit. fol. 234. Common Law (as hath been said) plenarty before the Writ of Quare impedit brought was a good plea, but plenarty hanging the Writ was no barre at the Common Law; but now by this Statute, plenarty is no plea in a Quare impedit, or Darrein Presentment, unlesse it be by the space of six moneths before the Quare impedit brought; for if the rightfull Patron bring his Action within the six moneths, it is maintainable by this Statute, which wrought purview doth remedy many mischiefs at the Common Law.

But

But this act doth not bind the King, for plenarty by the ſpace of ſix moneths is no barre againſt him, but he may have his quare impedit when he will. for nullum tempus occurrit Regi.

But ſome have taken a diverſity, when the King claimeth the advowſon in his owne right in jure coronæ, and when he claimeth it in the right of a ſubiect; for then he ſhall not be in better caſe then the ſubiect was: As where the King was intitled to preſent in the right of a Ward, and one did uſurp, and the Church was full by the ſpace of ſix moneths, and it was adiudged within twelve yeares after the making of this act, that the King by this plenarty was barred of his quare impedit. But ſince that time the law hath been otherwiſe taken. Mich.25.E.1.rot. 149.in banco 3.H.6.tit.coron. ſimil.18.E.3.2. 8.E.3.38. 43.E. 3.13. 25.E.3.54 4.E.3.1. 18.E.3.2. 24.E.3.76.

Plenarty by ſix moneths againſt the Queen is a good plea, albeit ſhe claime the advowſon by the Kings indowment.

And yet in all caſes plenarty by ſix moneths is no plea in a quare impedit. If an advowſon be alienedin Mortmain, and the Church become void, and a ſtranger uſurp, and his Clerke is in by ſix moneths, yet the immediate Lord ſhall have a quare impedit within the yeare, for the Statute of 7.E.1. de religioſis, giveth him a yeare, and the immediate Lord halfe a yeare after, &c. and for that cauſe alſo no deſcent of lands in the meane time ſhall take away his entry.

¶ Infra tempus ſemeſtre.] i.infra ſex menſes. And becauſe this computation doth concerne the Church, it is great reaſon that it ſhall be made accoꝛding to the computation of the Church, which Church men do beſt know; and therefoꝛe the computation ſhall be made accoꝛding to the Kalender foꝛ one halfe yeare, and not accounting 28.dates to the moneth, and ſo was it reſolved in the Court of Common Pleas, temps E.2. and temps H.8. as in the ſaid caſe it appeareth. Lib.6. fol.61,62. Catesbies caſe.

Ante Concilium Lateranenſe nullum currebat tempus contra præſentantes, but the Biſhop was to pꝛovide one to ſeꝛve the Cure in the meane time, and the Patron might pꝛeſent when he would. Britton fo.225.a. calleth it the Councell of Lyons in France, foꝛ the Councell of Lateran in Rome. This Councell of Lateran was holden under Pope Alexander the third, Anno Domini 1179. 25.H.2. But our Laple is not accoꝛding to the times and perſons expꝛeſſed in the Canons; foꝛ they do giꝛe foure moneths to a Lay Patron, and ſix moneths to an Eccleſiaſticall, &c. neither hath therein the King any ſupꝛeme title by them to conferre by Laple. And by the Councell, tempus ſemeſtre is to be accounted per dies, & non per menſes anni: And therefoꝛe we hold, that the time and title to preſent by Laple, is per legem Angliæ, occaſioned and eſtabliſhed it may be by reaſon of the ſaid generall Councell. See lib.6.fol.62. in Catesbyes caſe. Bract.li.4.fo.247. nu.5.Flet.lib.5. ca.14 Extr.ſuppl. prælat.negl.3.& 4 de conſ' præb. cap.5.&c. Cap.unico §.1.de jure patronatus. Mich.3.E.1.in banco 105.Staffoꝛd.prior de Lauda.

* In the reigne of Ed.3. the Clergy pꝛetended that Laple ſhould incurre againſt the King, whereupon it was thus reſolved and publiſhed, Rex ad agnitionem veritatis, & ad tollendum dubitationis ſcrupulum, quam quidem prærogativarum & jurium coronæ ſuæ, neſcii hæredicuntur, omn' patr' voluit notitiæ, quod ab exordio naſcente Eccleſia in Anglia, Reges Angliæ ad omnia Eccleſiaſtica beneficia qualitercunque vacantia, ad eorum collationem, &c. ſpectantia, quandocunq; placeret eis, jure ſuo regio pꝛæſentaꝛunt, &c. ſuique pꝛæſentati, &c. admiſſi fueꝛunt, &c. non obſtantibus aliquibus curriculis temporum, ſeu * Conſtitutionibus de pꝛæſentationibus hujuſmodi infra certũ tempus fact' in contrarium edit' &c. Mich.5.E.1.rot. 100.in banco Lincoln.Nota * Rot.pat.27.E.3 pars 1.m.18. The Councell bound not the prerogative of the King. * Concilium Lateran.

But ſee the Regiſter, Rex venerabili in Chriſto Patri R. Epiſcopo London, &c. Quia ſecundum legem & conſuetudinem regni noſtri Angliæ, Epiſcopi, ſeu alii Dioceſani Eccleſias, ſeu alia beneficia de quorumcunque patronatu exiſtunt, infra Dioceſariam ſuam vacantia per lapſum temporis ante ſex menſes à tempore vacationis earundem tranſactas conferre non debent, &c. Regiſt.42.b. Nota per lapſum, &c. eſt ſecundum legem & conſuetudinem Angliæ. Paſch.9.E.1.in banco rot.58. Southt' the Biſhop of Canterburies caſe per tempus ſemeſtre.

And albeit if the Laple were eſtabliſhed by authoꝛity of ſome Act of Parliament now (as many others be in like caſes) not extant, yet the writ may ſeꝛve ſecundùm legem & conſuetudinem Angliæ, as our Bookes doe warrant.

It was well and graciouſly done of King James in his generall pardon at his 19.E.2.brev.842. Regiſt.fo.98.nota.

Parliament holden in Anno 21. of his reigne, he pardoned all titles and actions of quare impedit, as his Maiesty had or might, by reason of Laps incurre above three yeares then past. A necessary branch to be contained in every generall pardon. For we have knowne an incumbent turned out of his Benefice after 40. yeares quiet possession, by pretence of a Laps upon the Statute of 21.H.8.ca.13. yet after so long possession omnia præsumi debent solemniter esse acta.

22.E.3.9. 30.E.3.quare imp.49. 43.E.3.35. F.N.B.36.c.

¶ Et cum aliquando inter plures clamantes advocationem alicujus Ecclesiæ pax fuerit formata inter partes quod unus primo præsentet, &c.] This clause extendeth as well to strangers of blood, as to coparceners that are privie in blood, and if one of the parties or his heires, or any stranger usurp in the turne of another, the party injuryed is not driven to his quare impedit; for so it may be, that the quare impedit, or assise of Darren presentment may faile, and yet he may have remedy by this branch of the Act, for albeit there be a plenarty by six moneths, yet the party may have a scire facias upon the roll or fine, and therein recover the presentation and damages.

¶ Et cum contingat, &c. utrum perquirere velit breve de quare impedit, vel ultimæ præsentationis.] Upon this branch two conclusions are to be observed.

F.N.B.31.g.i. Glanv.l.13.c.19. Bract.lib.4.240, 241. &c. Brit. cap.82.fol.224. Flet.lib 5 cap.11. 20.E.3.Darr. presen.13.

1. First, that the heire in reversion is privie unto, for in this case, and not the lessor himselfe; for here it is said, Verus hæres.

2. That albeit tenant by the curtesie, tenant in dower, tenant for life, or tenant in tayle presented last, yet the heire, to whom the reversion falleth in possession, shall have by this branch an assise of Darren presentment, albeit the heire or his ancestor did not immediatly present before.

¶ Et de cætero in brevibus ultimæ præsentationis, & quare impedit, adjudicentur damna, viz. si tempus semestre transierit per impedimentũ alicujus, ita quod Episcopus Ecclesiam conferat, & verus patronus ea vice præsentationem suam amittat, adjudicentur damna, ad valorem Ecclesiæ de duobus annis.

¶ Adjudicentur damna.] Before the making of this Act, the Plaintife in a quare impedit recovered no damages, but any profit the Patron should take should savour of simony, which the common Law did so detest: and this is the cause that the King in a quare impedit recovereth no damages, because he could recover none by the common Law, and the King is not within the purview of this act, for the causes shewed in Boswels case.

Lib.5.fol.58,59. Specot's case. Lib.6.fol.49,51. Boswels case. 14.E.3. quare imped.54. Temps E.1.ibid.181. 3.H.6 damag.17 34.H.6.51. 18.E.1.coram Rege & Concilio ad Parliament.fol.2. inter Dominum Regem & Episcopum Winton. pro custod.hospit. Soueth. 27.H.6.10. 9.H.6.30,32. 13.E.4.3.

And forasmuch as no damages were in a quare impedit at the common Law, and this Act after the Statute of Glocester giveth damages only, the Plaintife shall recover no costs.

In a quare impedit against a Prior Patron, and Incumbent, the Prior plead in barre, and the Incumbent plead the same plea, whereupon issues are joyned, the Prior dyeth, the issue is found for the Incumbent, he shall not recover damages by this Act, for he cannot have a writ to the Bishop, and he continues in possession.

¶ Si tempus semestre.] If upon the foundation of a Chauntery the composition be, that if the Patron present not within a moneth, the Ordinary shall collate in a quare impedit brought for this Chauntery, if the moneth be past, the Plaintife shall recover damages for two yeares within the equity of this Statute, for that the Patron in this case loseth the presentation, although the

words of the Statute be per tempus semestre, and this is per tempus mensis tantum.

¶ Ita quod Episcopus Ecclesiam conferat, &c.] Here conferat is to be taken for legitimè conferat. 11.H.4.fo.lib.9. fol.26.Stat.mercella-43.E.3.12.

Albeit the Bishop hath not collated, yet if he hath jus conferendi, the Plaintife shall, if he will, recover double damages within the meaning of this Act.

But albeit the six moneths be past, so as the Bishop hath a full title to present by Lapse, yet if the Church doth remaine void, the Plaintife at his perill may pray a writ to the Bishop: but then he shall not recover double damages but for halfe a yeare only, because in that case he shall recover his presentation, so as it is in the Plaintifes election in that case, either to lose his presentation, and have double damages, or to have his presentation, and single damages. 8.E.3.5.quare impedit.24. 39.E.3.25. 46.E.3. 15. 13.E.3.en quest 43. 11.H. 4.40. 13.E.4.3. Dyer 3.El.253. 7.El.241.

The Plaintife in a quare impedit after appearance was non-suit, whereupon the Court awarded a writ to the Bishop for the Defendant, and a writ to the Sheriffe to enquire when the Church became void, the yearly value thereof, and whether the Church were full, &c. the Sheriffe returned the time of the voidance, the yearly value, and that the Bishop had collated by Lapse, whereby it appeared tempus semestre was past before the writ could be served, yet seeing the judgement was given within the six moneths, he could recover the damages but for halfe a yeare. 27.E.3. damages 106.

And it is to be observed, that albeit the Bishop doth collate, yet if his Incumbent be removed by judgement within the six moneths, or after, the Plaintife shall recover the damages but for halfe a yeare, for the words of this Branch are, Et verus patronus ea vice præsentationem suam amittat, so as if he lose not his presentation, the collation of the Bishop is not materiall.

¶ Ad valorem Ecclesiæ.] This shalbe accounted according to the very true value, as the same may be letten. 24.E.3.33. 39.E. 3.15. Regist. 30. 59. F.N.B.52.

¶ Et si impeditor, &c.] No damages by this act are to be recovered but against him that is impeditor, a disturber. 46.E.3.25.b.

In a Quare impedit against the Patron and Incumbent, the Plaintife recovers the advowson post semestre tempus, and because the Incumbent was impeditor, for that he had counterpleaded the title of the Plaintife, therefore he recovered the value for two yeares as well against the Incumbent as the Patron.

¶ Et de cætero concedantur brevia de Capellis, Præbendis, Vicariis, Hospitalibus, Abbatiis, Prioratibus, & aliis domibus quæ sunt de advocationibus aliorum, quæ prius concedi non consueverunt.] Ecclesia, Capella. When the question was, whether it were Ecclesia, aut Capella pertinens ad matricem Ecclesiam, The issue was, whether it had baptisterium & sepulturam: for if it had the administration of sacraments and sepulture, it was in Law judged a Church. Trin.20.E.1. in banco Rot. 77. in quare imped. Ric' de Smythes case. Mich.21.E.1. in banco Rot.1. Herts. Prior de Elies case. Hill.8.E.1 in banco, Roger de Bigod, & Comme de Norff. case. Hill.8.E.2. coram rege Cornub. pro capella sancti Berione. A capella venit capellania Rot. Cart. 26. Nov. an. 28. H. 3. in cart' fact' Will. Oxon' Episcopo & Capellan' ut patet, Mich. 32. E. 1. coram rege Gloc' Capellania sancti Oswaldi, prioratus sancti Oswaldi de Gloc' quæ est de libera capellania nostra. Trin. 23.H. 3. rot. 19. in Turri. Brack. lib. 4. fol. 241. & Brit. fol. 226. b. Plac. Lib. 5. cap. 14. 14.H.3. quare imped. 183. 34.E.1. ibid. 189. 47.E.3.4. 8.Ni. 6.32. 24.E.3. ibid. 26. 45.E.3. ibid. 128. 14.H. 4.12. Inter brevia 28.Maii, anno regis E. 6. 18. 6.E.3.5. 39.Brack. li.4.fo.249, 244. Regist. 32.a. 19. H.3 Dar. presentment, pl.ult. Vid. Rot. Hund. 18.H.3. m.2.

It appeareth here, and by 6.E.3. that before this act writs did not lye de capellis, præbendis, &c. and yet it is adiudged in 14.H.3. which was long before this Statute, that a quare impedit did lye of a Chappell, and it was resolved in Parliament, Hill.19.H.3. Quod nulla assisa ultimæ præsentationis capiatur de

de Ecclesiis præbendatus, nec de præbendis: but now this act hath made it cleare, and the writ shall be ad capellam, &c.

47.E.3.4. 8.H.6.32. If a patron of a Chappell present unto it by the name of a Church, and the Clerke be instituted and inducted thereunto, &c. it hath lost the name of a Chappell.

¶ Brevia.] That is, writs of right of advowson, quare impedit, and assise of Darren presentment, which in this act had been named before.

¶ Et cum per breve de Indicavit impeditur rector alicujus Ecclesiæ ad petendum decimas in vicina parochia, habeat patronus rectoris sic impediti breve ad petendam advocationem decimarum petitarum. Et cum disrationatum fuerit, procedat postmodum placitum in curia Christianitatis, quatenus disrationatum fuerit in curia Regis.

Regist 35.36. ¶ Indicavit.] Hereby, and by the Register, and F.N.B. it appeareth where the writ of Indicavit doth lye, and it properly appertaineth to another treatie.

Glanvile, lib.4. cap.13. Bract. li.5. fol 402.b Britt. fol 260. 31.H.6. 14.b. Mich. 2.E.1 in banco rot. 52. Lei' indicavit de 4.part. But this is an ancient writ by the common Law of England, the forme whereof appeareth in Glanvile, and other ancient Authors.

*¶ Ad petendum decimas.] By the common Law, if the incumbent of one patron demanded tithes against the incumbent of another patron, the writ of Indicavit did lye, for that the right of the patronage should come in question, for by the presentation of the patron, his incumbent is to have the tithes, which are the profits of the Church; and in a writ of right of advowson the patron shall alledge the esplees in his incumbent in taking of the great and small tithes: and therefore if the right of tithes came in question, that concerned the right of advowson, the writ of Indicavit did lye, and this appeareth by the writ it selfe.

* 4 E.3.27. 7.E.3.42. 31.H. 6.14. 38 H.6. 20,21. 12.E 4.13 2.H.7.12.

Bract. lib.5.402. Brit.fol.33. 28.E.3.97. But for subtraction of tithes against an inhabitant within the parish of the rector claiming from one patron, where the right of the advowson of the tithes never come in question, the Court Christian hath jurisdiction.

4.E.3.27. 31.H. 6.14. 38.H.6. 20,21. The mischiefe before this Statute was, that seeing the right of tithes could not be tried between the two persons after the Indicavit granted, the person prohibited was without remedie for tryall of the right of tithes; and therefore this act doth give the patron, whose Clerke is prohibited, a writ of right de advocatione decimarum, the forme of which writ appeareth in the Register, and if the right be tryed for the Demandant, the cause shall be remanded into the Court Christian.

But what if the patron hath but an estate in taile, or an estate for life, &c. so as he cannot have this writ of right of advowson, what remedy shall be had for tryall of the right of tithes in this case? It seemeth that by construction of this Statute, the Defendant in the Indicavit appearing upon the attachment shall plead to the right of the tithes in the Kings Court, or otherwise he shall be without remedy. And this standeth well with the words of the writ of Indicavit, viz. Vobis prohibemus, ne placitum illud teneatis, donec discussum fuerit in Curia nostra, ad quem illorum pertineat ejusdem Ecclesiæ advocatio, &c.

See Art-cleri ca.2. 9.E.2. Bract.li.5. 402,403. 38.H.6.20. By this branch it appeareth, that the value of the tithes at the making of this act was not materiall; for of whatsoever value they were of, the right of tithes could not be determined in Court Christian; but by the Statute of Artic' cleri, cap.2. the tithes must amount to a fourth part of the value of the Church in that case, or otherwise the writ of Indicavit doth not lye, but the King may have a writ of a lesser part, for he is not bound by that Act.

Regist.29. F.N.B. 45.b. Also by this Act a writ of Indicavit was maintainable ante litem contestatam, that

that is, when the party hath libelled in Court Christian, and the adverse party hath answered thereunto, but this is remedied by the Statute of Conjunctim feoffatis. An. 34. E. 1. 31. H. 6. 13, 14.

A writ of Indicavit must be brought by the patron before sentence given in Court Christian, as it appeareth by the words of the writ; for it is but a supersed' donec, &c. ne placitum illud teneatis, donec discussum fuerit, &c. and this Act saith, Procedat postmodum placitum in Curia Christianitatis, which could not be after sentence. F.N.B. 45. b. 12. E. 4. 13.

And albeit this Statute doth give the writ of right of advowson of tithes, yet a writ may be brought de decimis & oblationibus; for oblations be in consimili casu. 38. E. 3. 13. a. 4. E. 3. 28. F.N.B. 45. Do9. & Stud. cap. 25. fol. 108.

This writ of Indicavit is against the Canonical sanction, and yet hath been ever obeyed; for all forraine sanctions or canons against the law or custome of the Realme are of no force, and bind not here, as elsewhere hath been spoken more at large. Rot. Parliament. 50. E. 3. nu. 203.

The writ of Indicavit shall not mention that the tithes, &c. in suit amount to a fourth part of the Church, but it shall be pleaded by the other party to have a consultation. F.N.B. 45. d.

If an Abbot be parson in parsonee of the Church of D. and another Abbot is parson in parsonee of the Church of E. so as there be (in respect of the appropriations) but two parsons, yet for that each party is both patron and incumbent, an Indicavit lyeth between them. 31. H. 6. 14. 38. H. 6. 26. F.N.B. 45. c.

¶ Cum advocatio discendat participibus, licet unus bis præsentet, & usurpet super cohæredem, non propter hoc excluſus sit ille in toto qui fuit negligens, sed alias habeat turnum ſuum præſentandi, cum acciderit.] By the common Law, if an advowson descended to divers coparceners, if they cannot agree to present, the eldest sister shall have the first turne, and the second the second turne, & sic de cæteris, every one in turne according to seniority; and this priviledge extends not onely to their heires, but to the severall assignees of every coparcener, whether hee hath the estate of them by conveyance, or by act in law, as tenant by the curtesie, hee shall have the same priviledge by presenting in turne as the sisters had: Therefore albeit the coparceners do make composition to present by turne, this being no more then the law doth appoint, expreſsio eorum quæ tacite insunt nihil operatur: therefore they remaine coparceners of the advowson, and the inheritance of the advowson is not divided, and notwithstanding this composition they may joyne in a quare impedit, if any estranger usurp in the turne of any of them: And the sole presentation out of her turne did not put her sister out of possession in respect of the privity of estate, no more then if one coparcener taketh the whole profits. If one joyntenant present alone, this doth not put the other out of possession, in respect of the unity of the title, but the Ordinary might have refused his presentee, as he might the presentee of one tenant in common, in respect of some barring opinions in old bookes: therefore this Act doth declare the Law, as here it appeareth. 18. E. 2. quare Imp. 176. 19. E. 2. ibid. 177. 19. E. 3. ibid. 59. 31. E. 3. ibid. 1. 20. E. 2. ibid. 63, 64. 7. E. 3. 20. 45. E. 3. 12. 11. H. 4. 54 5. H. 5. 10. 22. H. 6. 47. 34. H. 6. 40 35. H. 6. 59. 38. H. 6. 8, 9. 2. H. 7. 4. 5 H. 7. 8. li. 8. fo. 22. Walkers case F.N.B. 36. d. 15. E. 3. Darr. present. 11. 22. E. 4. 94. 33. E. 3. quare imped. 146. 30. E. 3. Statham quare imped. 21. E. 3. 32. 13. E. 3. quare imped. 58. 6 E. 3. 39. 52. 7. E. 3. 20, 21. 15. E. 3 Darr. present. 11. 20. E. 3. mowst' de faits 72 13. E. 3. quare imped. 58. 17. E. 3. 30 37. 21. E. 3. 37. 11. H. 4. 54. 27. H. 8. 11. 36. H 8. tit. present. Bro. Bract. lib. 4. fol. 238. 245. Brit. fol. 224.

This law doth extend to usurpations by one coparcener upon another, as well before partition, as after.

Cap.

CAP. VI.

CUm quis petat tenementum verſus alium, & implacitatus vocaverit ad warrantum, & warrantus dedicat warrantiam, & diu pendeat placitum inter tenentem & warrantum, cum ad ultimum convincatur, quod vocatus ad warrantum warrantizare tenetur per legem & conſ. hactenus viſitatam, non fuit antea alia pœna inflicta vocato, qui warrantiam dedixit, niſi tamen quod warrantizaret, & eſſet in miſericordia, quia prius non warrantizavit, quod durum fuit petenti, quia multotiens per colluſionem inter tenentem & warrantum magnas ſuſtinuit dilationes. Propter quod Dominus Rex ſtatuit, quod ſicut tenens amitteret tenementum petitum, ſi vocaſſet ad warrantum, & warrantus ſe poſſet devolvere de warrantia: Eodem modo amittat warrantus ſi warrantiam dedicat, & convincatur quod warrantizare debeat. Et ſi inquiſitio pendeat inter tenentem & warrantum, & petens petat per breve ad faciendum venire juratum, concedatur ei, &c.

Albeit the Writ, by this Act, L'eſtatute de garranties neſt forſque revocation de error uſee jeſque a droit ley, **yet the tenant, according as it is here recited in the preamble of this Act, after the warranty tryed, could have no other iudgement, but that the vouchee ſhould warrant the land, according to the voucher of the tenant, but this was many times in great delay of the Demandant by colluſion or agreement betweene the tenant and the vouchee; for remedy whereof this Statute was made.**

¶ Propter quod Dominus Rex ſtatuit quod ſicut tenens amitteret tenementum petitum, ſi vocaſſet ad warrantum, & warrantus ſe poſſet devolvere de warrantia, eodem modo amittat warrantus, ſi warrantiam dedicat, & convincatur quod warrantizare debeat.

Lib. 6. cap. 23. **Which** Fleta **rendreth in theſe words:**

Si is qui ad warrantiam tenetur warrantizare falſo contradixerit, proviſum eſt, quod ſicut tenens amitteret tenementum, ſi vocaſſet ad warrantum, & warrantus ſe poſſet devolvere de warrantia, eodem modo amittat warrantus warrantizare dedicens, ſi convincatur quod warrantizare debeat.

¶ Si warrantiam dedicat.] **This is not to be underſtood onely where the vouchee denieth the deed, or other cauſe of the warrantie, and thereupon iſſue is taken, and found againſt the vouchee: And where the vouchee entereth into the warranty, and demands of the tenant what he hath to binde him to warranty, and the tenant ſheweth ſpeciall matter to binde him to warranty, and the vouchee demurreth in law upon the tien, this is within the remedy of this Act: for the words ſubſequent be,** Si convincatur quod warrantizare debeat, **which the vouchee is in this caſe; and this Act being made to auoid delayes, which are odious in law, is to be interpreted favourably.**

Mich. 16. E. 1. in banco rot. 44. Rog. de Mowbrey's caſe. 5. E. 3. voucher 249. Paris caſe. 30. E. 3. 6. Simons caſe. Liber plac. Hall. 352. 414. 6. H. 6. 3. 4.

And it is to be obſerved, that here is Sicut, which is an adverb of ſimilitude, viz. Sicut tenens amitteret, ſi vocaſſet ad warrantum, & warrantus ſi poſſet devolvere de warrantia. Under which words are included, if the vouchee can diſſolve him of the warranty by demurrer, or any iſſue whatſoever, eodem modo (ſaith this Act) amittat warrantus, &c. which ſignifieth the former expoſition that hath been made; and to be ſhort, whereſoever the judgement at the common law ſhould have been againſt the vouchee upon falſe plea, or demurrer, &c. quod warrantizaret. all theſe caſes are within the proviſion of this Act.

¶ Et ſi inquiſitio pendeat inter tenentem & warrantum, & petens petat breve ad fac' venire juratum, concedatur ei.] Here is further remedy given for the Demandants expedition, that he may ſue out the venire fac' for the tryall of any iſſue between the tenant and vouchee.

Theſe things are neceſſary to be knowne; for at this day vouchers are moſt commonly uſed for delay.

CAP. VII.

CUſtodi de cætero concedatur breve de admenſuratione dotis. Nec per ſectam cuſtodis, ſi fictè & per colluſionem ſequatur verſus mulierem tenentem in dotem, præcludatur hæres cum ad ætatem pervenerit ad dotem admenſurandam, ſecundum quod per legem Angliæ fuit admenſuranda. Et tam in iſto brevi, quam in brevi de admenſuratione paſturæ, celerior quam prius de cætero ſit proceſſus, ita quod cum perventum fuerit ad magnam diſtrictionem, dentur dies, infra quos duo comit. teneantur, ad quos publica fiat proclamatio, quod defendens veniat ad diem in brevi contentum querenti reſponſurus. Ad quem diem ſi venerit, procedat placitum inter eos, & ſi non venerit, & proclamatio ſupradicta modo per Vicecomitem teſtificata fuerit, procedatur per defaltam ad admenſurationem faciendam.

Vide Mich. 10 E. 1. in banco rot. 105. North. Paſc 18 E. 1. in banco rot. 15. Laurence de Oyſileurs caſe.

Before this Act, if the heire within age, before the garden in chivalry enter into the land, had aſſigned dower to the wife more then ſhe ought to have, the garden had been without remedy: for no writ of admeaſurement of dower being a reall action lay for the garden at the common law implyed by de cætero.

Brit. cap. 113. fol. 263.

¶ Cuſtodi.] Garden in droit or in fait ſhall have this writ by this Act, if the aſſignement of dower be made in his owne time: but if the aſſignment be made by the heire in time of garden in droit, and after the garden in droit aſſigneth his intereſt over, the aſſignee ſhall not have a writ of admeaſurement, for that the garden in droit had but a chofe in action: but if the aſſignement had been made in the time of the garden in fait, he ſhould have had a writ of admeaſurement of dower by this Act.

7. R. 2 tit. admeaſurement 4. F.N.B. 149. a.

But this is to be underſtood (though the Statute be generall) when the heire within age aſſigneth dower, as is aforeſaid, or when dower is aſſigned in the right of the heire, or the garden aſſigneth more dower then he ought, the heire after his full age ſhall have a writ of admeaſurement of dower by the common law.

and

Glanv. li. 6. ca. 13 Bract. li. 2. fo. 93. lib 4. 314, 315. Flet. lib. 5. ca. 22. & 33. Brit. fo. 263 Mirror cap. 5 §. 5. 7. E 4. 22. b. 7. E. 2. admeasur. 13. 7. R. 2. ibid. 4. 21. H. 7 43. * Brit. ca. 113. fo. 263. b. 6. H. 3. admeasur. 8. 7. R. 2. tit. admeasur. 4. le Countee de Devons case. 17. E. 3. 71. F. N. B. 149.

and he cannot have it before, because the interest of the garden (which he may give away) endureth until that time; but if the heire within age be out of ward, and assigneth more dower then he ought within age, he may have an admeasurement of dower within age, for enter he cannot.

If the garden assigneth more dower then he ought, and the heire dyeth, his heire shall have a writ of admeasurement of dower.

* And so if the heire within age assigne dower, and dyeth, his heire shall have the like writ; but if the ancestor of full age, being tenant in fee simple, assigneth dower more then he ought, his heire shall never avoid it, because he had full power to assigne as much as he would.

The King is intituled by false office to the wardship of the body and lands of the heire of J. S. being within age, dower is assigned to the wife more then she ought, the garden in chivalry traverseth the office, and avoideth it, this garden shall by this Act have a writ of admeasurement of dower of the assignment made by the King, having but a defeasible title to the wardship.

By the like reason, if tenant by Knight-service dyeth, his heire within age an estranger abate, and endoweth the wife of more then she ought, the garden seiseth the ward, he shall by this Act have a writ of admeasurement of dower: And so if J. S. seised of lands in fee taketh wife, and is disseised and dyeth, the disseisee assigneth more in dower then she ought, the heire entreth into the residue, he shall have a writ of admeasurement by the common law, and this well agreeth with the words of the writ, viz. Quod C. quæ fuit uxor prædict' B. plus habet in dotem de libero tenemento, quod fuit prædict' B. quondam viri sui in N. quam habere debet, & ad ipsam pertinet habendam.

14. H. 3. admeasur. 10. F. N. B. 149. c.

And albeit the words of the writ be in the present time, plus habet in dotem, &c. yet it is to be taken, that she had more in value at the time of the assignment of dower; for if by her industry and policie it be made of greater value afterward, no writ of admeasurement lyeth for this improvement.

¶ Nec per sectam custodis si fictè per collusionem sequatur, &c.] Hereby is remedy given to the heire at his full age, if the garden prosecute feintly, or by collusion against the wife, so as the heire shall not be barred in his writ of admeasurement against the tenant in dower.

11. H. 4. 3. Plow. com 55.

The heire shall not be driven to shew the manner of the feint pleading, but to alledge the same generally.

9. H. 6. 5.

The tenant in a Precipe doth plead, that an estranger hath recovered against him by verdict in an assise, the Plaintife against this verdict cannot generally averre, that this was by covin, but must shew some speciall matter.

¶ Et tam in isto brevi, quam in breve de admensuratione pasturæ, celerior quam prius de cætero fiat processus.] Whereas by the common law the processe in both these writs were Summons, Attachment, and Distresse infinite, by this Act a more speedy proceeding is provided.

Regist. 171. Vet. N. B 9. & 10. F. N. B. 148. h.

There is great affinity between these two writs, as hereby it appeareth: amongst others there is one difference, that in a writ of admeasurement of dower the Demandant shall recover damages, if the tenant appeare not the first day, and yeeld to admeasurement for the issues in the meane time; but in admeasurement of pasture no damages shall be recovered at all.

34. E. 3. damag. 2. 42. E. 3. 19. Regist. 171.

More shall be said of the processe and proceeding in this writ of admeasurement of dower in the exposition of the next Chapter, onely to remember by the way what the Mirror saith, Le statute de admeasurement est reprovable in plusors points quant as proclamations, de sicome admeasurement, & surcharge sont feasibles per juries de office.

Mirror cap. 5. §. 5.

¶ Ita qd' cum perventū fuerit ad magnā districtionem, dentur dies, infra quos duo comitatus teneantur, &c.] By reason of these words, Cum perventum fuerit ad magnam distric' the very writ of distresse shal contain.

containe, & interim in duobus plenis comitatibus tuis publice proclamari fac', quod prædict' A. quæ fuit uxor T. veniat coram præfatis Justiciariis ad respondendum, &c. si voluerit, & ad audiendum judicium suum pro pluribus defaltis.

And yet I find, that after the grand distresse returned, the Plaintife prayed a proclamation, and there it is taken, that he had not surceased his time, but it was granted. 4. E. 3. admeasur. 12.

See more of admeasurement of dower in the next Chapter following.

CAP. VIII.

CUm per placitum motum per breve de admensuratione pasturæ, pastura fuerit admensurata aliquando coram Justic', aliquando in com' coram Vicecom', multotiens contingit, quod post hujusmodi admensurat' actam, iterum ponit ille, qui primo superoneravit pasturam, pluria animalia quam ad ipsum pertinet habend', nec super hoc hucusque provisum fuisset remedium: Statutum est, quod de secunda superoneratione fiat remedium conquerenti sub hac forma, Quod conquerens habeat breve de Judicio, si coram Justic' admensurata fuerit pastura, quod Vic' in præsentia partium præmonitarum (si interesse voluerint) inquirat de secunda superoneratione. Quæ si inventa fuerit, mandetur Justic' sub sigillo Vic', & sigillis Juratorum, & Justic' adjudicent conquerenti damna, & ponant in extractis valorem animalium quæ superonerat' post admensurationem factam posuit in pastura, ultra quod debuit, & extractas liberent Baronibus de Scaccario, ut inde respondeant Domino Regi. Si in com' facta fuerit admensuratio, tunc ad instantiam querentis exeat breve de Cancellaria, quod Vic' inquirat super hujusmodi superonerat', & de averiis positis in pasturam ultra debitum numerum, vel de pretio Dom' Regi ad Scaccar' suum respondeat. Et ne Vic' fraudem faciat Domino Regi in isto casu, concordatum est, quod omnia hujusm' brevia de secunda superonerat', quæ exeunt de Cancel' irrotulentur, & in fine anni mittantur transcripta ad Scaccar', sub sigillo Cancellarii, ut videant Thesaurius & Barones de Scaccar' qualiter Vic' respondeat de exitibus hujusmodi brevium. Eodem modo irrotulentur brevia de Rediſſeisina, & mittantur ad Scaccarium in fine anni. Glanv. li. 12. c. 13 Bract. li. 4. fo. 229 Brit. fol. 138. Flet. lib. 4. cap. 23. Mirr. cap. 5. §. 5.

It is to be observed, that the writs of admeasurement of pasture and of dower are vicontell, and are not returnable, and the parties may thereupon plead before the Sheriffe in the County. 7. E. 4. 22. F. N. B. 225. h. & 148. f. g.

Both these pleas may be removed out of the County Court by pone at the suit of the Plaintife, without shewing cause in the writ, but at the suit of the Defendant he ought to shew cause. 44. E. 3. 10.

Now where this Statute saith, Aliquando coram Justiciariis, that is, when the plea is removed before the Justices, there upon pleading, or confession before them after admeasurement made and returned, judgement shall be given by the Justices; but if the plea be not removed, the admeasurement shall be enquired of, and made before the Sheriffe, and so be these words (aliquando in comit' coram Vicecom') to be understood.

Regist. judic. fol. 36. b. & 40. a.

Regist. judic. ubi supra.

See the judiciall writ of admeasurement of pasture granted by the Court of common pleas for making of admeasurement, which writ is returnable before the Justices.

¶ Nec super hoc hucusque provisum fuisset.] Yet I have seen a Record in 11. H. 3. where a writ de secunda superoneratione was granted.

Anno 11. H. 3. in archivis turris London.

¶ Statutum est, quod de secunda superoneratione fiat remedium conquerenti sub hac forma, Quod conquerens habeat breve de judicio, si coram Justiciariis admensurata fuerit pastura.] The effect of which judiciall writ is, That the Sheriffe in the presence of the parties, if they will be present, being warned, shall enquire by a Jury of the second surcharge, and what cattell secondly surcharged, and the value of them, which if it be found, and returned under the seale of the Sheriffe, and the seales of the Jurors, the Justices shall adiudge damages to the party, and the cattell which surcharged after the admeasurement made shall be forfeited to the King, and the value of them shall be estreated into the Exchequer, that thereof the King may be answered.

Regist. 157. Regist. judic. 36. F.N.B. 126. Flet. lib. 4. ca. 23. 7. E. 4. 22. Vet. N B. fol 72.

¶ Si in com' fact' fuerit admensuratio, tunc ad instantiam querentis exeat breve de Cancellaria.] Which writ you may find in the Register.

Regist. 157.

¶ De secunda superoneratione.] And here it is to be known, that a writ de secunda superoneratione lyeth not against any that surchargeth after a former admeasurement, but onely against them, against whom the writ was brought, and which were particularly charged with surcharge in the writ; for all the Commoners, as well those which surcharged not, as those which surcharged, are to be admeasured; and therefore it appeareth not who surcharged, but onely they that are charged therewith, and so found: Hereupon it followeth, that a writ de secunda superoneratione lyeth not against any, but against them that were named and thereof convicted in the first writ; for he cannot be charged with a second, that was not culpable of the first: and therefore none but such as were named in the former writ shall forfeit their cattell, &c. or yeeld damages.

Temps E. 1. admeasurement 15. 18. E. 3. 30. 7. E. 4. 23. 8. H. 6. 26. F.N.B. 126. i.

¶ Et ne Vicecomes fraudem fac' Domino Regi.] Here is provision made to prevent the fraud of Sheriffes, lest by their fraud they should prevent the King of his duty.

CAP. IX.

CUm capitales domini distringunt feodum suum pro consuetudinibus & servitiis sibi debitis, & medius sit qui tenentem acquietare debeat, cum non jaceat in ore tenentis, postquam districtionem replegiaverit, dedicere demanda capitalis domini sui, qui advocat in curia Regis justam districtionem fieri super tenentem suum, *viz.* super medium: multi per hujusmodi districtiones hucusque gravati exiterunt,

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per hoc quod medius (licet haberet per quod distringi posset) magnas fecit dilationes antequam ad curiam venerit ad respondendum hujusmodi tenentibus suis ad breve de medio: per hoc etiam quod durius fuit in casu quando medius nihil habuit, in casu etiam cum tenens paratus esset facere capitali domino servitia & consuetudines exactas, & capitalis dominus servitia & consuet. sibi debitas renuebat percipere per manum alterius, quam per manum proximi tenentis sui, & sic amiserunt hujusmodi tenentes in dominico proficuum terrarum suarum aliquando ad tempus, aliquando toto tempore suo, nec fuit antea aliquod remedium in hoc casu provisum. Ordinatum est & provisum in hoc casu remedium in posterum, sub hac forma, Quod quam cito hujusmodi tenens in dominico, habens medium inter ipsum & capitalem dominum, distringitur, statim perquirat sibi tenens breve de medio. Et si medius habens terram in eodem comitatu diffugerit usq; ad magnam districtionem, detur querenti in brevi suo de magna district' talis dies, ante cujus adventum duo comitatus teneantur, & præcipiatur Vicecom', quod distringat medium per magnam districtionem, prout in brevi continetur. Et nihilominus Vicecomes in duobus plenis comitatibus solemniter proclamare faciat, quod hujusmodi medius veniat ad diem in brevi contento, respondsurus tenenti suo. Ad quem diem si venerit, procedat placitum inter eos modo conjuncto. Et si non venerit hujusmodi medius, amittat servitium tenentis sui, & à modo non respondeat ei tenens in aliquo, sed (omisso illo medio) respondeat capitali domino de eisdem servitiis & consuetudinibus, quæ prius facere debuit prædictus medius. Nec habeat capitalis dominus potestatem distringendi tenentes in dominico, dum prædictus tenens offerat ei servitia debita & consueta. Et si capitalis dominus exegerit plus quam medius si facere deberet, habeat tenens in hoc casu exceptionem versus dominum quam haberet medius. Si vero medius nihil habuerit in potestate Regis, nihilominus perquirat tenens breve suum de medio ad Vicecomitem illius comitatus in quo distringitur. Et si Vicecomes mandaverit, quod medius nihil habet unde potest summoneri, nihilominus sequatur breve de Attachiamento. Et si Vicecomes mandaverit, quod nihil habet per quod potest attachiari, nihilominus sequatur breve de magna districtione, & fiat

proclamatio in forma prædicta. Si vero medius non habeat terram in comitatu in quo fit diſtrictio, ſed habeat terram in alio comitatu, tunc exeat breve originale ad ſummonendum medium ad Vicecomitem illius comitatus in quo fit diſtrictio. Et cum teſtificatum fuerit per illum Vicecomitem, quod nihil habet in comitatu ſuo, exeat breve de Judicio ad ſummonend' medium ad Vicecomitem illius comitatus in quo teſtificatum fuerit quod habet tenem', & fiat ſecta in illo comitatu, quouſq; perveniatur ad magnam diſtrictionem, & proclamationem, ſicut dictum eſt ſupra de medio habente terram in eodem comitatu in quo ſit diſtrictio. Et nihilominus fiat ſecta in comitatu in quo nihil habet (ſicut dictum eſt ſupra de medio nihil habente) quouſq; perveniatur ad magnam diſtrictionem & proclamationem, & ſic poſt proclamationem in utroque comitatu factam adjudicetur medius de feodo & ſervitio ſuo. Et cum aliquando contingat, quod tenens in dominico feoffatus eſt ad tenendum de medio per minus ſervitium, quam medius facere debuit capitali domino, cum poſt hujuſmodi proclamationem attornatus ſit tenens capitali domino, medio omiſſo, neceſſe habet tenens reſpondere capitali domino de ſervitiis & conſ. quæ medius ei prius facere debuit, & poſtquam medius venerit in Curiam, & cognoverit, quod acquietare debet tenentem ſuum, vel adjudicetur ad acquietandum, ſi poſt hujuſmodi cognitionem aut judicium queremonia perveniat, quod medius non acquietat tenentem, tunc exeat breve de Judicio, quod Vicecomes diſtringat medium ad acquietandum tenentem, & ad eſſendum coram Juſticiariis ad certum diem, ad oſtendendum quare prius eum non acquietavit. Et cum per diſtrictionem venerit, audiatur querens. Et ſi querens verificare poterit, quod ipſum non acquietavit, ſatisfaciat de damnis, & per judicium recedat tenens quietus de ſuo medio, & attornetur capitali domino. Et ſi ad primam diſtrictionem non venerit, exeat breve de alia diſtrictione, & fiat proclamatio, & poſtquam teſtificatum fuerit, procedatur ad judicium, ſicut ſuperius dictum eſt. Et ſciendum eſt, quod per hoc ſtatutum non excluduntur tenentes, quin habeant warrantiam, ſi de tenementis ſuis implacitentur, ſuper medios ſuos & eorum hæredes, ſecundum quod prius habuerunt, nec etiam excluduntur tenentes, quin ſequi poſſunt verſus medios ſuos, ſecundum conſuetudinem prius uſitatam, ſi viderint quod proceſſus eorum plus valeat

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per antiquam conſuetudinem, quam per iſtud ſtatutum. Et ſciendum eſt, quod per iſtud ſtatutum non providetur remedium quibuſcunque mediis, ſed ſolummodo in caſu cum ſit unus medius tantum inter dominum diſtringentem & tenentem, & in caſu quando medius ille eſt plenæ ætatis, & in caſu quando tenens, ſine præjudicio alterius quam medii, attornare ſe poteſt capitali domino, quod dictum eſt pro mulieribus tenentibus in dotem, & tenentibus per legem Angliæ, vel aliter ad terminum vitæ, vel per feodum talliatum, quibus pro aliquibus cauſis nondum eſt proviſum remedium: ſed (Deo dante) alias providebitur.

One miſchiefe here firſt mentioned before the making of this Statute was, the great delayes which were uſed in the writs of Meſne, in which the proceſſe at the common Law was ſummons, attachment, and diſtreſſe infinite; and yet the tenant in default of the Meſne was preſently diſtrained by the Lord Paramount, which miſchiefe appeareth by the preamble of this Act: For remedy whereof a more ſpeedy proceeding is given by this Act in a writ of Meſne. 50.E.3.23.

Another miſchiefe was, when the Meſne had nothing within the ſame County; for there the tenant was without remedy, and though the Meſne had ſufficient in another County, the common Law extended not thereunto, in both which caſes remedy is given by this Act.

¶ Pro conſuetudinibus & ſervitiis, &c.] The diſtreſſe muſt bee taken for the cuſtomes or ſervices which the Meſne by reaſon of his tenure ought to doe to the Lord, within which, ſute ſervice to a Hundred is comprehended, but not ſute reall, that is, by reſiancie, either to Hundred, Leet, or Tourne, for that is not by reaſon of his tenure. 4.E.3.42. F.N.B.137.a.

But if the tenant be diſtrained for the reliefe of the Meſne, or for reaſonable aide, albeit they are rather improvements of ſervices then ſervices, yet the tenant ſhall have a writ of Meſne, becauſe they grow by reaſon of the tenure. 5.E.3.49. 10.H.6.26. 39.H.6. 31.a. 9.E.4.27. F.N.B.136.m.

¶ Et medius ſit.] If there be A. Lord, B. Meſne, C. Meſne, D. tenant per availe, A. the Lord Paramount diſtrein D. for ſervices, &c. he bringeth a writ of Meſne againſt C. and recovereth damages againſt him, whereupon C. the Meſne may have a writ of Meſne againſt B. but if B. plead nient diſtrein in ſon default, the ſpeciall matter muſt be ſhewed, and not to take the generall iſſue, and ſo every Meſne ſhall have his writ againſt his Meſne. 18.E.3.19. 29.E.3.34. 39. E.3.19. 39.H.6. 31.b.

¶ Qui tenentem acquietare debeat.] There be two kinds of acquitals; one expreſſe, and the other implyed: expreſſe, three manner of waies:

Firſt, by fine or deed, either at the creation of the tenure, or after: ſecondly, by acknowledgement of acquitall: thirdly, by preſcription.

Implyed, five manner of waies:

Firſt, by oweltie of ſervices; ſecondly, by tenure in frankalmoigne; thirdly, in frankmarriage; fourthly, by homage anncеſtrell; and fifthly, in dower. 31.E.1.meſn.55. 7.E.2.ibid.66. 20.E.2.ibid.59. 8.E.3 49. 39.E.3.19. 38.E.3.10. F.N.B.136. Acquittals

¶ In caſu etiam cum tenens paratus eſſet facere capitali Domino ſervitia & conſuetudines exactas, & capitalis Dominus ſervitia & conſuetudines ſibi debitas renuebat percipere per manum alterius, quam per manum proximi tenentis ſui, &c.] By the common Law the Lord Paramount might have refuſed his ſervices by the Lib.6.58.Bredimans caſe, lib.9. fol.110, 111. 21.E.3.49. 2.H.6.3. 8.H.6.16.

the hands of the tenant per ayaile, or by the hands of tenant for life, where the reverſion was over, becauſe the Meſne or he in reverſion was his very tenant in poſſeſſion, for the which remedy is given by this Act.

¶ Uſque ad magnam diſtrictionem.] This muſt be underſtood of a writ of Meſne returnable into the court of common Pleas, and not of a writ of Meſne that is vicontell, and not returnable.

F.N.B.136.d. And although a writ of Meſne be depending between the tenant and the Meſne, yet the Lord Paramount may proceed, &c. for he ſhall not tarry till the matter be tried in the writ of Meſne.

Flet.li.2. cap.43. Brit.fol.58.b. But it appeareth by Fleta, Si medius ſit paratus ipſum tenentem acquietare de ſervitiis, quod capitalis Dominus ab eo exigit, tunc ſecundum æquitatem juris ſubvenietur tenenti per breve, *viz.* quod capitalis Dominus deſiſtat, and there the writ in that caſe appeareth.

¶ Et ſi medius habens terram in eodem comitatu, &c.] Brit.ubi ſupra. Here is provided a more ſpeedy proceeding in the writ of Meſne, if the Meſne had land in the ſame County.

¶ Et ſi non venerit hujuſmodi medius, amittat ſervitium tenentis ſui, & à modo non reſpondeat, &c.] If the Meſne appear not at the grand diſtreſſe, he ſhall be fore-judged, that is to ſay, that the Meſne ſhall loſe the ſervices of his tenant of the tenements before holden. And that the Meſne being omitted, the tenant from thenceforth ſhall be attendens & reſpondens to the chiefe Lord by the ſame ſervices, as the Meſne holdeth by.

Flet.lib.2 ca.43. Brit.fol 58. 10 H.6.26.

21.E.3.meſn.48. 10.H.6.fol.26. 4.H.6.28. But it is to be obſerved, that the immediate chiefe Lord muſt be named in the fore-judger; for albeit he be a ſtranger to the writ, and by his death the writ of Meſne ſhall not abate; yet in the judgement he that is then immediate Lord Paramount muſt be particularly named.

¶ Nec habeat capitalis Dominus poteſtatem diſtringendi tenentes in dominico, dum prædictus tenens offerat ei ſervitia debita, & conſueta.] Here three things are to be obſerved.

1. That the tenant muſt offer and tender the rent or ſervice due upon the land, and not be ready only, by reaſon of the word (offerat.)

2.H.6.avowry 1. 2.H.6.fol.3. 21.E.3.49.Brediman's caſe, ubi ſupra, li.9.fol.110, 111. 2. This muſt be done at the time, when the Lord comes to diſtraine.

3. That this Act is to be underſtood of ſervices, and cuſtomes which the tenant may doe, as payment of rents, delivery of heriot-ſervice, or the like; but extendeth not to perſonall ſervices annexed to the perſon of the Meſne, as homage, fealty, &c. for he cannot ſay, I become your man: nor ſweare to him fealty, &c. But after fore judger, then the tenant ſhall doe all manner of ſervices which the Meſne ought to have done, for then the Meſnalty is extinct; but as long as the Meſnalty remaines, the perſonall ſervices remaine with the Meſne, Servitia perſonalia ſequuntur perſonam.

¶ Et ſi capitalis Dominus exegerit plus, quam medius ei facere deberet, habeat tenens in hoc caſu exceptionem verſus Dominum quam haberet medius.] Hereby proviſion is made for the tenant to take any advantage that the Meſne might do, if the chiefe Lord demand other ſervices then the Meſne ought to doe, albeit he be a ſtranger to the avowry.

¶ Si vero medius nihil habuerit in poteſtate Regis.] Here ſub poteſtate Regis is taken for the power of the King to adminiſter juſtice to his ſubjects by his writs, Poteſtas regia eſt facere juſtitiam. See the firſt part of the Inſtitutes, ſect.199. Lib.7. in Calvins caſe, cap Itineris, vet Magn. Chart. fol.154.

And by this branch remedy is given to the tenant where the Meſne had nothing, where he had no remedy by the common law.

¶ Si

¶ Si vero medius non habeat terram in comitatu in quo fit districtio, sed habeat terram in alio comitatu, &c.] Here is remedy given to the tenant, where the Mesne hath land in a forraine County.

¶ Adjudicetur medius de feodo & servitio suo.] Here also forejudger is given in the cases here mentioned, which is a better and speedier remedy then the common law gave. Mich. 17.E.1. in banco rot. 147. Suff. Rich. de Rokeles case.

¶ Et postquam medius, &c. cognoverit, &c. vel adjudicetur ad acquietandum, &c. si post, &c. medius non acquietavit tenentem.] Medius, the heire of the Mesne shall not be fore-judged within this Statute, for that this Act speaketh of the Mesne onely, and not of the Mesne and his heires. 31.E.1. mesn. 55. 18.E.2. ibid. 57. 46.E.3.31.

¶ Satisfaciat de damnis, & per judicium recedat, &c.] This branch of the Statute giveth damages and fore-judger, and the Plaintife cannot take damages, and leave the fore-judger, but he must either take both according to this branch, or neither of them. 31.E.1. mesn. 55. 13.E.2. ib. 68. 46.E.3.31. 49.E.3.8.

¶ Et sciendum est, quod per hoc Stat' non excluduntur tenentes, quin habeant warrantiam.] By this clause the warranty of the tenant (which was ever much esteemed in law) is saved and preserved, and many deeds comprehended both warranty and acquitall. 8.E.3.49.

¶ Nec etiam excluduntur tenentes, &c.] Here the tenant hath election either to take the benefit of this Act, by taking the processe given by the same, or to take the processe at the common law, and this was abundans cautela; for this Statute being in the affirmative, the tenant might have had election (if this clause had not been) but abundans cautela non nocet: and the ancient Sages of the law did ever make things as plain, & leave as little to construction, as might be. 13.E.2. mesn. 68. 50.E.3.23. F.N.B.137.b.

¶ Sed solummodo quando unus sit medius, &c.] Hereby it appeareth, that no fore-judger can be, but when there is but one Mesne betweene the Lord Paramount and the tenant.

¶ In casu quando medius est plenæ ætatis.] Albeit a feme covert be not here excepted, yet by good construction she is excepted. 7.E.2. mesn. 76. 9.E.2. ibid. 67. 7.E.3. fol. 41.

¶ Sine præjudicio alterius.] These words were specially intended of tenant in dower, or of tenant for life, or in taile with a remainder over; for against them no fore-judger shall be given, but their extent is farre more large. 34.E.3. mesn. 47. Dyer 2. mar. 104. 14.E.2. tit. mesn. 70.

If the disseisor, or any other that hath a defeasible title in the tenancy doth fore-judge the mesne, this shall not prejudice the disseisee, or him that right hath; for they are within the remedy of these words, That every fore-judger ought to be sine præjudicio alterius.

But if the daughter fore-judge the mesne, and a son is borne after the fore-judgement, the son shall not avoid it; for it was sine præjudicio alterius, when the judgement was given.

If two joyntenants bring a writ of mesne, and the one is summoned and severed, and the other saith forth, he cannot fore-judge the mesne, because he cannot respondere capitali domino de eisdem servitiis & consuetudinibus, quæ prius facere debuit prædictus medius. 14.H.4.37.

So it is, if there be two joynt mesnes, and the one appeare, and the other make default, no fore-judgement shall be, for the same cause necessarily collected upon the same words.

They that are seised in auter droit, as the Bishop in right of his Bishoprick, or the Abbot or Prior in the right of his Monastery, or the like, shall neither fore-judge, nor be fore-judged, because it is to be intended, that it cannot be done sine præjudicio alterius, for that the consent of them is not had, which by law to the alteration 19.E.3. tit. mesn. Statham.

teration of any estate is requisite, as the Deane and Chapter to the Bishop, and the Covent to the Abbot, Prior, &c.

34. E. 3. mesn. 47. If the mesne hanging the writ of mesne against him alien by fine, albeit the right of the mesnalty passeth to the cognisee, yet the mesne may be forejudged, and the cognisee shall not take advantage of these words, Sine præjudicio alterius, because he came to the mesnalty, pendente brevi, and in judgement of law the mesne (as to the Plaintife) remaine seised of the mesnalty; for, pendente lite nihil innovetur.

CAP. X.

Regist. 19. b. CUm in itinere Justic' proclamat' fuerit, quod omnes qui brevia liberare voluerint, ea liberent infra certum terminum, post quem nullum breve recipiatur, multi de hoc confidentes, cum moram fecerint usque ad prædictum terminum, & nullum breve super eos fuerit liberatum, de licentia Justic' recedunt, post quorum recessum adversarii sui ipsorum absent' percipientes, brevia sua porrigunt in cera, quæ aliquando per favorem, aliquando pro dono per Vicecomitem recipiuntur, & illi, qui secure credebant recessisse, ten' sua amittunt: ut hujusmodi fraudi subveniatur imposterum, statuit Dominus Rex, quod Justic' in Itineribus suis statuant terminum quindenæ, vel mensis, minoris vel majoris termini, secundum quod comit' fuerit major vel minor, infra quem terminum publice proclametur, quod omnes qui brevia liberare voluerint, ea liberent infra terminum illum. Et in adventum illius termini certificet Vicecomes capitali Justic' itineranti, quot brevia habet, & quæ, & quod ultra illum terminum nullum breve recipiatur, quod si receptum fuerit, processus per illud factus pro nullo habeatur: excepto quod breve cessatum durante toto itinere relevari poterit. Breve etiam de dote de viris qui obierint al' seisiti infra summonitionem itineris, assisæ ultimæ præsentationis, & quare impedit, de Ecclesiis vacantibus, infra summonitionem præd', quocunq; tempore ante recessum Justic'. recipiantur in itinere. Brevia etiam novæ disseisinæ, quocunque tempore facta fuerit disseisina, recipiantur in itineribus Justic'.

Concedit Dominus Rex de gratia speciali, quod illi qui habent tenem' in diversis comitatibus, in quibus Justic' itinerant, vel de quibusdam ten' in com' in quo Justic' non itinerant, timent implacitar', & de aliis tenem' in comitatu, in quo Justic' non itinerant, implacitentur: ut coram Justic' apud Westm', vel

vel de banco domini Regis, vel coram Juſticiariis ad Aſsiſas capiendas aſsignatis, vel in aliquo comitatu coram vic', vel in aliqua Cur' Baronum, facere poſsint generalem attornat' ad proſequendum pro eis in omnibus placitis in itinere Juſtic' pro ipſis, vel contra ipſos motis vel movendis, durante itinere. Qui quidem Attornatus, vel Attorn', habeat poteſtatem in placitis motis in itinere quouſque placitum terminetur, vel dominus ſuus ipſum amoverit, nec per hoc excuſentur, quin ſint in juratis, & aſsiſis, coram eiſdem Juſtic'.

¶ Cum in itinere Juſtic' proclamat' fuerit quod omnes qui brevia liberari voluerint ea liberent infra certum terminũ,&c.] Hereby is recited the miſchief which was before the making of this Act, the remedy followeth.

¶ Ut hujuſmodi fraudi ſubveniatur impoſterum, ſtatuit dom' Rex, quod Juſticiarii in itineribus ſuis ſtatuant terminum, quindenæ, vel menſis, minoris vel majoris termini ſecundum quod comitatus fuit major vel minor, infra quem terminum publice proclametur, quod omnes qui brevia liberare voluerint ea liberent infra terminum illum, & in adventu illius termini certificet vicecomes capitali Juſticiar' itineranti quot brevia habent & quæ, & quod ultra illum terminum nullum breve recipiatur, quod ſi receptum fuerit, proceſſus per illud factus pro nullo habeatur.] Upon this purview was great queſtion, whether the King might diſpenſe with this Law, and give a further day, then hereby is preſcribed, and in the end adjudged that he might for advancement and furtherance of Juſtice. Of this purview, the Mirror with too much aſperity ſaith thus, Leſtatute de ſuſpention de brieſes en Eyres eſt reprovable come repugnant a la grand chartre, que dit, nous ne veerons a nul droit, ne delaierons. Et pur quoy ſont brieſes rebotables de audience; Eins pur le multitude des briefs, que adonques ſe font, & pur le petit nombre des Juſtices perit droit de pluſors. Fleta li. 1. ca. 19. Tr. 6 E. 2. in Theſaur. Regiſt. fo. 19. F.n.b. 17. E. Mirror ca. 5. § 5.

¶ Excepto quod breve, &c.] Here followeth five exceptions:

1. The firſt is, that a Writ abated may during the whole Eyre be amended.

2. Writs of Dower of the ſeiſin of men that dyed within the Summons of the heir, (which is by the ſpace of forty dayes before the beginning of the heir.) Brit. cap. 2. Fleta lib. 1. cap. 19, &c.

3. Aſſiſes of Darrein Preſentment.

4. Quare impedits of Churches vacant within the aforeſaid Summons ſhall be received at any time before the departure of the Juſtices.

5. Writs of Aſſiſe of Novel diſſeiſin, at what time ſoever the diſſeiſin was done, ſhall be received during the Eyre of the Juſtices.

¶ Concedit dom' Rex de gratia ſpeciali quod illi qui habent tenem',&c.] Here is an Act of grace, and therefore it is termed accordingly. Regiſt. fo. 19, 20. F.N.B. 25. c.e. 26. a.c.d. 18 E. 3. 46. 8 E. 3. 20.

De gratia speciali; for where the King by his Prerogative before this and other Statutes might by Letters Patents, or by Writ under his great Seal, grant to any Demandant or Pl', Tenant, or Defendant, to make Attorney in any Action, and to commaund the Judges to admit such persons to be Attorneys for them: Now justly is this Act stiled an Act of Grace, for that the King gave his Royall assent to this Law for the quiet and safety of his Subjects, giving them power hereby to make Attorneys in cases herein expressed, whereby the King lost such profit of the great Seal, as he formerly received in such cases. Statutum ex gratia Regia dicitur, quando Rex dignatur cedere de jure suo Regio pro quiete & commodo populi sui.

¶ Illi qui habent, &c.] This Act extends aswell to Corporations aggregate of many, as Maior and Commonalty, and to sole Corporations, as to private persons: and it extendeth aswell to Justices in Eyre of the forest, as to other Justices in Eyre; see the fourth part of the Institutes, cap. Justices in Eyre, & cap. the Courts of the Forests, and the Register ubi supra for claim of Liberties.

4 E. 3. Attorney 18.8 E.3.9.32 H. 6.1. 33 H.6.49. 34 H.6.51.

¶ Quousque placitum terminetur.] By the Judgement against the defendant, the Warranty of Attorney is determined; for thereby Placitum terminatur, but onely to sue Execution (which is the fruit of the Judgement) within the yéar: and if he sue out Execution within the yéar, he may prosecute the same after the yéar; but if he sue out no Execution within the yéar, then after the yeer is ended after Judgement, his Warrant of Attorney is determined.

8 E.3.20.18 E.3. 47.F.N.B. 25 E. Regist. 19,20.

¶ Attornatum generalem.] Of this generall Attorney you shall often reade in our Books.

¶ In omnibus placitis in itinere.] This is not understood of an Assise of Novel disseisin, for it is querela, and not placitum Assise, wherof (as elsewhere hath been said) there is plentifull authority in our Books.

Marlbr. cap. 14. 39 E.3.15. 34 H. 6.25. 35 H.6.42.

¶ Nec per hoc excusentur quin sint in Juratis & Assisis coram eisdem Justic'.] The wisdom of Parliaments, and of the Sages of the Law hath ever been, that able and sufficient men should not (to the hinderance of Justice) be exempted for service in Juries and Assises.

CAP. XI.

Fleta lib. 2. ca. 64. Brit. fol. 70. a.

DE servientibus, balivis, camerariis, et quibuscunque receptoribus, qui ad compotum reddendum tenentur: Concordatum est et statutum, quod cum dominus hujusmodi servient' dederit eis auditores compoti, et contingat ipsos esse in arreragiis super compotum suum omnibus allocatis, & allocandis, arrestentur corpora eorum, et per testimonium auditorum ejusdem compoti, mittantur et liberentur proximæ gaolæ domini Regis in partibus illis, & à Vic', seu custode ejusdem gaolæ recipiantur, et carceri mancipentur

dipentur in ferris, et sub bona custodia, et in illa prisona remaneant de suo proprio viventes, quousque dominis suis de arreragiis plenarie satisfecerint. At tamen si quis sic gaolæ liberatus conqueratur, quod auditores compoti sui ipsum injuste gravaverunt, onerando ipsum de receptis quæ non recepit, vel non allocando ei expensas aut liberationes rationabiles, & inveniat amicos, qui eum manucapere voluerint ad ducendum coram Baronibus de Scaccario, liberetur eis, & scire faciat Vicecomes (in cujus prisona fuerit) domino, quod sit coram Baronibus de scaccario ad aliquem certum diem cum rotulis & aliis, per quos compotum suum reddiderit, & in præsentia Baronum vel auditor', quos assignare voluerint, recitetur compotus, & fiat partibus justitia, ita quod si fuerit in arreragiis, committatur Gaolæ de Fleete, ut supradictum est. Et si diffugerit, & gratis compotum reddere noluerit, sicut in aliis statutis alibi continetur; *Marlbridge cap.* 23. distringatur ad veniendum coram Justiciariis, ad compotum reddendum, si habeat per quod distringi possit. Et cum ad curiam venerit, detur ei Auditores compoti, coram quibus si fuerit in arreragiis, & statim arreragia solvere non possit, committatur gaolæ custodiend' in forma prædict'. Et si diffugerit, & testificatum fuerit per Vicecomit', quod non sit inventus, exigatur de comit' in comitatum, quousque utlagetur. Et sit hujusmodi incarceratus irreplegiabilis. Et caveat sibi vicecomes, vel custos ejusdem gaolæ, sive sit infra libertatem sive extra, quod per communie breve, quod dicitur Replegiare, vel alio modo sine assensu domini ipsum à prisona exire non permittat. Quod si fecerit, & super hoc convincatur, respondeat domino de damnis, per hujusmodi servientem sibi illatis, secundum quod per patriam verificare poterit, & habeat dominus suum recuperare per breve de debito *versus custodem*. Et si custos gaolæ non habeat, per quod justicietur, vel unde solvat, respondeat superior suus qui custodiam hujusmodi gaolæ sibi commisit, per idem breve.

¶ Servientibus.] Every writ of Account must be brought against one, either as Bailife, Receiver, or Servant in Socage; and therefore against a servant as servant, or against an Apprentice, or a Controller, Surveyor, Messenger,

3 E.3.8. 4 E.3.7. 13 E.3. Account 76. 41 E.3. ib. 74. 8 E.3.46. 2 R.2. Account 45. 11 R.2. ibid. 48. F.N.B. b.c.d.e.

ger, or the like, a Writ of Account lyeth not, unlesse he be charged as Bailife or Receiver.

17 E. 2. Procl. 203. 18 E. 2. Avowry 220. 17 E. 3. 59. 29 E. 3. 5. See the first part of the Institutes, sect. 124. For this *Servientes*, see towards the end of this Chapter.

A Gardein in Socage cannot be committed to prison by force of this Act, for a Gardein in Socage is in loco parentis, and this Act beginneth with Servientibus, and this word Servientibus is to be applyed to Balivis, camerariis, & receptoribus; for this Act soon after this saith, Cum domini hujusmodi servientum dederit eis auditores, &c. Where these words are to be observed, viz. Domini, the Lords or masters, and Servientes, servants, which word Servientes extends to all; and therefore the Gardein in Socage being no Servant, nor the Heir Lord, or Master is not by this Act to be imprisoned, &c.

1. Part of the Institutes, ubi sup.

¶ Balivis.] This word is sufficiently known, and if Gardein in Socage occupy after the heir attain to the age of 14. years, he may be charged as Bailife.

1. Part of the Institutes, 153. Fleta li. 2. ca. 70.

¶ Camerariis.] Receivers were anciently called Chamberlains, because they were wont to keep the money received in Chambers specially provided for that purpose; yet cannot he be charged as Chamberlain in an account, but as Bailife, or Receiver, for the cause aboresaid.

¶ Et quibuscunq; receptoribus qui ad compotum reddend' tenentur.] Receptores is a known word, and needeth no further explication.

43 E. 3. 31. 49 E. 3. 2. 50 E. 3. 17. 27 Ass. 3 20 H. 6. 17, 18, 41, 45. 8 H. 6. 15 14 H. 6 24. 22 H. 6 35, 47 lib. 10. fol. 103. Denbands case.

¶ Dederit eis auditores.] An account taken before one Auditor, is not within the purview of this Statute; for this Act is in nature of a Commission, and a Commission being made to two or more, cannot be executed by one alone.

38 H. 6. 6. 2 H. 6. 41. 10 H. 6. 24, 25 Denbands case, ubi supra.

By this Act the Auditors are Judges of Record, and therefore by consequence in an Action of Debt for the arrerages of an account before two or more Auditors, the Defendant shall not wage his Law.

5 H. 4. cap. 8.

And by the same consequence of reason, if the Lord be found in surplusage upon the account determined by the Auditors as an incident to their authority in an Action of Debt brought by the Bailife for this surplusage, the Lord shall not wage his Law, because by force of this Act (they being Judges of Record) no wage of Law can be allowed against their Record: and so was it adjudged in the Exchequer Chamber, as it is reported in 20 H. 6. But if the account be made before one Auditor, this (as hath been said) is out of the Statute, and therefore there he shall wage his Law; but the Lord cannot be committed to prison (for the cause aforesaid) by force of this Act.

20 H. 6. 17, 18. 14 H. 6. 24. Vide infra, †.

In an Action of account against a Receiver, for 13. s. 4. d. or any other sum under 40. s. the Sheriffe in his County Court shall not hold plea of it; and the reason thereof is, because the Sheriffe cannot assigne Auditors who (as hath been said) are Judges of Record, and the County Court is no Court of Record.

43 E. 3. 21.

¶ Omnibus allocatis & allocandis.] † By these words, if the Lord be found in surplusage, it is within their authority, and therefore parcell of their Record, and so in that case (as hath been said) no wager of Law.

But albeit the Auditors do disallow a just demand, yet shall he take no advantage or advantage upon these words, against the Record of the judgment of the Auditors; for, Judicium pro veritate accipitur, and Nemo potest contra recordum verificare per patriam: but he hath remedy after by this Act, by a Writ of Ex parte talis for his relief, whereof more shall be said hereafter in his proper place.

Marlbr. cap. 23. lib. 3. fol. 11. Sir William Herberts case.

¶ Arrestentur corpora eorum.] Note at the Common Law, the Processe in Account was Summons, Attachment, and Distresse infinite; by the Statute of Marlbr. a Writ of Monstravit de compoto was given; & here by this branch

branch the body may be arrested, and after by this Act proces of outlawry is given in account, so as after the account determined the body of the Defendant may be arrested, &c.

Note the words in effect be super compotum suum, &c. arrestentur & liberentur, so as the auditors by force of this Act ought to commit him, &c. presently after the account determined. 46 E.3.30.27 H.6 8. Lib.8.fol.119. D.Bonhams case.

¶ Proximæ gaolæ Domini Regis.] This is intended of the next Gaole, though it be not in the same County, for, as it hath been said, the Statute is in nature of a Commission, and therefore this word proximæ must be pursued. 13 E.3.barre 253. 27 H.6.8.

¶ Et à Vic' seu custode ejusdem gaolæ recipiantur.] The Auditors must make a warrant in writing under their seales to the Sheriffe upon the spectall matter, and thereupon the Sheriffe ought to receive the accountant in execution. Dier 24 H.8.249. Lib.3.fol.44. Boytons case.

¶ Carceri mancipentur in ferris.] Hereby it appeareth that the Sheriffe ought to kéep him in salva & arcta custodia, and hath power by this Act, if néed require, to lay Irons upon him for his safe kéeping; but this the Gaoler could not have done by the Common Law, as by all our ancient Authors it appeareth. Lib.8. fol.160. Pl.Com.360.a. Brac.l.3.105,137 Brit.fol.14,17. Fleta l.1.ca.26. Mirror ca.5.§ 1. 8E.2.Coron.432

¶ De suo proprio viventes.] By this clause it appeareth, that he that is so imprisoned must live of his owne. Vide 3.part des Institutes.Cap. petit treas.in fine

¶ Auditores compoti sui ipsum injuste gravaverunt.] By this clause is the Writ of Ex parte talis given to the accountant, if the Auditors assigned by the Lord either charge him de receptis quæ non recepit, vel non allocando ei expensas aut liberationes rationabiles, and this Writ is in nature of a Commission to the Barons of the Exchequer, for that they are the Soveraigne Auditors of England to heare and audite the account, Et quod fiat Justicia partibus. Britton fol 70. Fleta l.2.c.64. Regist.137. F.N.B.129.f. 13 E.3.barre 253. 14E.3.account 74 2 E.3.12.

But this Writ lieth not, but where the account is taken before Auditors assigned by the Lord, for if there be a Writ of account brought, and the Court assigneth Auditors, there lieth no Writ of Ex parte talis, for in that case he ought to shew his griefe to the Justices, and they ought to doe him Justice, and the Writ of Ex parte talis is grounded upon this Act, where the Lord assigneth Auditors.

¶ Quod sit coram Baronibus de Scaccario.] The Writ in the Register, and F.N.B. ubi supra, is Coram Thesaurario & Baronibus nostris de Scaccario, but it ought to be coram Baronibus de Scaccario according to this Act, and that the rather, because the Barons are (as hath been said) the Soveraigne Auditors of England, and herewith agréeth Fleta. Fleta l.2.ca.64.

Upon sureties found he shall be at large to follow his Writ of Ex parte talis, before the Barons, but if it be found that he was in arrerages, he shall be in execution again. Dier 36 H.8.c.64

¶ Et si diffugerit, & gratis compotum reddere noluerit, &c.] Vide Marlebridge whereby the Writ De monstravit de compoto is given. Marlb. ca.23.

¶ Et si diffugerit & testificatum, &c.] Here is proces of outlawry given in account. Fleta ubi supra.

¶ Et caveat sibi Vicecomes vel custos ejusdem gaolæ si sit infra libertatem.] This Act extends to all Keepers of Gaoles, and 11 H.4.75.

See 1 R. 2. c. 12. and therefore if one hath the keeping of a Gaole by wrong, or de facto, and suffereth an escape, he is within this Statute, as well as he, that hath the keeping of it de jure.

¶ Sine assensu Domini.] And this assent may be by parol, and

27 H. 8. 24. b. per Curiam. shall be a sufficient barre in an Action of Debt brought for the escape.

¶ Et habeat dominus suum recuperare per breve de debito, &c.] There was no Action of Debt against the Gaoler for an escape at the Common Law, but the party was driven to his speciall Action upon his

14 E. 4. 3. Dier 15 El. 322. 16 E. 3. damag. 81. 13 E. 3. barre 253. 42 Ass. Pl. 11, 45 E. 3. 1. 2 R. 2. illue 160. 9 H. 6. 19. 30 H. 6. 6 Dier 20 Eliz. 275 case, which Action was grounded upon a Trespasse or wrong, and not upon any contract in deed or in Law, but this Act first gave the Action of Debt against the Gaoler, which had let one to escape, which was committed to prison by auditors for arrerages of account, but it lieth not against the Gaolers Executors, because it is a Trespasse, and before any other Act of Parliament by the equity of this Act an Action of Debt did lie against the Gaoler for an escape in Court Pipe rolers, and so in all other cases.

1 R. 2. cap. 12. Afterwards the Statute of 1 R. 2. for a further declaration gave the Action against the Gardein of the Fleet.

But albeit this Act, and the Statute of 1 R. 2. also doth speake per breve, yet a bill of Debt lieth also by the equity of this and that Statute, albeit it hath

42 Ass. p. 11. 7 H. 6. 5. Pl. Com. 38. 2. been holden to the contrary, but since it hath been often adjudged that a bill of debt is maintenable upon the said Acts.

16 E. 3. dam. 81. 13 E. 3. ibid. Lib. 8. fol. 44. Wittinghams case Now for as much as the Statutes doe give recovery by Writt of Debt, incidently, they doe give damages also.

This Act doth extend to feme coverts and infants, that are keepers of Gaoles, to charge them in an Action of Debt for the escape of one in execution.

See cap. 43. 13 E. 3. barre 253. ¶ Respondeat superior suus, qui custodiam hujusmodi gaolæ sibi commiserit.] This is to be understood, when one that hath the custody of a goal of freehold or inheritance, committeth the same to another that is not sufficient, his superior shall answer for the escape of the prisoner; But he shall not have the Action of Debt against the superior as long as the inferior is sufficient.

11 E. 2. Debt 272. 11 El. Dier 278. The Mayor and Citizens of London have the Shrievalty of London in fee, and the Sheriffes of London are Gardeins under them, and removable from yeare to yeare, in this case the Sheriffes of London are Gardeins, and the Mayor and Citizens their superiors; and though the Sheriffes appoint a Keeper under them, yet he is not within this Statute, because it is intendable when the Gardein commeth in by him that hath the freehold or inheritance in the custody, for this Act doth extend but unto two such degrees, for there cannot be two

11 El. ubi supra. superiors within this Act, but one superiour and one inferiour.

The Duke of Norfolk being Marshall of England of inheritance, and having authority to make a Deputy doth make a Deputy, who hath the custody of the gaole, he is the Gardein, and the Duke of Norfolk his superiour within this Act.

CAP.

CAP. XII.

QUia multi per malitiam volentes alios gravare, procurant falsa appella fieri de homicidiis, et aliis feloniis, per appellatores nihil habentes, unde domino Regi pro falso appello, nec appellatis de damnis respondere possint: Statutum est, quod cum aliquis sic appellatus de felonia sibi imposita se acquietaverit in curia Regis modo debito, vel ad sectam appellatoris, vel Domini Regis: Justiciarii coram quibus auditum erit hujusmodi appellum et terminatum, puniant appellatorem per prisonam unius anni, et nihilominus restituant hujusmodi appellatores damna appellatis, secundum discretionem Justic', habito respectu ad prisonam vel arrestationem quam occasione hujusmodi appellorum sustinuerint appellati, & ad infamiam suam, quam per imprisonamentum, vel alio modo incurrerunt, & nihilominus versus dominum Regem graviter redimantur. Et si forte hujusmodi appellatores non habeant, unde prædicta damna restituere possint, inquiratur per quorum abbettum formatum fuerit hujusmodi appellum per malitiam, si appellatus hoc petat. Et si inveniatur per illam inquisitionem, quod aliquis sit abbettator per malitiam, per breve de Judicio ad sectam appellati distringatur ad veniendum coram Justic'. Et si legitimo modo convictus fuerit de hujusmodi abbetto per malitiam, puniatur per prisonam, & teneatur ad restitutionem damnorum, sicut superius dictum est de appellatore. *Vide anno* 1 *R.* 2. *cap.* 13. Nec jaceat de cætero appellatori in appello de morte hominis essonium, in quacunque curia ubi appellum fuerit terminandum.

By the words hereof it appeareth, that before this Statute the Defendant being only acquited, should recover his damages, but that is to be understood in a Writ of conspiracy, wherein he should recover damages for satisfaction in regard of the infamy, imprisonment and veration done to him, and further that the parties convicted should be fined to the king and imprisoned, which, I have read, began in this sort before the raigne of H. [illegible] They which plotted, or compassed the death of a man under pretext of Law by bringing of false appeales, or preferring untrue indictments against the innocent of felony, who being only acquited, both the appellant and his abbettors were to suffer death.

See the Mirror c. 4. de homicide. 48 E. 3. 22. Stamf. Pl. Cor. 167. c. F. N. B. 114 f. Regist. 134.

But

But King H. 1. by authority of Parliament did mitigate the ſeverity of this auncient Law (leſt men ſhould be deterred and afraid to accuſe) and did ordaine that if the delinquents were convicted at the ſuit of the party, they ſhould make ſatisfaction, and be fined and impriſoned: But if they were convicted by judgement at the ſuit of the King, (whom they pretended to intitle to the forfeiture) then they ſhould loſe the freedome of the Law; they ſhould be ſo infamous as never to be any witneſſe, or to be of any Jury; That they ſhould never come in or neare the Kings Court, but make their Attournies; that they, their wives, and their children, ſhould be caſt out of their houſes, and their houſes proſtrated, their trees eradicated and ſubverted, their meadowes ploughed up and waſted, every thing to be deſtroyed which nouriſhed or comforted them, in reſpect of the villany, and ſhame done to the delinquent, all againſt nature and order, for that the delinquent ſought the blood of the innocent under pretext and colour of Law, and this in later bookes is called a villanous judgement, all which in caſe of conſpiracy remaine a conſtant Law to this day. But this Act doth give the party a ſpeedier remedy for his ſatisfaction then he had before, as hereafter ſhall appeare.

24 E. 3. 24. 27 Aſſ. 59. Tr. 18 E. 3. Coram Rege. Rot. 148. 43 E. 3. conſpir. 11.

¶ Per malitiam.] These words doe open divers windowes for the better underſtanding and inlightening of the generall words of this Statute.

Paſch. 30 E. 1. Coram Rege. Northampt. Joh. de Boſco, &c. Hil. 26 E. 1. Coram Rege. Leic' Will. Burnell. 22 Aſſ. 39. 40 Aſſ. p. 18. 40 E. 3. 42. 33 H. 6. 2. 14 H. 7. 2. 26 H. 8. 3. 4. Firſt part of the Inſtitutes, ſect. 208. 9 H. 4. 2. 9 H. 5. 2. 20 E. 4. 6.

1. If the appellee be firſt indicted of the felony whereof he is appealed, the appeale ſhall not be underſtood to be commenced per malitiam, becauſe the Plaintiffe hath a foundation to build upon, viz. an indictment by the othe of twelve or more men, ſo as it ſhall be preſumed that the Plaintiffe was moved to his appeale by the indictment, & non per malitiam; for in thoſe dayes (as yet it ought to be) indictments taken in the abſence of the party were formed upon plain and direct proofe, and not upon probabilities or inferences: but if the indictment be inſufficient, then it is in judgement of Law as no indictment, and then the appeale may notwithſtanding be commenced per malitiam, & ſic in ſimilibus, or if it be a good indictment, and found after the appeale commenced, yet may the appeale be commenced per malitiam.

22 Aſſ. p. 77.

2. If one be appealed of murder, and it is found by verdict that he killed him ſe defendendo, this ſhall not be ſaid to be per malitiam, becauſe he had a juſt cauſe, for Quod quiſque ob tutelam corporis ſui fecerit, jure id feciſſe videtur; et ſic de ſimilibus.

3. The heire or other near of kin may abbet the wife Plaintiffe in the appeale, Et ſic adjudicatur quod pater, mater, frater, &c. non ſunt in caſu hujus ſtatuti ratione propinquitatis ſanguinis, & ad eos pertinet prædictam mortem ulciſci: Hoylands Caſe, and cannot be ſaid to be per malitiam.

Term. Mic. 21 E. 1 Coram Rege. Rot. 276. Hoylands caſe. 6 E. 3. 33.

4. Malitia refereth onely to the procurers and abbettors, as it appeareth by the expreſſe words of this Act.

¶ Falſa appella.] Some after the making of this Statute, the wife and her ſecond husband brought an appeale for the death of her former husband, the Record ſaith, Non poteſt eſſe appellatrix pro morte prioris mariti, &c. ipſa pro repellend' pœna ſtatuti pro falſis appellis advocat appellum ſuum eſſe juſtum, nec falſum, licet ſit caſſatum, & licet illud proſequi non poteſt, quia habet virum; quæ quidem cauſa potius eſt quædam ſtultitia, quam falſitas, ideo ex gratia curiæ conceſſ. eſt in præſent' aliorum Juſtic' de banco, poſtquam priſonam 15. dierum habuerit, quod finem fac' cum Rege.

Mich. 34 E. 1. Coram Rege. Linc' Rot. 19. Potius ſtultitia quam falſitas.

¶ De homicidio & aliis feloniis.] This is not onely intended of ſuch offences as were felonies at the making of this Act, but of all ſuch offences alſo, as have been made felonies by any Act of Parliament ſince this Act.

¶ Se

¶ Se acquietaverit in Curia Regis modo debito.]

This Statute doth extend both to acquitals in Déed, and to acquitals in Law.

Acquitals in déed, as either by verdict, or by battell, and in that case when the Plaintiffe yéelds himselfe creant, or vanquished in the field, the judgement shall be that the appellée shall goe quite, and that he shall recover his damages against the appellor, but if the Plaintiffe had bèen slaine, then no judgement can be given against a dead person. Regist. 34. 24 E. 3. 73. 41 E. 3. Coro. 98. 21 H. 6. Cor. 12

Acquitals in Law, as if two be appealed of felony, the one as principall, and the other as accessary, and both of them plead not guilty, &c. and the Jury doth acquite the principall, in this case by Law the accessary is acquited, and shall recover damages by this Act against the appellant, &c. or may have his Writ of Conspiracy at the Common Law. 33 H. 6. 2. 8 H. 5. 6

But if the principall be acquited by verdict, proces depending against the accessory, the accessory shall not recover damages within this Statute, because no Jury can be returned to assesse them. 41 Ass. 24.

If one be appealed as accessory to two principals, one of the principals is acquited, the accessory shall recover no damages untill the other principall be acquited. 3 Mar. 120. Dier

If the Plaintiffe in an appeale be non-suit, and the Defendant is arraigned at the suit of the King, and acquited, he shall recover his damages by this Act, for the words be, Vel ad sectam appellantis vel Domini Regis, but this suit of the King must be intended upon the appeale after non-suit, for an acquitall upon an indictment is not within this Statute. 41 Ass. 24. 46 E. 3. Coro. 102. 14 H. 7. 2. 9 H. 5. 2. Stamf. Pl. Cor. 135. F. N. B. 214.

For debito modo acquietatus, sée 9 H. 5. 2. that the Defendant being acquitted by verdict, yet if his life was never in jeopardy either in the originall, or proces, though it be in default of the Plaintiffe himselfe, yet is he not debito modo acquietatus within this Statute. 9 H. 5. 2. 20 E. 4. 5. 9 H. 4. 2.

The wife of Copleston brought an appeale of murder against Stowell, and five of his servants as principals by being present, aiding and abetting Stowell to commit the murder, and Stowell appeared, against whom the Plaintiffe declared with a sicut cum of his five servants, and Stowell pleaded not guilty, and proceese was continued against the other five, and by verdict it was found that Stowell killed Copleston in his owne defence, whereupon he was acquited, and had his pardon of grace; and it was resolved by all the Judges of England, that this acquitall of him was in Law an acquitall of all the other five that were charged as principals by being present, aiding, and abbetting, and Stowell could not upon this Statute recover damages for the cause before remembred. Pasch. 15 Eliz. Coram Rege. Dier Manuscript

If the Defendant plead that there is a nearer heire, and issue thereupon taken, and found for the Defendant, he is discharged of the Action, but is not acquited of the felony within the purview of this Statute; so it is if the Defendant be discharged by Clergy, he is not acquited within the purview of this Statute. 27 Ass. 25. 17 E. 2. Cor. 386.

If the Defendant wage battell, and the Plaintiffe demurre upon it, and it is adjudged against the Plaintiffe, the Defendant is discharged of the appeale, but hee is not acquited, untill he be acquited of the fact at the suit of the King.

¶ Damna appellatis secundum discret' Justiciar' habito respectu ad prisonam.] Though this branch bee generall, yet every appellæ shall not upon his acquitall recover damages, for if a Monke be appealed, or a feme covert be appealed alone without her husband and acquited, they cannot recover any damages by this Act in respect of their disability, for the generall words of this Act doth not enable any to recover damages that thereunto was disabled by Law. But if an appeale bee brought against the husband and wife, and they be acquited, damages 22 E. 3. Coro. 176. Artic. Cleri c. 16. Lib. 9 fol. 73. D. Husseyes case. Lib. 11. fol. 77. Magd. Coll. case. 12 R. 2. judg. 108.

shall be given to the husband alone for his damage, and to the husband and wife for the damage of the wife.

And where several persons be acquited, the damages must be several, for the words of the Statute be Habito respectu ad personam.

Tr. 30 E. 1. Rot. 2. London. 8 H. 6. 5, 6 24 E. 3. 73.

But then may be demanded, what remedy hath the Spouke or some cabert being solely appealed: The answer is, that they have no remedy by this Statute, but the Abbot and Spouke, and the husband and wife may have a Writ of Conspiracy at the Common Law.

9 H. 5. 2. ubi supra

Whensoever any is acquited by verdict, and yet his life was never in jeopardy, either by reason of the erroneous proces, or original, or otherwise, though this be within the letter of the Law, yet it is out of the meaning, and therefore the Defendant in that case shall recover no damages.

¶ Ad infamiam suam.] For a mans fame is above all things to be repaired.

Caro.

Omnia si perdas, famam servare memento:
Quæ semel amissa, postea nullus eris.

¶ Et si forte hujusmodi appellatores non habeant, &c. inquiratur per quorum aberrum.] If the Defendant in an appeale be tried before Justices of Nisi prius, albeit they have but delegatam potestatem, yet shall they inquire of the insufficiency of the Plaintiffe, and of the abbettors, and the words of this Act are, Quod Justic' coram quibus audium fuerit appellum exterminatum; but that great ouer-ruler experientia hath ruled, and ouer-ruled it by precedents, that they cannot give iudgement for the damages.

3 E. 2. Action sur lestat. 28. 22 E. 4. 29. 10 E. 4. 14. Dier 3 Mar. 120. Tr. 30 E. 1. Coram Rege. Rot. 2. London.

This insufficiency of the Plaintiffe in the appeale must be found by the Jury, and cannot come in by the aberment of the party, and so it is in other like cases.

8 E. 4. 3. 8 H. 5. 6. 17 E. 2. Cor. 386. 26 H. 8. 3, 4. Tr. 30 E. 1. ubi sup

But here it may be demanded, What if the Plaintiffe in the appeale be sufficient for part of the damages, and not for all, may not the Defendant by this Act recover part against the Plaintiffe, and part against the abbettors? And it is resolved that he must recover either all against the Plaintiffe, or all against the abbettors, and not by parcels, so as if the Plaintiffe be not sufficient for the whole, the Defendant shall recover the whole against the abbettors, for prædicta damna & omnia damna, are all one.

It is a certain conclusion upon these words of the Statute, that where damages shall not be recovered against the Plaintiffe, there none shall bee recovered against the abbettors; Also where the Plaintiffe is sufficient and so found by the Jury, the abbettors shall not be inquired of.

¶ Abbettator per malitiam.] Abbettors were found (upon the acquitall of the Defendant) by name, Et quod procuraverunt, instigaverunt & abbettaverunt prædictum querentem ad capiendum & prosequendum appellum prædictum in forma prædicta, and safe not per malitiam, and yet allowed of. But nota this surer way is to pursue the words, falso & per malitiam, according to this Act.

3 Mar. Dier 120. Tr. 30 E. 1. ubi supra.

¶ Per breve de judicio ad sectam appellati distringatur, &c.] This Writ is given in lieu of the Writ of Conspiracy at the Common Law, the abbettors comming in upon this proces may trauers the abbetment, because they were estrangers to the verdict, and if the Defendant that sueth the distresse be non-suit, yet may he have a new Writ, and it is not peremptory to him. And albeit the Jury finde neither the time, nor the place where the abbetment was, yet if they finde the abbettors, it is sufficient, for when the Plaintiffe appeareth, the Defendant may shew time and place in due time.

Reg. 34. 8 E. 4. 3. 17 E. 2. Cor. 386. Tr. 19 E. 2. Coram Rege. Rot. 82. 40 E. 3. dam. 77. Tr. 30 E. 1. ubi supra. 22 E. 4. Coro. 45.

Note

Note in 46 E. 3. the Court granted first a Venire facias, and then a Distresse, but it seemeth that the Processe given by the Statute is a Distresse infinite.

But if the Jury give too small damages, it being but an Enquest of office, the Plaintife may have an originall Writ of Abetment, and Count to greater damages. Vide 8 H. 6. cap. 10.

Note Reader, that Judiciall Precedents, and the right Entries of Pleas upon this (or any other) Statute are good Interpreters of the same, and of questions that have been, or may be moved thereupon.

46 E. 3. Coron. 102.
3 E. 2. Action sur lestatut. 28.
8 H. 6. cap. 10.
F N. B. 115. i.
Kelwey 21.
Tr. 30 E. 1. Coram Rege. Rot. 2
Hil. 35 E. 1. ibid. Rot. 19. Tr. 19 E. 2. ibid. 82. Mich. 14 H. 7. ibid. Rot. 76. Tr. 14 H. 7. ibid Rot. 74. Hil. 10 H. 7. ibid. Rot. 38. Mich. 19 H. 7. ibi. Rot. 27. Liure de Entries. Rast. 56. & 297.
Staunf. Pl. Cor. 297.

¶ Nec. jaceat de cætero appellatori in appello de morte hominis essonium.] The Defendant that is appealed of the death of man ought to have convenient expedition, and not to be detained in prison, or to live under the inkamp of a murtherer longer than there is cause: and this Statute was chiefly made for the benefit of the Defendant.

Vide the Statute of 1 E. 3. cap. 7. Parliament' primo, & Statut' de 1 R. 2. cap. 13.

CAP. XIII.

QUia etiam Vicecomites multotiens fingentes aliquos coram eis in Turnis suis indictatos de furtis, & aliis malefactis, capiunt homines non culpabiles, nec legitimo modo indictatos, & eos imprisonant, ut ab eis pecuniam extorqueant, cum legitimo modo per duodecim Juratores non fuerint indictati: Statutum est, quod Vic' in Turnis suis, & alibi, cum inquirere habeant de malefactoribus per præceptum Regis, vel ex officio suo, per legales homines ad minus duodecim faciant inquisitiones suas de hujusmodi malefactoribus, qui hujusmodi inquisitionibus sigilla sua apponant, & illos quos per hujusmodi inquisitiones invenerint culpabiles, capiant & imprisonent, secundum quod alias fieri consuevit. Et si aliquos aliter imprisonaverint, quam per hujusmodi inquisitiones indictatos, habeant hujusmodi imprisonati actionem suam per breve de imprisonamento versus Vicecom', sicut haberent versus quamcunque aliam personam, qui eos imprisonaret sine Warranto. Et sicut dictum est de Vicecom' observetur de quolibet balivo libertatis.

¶ Quia etiam Vicecomites multotiens fingentes aliquos coram eis in Turnis suis indictatos de furtis & aliis malefactis.] Two things are provided, or rather declared by this Act:

1. Per legales homines ad minus 12. faciant inquisitiones.

That Indictments in Tournes ought to be found by 12. at the least.

Fleta li. 2. ca. 45.

1.

F.N.B. 165. ¶ Legales homines.] More ſhall be ſaid hereof when we come to the eight and thirtieth Chapter of this Parliament, and the ninth Chapter of Articuli ſuper Chartas.

Vide cap. Itineris ℂ Ut ab eis pecuniam extorqueant.] This is the greateſt injuſtice, when the innocent under colour of Juſtice, whereby he ought to be protected, is oppreſſed, and wrought to give money to redeem his vexation: That things (it is ſaid) overthrew the flouriſhing eſtate of the Roman Empire, Latens odium, Juvenile conſilium, & Privatum lucrum.

By this Act you may ſee that Juſtice was pretended, and ſordid Lucre intended, which this Act in relief of the innocent provideth to prevent.

28 E. 3. cap. 9. F.N.B. 92. cap. 144. I. 250. 2. ℂ Per præceptum Regis.] That is, by the Kings Writ or Commiſſion; but thereupon grew ſo many evils & miſchiefs for the ſingular profit of the Sheriffs, that by a latter Statute it is provided that no ſuch Writs or Commiſſions ſhould be granted to them; ſo as at this day the Sheriffs cannot proceed in thoſe caſes per præceptum Regis. See hereafter how this power Ex officio is reſtrained.

2. ℂ Qui hujuſmodi inquiſitionibus ſigilla ſua apponant.] The 2. part is, that the Jurors do put their Seals to the Inquiſitions or Indictments.

1 E. 3. Parliam. 2. cap. 17. By a latter Statute, theſe Indictments are to be by a Roll indented, whereof one part is to remain with the Indictors, and the other part with him that takes the Enqueſt.

This Act of 1 E. 3. doth extend to Preſentments or Indictments, not only in Tourns, but in Leets alſo, and the like.

1 R. 3. ca. 4. See the Statute of 1 R. 3. of what quality, ability, and liveliehood, the Indictors in Tournes and Leets ought to be.

But ſuch corrupt and partiall proceedings upon Preſentments and Indictments before the Sheriff Ex officio, were, notwithſtanding all theſe proviſions in Tourns and Leets, continued, untill by the Statute of 1 E. 4. the power of them, ſave only to take Preſentments and Indictments, and to deliver the ſame to the Juſtices of Peace at the next Seſſions of the Peace, &c. is taken away; and by that Act authority is given to Juſtices of Peace, to award Proceſſe upon all ſuch Preſentments and Indictments delivered to them, &c. which is to be intended of ſuch as be lawfull.

1 E. 4. c. 2. 4 E. 4. 31. 8 E. 4. 5. lib. 9. fol. 96. Strata Marcella.

ℂ Per breve de impriſonament'.] This Act doth not onely preſcribe a form for the Sheriff to purſue, but giveth the party remedy againſt the Sheriff, if he purſueth not the form of the Act; for, Non obſervata forma infertur adnullatio actus.

ℂ Et ſicut dictum eſt de Vicecom', obſervetur de quolibet balivo libertatis.] Every Bailife of Franchiſe, that is, of Leets, and Views of Frankpledge, which are exempted out of the Sheriffes Tourn, and are the Franchiſes here intended.

CAP.

CAP. XIV.

CUm de vaſto facto in hæreditate alicujus per cuſtodes, tenentes in dotem, per legem Angliæ, vel aliter ad terminum vitæ, vel annorum, conſueverit fieri breve de prohibitione vaſti, per quod breve multi fuerunt in errore, credentes quod illi qui vaſtum fecerint, non habuerint neceſſe reſpond', niſi tamen de vaſto facto poſt prohibitionem eis directam, Dominus Rex (ut hujuſmodi error de cætero tollatur) ſtatuit, quod de vaſto quocunque ad nocumentum alicujus facto, non fiat de cætero breve de prohibitione, ſed breve de ſummonitione, ita quod ille, de quo queritur, reſpondeat de vaſto facto quocunque tempore. Et ſi poſt ſummonitionem non venerit, attachietur, & poſt attachiamentum diſtringatur, & poſt diſtrictionem, ſi non venerit, mandetur Vicecom', quod in propria perſona, aſſumptis ſecum xii, &c. accedat ad locum vaſtatum, & inquirat de vaſto facto, & retornet inquiſitionem. Poſtquam retornata fuerit inquiſitio, procedatur ad judicium, ſecundum quod continetur in ſtatuto prius edito apud Gloceſt' cap. 5. de vaſto, 20 E. 1.

¶ Cum de vaſto facto in hæreditate alicujus per cuſtodes, &c. conſueverit fieri breve de prohibitione vaſti, &c.] This errour herein recited is hereby clérly confuted, and hereof you may read more in the Statute of Gloc. Gloc. ca. 5.

¶ Non fiat de cætero breve de prohibitione.] By this the prohibition of Waſte, whereupon an Attachment did lye, &c. is taken away, and in lieu thereof an Action called here a Writ of Summons, becauſe the Writ beginneth, Si A. fecerit te ſecurum, &c. tunc ſummoneas per bonos ſommonitores, &c. is given. 4 E. 3. Waſte 129. 15 H. 3. ibid. 130. Regiſt. 172. F. N. B. 55.

¶ Ita quod reſpondeat de vaſto facto quocunque tempore. Et ſi poſt ſummonitionem non venerit, attachietur, & poſt attachiamentum diſtringatur, & poſt diſtrictionem, ſi non venerit, mandetur Vicecomiti, &c.] If the Defendant be retourned Nihil, &c. ſo as peradventure he was never ſummoned, nor any other Writ ſerved, whereby he might have notice, yet a Writ of inquiry of Waſte ſhall be awarded by this branch; for here it is not ſpecified that iſſues ſhould be retourned, &c. but generally and by the Writ, the Waſte ſhall be inquired of by the oath of twelve men, where the Defendant or any for him may attend if he will, and the Jurors may finde againſt the Plaintife. 21 H. 6. 56. 34 H. 6. 44. 11 H. 6. 3. 3 H. 6. 29.

Note

7 H.4.15.12 H.4. 3, 4.

Note the words here be, Et poſt diſtrictionem, ſi non venerit, mandetur Vicecomiti, &c. So as if the Defendant appear upon the Diſtreſſe and plead, and after make default, the Plaintiſe ſhall not by this branch have a Writ to inquire of the Waſte, becauſe it is out of the words and purview of this Act.

¶ Quod in propria perſona ſua aſſumptis ſecum duodecim accedat ad locum vaſtatū.] Here are three things to be obſerved:

a Regiſt. judi. 23, 25, 27. 2 H.4.2. 3 H. 6. 29. 11 H.6.6. 11 H.4.82. lib.4. fol.65. Fulwoods caſe, lib.8.fol.52. Althams caſe.

1. a That the Sheriſe ought to go in proper perſon, for that, though in rei veritate he is no Judge, yet this Writ is in nature of a Commiſſion unto him, and he is in loco Judicis, and therefore he ought to go in propria perſona. If the Sheriſe upon this Writ return Quod mandavi balivo libertatis, &c. qui mihi nullam dedit reſponſionem, the return is inſufficient, becauſe by the Writ (as the Book ſaith) he is a Judge, and hath power to enter into the Franchiſe.

b F.N.B. 10.7.c, Regiſt. judic. ubi ſup. 41 E.3.7. 48 E 3.19.2 H.4.2 3 H.6.29. 21 H.6 56. 34 H. 6. 12.

2. b Where ſome have holden, that the Sheriſe may inquire upon this Writ by the oath of 6, or 8. perſons, it appeareth that there ought not to be under 12. for the words of this branch are, Aſſumptis ſecum 12. yet this is but an Inqueſt of office, for it is taken ſans miſe des parties, that is, without any iſſue joyned.

c 16 E.3. Retorn de Viſcont 82. 34 H.6. 42, 44.

3. c The Sheriſe muſt go ad locum vaſtatum, together with the Jurors, and view the ſame; for, Iſta cadunt potius ſub viſu, quam ſub auditu.

¶ Et inquirat de vaſto facto.] d If the Waſte be aſſigned in divers Towns, the Sheriſe and the Jurors muſt view (as hath been ſaid) all the places waſted in every of the Towns, but he may inquire thereof in any one of the Towns; and this copulative doth ſo knit the words together, as he cannot inquire of it in a ſeverall Town.

d 16 E.3. ubi ſup. 34 H.6. ubi ſup.

See more of this matter in the expoſition upon the Statute of Gloc. cap 5.

CAP. XV.

IN omni caſu quo minores infra ætatem implacitare poſſunt: Conceſſum eſt, quod ſi hujuſmodi minores elongati ſint, quo minus perſonaliter ſequi poſſint, propinquiores amici admittantur ad ſequendum pro eis, Weſtminſt' 1. cap. 47.

W.1. cap.47.

The Act of W. 1. touching this matter was particular, but this Act is generall.

Regiſt.78.28 Aſſ. 22. 2 E.3.16. 40 E.3.6. 13 E.3. Attorney 76. 34 H.6.4. 20 E. 4.2. F.N.B. 27. 27 H.8. fol.11.

Upon this Statute, whether the Infant be eſloigned or no, he ſhall ſue by Prochein amy, for the eſloignment is put in this Act, to ſhew what miſchief may fall out in this caſe; and therefore when a Sergeant offered, that oath ſhould be made of the eſloignment of the heir, the Judge ſaid, he would take it upon his honeſty; but if the ſurmiſe that the Plaintiſe is within age be untrue, and that the Plaintiſe is of full age, his admittance by Prochein amy is errour.

See before in the expoſition upon the 40. Chapter of W.1. where this matter is handled at large; and obſerve well our Books, where many times a Gardein is taken for a Prochein amy, and a Prochein amy for a Gardein.

33 H.6.28.F.N.B 24.g.

This Act extends not to an Ideot.

CAP.

CAP. XVI.

IN casu quo alicui minori descendat hæreditas ex parte patris, qui tenuit de uno domino, et ex parte matris quæ tenuit de alio domino, dubitatio hucusque extitit de maritagio hujusmodi minoris, ad quem de duobus dominis pertineat. Concordatum est, quod ille dominus de cætero habeat maritagium, de quo antecessor suus prius fuit feoffatus, non habito respect' ad sexum, nec ad quantitatem tenementi, sed solummodo ad antiquius feoffamentum per servitium militare.

Albeit this Act putteth a case onely where one inheritance descends on the part of the Father, and when another descends on the part of the Mother, yet this Statute extends to all cases of priority. 4 E.3. receit 46.

By these words in the Act, [non habito respectu ad sexum nec ad quantitatem.] the doubts at the Common Law are here mentioned: the first, that some did hold opinion that the part of the Father being digniori de sanguine, the worthier blood should be preferred; others did hold opinion that if the Lord of the land of the part of the Mother, first happed or seised the Ward, he should have it, and that melior est conditio possidentis. 14 E.3. gard 37. 8 H.3 gard 139.

Lastly, some did hold that the tenure by the greater quantity and value should be preferred: all which doubts are cleared by the purview of this Act.

¶ De uno domino, &c. de alio domino, &c.] This Act extendeth not to the King, because before the making of this Act hee was to have the Wardship of the body though the land were holden of him by posteriority; and so it is, if the King graunt that Seigniory for life, the graunte shall have the same benefit, in respect that the reversion remaine in the King: but if the King graunteth the fee-simple to another, there the Lord by priority shall have the Wardship, and the tenure by priority is revived, for the King had the Wardship in respect of his person and prerogative. 11 E.2.c.2.21E.3 41. 11 E.3. gard Statham.5 E.3.4. 12E.3.Prærog.23 24 E.3.31,65. 18 E.3.29. 12H.4 25.14 H.4.9. 9 H.4.4. simile.

¶ Alicui minori descendat hæreditas.] This Act is to be understood of a descent from one auncestor to one heire, and not from divers auncestors to one heire, nor from one auncestor to divers heires, nor from one auncestor to one heire at severall times.

As if a man seised in fee of the Manor of D. of the part of the Father holden of A. by Knights service, and of the Manor of S. of the part of the mother holden of B. by Knights service, and dieth, his heire within age, this case (as by the letter thereof it appeareth) is within the scope and purview of this Statute; for if the Father holdeth land by Knights service, and the Mother hold land also by Knights service, which of them die first, the Lord of whom the land is holden, albeit there be but one heire to both, shall have the Wardship of the body, which being once vested, shall not after be devested in respect of any priority, no though it were in the Kings Case. 24 E.3.26,45. 15 E.4.14. 3 H.7.15.

The Tenant maketh a feoffement in fee upon condition of the land holden by priority, and dieth seised of the land holden by posteriority his heire within age, the Lord by posteriority seiseth the body, the condition is broken, the Vet.N.B.97.b.

the heire entreth into the land holden by priority, the Lord by posteriority shall retain the Wardship, for seeing that both descended not at one time, it is out of this Statute.

¶ Habet maritagium.] The Lord by priority shall have the Wardship of the body, for the Lord by posteriority shall have the Wardship of the land holden of him, as well as the Lord by priority of the land holden of him, but the Wardship of the body being intire, and which both cannot have, of right be-
44 E. 3. 15. longeth to the Lord by priority by this Act, and therefore if the Lord by priority waive the Wardship of the body, and refuse to take the same, yet the Lord by posteriority cannot take advantage of it, for by this Act the Wardship of the body belongeth to the Lord by priority and to no other.

¶ De quo anteceſſor ſuus fuerit feoffatus, habito reſpectu ſolummodo ad antiquius feoffamentum.] 14 E. 3. gard 37. Here it appeareth that the feoffement of the Tenancy doth onely make the priority and not the change of the Seigniory.

But where this Statute speaketh of a feoffement, it is to be understood of any other assurance or conveyance of the Tenancy.

3 E. 3. gard 19. Per antiquius feoffamentum, are not to be understood of the feoffement of the Lord upon the creation of the Seigniory, but of the feoffement made by the Tenant of the Land.

To illustrate the meaning of this Law by examples:

One holdeth Black acre of A. by Knights service, and White acre of B. by Knights service, Anno 10 Reg Eliz. infeoffeth C. of Black acre, and 20 Reg. Eliz. infeoffeth C. of White acre, who dieth his heire within age, B. shall have the Wardship of the body, for C. had Black acre per antiquius feoffamentum.

So it is if the heire of C. die seised, and both acres had descended to his heire, he had holden Black acre by priority, that is per antiquius feoffamentum made to his auncestor, and so from heire to heire so long as both acres continue in that line by descent.

On the Lords side the priority shall not onely continue as long as the Seigniories continue in the lines of the Lords, but also the change of the Seigniory maketh no alteration, and therefore though the Lord of whom Black acre is holden alien the Seigniory, yet if he taketh it back to him again, Black acre shall be still holden of him by priority, the assignee of the Lord by priority shall take advantage of it as well as the grauntor.

Temps E. 1. gard 134. F.N.B. 142. f. 13 E. 1. Cor. Rege Rot. 40. Eborum. 2 E. 2. gard. 2. 7 E. 3. 11. 34, 35. 13 E. 3. gard 39. 18 E. 3. 29. b 7 E. 3. 11. 63, 64. 11 E. 3. gard 115 14 E. 3. gard 37. 33 E. 3. ibid. 12. F.N.B. 142. 13 E. 3. gard 38. 7 E. 3. 11. 34, 35. 21 E. 3. 11. 19. 4 E. 3. 37. 30 E. 3. 7 13 E. 3. gard 39. 30 E. 3. 7.

But if the Tenant had alienen Black acre to another, and acquired it backe againe, yet shall he hold it by posteriority, for now he holdeth White acre, per antiquius feoffamentum; so as the feoffement of the land (as hath been said) doth make the priority, and that feoffement must be understood of the immediate feoffement, but the priority of the land doth attend on the Seigniory, into whose hands soever it commeth.

If there be Lord, Mesne, and Tenant, and the Mesne hold by priority, the Tenant in a Writ of Mesne doth forejudge the Mesne; in this case the mesnalty is extinct, and the Tenant shall be answerable to the Lord, De eisdem serviciis & consuetudinibus quæ prius facere debuit prædictus medius; in this case the Tenant shall hold by priority: for 1. he shall hold per antiquius feoffamentum; 2. The Mesne in supposition of Law was said to hold the land. 3. The Statute of W. 2. that give the forejudger, provideth that he shall hold by the same services, and customes, and in such sort, as it may be done sine prejudicio alterius, and this should be to the prejudice of the Lord by priority, if he should lose that benefit.

In a Ravishment of Ward the Defendant pleaded that the Father of the Infant held the Mannor of D. of him the Defendant by Knights service, Et quod tenuit

tenuit manerium illud de ipſo per antiquius feoffamentum, quam pater ſuus tenuit manerium de A. de modo querente; and this was agréed to be a good plea without ſhewing of whoſe feoffement he held by priority, but generally, which is worthy of obſervation.

A. holds land of B. by priority, and other land of C. by posteriority, and infeoffeth D. of both: this caſe is out of this Statute, becauſe he commeth to both the lands at one time, ſo as he holds not either of them per antiquius feoffamentum, ſed per unum & idem feoffamentum; And therefore if he dieth, his heire within age, the Lord which firſt ſeiſeth the body in this caſe ſhall have it. 8 E.3.57.18 E.3. 29. Vet.N.B.97. F.N.B.142.f. Bro. gard 115.

CAP. XVII.

IN itinere Juſtic' non admittatur de cætero eſſonium de malo lecti de tenemento in eodem comitatu, niſi ille, qui ſe facit eſſoniari, veraciter ſit infirmus, quia ſi excipiatur à petente, quod tenens non eſt infirmus, nec in illo ſtatu, quo minus venire potuit coram Juſticiariis, admittatur ejus calumnia. Et ſi hoc per inquiſitionem convinci poterit, vertatur illud eſſonium in defaltam. Nec jaceat de cætero illud eſſonium in brevi de Recto inter duos clamantes per eundem deſcenſum.

We have before in generall ſpoken of the five kindes of eſſoines, but reſerved to ſpeak more particularly of this kinde of eſſoine de malo lecti in the expoſition of this Chapter, as in his proper place. See Marlb.c.11.

¶ De malo lecti.] This eſſoine differeth from all other kindes of eſſoines, for this eſſoine lieth onely ad certum diem, for he ought to appeare ad primum diem, &c. & ad tertium diem ſi avera ceſt eſſoine. 20 E.3.eſſoine 27

And in this caſe he ſhall have two eſſoiners, and the one ſhall cark the eſſoine, and the other ſhall ſweare, that he ſaw the party ſick, &c.

The miſchiefe before this Act was, that the adverſe partie could not take iſſue, that he that offered to be eſſoined de malo lecti was in health, and not ſick, and try it by a Jury; but it was inquired by foure Knights returned for that purpoſe by the Sheriffe, Si fuer' languidus aut non, and if they found that he was not languidus, then he ſhould have fifteene dayes after to appeare, ſo as the party was delayed thereby fifteene dayes, and all the time before, and this was miſchievous: for remedy whereof this Act provideth, that the party ſhall take iſſue, that he is not languidus, which if it be ſo found, it ſhall turne to a default; and if it be found that he is languidus, then he ought to have time to appeare a yeare and a day, and before he commeth out, he ought to have a Writ de licentia ſurgendi, &c. as it appeareth by the authorities cited in the expoſition of the ſaid 12. Chapter of Marlebridge. 3 H.3.eſſoine 186

¶ In itinere Juſtic'.] Although Juſtices in Eyre are here particularly mentioned, yet this Act being a beneficiall Law to ſuffe delayes is taken by equity, and doth extend to the Court of Common Pleas.

¶ De malo lecti.] Sufficient hereof hath bin spoken, onely this may be added that this essoine lieth not for an Attourney, for no essoine shall be cast for an Attourney but the common essoine onely.

¶ De tenementis in eodem com'.] This essoine de malo lecti
15 H. 3. essoin 196 doth onely lie in a Writ of Right right, and not in a Writ of Right in his nature.

¶ Clamantes per eundem descensum.] This essoine de malo
15 H. 3. essoin 191 192, 194. 20 E. 3. essoine 27. lecti is wholly ousted in a Writ of Right between two claiming by the same descent.

As between two parceners either at the Common Law or by Custome, &c.
Bract. l. 2. fol. 66. Britton fo. 190. 13 E. 1. droit 51. F. N. B. 10. a. But if one coparcener claime the land by feoffement made by her auncester in fee, now if the other coparcener deforce her of this land in a Writ of Right brought against her sister, she may be essoined de malo lecti, and so between two theyren: so as this Statute is intended where they claime the land per eundem descensum, and not where they derive their blood onely per eundem descensum; for in the case put before where they claime by severall titles, they may joyne the mise by graund Assise, or by battell, which they cannot doe when they claim by one descent.

CAP. XVIII.

Fleta l. 2. cap. 55. See the first part of the Institutes, sect. 504. verb. per Elegit.

CUm debitum fuerit recuperatum, vel in curia Regis recognitum, vel damna adjudicata, sit de cætero in electione illius qui sequitur pro hujusmodi debito, aut damnis, sequi breve quod Vicecom' fieri faciat de terris & catallis debitoris, quod Vicecom' liberet ei omnia catalla debitoris, (exceptis bobus & afris carucæ) & medietatem terræ suæ, quousque debitum fuerit levatum per rationabile precium & extentum. Et si ejiciatur de illo tenemento, habeat recuperare per breve Novæ disseisinæ, et postea per breve de redisseisina, si necesse fuerit.

Vide Mag. Char. ca. 8. Dier 23 El. 305. b. At the Common Law where a Subject sued execution upon a judgement for debt or damages, he should not have the body of the Defendant, or his land in execution (unlesse it were in speciall cases,) and the reason of the Law was: that the body in case of debt should not be detained in prison, but be at liberty, not onely to follow his owne affaires and busines, but also to serve the King and his Country when need should require; nor to take away the possession of his lands in that case, for that would hinder the following of his husbandry and tillage, which is so beneficiall to the Common wealth, whereof you may reade at large in Sir William Herberts Case.

Lib 3. fol 11, 12, &c. Sir Will. Herberts Case. But by the Common Law he should have execution in that case onely of his goods and chattels, and of his corne, and other present profit that grew upon his land, to which purpose the Law gave him two severall Writs to be sued within the yeare, one a Levari facias, whereby the Sheriffe was com-

mand-

manded, Quod de terris & catallis ipſius A. levari fac', and the other called a Fieri fac', which alſo was onely de bonis & catallis.

Now the Common Law being underſtood, let us peruſe the words of the Act.

¶ Cum debitum fuerit recuperatum.] That is, by Judgement in an Action of debt, or any Action wherein damages are recovered.

¶ Aut recognitum.] That is, by Recogniſance knowledged in any Court of Record that hath power to receive the ſame.

If two do knowledge a Recogniſance of C. l. quilibet eorum in ſolido, that is, joyntly and ſeverally, the Conuſée may ſue ſeverall Scire fac' againſt the Conuſors upon this Recogniſance. 29 E.3. 38,39. 5 E. 3. 26,35. 34 E.3. Execution 129. 36 H.6 2, 3. 10 E.3. 34,35.

A ſpeciall Recogniſance may by expreſſe words binde the lands of the Conuſor in one County onely.

¶ Sit in electione illius.] This Election ſhall the Executors or Adminiſtrators of the Plaintife, or Reconuſée have, albeit they be not named; and ſo likewiſe ſhall the ſucceſſor of the Conuſée have alſo: but the Executors ſhall not have Execution of the Judgement or Recogniſance in the time of the Teſtator, within the yeer, without ſuing a Scire facias; but otherwiſe it is of a Statute, &c. F.N.B. 267.c. Lib.3.fol.65. Fulwoods caſe. 21 Aſſ. 15. 15 H. 7.5. 20 E.2. Execution Statham. 2 R.3.8. F.N.B. 267. b. Regiſt. 299. 7 H. 6. 2. 30 E. 3. 2. Proc. 26. 30 E.3. Statham. 43. 17 E. 4. 4. 18 E.4.12. 34 H. 6.20. 19 H 6.4.

When the Plaintife or Conuſée prayeth an Elegit, the Entry is Quod elegit ſibi executionem fieri de omnibus catallis, & medietate terræ; and the Writ of Elegit is, Ac cum idem H. juxta ſtatutum inde editum (meaning this Statute) elegerit ſibi liberari pro prædict' 20 libris omnia catalla, & medietatem terræ ipſius R. And therefore after the ſuing out of the Elegit, the Plaintife, that hath a Judgement in an Action of Debt, cannot have a Capias, &c.

¶ Fieri facias.] Here under theſe words is alſo the Writ of Levari facias included.

¶ Vel quod Vicecom' liberet ei omnia catalla exceptis bobus & aſris carucæ.] The Maior and Aldermen of London take a Recogniſance of 250. pounds to the Chamberlain of the City of London, and his ſucceſſors according to the Cuſtome for Orphanage money; in this caſe the Chamberlain for the time being may ſue out a Precept in the nature of an Elegit to a Sergeant at Mace, and miniſter of that Court to do execution upon this Act: and albeit the words of this Statute are, Quod Vicecomes liberet; yet being a beneficiall Law, by equity it is extended to every other immediate officer to every other Court of Record. Lib.3.fol.65. Fulwoods caſe.

[a] If the Chattels be ſufficient to pay the debt, and ſo may appear to the Sheriffe, whereby he may ſatisfie the debt, then he ought not to extend the land for the reſidue; and all this appeareth by the Writ of Elegit framed upon this Act.

¶ Et medietatem terræ ſuæ.] [b] This is to be underſtood of the half of ſuch land as the Defendant had at the time of the Judgement given, or of the Recogniſance knowledged, unleſſe it be conveyed away by fraud and covin to deceive his Creditors, contrary to the Statutes in that caſe provided.

[c] A man doth knowledge a Recogniſance of 100. pounds to be paid at five dayes; preſently after the firſt day he may ſue an Elegit upon this Act for 20. pounds, and have the moity of the land delivered unto him; and when the ſecond day is paſt, he may have another Elegit for that 20. pounds, and have the moity of the remnant delivered to him. Et ſic de cæteris; for they be in effect in nature of ſeverall Judgements in Law.

[a] Regiſt. 299. [b] 19 E.2. Execut. 249. 2 H. 4.14. 42 E.3.11. 42 Aſſ. 17.3 E.3. Execut. 107. 10 E.2. Execut. 137. 6 E.3. 15,17. 7 E.3.7. 8 E.3.15,17. 17 E. 3.15. 30 E.3.26, 50. 11 H.4.70. 9 H.6.58. [c] 16 E 2. Execut. 138. 2 E.2. ibid. 120. 16 E.3. Fieri fac. 4. F.N.B. 267 b. Vide Mich. 31 E.3. fol.50. b. in libro meo per Fiſher & Fincladen.

And upon these words, Medietatem terræ suæ, the Sheriff hath extended a term for yéars, and the like.

It is to be observed, that the generall words of this Act doth not take away the priviledge which the Law giveth to any person; and therefore no Elegit upon this Act shall be sued against the heir of the Conusor during his minority.

3 li. 1 Ass. 6. 38 Ass. 4 Sh. 8. fol. 171. ir George Fletwoods case.

Upon the equall construction of these words, if the Conusor be seised of Black acre, White acre, and Green acre, and after the Judgement given, or Recognisance knowledged, infeoffeth A. of White acre, and B. of Black acre, and retains Green acre to himself, in this case he may have the moity of Green acre, and never intermeddle with the rest: but he cannot extend the moity of the Acre in the hand of any purchaser, except he extend also the moity of all the land subject to the Judgement, or Recognisance; and if he omit any, the Extent shall be avoided in an Audita querela: for where it is said in Books, that each purchaser shall have contribution in that case, the meaning is, that such extent of part shall be avoided, and all the land extended and equally charged; and so it is if Green acre descend to an heir, the moity thereof may be onely extended, without dealing with any of the rest: so likewise if there be two or more Conusors, the lands of them all must be extended; and hereof you may read at large in Sir William Herberts case, all which are just and righteous expositions.

29 Ass. 37. 29 E. 3 50. Sir William Herberts case, ubi supra.

¶ Quousque debitum fuer' levatum.] The Elegit framed upon these words, saith, Tenendum ut liberum tenementum, quousque debitum prædict' inde fuer' levatum; and yet whensoever the party pay and satisfie the debt of Record, he shall enter into his land: and so it is when the Tenant by Elegit is satisfied by the ordinary Extent, the Tenant of the land may enter. But if it be in respect of any casuall profit, to avoid the Extent he must have a Scire fac' in respect of the incertainty.

13 E. 3. Scire fac. 17. 21 E. 3. 36. 17 E. 3. 43. 46 Ass. tit. Scire fac. 47 E. 3. 11. 31 E. 3 Extent 31. Regist. 299. Fulwoods case, ubi supra.

¶ Per rationabile precium & extentum.] Per rationabile precium doth refer to goods and chattels, and Rationabile extentum referreth to lands.

And hereby is implyed, that this Appraisement and Extent upon the Elegit must be found by enquest of 12. men, and so returned of Record.

That shall be said a reasonable Extent, which is found by the oath of 12. men, and returned by the Sheriff, and filed; and there can be no re-extent granted upon surmise, that it is more then the half in value, or the like, because it extendeth onely to a chattell in lands: but before the Extent be filed, the Court may examine the cause, and if there be found fraud, deceit, or partiality, they may stay the filing of that Writ, and grant a new.

Dier 2 Mar. 100. lib. 4. fol. 74. Palmers case. 15 H. 7. 15. 9 H. 7. 9 22 Ass. 44. 22 E. 3 31. 44 E. 3. 10. Temps R. 2. Pl. ult. tit. Extent. 15 E. 3. Scire fac. 115. 31 E. 3. Extent 13. 15 E. 3. ibid. 17. 22 E. 3. Recovery in value 22. 7 H. 4. 19. 22 R. 2. Executiõ 165. Dier 6 E. 6. 73. Regist. Judic. 13, 14, 20. *19 E. 2. Execut. 246. 28 Ass. p. 7. F. N. B 189. I.

But see 22 R. 2. 165. in Dower, and in case of Free-hold in Hil. 13 E. 2. fol. 74. b. the case of the Hospitall of T. a Scire facias granted for the surplusage upon a Return in value, and delivered to the Sheriff by Habere fac' ad valorem, for that it concerneth an Inheritance, and so it was adjudged. Note the diversity, the Tenant by Elegit may for reasonable cause hold over the ordinary course of the Extent, * by a reasonable construction upon this Statute.

¶ Per breve novæ disseisinæ, & per breve de redisseisina, &c.] The words of the Writ of Elegit (as hath been said) are, Tenendum ut liberum tenementum, &c. because this Statute giveth him remedy by Assise, &c. but he hath but a Chattell, and no Free-hold; and therefore it is said, Si ejiciatur: and the Writ saith similitudinary, Ut liberũ tenement', in respect of the Assise, &c.

This branch doth give the Assise to the Tenant by Elegit, and yet his Executors or Administrators shall have it by the equity of this Act; and so shall the Executors or Administrators of Tenant by Statute Merchant, and Tenant by Statute Staple.

I have

I have seen a Record of a Judgement in the Raign of E. 2. that the Assignee of a Tenant by Elegit should not have an Assise by the purview of this Statute. Tr. 15 E. 2. Corã Rege. Rot. 40. John Semers case.

Tenant by Statute Merchant of lands, which the Conusor had in the right of his wife, brought an Assise upon this Statute, the Tenant pleaded Ancient demesne, &c. and so found, &c. and yet the Plaintife had Judgement; and the reason of the Judgement given in the Record is this, Licet manerium prædict' sit de antiquo Dominico corone, & tenementa in eodem manerio existentia per parvum breve tantum placitabilia, & prædict' Ranulphus Huntingfeld in cognitione prædict' quam fecit præd' I. in statuto obligavit tenementa præd' in summa ejusdem cognitionis, quæ quidem obligatio naturam eorundem tenementorum non mutat, nec est ad præjudicium Domini, aut exhæredationem tenentium, ex quo tenementa illa per obligationem præd' solummodo onerata sunt ad certum tempus, post quod tempus reverti debent præd' Ranulpho & uxori suæ exonerata, tenend' ut prius, &c. Consideratum est, &c. Mich. 31 E. 1. Coram Rege ebor. Ranulp. de Huntingfelds case.

By this Judgement three things are to be observed; 1. That lands in Ancient demesne may be † extended by the Statute de Mercatoribus, Anno 13 E. 1. 2. That Ancient demesne is * no plea in Assise brought by Tenant by Statute Merchant, upon this Statute. 3. That in an Assise of Novel disseisin (which is festinum remedium) Ancient demesne shall be tryed by the Recognitors of the Assise. † 7 H. 7. 1. lib. 5. fol. 105. Aldens case. * 22 Ass. 45. lib. 5. ubi supra. 22 Ass. ubi supra. 8 Ass. p. 35. 9 Ass. 9 12 Ass. 18. 2 E. 3. 42. b. 41 E. 3. 2. 49 E. 3. 24. 3 H. 6 47.

CAP. XIX.

CUm post mortem alicujus decedentis intestati, & obligati aliquibus in debito, bona deveniant ad Ordinarium disponend', obligetur de cætero Ordinarius ad respondendum de debitis quatenus bona defuncti sufficiunt: Eodem modo quo Executores respondere tenerentur, si testamentum fecissent.

¶ Decedentis intestati.] There be divers kindes of Intestates, one that make no Will at all, another that make a Will and Executors, and they refuse; in this case he dyeth Quasi intestatus, and these are within the purview of this Act: therefore the Ordinary is the person whom the Law appointeth to have the charge or Administration of the goods and chattels of the party that dyeth intestate, or Quasi intestatus; and justly did the Law in this case appoint the Ordinary: for the Law presumed, that he that had the care of his soul in his life time, would after his death have care of his temporall goods and chattels, to see them well disposed and administred. Lib. 6. fol. 67. Sir Moyle Finches case.

And this Act was made in affirmance of the Common Law, as hereafter upon the exposition of some parts of the Act shall appear. 17 E. 4. Br. 822. 24 E. 3. 55. 11 E. 3 Executors 77. 18 H. 6. 23. 9 E. 4 33. 11 H. 7. 12. F. N. B. 120. lib. 5 fol. 83. Snellings case. Dier 8 Eliz. 247.

¶ Et obligati.] This is not onely intended of an Obligation or Deed in writing, but howsoever he was charged in Law, as for Rent upon a Lease, or upon an Assumpsit, or the like.

And after it is said in this Chapter, Obligetur de cætero ordinar', where Obligetur is not taken, that he should be bound in an Obligation, but that he should be charged, or subject to an Action.

¶ In debito.] This Act is not onely intended of that which is properly

perly a debt, but of all duties, covenants, or juſt cauſes of Actions, ſuch as might be brought againſt Executors.

¶ Bona deveniant ad ordinarium diſponend'.] Unleſſe ſome of the goods or chattels came to the hands and poſſeſſion of the Ordinary, he was not to be charged by the Common Law; but if they came to his hands, and he would neither adminiſter and pay the debts and duties himſelf, nor commit them over to the kin and friends of the Inteſtate that would, the Common Law did charge him, and ſo doth this Act which is made in affirmance of it.

7 H.4.18. If a man dye Inteſtate, and a ſtranger taketh the goods, the Ordinary ſhall not have an Action of Treſpaſſe for taking of them (unleſſe he had taken them into his poſſeſſion.) But the Executor or Adminiſtrator before ſeiſure may have an Action of Treſpaſſe.

31 E 3. cap. 11. 19 E. 3. Adminiſt. 20. & 24. 7 H. 4. 18. F. tit. Treſp. 97. 25 E. 3. Exec. 105. 11 H. 4. 71. 18 H. 6. 22. F. N. B 92 a. Pl. com. 278 *a* 41 E. 3. 2. 11 H. 4 72. lib. 5. fo. 82, 83 Snellings caſe. *b* 12 R. 2. Adminiſtrat. 21.

Neither can the Ordinary have any Action of Debt, Covenant, or any other Action which belonged to the Inteſtate; but thoſe to whom the Ordinary commit Adminiſtration may have all theſe Actions by the Statute of 31 E. 3. but before that Statute, there was no remedy by Law given to the Adminiſtrators to recover thoſe things in Action.

a But by the Common Law, an Action of Debt did lye againſt the Adminiſtrators, but it was by the name of Executors untill the ſaid Statute of 31 E. 3.

b If the Ordinary take goods of the Inteſtate, being out of his Dioceſſe, he ſhall not be charged as Ordinary by this Act, becauſe he taketh them of his own wrong, and not as Ordinary, in which right he is to be charged by this Act.

Lib. 5. fol. 29. the Princes caſe. 9 Eliz. Dier 255, 256. lib. fol. Sir Moyle Finches caſe.

If it be demanded what intereſt the Ordinary hath in the goods of the Inteſtate, which come to his hands; it is anſwered, that he hath ſuch an intereſt as the Adminiſtrator, to whom adminiſtration is committed Durante minore ætate executoris, ad opus, commodum, & utilitatem ipſius executoris, & non aliter, ſeu alio modo. So as the Ordinary may adminiſter for the good of the Inteſtate, but cannot give the goods of the Inteſtate, or do any thing to his prejudice.

c 17 E. 2. Br. 822. 5 E. 2. ibid. 16. 17 E. 3. 23. 21 E. 3 60. 41 Aſſ. 29. 7 E. 4. 14. 12 E. 4 15. 31 H. 6. 10. 15 E. 3. quare nó admiſit 5. Dier 18 Eliz. 350. Regiſt. 67. Capitulũ ſede vacante ſuccedit epiſcopo in ordinaria juriſdictione.

¶ Obligetur de cætero ordinarius.] Ordinarius; this word in the Law of England, in the uſuall and common ſenſe ſignifieth a Biſhop, or he, or they that have Ordinary Juriſdiction, and is derived ab Ordine, to put him in minde of the duty of his place, and of that order and office that he is called unto; And this was the wiſdom of Antiquity, that names of men in great places ſhould put them in minde (as often as they were named) of their duty: as the Treaſurer of England to have ſpeciall care of the Kings treaſure; and they that had places in the Kings principall Courts of Juſtice are called Juſtices, to put them in continuall memory to do Juſtice, & ſic de cæteris.

c In this Statute Ordinarius is not onely taken for a Biſhop, but every one that is in loco Epiſcopi; as Gardeins of the Spiritualties, and ſuch as have peculiar and exempt Eccleſiaſticall Juriſdiction, and be immediate officers to the Kings Courts of Juſtice: and not onely an Ordinary or Gardein of the Spiritualties, or others that be in loco Ordinarii, that of right are within this Act, but alſo ſuch as uſurp the place, and are in poſſeſſion by wrong, are to be charged by this Act.

Vide lib. 3. fo. 73. the Dean and Chapter of Norwich caſe. *a* Reg. 141. 11 R. 2 & 16 E. 3. Adjudg. 11 E. 3. Execut. 177. 24 E. 3. 54. 11 H. 4. 73. F. N. B. 120. Pl. Com. 280. *e* 11 R. 2. Adminiſtrat. 21.

d If goods of the Inteſtate come to the hands of the Ordinary, and he dyeth; although the words be [Obligetur de cætero ordinarius] yet his Executors or Adminiſtrators ſhall be charged in an Action of Debt; for when this Act bindeth the Ordinary, by conſequent his Executors or Adminiſtrators are bound. But if the Ordinary commit adminiſtration to one, and he taketh the goods into his poſſeſſion and dyeth no Action lyeth againſt his Executors.

e If the Ordinary take goods into his hands of the Inteſtate, and after commit adminiſtration, and the Ordinary retaineth the goods, he ſhall be charged, notwithſtanding the committing of adminiſtration.

CAP.

CAP. XX.

CUm Juſticiarii in placito mortis anteceſſoris conſueverint admittere reſponſionem tenentis, quod petens non eſt propinquior hæres anteceſſoris, de cujus morte tenementum petitur, & hoc paratus eſt per aſsiſam inquirere: Concordatum eſt, quod in brevibus de conſanguinitate, avo, & proavo, quæ ſunt ejuſdem naturæ, admittatur illa reſponſio, et inquiratur, et ſecundum illam inquiſitionem ad judicium procedatur. Fleta l. 5. ca. 8.

¶ Conſueverint admittere reſponſionem.] Hereby it appeareth that admiſſion and allowance of the Juſtices ought to be holden for Law, and ſo it is affirmed by this Act.

¶ Quod petens non eſt propinquior hæres.] It is to be underſtood that the Entry in an Aſſiſe of Mord' brought for (example) by P. againſt R. of 20. acres of land in S. is according to the words of the Writ Aſſiſa venit recognoſcere ſi' O. pater P. cujus hæres ipſe eſt, fuit ſeiſitus in dominico ſuo ut de feodo de 20. acris terræ cum pertinentiis in S. die quo obiit. Et' ſi obiit infra 50. annos jam ultime elapſos ante Teſte brevis. Et' ſi P. propinquior hæres ejus ſit.

These three points in this Aſſiſe of Mordaunc' ſhall be inquired of by the recognitors of the Aſſiſe, albeit the Tenant make default, and no iſſue be joyned thereupon: But ſo it is not in the Writs of Aiel, Beſaiel, or Coſinage; for they are no Aſſiſes but Writs of Præcipe quod reddat, and therefore if default be made therein, judgement ſhall be given by default, as in other Writs of Præcipe quod reddat, without inquiry of any point of the Writ: The three points of the Aſſiſe are hypothetical, the Demandant affirming nothing, and the words of the other three Writs here mentioned are categorical; Præcipe A. quod juſte, &c. reddat B. unum meſſuagium, &c. de quo W. avus prædict' B. cujus hæres ipſe eſt, fuit ſeiſitus in dominico ſuo ut de feodo die quo obiit; Now quod petens non eſt propinquior hæres is a denial of one of the points of the Writ of Mordaunc'. 31 E. 1. Mord. 58. 4 E. 2. Mord. 38. 8 E. 2. ibid. 42. 2 E. 3. 9 9 E. 3. 30 9 Aſſ. 3. 10 E. 3. 4. 45. 30 E. 3. 8.

And it is to be underſtood that when the Tenant pleadeth in barre of the Aſſiſe, as matter of Record, or a releaſe, or warranty, or any other barre that is out of the ſaid three points of the Aſſiſe, there the Tenant beginneth his plea with Aſſiſa non, &c. and therefore the triall of that iſſue is peremptory, and the Aſſiſe ſhall never inquire of any of the points of the Writ; but when the Tenant ſaith, that he is ready to heare the recogniſance of the Aſſiſe, he cannot ſay Aſſiſa non, for that ſhould be repugnant to his owne ſaying; and if hee ſay that he is ready to heare the recogniſance of the Aſſiſe of one of the points of the Writ, or traverſe one of the points of the Writ, yet the Court Ex officio ought to enquire of them all: and ſo it is if the Tenant pleade in abatement of the Writ, or vouch, and the Demandant counterplead the Vowcher, and theſe pleas bee tried, or adjudged for the Demandant, yet the points of the Writs ſhall bee enquired, and ought to bee found for the Demandant, or elſe he ſhall not recover. 2 Aſſ. 10. 8 Aſſ. 17. 14 E. 3. Mord. 8. 29 Aſſ. 1. 11. 39 Aſſ. 13. 40 E. 3. 48. 33 E. 3. Mord. 34. 27 H. 8. 14. 12 Aſſ. 48.

Now

Now the miſchiefe before this Statute was, that in the Writs of Aiel, Beſaiel, and Coſinage, the Tenant was not admitted to plead, that the Demandant
6 E. 3. 55. was not heire to him, upon whoſe dying ſeiſed the Writ was conceived, but he muſt ſhew who was his next heire, which now by this Act he need not to doe, but yet he may plead the like plea, as he might have done at the Common Law as he did in 6 E. 3.

Mirror ca. 5. § 5. But heare what the Mirror ſpeaking of this Act ſaith. Leſtatut de allower un manner de exception in ſemblable actions ne fuit my miſtier daver eſtre ordein ſinon pur negligence des Juſtices, car cheſcun affirmative eſt encounterable de ſon negative al peril del deliverant.

12 E. 3. Mordanc' 10. 30 E. 3. 8. 33 E. 3. Mord. 34. If the Tenant ſaith, that he is ready to heare the recognizance of the Aſſiſe, he cannot give in evidence that the Demandant is a baſtard, but he ought to have pleaded the ſame.

¶ Anteceſſoris.] This anteceſſor in a Writ of Mordaunc' is interpred of the father, mother, brother, ſiſter, uncle, aunt, nephew, or niece of the Demandant, and of no other.

¶ Quæ ſunt ejuſdem naturæ.] The difference betweene the Aſſiſe of Mordaunc', and thoſe three Præcipes appeareth by that which hath been ſaid, and yet in ſome reſpect the words of this Act that they be ejuſdem naturæ are true.

For as the Writ of Mordaunc' ſaith, Si O. pater P. cujus hæres ipſe eſt, fuit ſeiſitus in dominico ſuo ut de feodo de 20. acris terræ cum pertinen' in S. die quo obiit. So the words of the Writ of Aiel be, De quibus N. avus prædict' P. cujus hæres ipſe eſt, fuit ſeiſitus in dominico ſuo ut de feodo die quo obiit, &c.

¶ Et ſecundū illam inquiſitionem ad judicium procedatur.] Herein is the difference betweene this plea in Aſſiſe of Mordaunc', and the other Writs; for in the Aſſiſe of Mordaunc' the reſt of the points of the Writ, as hath been ſaid, ſhall be enquired.

But in the Writs of Aiel, Beſaiel, and Coſinage, the triall of this title is peremptory, and thereupon the Court ſhall proceed to judgement as here is expreſſed.

CAP. XXI.

Glouc' cap. 4. CUm in ſtatuto edito apud Glouc' contineatur, quod ſi quis dimiſerit terram alicui ad reddend' valorem quartæ partis ten' vel majoris, habeat ille qui dimiſit, vel ejus hæres (poſtquam ceſſatum fuerit a ſolutione per biennium) actionem petendi ten' ſic dimiſſum in dominico. Eodem modo concordatum eſt, quod ſi quis detineat domino ſuo ſervitium debitum & conſuetum per biennium, habeat dominus actionem petendi ten' in dominico per tale breve. Præcipe A. quod juſte, &c. reddat B. tale ten', quod A. de eo tenuit per tale ſervitium, & quod ad præd' B. reverti debeat, eo quod prædictus A. in faciend' prædictum ſervitium per

per biennium ceſſavit ut dicit. Et non ſolum in iſto caſu, ſed in caſu de quo fit mentio in prædicto ſtatuto Glouc' fiant brevia de ingreſſu hæredi petenti ſuper hæredem tenentem, & ſuper eos quibus alienat' fuerit hujuſmodi tenementum.

¶ Cum in ſtatuto edito apud Glouceſt', &c.] The Statute of Glouc' is miſrecited for [vel ejus hæres] are not in that Statute.

1. Hereby it appeareth that the Statute of Glouc' extended onely, when upon the creation of the tenure a fée farme was reſerved, the deteinment whereof was more prejudice to the Lord then common and uſuall rents and ſervices, and therefore that Act was not extended by equity to other rents, or ſervices.

2. That albeit the Statute of Glouc' mentioneth a Déed, yet if the fée farme be reſerved without Déed, that Act extended to it, for here in the recitall of the Act no Déed is mentioned, ſo as that Statute is extended to all fée farmes.

3. Here it is ſaid eodem modo concordatum eſt, quod ſi quis detineat domino ſuo ſervitium debitum & conſuetum; and if the Statute of Glouc' had not extended to fée farmes without Déed, then ſhould not a Ceſſavit lie for other ſervices upon this Act, unleſſe they had been reſerved by Déed, by reaſon of theſe words, eodem modo, &c.

¶ Eodem modo concordatum eſt, &c.] By theſe words this Act is ſo incorporated into the Statute of Glouc'; as the letting of the land to lie freſh, the tender of the arrerages, finding of ſurety, &c. are to be applied to this Act concerning other ſervices.

¶ Si quis detineat.] Theſe words extend as well to bodies politique or incorporate, either ſole or aggregate of many, as to naturall perſons; alſo to feme coverts and infants, unleſſe the infant have the land by deſcent, and then although the ceſſer be in his time, he ſhall have his age, for that by intendment of Law he knows not what arrerages to tender. 3 E.3.26. 4 E.3.Cui in vita 22. lib.8.fo.44. Wittinghams Caſe.Lib.9.fo.85 Combs caſe.

If a villein ſeiſe and the Lord enter, no Ceſſavit ſhall lie againſt the Lord for the ceſſer by the villein. 34 E.3. bre 924.

¶ Domino ſuo.] This is not intended onely of a Lord that hath an eſtate in fée-ſimple in a Seigniory, but of ſuch alſo that have an eſtate taile, or any eſtate for life derived out of a fée-ſimple; but he in the reverſion ſhall not have a Ceſſavit againſt the donée in taile or Tenant for life, for he in the reverſion is not Dominus within this Statute. 32 E.1.ceſſav.29. 11 E.2.ceſſavit. 13 E.2. ibid.52. 8 E.3.receit 36. 43 E 3.15.45 E.3 27. 33 H.6.53. 9 H.7.16.F.N.B. 209. Vet.N.B.78

If the Tenant ceaſe by one year, and the Lord graunt over his Seigniory, and then the Tenant ceaſe another year, neither of them is Dominus within this Act. Lib.2. fol.93. Binghams Caſe.

See the Expoſition upon the Statute of Glouc' cap. 4. what ſervices are intended within this Statute, viz. ſervices annuall, as rent, ſuit, and the like, and not homage, or fealty, or the like, for this Act ſaith per biennium, which implieth annuall ſervices. But this Act extendeth not to rent ſervice created upon a fée farme, but a Ceſſavit upon a fée farme muſt be conceived upon the Statute of Glouceſter, for which purpoſe there be ſeverall Writs in the Regiſter. Regiſt.237.

¶ In dominico.] It was the wiſdome of auncient Parliaments to comprehend much matter in few words, as in this caſe, if the Tenant made a leaſe for life, or a gift in taile, and a ceſſer was by two yeares, in this caſe

14 E.2.brē 815. 14 E.3.ibid.269. 19 E.3. ibid.249. 21 E.3.44.30E.3. 22. 28 E.3.95. 48 E.3.4.27 E.3. 27. 39 E.3.15. 12 R.2. ceſſavit 460. 33 H.6.53. 12 E.4.fol.ult.

a Ceſſavit ſhould bee brought againſt the Tenant for life or in taile, and ſuppoſe that he in reverſion did hold of him, and that the Tenant for life, or in taile did ceaſe: and ſo if the Tenant was diſſeiſed, and the diſſeiſor ceaſed, the Writ of Ceſſavit ſhould ſuppoſe that the diſſeiſée did hold, and that the diſſeiſor did ceaſe: and likewiſe if the Tenant by whoſe hands the Lord was ſeiſed of his ſervice made a feoffement in fée, the Writ of Ceſſavit ſhould ſuppoſe that the feoffée ceaſed, and that the feoffor did hold of him, Et ſic de ſimilibus: and the reaſon of theſe and the like caſes was, for that the Lord by his Ceſſavit was to recover the land in dominico; and therefore theſe Writs were framed and allowed accordingly: and for the ſame reaſon, if there be Lord Meſne and Tenant, and the Tenant peravaile ceaſe by two yeares, the Lord ſhall have a Ceſſavit againſt the Tenant (for a Ceſſavit doth not lie of a rent) and ſuppoſe that the Meſne ceaſed.

27 H.8.28. Kelwey 104, 105. 13 E.3.gard 38. 1 H.4.3. per Burgh.

Lib.8.fol.86. Buckmers caſe. 21 E.3.44 b,&c. Regiſt. 237. Vet. N.B.78.138,139. F.N.B.208.

¶ Præcipe A. quod juſte, &c.] Here is the Writ of Ceſſavit framed; now the great Objection upon that which hath been ſaid, how the ceſſer can be alledged in the Tenant, againſt whom the Præcipe is brought, and the tenure alledged in another, when the Writ ſo formed doth ſuppoſe him againſt whom the Ceſſavit is brought, to hold alſo of the Demandant; The Anſwer is, that the Writ formed by this Act is put but for example, and ſeeing that, if ſuch Writs, as are aboveſaid, ſhould not be maintained, no Ceſſavit ſhould be maintenable at all in thoſe caſes, therefore they have been adjudged to be good.

Regiſt.237.

Here is a Writ in a new caſe framed by this Act, and therefore the Act is not to be recited, (as often we have obſerved before) but the forme preſcribed is to bee purſued; but in a Ceſſavit upon the Statute of Glouc', the Statute is rehearſed, becauſe there is no forme of Writ preſcribed by that Act.

¶ Fiant brevia de ingreſſu hæredi.] A Ceſſavit is properly called Breve de ingreſſu, when it is in the Per, or in the Per & Cui.

33 E.3.ceſſav.42. Pl.Com.110. F.N.B.209.f. Lib.8. fol.118. D. Bonhams caſe.

Certain it is that the heire ſhall not have a Ceſſavit for a ceſſer in the life time of the anceſtor, becauſe the heire cannot have the arrerages which the Tenant in the Ceſſavit hath power to tender, and therefore this Act is to bee intended of a ceſſer in the time of the heire, otherwiſe the Act ſhould be contrary to it ſelfe, which in all Expoſitions is to bee avoided.

33 E.3.ubi ſupra. F.N.B.ubi ſupra.

And ſo it is of the Aunt and Neece, they ſhall not joyne for a ceſſer in the time of the Mother of the Neece, but for a ceſſer in the time of both of them the Ceſſavit doth lie.

Fleta l.2. cap.48.

See the Statute of 10 E.1. Statutum de Gamletto in London, Vet. Magna Charta fol.122. where it is ſaid, Implacitentur de gamletto, which is a kinde of Ceſſavit, for gamel or gabble, or gabel in one of the ſenſes is taken for cenſus, rent, &c. and gamellettum is as much to ſay, as to ceaſe, or let to pay the rent. Breve de gamelletto in London eſt breve de Ceſſavit in biennium, &c. pro redditu ibidem, quia tenementa fuerunt indiſtringibilia.

Coram Rege Paſch. 17 E.3. Rot.139.London

CAP.

CAP. XXII.

CUm duo vel plures teneant boſcum, turbariam, piſcariam, vel alia hujuſmodi in communi, abſq; hoc quod aliquis ſciat ſuum ſeperale, & aliquis eorum faciat vaſtum contra voluntatem alterius: moveatur actio per breve de vaſto. Et habeat defendens, cum ad judicium venerit, electionem capiendi partem ſuam in certo loco per vic', & per viſum, et ſacram', ac aſſignationem vicinorum ad hoc elect' et juratorum: vel quod concedat quod nihil capiat de cætero in hujuſmodi boſco, turbaria, et aliis, niſi ſecund' quod participes ſui capere voluerint. Et ſi eligat capere partem ſuam in certo loco, aſſignetur ei locus vaſtatus in ſuam partem, ſecundum quod fuit antequam vaſtum fecit. Et eſt tale breve in hoc caſu: ſcil. cum A. et B. teneant boſcum pro indiviſo, B. fecit vaſtum, &c.

Fleta li. 1. ca. 11 See the firſt part. of the Inſtitutes, 323.

¶ Boſcum, &c.] This Act extendeth not to caſtles, houſes, or other places for the habitation of man, for one Joyntenant, or Tenant in common might have had for reparation of them a Writ de reparatione faciend'.

Regiſt. 76 13 H. 7 Kelw. 98. F.N.B. 127. a.

¶ Teneant, &c. in communi, &c.] Theſe words do include aſwell Joyntenants as Tenants in common, for both of them hold in communi, and ſo do old Books and Records term them both: but though the generality of theſe words do extend to coparceners, yet in good conſtruction they are not within the purview of this Act, becauſe they were compellable to make partition; for this Act extends not to them that had remedy by the Common Law, as hath been ſaid before.

27 H. 8. 13. 21 E. 3. 29. 29 E. 3. 39.

This word [Teneant] doth imply a Free-hold at leaſt.

A Parſon of a Church being Tenant in common with another ſhall have an Action of Waſte upon this Statute; and it is holden, that an Action of Waſte upon this Act is maintainable betwæn Joyntenants, or Tenants in common for lives, and yet the words of the Writ be, Ad exhæredationem.

F.N.B. 49, 59. d. 21 E. 3. 29. 3 E. 3. Waſte 25.

If woods be given to two, and the heirs of one of them, he that hath the Fee ſhall have an Action of Waſte upon this Statute, for no other Action of Waſte he can have.

50 E. 3. 3.

But if woods be letten to two, the one for life, and the other for years, they are not within this Statute, in reſpect of the ſaid word Teneant.

¶ Faciat vaſtum.] What ſhall be ſaid Waſte or deſtruction in a Tenant for life, &c. ſhall be ſaid Waſte within this Act.

¶ Habeat defendens, cum ad judic' venerit, electionem, &c.] Here the Defendant hath election, either to have his part in certain, and to take the place waſted as part thereof, or that he findeth ſurety to take no more then belongs to his part.

Note: waſte

28 H.8. cap.1. 32 H.8. cap.32. And the Defendant hath at this day a further election, either to have an Action of Waſte upon this Act, or a Writ of Partition by the late Statutes.

¶ Concedat.] That is expounded, that he finde ſuch convenient ſurety, as the Court ſhall allow of.

¶ Aſsignetur eis locus vaſtatus.] This is not literally to be taken, for it may be, that the place waſted is more than his portion, therefore it muſt be underſtood of ſo much as belong to his part.

CAP. XXIII.

HAbeant de cætero executores breve de compoto, & eandem actionem, & proceſſum per illud breve, quale habuit mortuus, et haberet ſi vixiſſet.

7 E.3.62. 19 E.3 Account 56. Hil. 31 E.3. fol.30. in libro meo in Account. F.N.B. 117. b. 38 E.3.7. 31 E.3. Account 57. By the Common Law Executors ſhould not have an Action of account for an account to be made to the Teſtator, becauſe the account reſted in privity for remedy whereof this Act was made; but per legem mercatoriam an Action of account did lye for Executors. The ſucceſſor of a Prior, or the like ſhould have an Action of account for an account to be made to the predeceſſor, becauſe the houſe never dyeth.

31 E.3. cap.11. 25 E.3.cap.5. Pl. Com.286,287. 10 E.2. Execut. 100. ¶ Executores.] Adminiſtrators had no Action untill the Statute of 31 E.3. No Action of account was given to the Executors of Executors till the Statute of 25 E.3. But this Act of 25 E.3. as to the Action of debt, covenant, &c. therein mentioned, is but in affirmance of the Common Law.

¶ Eandē actionē & proceſſum.] The heir in Socage dyeth before the age of 14. his Executors or Adminiſtrators ſhall have an Action of account preſently, and yet the heir himſelf ſhould not have an Action before 14. but the Statute ſaith, Eandem actionem, and not Ad idem tempus.

CAP. XXIV.

IN caſibus in quibus conceditur breve de Cancellaria de facto alicujus, de cætero non recedant querentes a cur' regis ſine remedio, pro eo quod tenement' transfertur de uno in alium. Et in regiſtro de Cancellaria non eſt inventum aliquod breve in iſto caſu ſpeciale, ſicuti de muro, domo, mercato, conceditur breve ſuper eum qui levavit ad nocumentum. Et ſi transferatur domus, murus, & his ſimilia in aliam perſonam, breve non deneget': ſed de cætero cum in uno caſu conceditur breve, in conſimili caſu ſimili remedio indigente, ſicuti prius, fiat breve: Queſtus eſt nobis A. quod

A. quod B. injuſte, &c. levavit domum, murum, mercatum, & alia quæ ſunt ad nocumentum liberi tenement' ſui. Et ſi hujuſmodi levata ad nocumentum transferantur in aliam perſonam, de cætero fiat breve ſic: Queſtus eſt nobis A. quod B. & C. levaverunt, &c. Eodem modo ſicut perſona alicujus eccleſiæ recuperare poteſt communiam paſtur' per breve novæ diſſeiſinæ. Eodem modo de cætero recuperet ſucceſſor ſuper diſſeiſitorem, vel ejus hæredem per breve, quod permittat, licet hujuſmodi breve prius in Cancellaria non fuerit conceſſum. Eodem modo ſicut conceditur breve, utrum aliquod tenem' ſit libera eleemoſina alicujus eccleſiæ, vel laicum feodum, tale fiat de cætero breve utrum ſit libera eleemoſina talis eccleſiæ, vel alterius eccleſiæ, in caſu quo libera eleemoſina unius eccleſiæ transferatur in poſſeſſionem alterius eccleſiæ. Et quotieſcunque de cætero evenerit in Cancellar', quod in uno caſu reperitur breve, & in conſimili caſu cadente ſub eodem jure, & ſimili indigente remedio non reperitur: concordent clerici de Cancellaria in brevi faciendo, vel atterminent querentes in proximum parliamentum: & ſcribantur caſus, in quibus concordare non poſſunt, & referant eos ad proximum parliamentum: & de conſenſu juriſperitorum fiat breve, ne contingat de cætero quod curia domini regis deficiat conquerentibus in juſtitia perquirenda.

Before the making of this Act, an Aſſiſe of Nuſans did not lye againſt him that levyed the Nuſans, and againſt his alienée; ſo as by the alienation of the wrong doer, the Aſſiſe of Nuſans failed: and he, to whom the Nuſans was done, was driven to his Quod permittat (which was a Writ of Right in his nature, wherein was great delay) againſt the alienée; and the reaſon thereof was, for that there was no Writ of Aſſiſe of Nuſans in the Regiſter, but that ſuppoſed that the Tenant in the Aſſiſe Levavit, which is remedied by this Act. 4 Aſſ. 3. 4 E. 3. 16. 5 E. 3. 43. lib. 5. fol. 101. Penrud-docks caſe.

¶ De cætero non recedant querentes a curia Regis ſine remedio.] This is an ancient Maxime of the Common Law, and the reaſon thereof is, Ne curia regis deficeret in Juſtitia exhibenda, ſo as in one Court or other the party injured ſhould have Juſtice.

¶ A curia, &c.] The makers of this Act knew well, that the party injured by the Nuſans, albeit the wrong doer made it in his own ground, yet might the party grieved (albeit he had but an eſtate for yeers) enter and abate, and demolish the Nuſans, be it houſe, wall, or other Nuſans, not onely when it was in the hands of the wrong doer, but in the hands of the alienée: but this Act doth give the Tenant of the Frée hold as ſpeedy a remedy by Law, as is the Aſſiſe of Novel diſſeſin, which was ever counted feſtinum remedium; and yet Bract. l. 4. fo. 231. 6 E. 2. Aſſ. 454. Fleta lib. 4. ca. 27. 9 E. 4. 35. F. N. B. 184 g. lib. 5. fol. 181. Penrud. caſe.

if

if the wrong doer refuse the Nusans before the Assise, or Quod permittat brought, the Action lyeth not; howbeit, if the party had any particular losse by the Nusans, he shall recover damages therefore in an Action upon the case, Ne querentes recederent a curia sine remedio.

¶ Tenementum transfertur.] Transfertur is a more generall word then Alienetur, for Alienare is regularly intended of the Act of the party, but Transferre comprehendeth also Acts in Law, as Descents, Escheats, and the like: and therefore if two coparceners levie a Nusans upon their ground, and one dye, so as her part descend to her heir, the Assise of Nusans is maintainable against the Aunt as a wrong doer, and the neece as a Tenant of a moity, which moity is transferred, but not alened to her, and so if the alienee dye seised.

1. Part of the Institutes, sect. 101, 234. Preface to the 3. Book of my Reports.

¶ In registro de cancellaria.] This is a Book of great Antiquity and authority in Law, whereof in another place I have spoken.

¶ De mercato.] Here it is to be observed, that if one hath a Market, either by prescription, or by Letters Patents of the King, and another obtains a Market to the Nusans of the former Market, he shall not tarry till he have avoided the Letters Patents of the latter Market by course of Law, but he may have an Assise of Nusans.

a Bract. li. 4. f. 235 Brit. fo. 159. Flet. li. 4. ca. 28. 11 H. 4 5, 6, 47. 22 H. 6. 16

Note there be words in the grant of a Market, Ita quod non sit ad nocumentum alterius mercati.

And note that Fairs are taken within this Law, for every Fair is a Market, but every Market is not a Fair.

a Now in what cases a Fair or Market shall be said to be levied to the Nusans of another, you may read in our old and latter Books, this onely that hath been said is sufficient touching this point, for the understanding of this Act.

¶ Levavit ad nocumentum, &c.] b A grant of a Fair, &c. Nisi sit ad nocumentum feriarum vicinarum, where ad nocumentum feriarum is put but for example; for if it be ad aliquod damnum, either of the King, or subject in any other thing, the Fair shall be revoked.

b Fleta li. 4. ca. 27. Glanv. li. 9. ca. 11 li. 13. ca. 34. 19 E. 3 Barre 179.

c Nocumentum est triplex; 1. Publicum sive generale. 2. Commune. 3. Privatum sive speciale.

Publicum, ad nocumentum totius regni; Commune, ad commune nocumentum transeuntium; Privatum, to a house, a mill, &c.

d Glanv. li. 13. ca. 34, &c. Bract. li. 4 fo. 231, &c. Fleta l. 4. c. 18, 23 26, &c. Brit. f. 71. 2 H. 4 11. 11 H. 4 83. 29 E. 3. 32.

d It is true that a private Nusans may be committed three manner of wayes; viz. Faciendo, non faciendo, permittendo, & non permittendo.

e Temps E. 1. Ass. 422. 7 E. 3. 56. 8 E. 3. 21. 8 Ass. 32 Ass. 2. 42 Ass. 15. 18 E. 3. 32. 18 E. 2. tit. Ass. 375. 5 H. 3. ibid. 426. 3 E. 3. ibid. 445. F. N. B. 183, 184. Regist. 452. 9 Ass. 19. 48 E. 3. 27.

e By this word Levavit, and these words in the beginning of the Chapter, De facto alicujus, it appeareth that this Act onely extendeth to Nusances that are committed by doing or disturbing; for, for not doing no Assise of Nusans lyeth, but an Action upon the case.

f Though the word Levavit is onely here, and in the Writ (herein mentioned) used, yet Exaltavit, deexaltavit, Obstruxit, obstupavit, Arctavit, Divertit, &c. nay Prostravit, which is the opposite to Levavit, &c. are within this Act.

¶ Cum in uno casu conceditur breve, in cõsimili casu simili remedio indigẽte, sicuti prius, fiat breve.] See hereafter in this Chapter concerning this Rule.

g 13 E. 1. Juris utrũ 15. 30 E. 1. Quod permittat 10. 32 E. 1. ibid. 14. & tit. Common 24. 31 E. 1. Br. 874. tit. Quod permittat 8. 4 E. 3. 38. 43 E. 3. 25. 1 H. 4. 3. F. N. B. 49. c.

¶ Eodem modo sicuti persona, &c.] g A Parson of a Church shall have a Quod permittat of a Common in the right, and also in nature of a Mordanc', &c. because the Parson had an Inheritance in the Common in the right of his Church.

But of a Nusans done in the time of the predecessor against the Disseisor or hi

his heire, being an injury and wrong, no Quod permittat did lie in that case before this Statute, as it plainly appeareth by this Act it selfe, and the reason was, for that there was no Writ in the Register in that case.

¶ Persona alicujus Ecclesiæ.] These words doe include Vicars, Prebendaries, &c. and all other Ecclesiasticall persons which could not have a Quod permittat in the like case before the making of this Act; For private persons, though they had but an estate taile they might have had a Quod permittat, and therefore no provision was made for them, but onely for Parsons of a Church, and the like. Regist. 32,33.

¶ Breve utrum.] A Juris utrum did lie at the Common Law for a Parson against a lay man, and for a lay man against a Parson, but no Juris utrum did lie for one Parson against another before this Act, because it was the right of a Church, and no lay fee. And the words of the Writ at the Common Law were an sit laicum feodum, &c. Glanv. l. 13. c. 23. Bract. l. 5. fo. 286. Britt. fol. 234, 55, 65. Fleta l. 5. c. 19 & 36. 11 E. 3. Juris utrum. 3. First part of the Institut. sect. 636. Custumier de Norm. ca. 115.

If an Abbot hath a Parsonage appropriated to him, and alienes the glebe of the Parsonage, his successor shall have a Juris utrum, which he hath as Parson, and not as Abbot. 30 E. 3. Juris utrum 5, 19 H. 3. ibidem 16.

A Parson or Chaplain of a Chappel which comes in by admission and institution, shall have a Juris utrum, because he hath no other remedy; other wise it is of a Cardein of an hospitall, a Prior, and the like, because they may have a Writ of Right. 8 E. 3. 60. 5 E. 3. Juris utrum 9. 19 R. 2. ibid. 17.

¶ Et quotiescunque evenerit.] This is a most excellent and necessary rule, for before this Act the Justices did punctually hold themselves to the Writs in the Register, because they could not change them without Act of Parliament; (as elsewhere hath been said) therefore by this generall Law it is notably provided for expedition and administration of Justice, that as often as it should happen in the Chauncery, that in one case there is a Writ (in the Register of the Chauncery) found, and in like case happening under the same right, and needing the like remedy, a Writ is not found, let the Clerks of the Chauncery agree in making of a Writ, or adjourne the Plaintiffe untill the next Parliament, &c. But now let us peruse the words. Bract. l. 5. fo. 413. Fleta l. 2. cap. 12. Lib. 8. fol. 48, 49. John Webs case. First part Inst. & 67.

¶ Consimili casu.] Although there be a speciall Writ grounded upon this Statute, called by the particular name of a Writ In consimili casu, yet many other Writs (though they bears not the name) are grounded upon this Act, as it appeareth in our Books. 31 E. 1. Br. 874. 38 E. 3. 13.

¶ Concordent Clerici.] And albeit that we have treated of this in another place, yet for the understanding of these words, somewhat shall here be said. First part of the Inst. sect. 67.

These that here are called Clerici, were at this time, and before called also Magistri Cancellariæ, and were allociated to the Lord Chancellor; of whom Fleta saith, Cui associentur Clerici honesti et circumspecti, domino Regi jurati, qui in legibus & consuetudinibus Anglicanis notitiam habeant pleniorem, quorum officium sit supplicationes, & querelas conquerentium audire & examinare, & eis super qualitatibus injuriarum ostensarum debitum remedium exhibere per brevia Regis. Lib. 8. fol. 48, 49. John Webs case. Fleta l. 2. cap. 12. 21 E. 3. fol. 38.

And these Writs agreed upon by these Master Clerks were called Magistralia, for distinction sake, between brevia formata de cursu, and these called Magistralia, but hereof more hath been said in another place. Lib. 8. ubi supra.

And one speciall note is to be taken, that this generall Law extends not onely to Writs at the Common Law, but to Writs also grounded upon Acts of Parliament: for example, the Statute of Gloucester doth give a Writ of Entry in case of alienation by Tenant in Dower, to be brought in the life of Tenant in 3 E. 2. Entry 8. F. N. B. 206. f.

3 E.2. ubi supra. 18 E.2. Entry 74. 11 E.2. Entry 68 ibid. 12 E.2. 60. 7 E.3. 17. 8 E.3. 48 6 E.3. 39, 40. 16 Ass. p. 11. Regist. 237. & 235 F.N.B. 207. b. 31 E.1. Entry 64

in Dower, which thereupon is called a Writ of Entry in casu proviso: now upon these generall words Writs have been framed in consimili casu, that is, where Tenant by the curtesie, or Tenant for life doe alien, but it must be in consimili casu with the Statute of Gloucester; for where that Statute speaketh of a reversion, a remainder is not in consimili casu, as some doe hold, that a reversion ex assignatione, though it be but for life, is within the Act.

¶ Atterminent querentes usq; in proximum Parliamentum.] Matters of great difficulty were in auncient time usually adjourned into Parliament to be resolved and decided there, whereof Bracton saith, Si aliqua nova & inconsueta emerserint, quæ nunquam prius evenerunt, & obscurum, & difficile sit eorum judicium, tunc ponantur judicia in respectu usque ad magnam Curiam, ut ibi per consilium Curiæ terminetur: And this agreeth with our Books from time to time,

Bract. lib. 1. ca. 2. Britton fol. 141. 19 H.3. Juris utr. 16. 1 E.3. 7, 8. 2 E.3. 7. 21 E.3. 31 37, 60. 33 E.3. Quar. Imp. 94. 37 Ass. 7. 18 Ass. p. ult. 17 E.3. 35, 49. 39 E.3. 21, 35 17 E.3. 35, 49. 40 E.3. 34, 38. 41 Ass. p. 28. 46 E.3. petit. 18. 13 vowcher 119. 13 H.4. 4. 14 H.4. 34.

And hereof there be infinite precedents in the Rols of Parliament. Vide the Statute of 14 E.3. cap. 5. & 22 E.3. 3. & 2 H.7. 19.

To which end Parliaments were often holden, * King Alfred or Alured did ordain by authority of Parliament, that for ever twice a yeare, or oftner, if need were, in time of peace a Parliament should be holden at London: Pur parlementer sur le gaidement del people de Dieu, coment gents se garderont de pecher, viveront in quiet, receiveront droit per certein usages, & saints judgements, of whom the Poet sung,

* Mirr. c. 2. § 3. & cap. 5. § 1.

Anglorum sic Regna regens, ut non foret illi
Antea Rex similis, æqualis postea nullus.

In historia Eliensi. lib. 2. fol. 39.

And in an ancient Chronicle I reade of him, Aluredus acerrimi ingenii princeps & doctissimus totumque novum & vetus Testamentum in eulogiam Anglicæ gentis transmutavit, &c.

In the raigne of E.1. Parliaments were very frequent, and often holden, and for the most part one Parliament in two yeares.

4 E.3. cap. 14. 36 E.3. cap. 10.

King Edw. 3. ordained by authority of Parliament, that a Parliament should be holden every year once, or more often, if need be: to what end? for maintenance and execution of Lawes, and for redresse of divers mischiefes, and grievances which daily happen.

W.2. cap. 51.

¶ Quod Curia Domini Regis deficiat, &c.] For it is a rule in Law, Quod Curia Regis non debet deficere conquerentibus in justitia exhibenda.

CAP. XXV.

QUia non est aliquod breve in Cancellaria, per quod querentes habent tam festinum remedium, sicut per breve Novæ disseisinæ, Dominus Rex voluntatem habens ut celeris fiat justitia, et quod dilationes in placito communi amputentur et abbrevientur, concedit quod breve Assisæ novæ disseisinæ locum habeat in pluribus casibus quam prius habuit. Et concedit quod de estoveriis bosci, proficuo capiendo in bosco, de nucibus, et glandibus, et aliis fructibus

ctibus colligend', de corrodio, liberatione bladi, et aliorum victualium, ac necessariorum in certo loco annuatim recipiend', tolneto, tronagio, passagio, pontagio, pannagio, et his similibus in certis locis capiend', custodiis boscorum, parcorum, forestarum, chacearum, warennarum, portarum, et aliis balivis, et officiis in feod', jaceat de cætero assisa Novæ disseisinæ. Et in omnibus supradictis casibus modo consueto fiat breve de libero ten'. Et sicut prius jacuit, & locum habuit in communia pasturæ: ita de cætero locum habeat in communia turbariæ, piscariæ, et aliis commun' his similibus, quas quis habet pertinentes ad liberum tenementum, vel etiam sine ten' per speciale factum, ad minus ad terminum vitæ. In casu etiam quando quis tenens ten' ad terminum annorum, vel in custod' illud alienat in feodo, et per illam alienationem transfertur liberum ten' in feoffatum, fiat remedium per breve Novæ disseisinæ. Et habeantur pro disseisitoribus tam ille qui feoffat, quam feoffatus: Ita quod vivente altero eorum locum habeat prædictum breve. Et si per mortem personarum cesset remedium per prædictum breve, fiat remedium per breve de Ingressu: Et quamvis superius fiat mentio de aliquibus casibus, de quibus locum non habuit prius breve Novæ disseisinæ, non propter hoc credat aliquis illud breve non competere, ubi prius competebat. Et licet dubitaverint quidam, utrum in casu quo quis pascat alterius seperale, fieri poterit remedium per prædictum breve, teneatur pro certo, quod in casu illo per prædictum breve bonum et certum est remedium. Caveant de cætero illi qui nominati sunt disseisitores, quod non proponant falsas exceptiones, per quas captio Assisæ differatur, dicendo quod alias transivit Assisa de eodem ten' inter easdem partes, vel dicendo et mentiendo, quod breve de altiori natura pendet inter easdem partes de eodem ten', & super his & consimilibus vocent rotulos, vel recordum ad warrantum, ut per illam vocationem asportare possint vesturam, et levare redditus, et alia proficua ad magnum detrimentum querentis. Et quia prius aliam pœnam non habuit, qui hujusmodi falsas exceptiones mendaciter proposuit, nisi tantū quod post mendacium suum convictum processum fuit ad captionem Assisæ: Dominus Rex, cui odiosæ sunt hu-

juſmodi falſæ exceptiones, ſtatuit qnod ſi quis diſſeiſitor nominatus perſonaliter proponat illam exceptionem ad diem ſibi datum, ſi defecerit de warranto quod vocavit, habeatur pro diſſeiſitore abſque recognitione Aſſiſæ, & reſtituat damna prius inquiſita, vel poſt inquirenda de duplo: & nihilominus pro falſitate ſua puniatur per priſonam unius anni. Et ſi illa exceptio proponatur per balivum, non propter hoc differatur captio aſſiſæ, nec judicium ſuper reſtitutione ten', & damn': Ita tamen quod ſi dominus illius balivi, qui abſens fuerit, poſtmodum veniat coram Juſtic', qui aſſiſam ceperint, & offerat verificare per recordum, vel per rotulos, quod aſſiſa alias tranſivit de eodem ten' inter eaſdem partes, vel quod querens alias ſe retraxit de brevi conſimili, vel placitum pendeat per breve de altiori natura: fiat ei breve de faciendo venire ſuper hoc recordum. Et cum illud habuerit, & videant Juſtic', quod recordum ita ei miſſum valeret ante judicium, quod per illud excluderetur querens ab actione ſua, ſtatim faciant Juſtic' ſcire parti, quæ prius recuperavit, quod ſit ad certum diem, ad quem rehabeat defendens ſeiſinam ſuam, & damna, ſi quæ prius ſolvit per primum judicium, ſimul cum damnis quæ habuit poſt primum judicium reddit': quæ ei reſtituantur in duplo, ſicut ſupradictum eſt: & nihilominus puniatur ille qui primo recuperavit, per priſonam ſecundum diſcretionem Juſtic'. Eodem modo ſi defendens, contra quem tranſivit aſſiſa, in ſua abſentia oſtendat chartas, vel quiet' clam', ſuper quarum confectione non fuerunt jurat' examinat', nec examinari poterunt, pro eo quod de eis non fiebat mentio in placitand', & probabiliter ignorare potuerunt confectionem hujuſmodi ſcriptorum: Juſtic' viſis ſcriptis illis faciant ſcire parti, quæ recuperavit, quod ſit ad certum diem coram eis: & venire fac' jurat' ejuſdem aſſiſæ. Et ſi per veredictum juratorum, vel forte per irrotulamentum ſcripta illa verificaverint, puniatur ille, qui aſſiſam impetravit contra factum ſuum, per pœnam ſupradictam. Nec capiat Vic' de cætero bovem à diſſeiſito, ſed à diſſeiſitore tantum. Et ſi plures ſint diſſeiſitores in uno brevi nominati, nihilominus de uno bove ſit contentus: nec exigat bovem niſi de precio v. s. vel precium.

¶ Tam

¶ Tam feſtinum remedium.] The Aſſiſe of Novel diſſeiſin is not onely maxime feſtinum, ſed maxime beneficiale remedium, for many cauſes:

1. The Defendant ſhall not be eſſoigned.
2. The Defendant ſhall not caſt a Protection.
3. He ſhall not pray in aid, but of the King.
4. He ſhall not vouch any ſtranger, nor any party to the Writ, unleſſe he enter into Warranty maintenant.
5. The ſame Law of Receit.
6. The Parol ſhall not demur, either for the nonage of the Plaintife, or the Tenant, and for divers other cauſes.

¶ Ut celeris fiat Juſtitia, & quod dilationes, &c.] This concerneth the Common-wealth, for Expedit reipublicæ, ut ſit finis litium; and the duty of every good Judge, for Boni judicis eſt lites dirimere. *Regula.* *Regula.*

¶ In pluribus caſibus quam prius habuit.] It is to be obſerved, that at the Common Law there were but two formes of Writs of Aſſiſe of Novel diſſeiſin in the Regiſter of the Chancery, that is to ſay, an Aſſiſe De libero tenemento, and an Aſſiſe De communia paſturæ for his cattell, &c. which was ſo neceſſary, as without it his Free-hold could not be manured: and the Aſſiſe De libero tenemento did lye of houſes, land, rent, and other things which lay in Render, whereof a Præcipe did lye at the Common Law; but of all praſits aprender, which conſiſted in Capiendo, Colligendo, Habendo, Recipiendo, & Exercendo, an Aſſiſe of Novel Diſſeiſin did not lye at the Common Law; but the party was driven to his Quod permittat, in which was great delay, and they which had but an eſtate for life could not maintain that Writ: therefore this Act doth give in all the ſaid caſes a ſpeedy remedy by an Aſſiſe in lieu of the Quod permittat, ſo the ſaid profits were to be taken or had in certo loco; and therefore theſe words, In pluribus caſibus, &c. are verified. 4 E.2. Aſſ.451. 35 Aſſ. p.12. 11 H.6.22. 31 E.1. Aſſ. 440. 4 E.2.ibid. 449. 8 E.2. ibid. 385. 16 E.2. ibid.370.

¶ De eſtoveriis boſci.] Theſe (as by this Act appeareth) conſiſt in Capiendo.

Of this word Eſtoverium, and of the ſeverall kindes thereof, I have ſpoken at large in other places. Lib.5. fol.25. lib. 8. fol.47,48. li.9. fol. 112.

¶ De nucibus, glandibus, & aliis fructibus colligendis.] Theſe and the like conſiſt in Colligendo, and are to be taken in woods: Notandum eſt quod ſub nomine herbagii, non continetur glans, & ideo tempore glandis, & peſſone excluduntur porci, & capræ, niſi ad hoc ſpecialiter agatur, quod talem habeant communiam; glandis enim nomine continentur glans caſtanea, fagina, ficus & nuces, & alia quæq; quæ edi & paſci poterunt præter herbam. Bract lib.4.226.

Nec de concuſſa tantum pluit ilice glandis. Virg. Geo. 4.

¶ De corrodio.] This being a reaſonable ſuſtenance for a man, conſiſteth in Habendo, as by the Writ De corrodio habend' appeareth. 44 E.3. 24, 25.

And albeit this Act ſpeaketh De corrodio, yet an Aſſiſe ſhall be maintained of the part of a Corrodie, but therein alſo are diverſities, as you may read, Lib.8. in Jehu Webs caſe. Lib.8. fol.46. Jehu Webs caſe.

¶ De liberatione bladorum, & aliorum victualium.] Theſe conſiſt in Recipiendo, as belonging to a Corrodie.

¶ Ac aliorum neceſſariorum.] Theſe alſo conſiſt in Recipiendo, as things Quæ pertinent ad victum, veſtitum, & habitationem hominis.

¶ In certo loco annuatim recipiendis.] Note this clause. In certo loco, extends to Rovers, and all the profits aprender, and not to the clause of Offices. But yet the Office must be In certo loco, which is so to be understood, as albeit the Office be removeable, yet it must be In certo loco, when the Assise is brought.

Jehu Webs case. Ubi supra.

¶ Tolneto, tronagio, passagio, pontagio, pannagio, & hiis similibus in certis locis capiend'.] These consist in Capiendo, and of these you may read at large in Jehu Webs case, ubi supra.

¶ Custodiis boscorum, parcorum, forestarum, chaceacrum, warrennarum, portarum, & aliis balivis.] Of these and other Offices, you may read at large in Jehu Webs case; and this Act concerning these Offices is but declaratory, for an Assise did lye of them at the Common Law, because a Præcipe did lye of them, as in that case it appeareth.

7 E. 3. 63. 8 E. 3. 55, 56. 10 E. 3. 27 18 E. 3. 27. 19 E. 2 Vicu 77 7 Ass. 18 10 Ass. 11. 30 Ass. 4 18 E. 2. Ass. 377. 4 E. 2. ibid. 449. 8 E. 2. ibid. 385. 16 E. 2. ibid. 370. 7 H. 6. 8. 22 H. 6. 9 9 E. 4. 6. 27 H. 8. 2. 28 H. 8. Dier 7. 3 Mar. Dier 153 31 H. 8. Br. gentes 134.

¶ Et officiis in feodo.] This Statute being herein (as hath been said) made in affirmance of the Common Law, although the Statute speaketh onely of Offices in fee *; yet such as have Offices in tail, or for life, shall have an Assise, as by the authorities before cited doth appear.

† And albeit the words be generall, yet this Act is only to be intended of Offices of profits, and not of Offices of charge, and no profit.

But this Act doth extend as well to Offices in the Admirall Court, Ecclesiasticall Court, or any other Court, where either the Civill or Ecclesiasticall Law, or any other Law then the Common Law, &c. of England doth rule; as to Offices in Temporall Courts which are governed by the Common Law, &c. as by the authorities aboveſaid, and Jehu Webs case appeareth.

* Jehu Webs case, ubi supr. F. N. B. 178. f.

† 31 E. 1. Ass. 440. 21 E. 3. 4. b. 27 H. 8 12.

If a man be disseised of the whole Office, he shall have an Assise De officio cum pertinen'; and albeit the Statute speaketh, De officiis, and if he be disseised of parcell of the profits, he may have an Assise of that parcell: but therein also are diversities, as you may read in Jehu Webs case.

13 E. 3. Parl. 23. 12 Ass. 23. 8 Ass. 4 3 E. 3. Ass. 175. 22 H. 6. 11. 15 E. 4. 4. 30 Ass. 4.

¶ Breve de libero tenemento.] So as now by this Act, in all the cases aboveſaid concerning profits aprender, the Assise of Novel disseisin shall be De libero tenemento.

11 Ass. p. 13. lib. 5 fol. 61. Jo: Webs case.

¶ Et sicut prius jacuit, & locum habuit in communia pasturæ, ita de cætero in communia turbariæ, piscariæ, & aliis communibus hiis similibus.] Bracton, who wrote before the making of this Act, saith, Quod locum habet Assisa de qualibet communia pertinen' ad liberum tenementum, scil. communia pasturæ, turbariæ, &c. And in the Raign of H. 3. which was before the making of this Act, an Assise did lye of a Common of Piscarie; and these opinions had great probability of reason: yet because (as hath been said) there was no Writ in the Register in these cases, therefore before this Act no Writ did lye by the generall opinion of the Judges; but now this Act hath cleared the question.

Bract. li. 4. fo. 231 23 H. 3. Ass. 438. 12 H. 3 ibid. 417. Temps R. 2. Grant 104.

¶ In casu etiam quando quis tenet tenementum ad terminum annorum, vel in custodiam, & alienat in feodo.] This branch is an affirmance of the Common Law, for the Free-hold being in the lessor, or in the heir, the livery being made by the Lessee for years, or Gardein, doth work a disseisin, because by his tortious livery he disseiseth the les-

4 E. 2. Ass. 790. 19 E. 2. ibid. 400. 3 E. 4. 1. 15 H. 7. 4

for or heir, for the which they may have an Assise of Novel disseisin at the Common Law, and both the Feoffor for making, and the Feoffee for taking a fortious livery were both Disseisors: and so it is if Tenant at will, or Tenant at sufferance make a Lease for yéers, and the Lessee enter, this is a Disseisin to the Lessor at the Common Law. 12 E. 4. 12.

This Act speaketh first of a Tenant for yéers, and yet a Tenant by Elegit, Statute Marchant, or the Staple are within this Law: and so it is of a Tenant at will, or a Tenant at sufferance, for all these have a possession, but otherwise it is of a Bailife, for he hath no possession at all. See the ancient Terms, cap. Elegit. 3 E. 4. 1. 4 E. 2 Ass. 790.

2. Of Gardein, which extendeth not onely to Gardein in Chivalry, but to Gardein in Socage, & pur cause de nurture. 8 Ass. 28. 8 E. 3. 63. 15 H. 3. Brc. 878. 20 H. 3. Ass. 432.

3. * Of an alienation in fée, and yet an alienation in tail, or for life is within this Act, because they are within the same mischief. * Bract. li. 4. f. 216. Brit. cap. 32. Disseisin. Fleta lib. 4. ca. 17.

4. † A Tenant for yeers, or a Gardein make a Lease for life, the Remainder for life, the Remainder in fee, and Tenant for life enter, he is a Disseisor, because he taketh the first livery; and so it is of him in the Remainder for life, or in fee, if he enter. 7 E. 3. 11. 43 Ass. 45. † 50 E. 3. 22.

¶ Fiat remedium per breve de ingressu.] Here it is objected, that if Tam feoffator, quam feoffatus be Disseisors, by the Common Law, and so declared by this Statute:

1. How the Lessor or heir can have a Writ of Entry, and suppose the Entry by the Lessee or Gardein?

2. Whether the Lessor or the heir may not have an election, either to have his Assise, or his Writ of Entry?

To the first it is answered, that albeit it be a Disseisin, having regard to the Lessor or heir, for the benefit of the Assise; yet between the Lessee or Gardein, and the Feoffee, it is a Feoffment, whereunto a Warranty may be annexed, and a Voucher had of them to recover in value (as in another place hath been said) so as the Lessor or the heir may have a Writ of Entry in the Per against the Alienee, and principally, because it is affirmed by this Act. See the first Part of the Institutes, sect. 698. & 611.

To the second, this Act hath prescribed a form and order concerning alienations after the Act, viz. that living either the Feoffor or Feoffee, an Assise should lye; and therefore living either of them, a Writ of Entry doth not lye: but for alienations before this Act, a Writ of Entry might have been brought since this Act. 4 E. 2. Ass. 790. 19 E. 2. ibid. 400. 15 H. 3. Brc. 878.

¶ Et quamvis superius fiat mentio, &c.] This is but abundans cautela, and yet prudently added ad majorem rei securitatem.

¶ Et licet dubitaverint quidam utrum in casu quo quis pascat alterius seperale, &c.] This Assise was in this case maintainable by the Common Law.

These words are to be intended, when one claimeth Common in the severall land of another, and puts in his cattell to eat the same; the owner of the soil hath two wayes to help himself, either to wast the possession, and then to bring his Assise as one out of possession, as in the common case of a Disseisin, and then he shall have Judgement to recover the land and damages; or else he may keep his possession, and bring his generall Writ of Assise of Novel disseisin: and if the Tenant plead to the Assise, that the Plaintife was Tenant of the land the day of the Writ purchased, and yet is; the Plaintife may maintain his Writ, and say, that the land was, and is his severall, and the Defendant did feed his severall with his cattell, and according to this branch of this Act he prayeth the Assise; and in this case if it be found for the Plaintife, he shall have Judgement to hold the land as his severall, and damages. 27 Ass. p. 30. Kelwey 12 H. 7. 20. F. N. B. 178. h. Liure de Entries Rast. 65.

Note

Note that in this caſe he is not diſſeiſed of the land, but of the ſeverall of his land.

And this feeding is to be underſtood, when one claimeth a Common appendant, appurtenant, or in groſſe, and for the uſe of the ſame doth put in his cattell; this claim, and putting in of his cattell is a Diſſeiſin of the ſeverall of the land, and ſhall have Judgement, as is aforeſaid, accordingly: but if the cattell come in by way of eſcape, this is a Treſpaſſe, and no Diſſeiſin of the ſeverall within this Statute.

Bract. li. 4. fo. 217 Fleta lib. 4. cap. 1. 27 Aſſ. p. 51. 28 Aſſ. p. 50. F.N.B. 178. i.

By the Common Law a man that is in ſeiſin of his land may have an Aſſiſe, for that he is diſſeiſed of the quiet injoying of his land; as when the Lord, or any other that hath a Rent, and oftentimes diſtreineth for the Rent, where none is behinde, the Tenant ſhall have an Aſſiſe of Novel diſſeiſin of the land, for that, by reaſon of the frequencie of diſtreſſes, he is diſſeiſed of the quiet injoying of his land, and cannot make his advantage thereof, and frequentia motat tranſgreſſionem in diſſeiſinam.

Bract. li. 4 fo. 216

Mirror ca. 2. § 15 Brit. fol. 108.

And the Mirror ſaith, that diſturbance of one that is in peaceable poſſeſſion, in three caſes doth amount to a Diſſeiſin: as if the Lord that is in quiet poſſeſſion of his Rent cometh to diſtrein, and is by the Tenant diſturbed, ſo as he cannot take a diſtreſſe, this diſturbance is a diſſeiſin of the Rent.

2. When the Lord hath taken a Diſtreſſe, and the Tenant pay not his Rent, but diſturb him by unjuſt ſute of a Replevie.

3. When any diſtrein ſo outragiouſly (that is, ſo often) as the terre Tenant cannot plough, or duly uſe his ground.

13 Aſſ. p. 1. 26 Aſſ. p. 35. 44 E. 3. 23. 7 H. 4. 16. 1 H. 4. 5, 52. Bro. covert. 68. Doct. & Stud. li. 2. fo. 113. 29 E. 3. 27. M. 18 E. 1. Coram Rege Rot. 35. North. 13 R. 2. Record 32.

¶ Caveant de cætero illi qui nominati ſunt diſſeiſitores, &c.] A Feme covert and an Infant are not within this Statute to have corporall puniſhment by impriſonment by their plea, by vouching of a Record, and failing of it.

This Act doth not extend to an Aſſiſe of Mordanc.

See a notable Record ſoon after the making of this Act, upon this branch of this Act, Mich. 18 E. 1. Coram Rege Rot. 35. North.

In a Formedon, or any other reall Action, if the Tenant plead a Record, and fail thereof at the day, the Demandant ſhall not have ſeiſin of the land, but onely a Petit cape; for this Statute extendeth onely to the Aſſiſe of Novel diſſeiſin: and in caſe of the Aſſiſe, if the Tenant before this Statute had pleaded a Record, and failed thereof, yet the Aſſiſe ſhould have been taken, as appeareth by this Act.

1. Part of the Inſtitutes, ſect. 494 Lib. 7. fol. 26.

Here it is to be obſerved, that every man ſhall plead that, which is apt and pertinent to his caſe; and therefore a Diſſeiſor that is not Tenant of the land ſhall not plead any thing that concerns the tenancie of the land, as a releaſe of all Actions reals, but ſhall plead a releaſe of Actions perſonals, or any other plea that doth excuſe himſelf of damages.

1 Aſſ. Pl. 1. 2 Aſſ. Pl. 4. 8 E. 3. 1. 8 Aſſ. 2. 9 E. 3. 13, 16. 9 Aſſ. 4. 25 Aſſ. 26. 8 H. 6. 9. 21 H. 6. 58. 22 H. 6 44. 1 E. 4. 4. 8 H. 7 11. 9 H. 7. 24. 11 H. 7. 11. F.N.B 182. a.

¶ Et ſi illa exceptio proponatur per balivum, non propter hoc differatur captio Aſſiſæ, nec judicium, ſuper reſtitutione tenementi, &c.] In an Aſſiſe, as by this branch it appeareth, the Bailiffe cannot plead any matter of Record, either in barre or to the Writ: for the Bailiffe cannot plead any matter, or any plea out of the point of the Aſſiſe, nor any thing that is not triable by the Aſſiſe, nor any plea which he cannot conclude, Et ſi trove ne ſoit nul tort, nul diſſeiſin. Hereby it appeareth what treaſure may be found in the Mines of theſe ancient Statutes.

And if therefore the Bailiffe do plead any matter of Record, yet the Juſtices ſhall proceed, &c. and give Judgement; but then the Defendant named in the Aſſiſe may come unto the Juſtices, and verifie that there was ſuch a matter of Record, &c. and he ſhall have a Certificate of Aſſiſe by force of this Act.

And

And the Writ that is given in this caſe is after judgement, but the certificate of Aſſiſe that was at the Common Law was after verdict; and before or after judgement when the verdict was not well examined by the Juſtices &c. the Juſtices of office might examine it, whereof we need not to treat any further in this place, for that this Statute doth not extend to that kinde of certificate; onely I may note two things, 1. That when the Recognitors of the Aſſiſe give a full generall verdict, there lieth no certificate at the Common Law. 2. That if any of the Recognitors of the Aſſiſe that gave the verdict died, the certificate failed at the Common Law, for it was to ſupply the defect of their former verdict: See hereafter more of this matter in this Chapter.

Bract. l 4. fol. 289, &c. 293. Britton fo. 239. 43 E 1, 5 Regiſt. 200. Judic' 22. 17 E. 3. 28 12 H. 4. 9. 2 H. 5. 5 F.N.B. 180, 183. vet. N.B. 111, &c Hil. 19 E. 1. coram Rege Rot. 35. Suff. 8 E. 2. aſſ. 412 12 H. 4. 9.

Note the words of the Aſſiſe are Attachias eum, vel balivum ſuum, &c. And the Bayliffe plead in his owne name; I. de C. tanquam balivus A. de B. dicit: and not A. de B. per balivum ſuum.

¶ Eodem modo ſi defendens, contra quem tranſivit aſſiſa, in ſua abſentia oſtendat chartas, vel quiet' clam', &c.] This branch doth not onely extend to an Aſſiſe of Novel diſſeiſin, but to the Aſſiſe of Darrein preſentment, Juris utrum, and Aſſiſe of Mordaunc', and ſome have thought to an attaint alſo: So as the Tenant ſhall not onely have a Certificate of an Aſſiſe by the former branch upon matter of Record, but alſo by this branch upon Deeds and Quiet claimes, and the reaſon thereof is, for that the Bayliffe could not plead the ſame.

Regiſt. Judic' 11, 12. 12 H. 4. 9. F.N.B. 183. c. f. & 196. c. 32 Aſſ. p. 1. 2 H. 5. 5 33 H. 6. 20.

And it is to be obſerved, that after the Bayly hath pleaded to the Aſſiſe, the Tenant may come before the Aſſiſe taken, though it be after the Aſſiſe awarded, and plead any Deed, Quiet-claime, or other matter of Certificate, and ſhall not bee driven after the Aſſiſe taken, &c. to ſue his Certificate upon this Act to trouble the Tenant and the Recognitors of the Aſſiſe, Quia fruſtra fit per plura, quod fieri poteſt per pauciora.

11 H. 7. 11. 11 Aſſ. p. 3. 11 E. 3. Aſſ. 85 20 aſſ. 6. 50 E. 3. 20

¶ Venire facias jurat' ejuſdem Aſsiſæ: Et ſi per veredictum juratorum, &c.] Upon this branch it hath been conceived, that albeit that ſome of the former Recognitors be dead, that it ſhall be tried by the former and by others; for though this Act doth ordain that a Venire facias ſhall be awarded to the Jurors of the ſame Aſſiſe, yet the ſubſequent words be, Et ſi per veredictum juratorum, and ſaith not prædictorum; ſo as upon this Act an addition may be made.

12 H. 4. 10. 7 H. 4. 45. 32 Aſſ. 1. F.N.B. 183. c.

In an Aſſiſe the Plaintiffe made title to ten Marks rent by ſpecialty of the graunt of the Tenant, and the Aſſiſe was taken by default, and after the Tenant upon ſhewing of a Deed of defeaſance of the ſame rent upon certain conditions to be performed on the Plaintiffes part, or otherwiſe the rent to ceaſe, which he averred to be broken, which Deed of defeaſance did beare date in a forein County, viz. in London, whereupon a Certificate upon this Statute was prayed before the Juſtices of Aſſiſe, who adjourned the ſame in Bank to be reſolved, whether a Certificate did lie upon this forein defeaſance: where it was awarded that the Certificate was maintainable, and that the Deed of defeaſance being denied ſhould be tried in London, where it was found for the Tenant, whereupon the Certificate was demaunded to be taken in the County where the Aſſiſe was brought: Out of this Record three things are to bee obſerved.

32 Aſſ. p. 1. 14 E. 3 receit 134. Br. certificat Daſſ. 13. Paſch 31 E 3. fol. 35. in libro meo, le Counteſſe de Atholes Caſe.

1. That a Certificate doth lie upon a defeaſance bearing date in a forein County (as well as upon a Charter or acquitance) which was tried by Jurors of that forein County, and by none of the Recognitors of the Aſſiſe.

2. That a Certificate lieth by this Act upon a recovery by default, as well as where the Tenant pleadeth by Bayly to the Aſſiſe.

3. That

26 Ass. p. 5. 12 H. 4 20. F. N. B. 181. c.

3. That the Certificate must be sued and adjudged in the County where the Assise was sued.

¶ Nec capiat Vic' de cætero bovem à disseisito, sed à disseisitore tantum.] This Ore which the Sheriffe tooke was not any reward for doing of his office, (pro officio suo exequendo) for that was prohibited by the Statute of W. 1. cap. 26. but this was a duty due by auncient custome after the cause sued.

W. 1. c. 26. 42 E. 3. 5. 4 E. 4. 10. 21 H. 7. 17. Stamf. Pl. Cor. 49. 2.

But where it was due onely from the disseisor, the Sheriffe before this Act did also incroach the like upon the disseisee, which is restrained by this Act, and to be taken onely of the wrong doer, and neither of the disseisee, nor of the Tenant that is no disseisor.

¶ Et si plures sint disseisitores in uno breve nominat, nihilominus de uno bove sit contentus.] This branch is in affirmance of the Law, for seeing they are joyned in one Writ, they are as to this purpose but as one disseisor, and therefore but one Ore is due unto the Sheriffe.

A man that is indicted and arraigned for two felonies, shall pay but for one deliverance onely, for though the felonies be severall, yet the person that is delivered is but one.

26 Ass. p. 47.

¶ Nec exigat bovem, nisi de precio 5. s. vel precium.] Herein the makers of this Law did adde this branch very provident, for there is nothing more incertaine then prices of things which oftentimes rise and fall, and specially of victuals, and therefore here having set down the price of the Ore, they adde, if that should not bee the just price of the Ore, which they foresaw might not continue long, then the Sheriffe should have 5. s.

CAP. XXVI.

IN brevibus de rediſſeiſina adjudicentur de cætero damna in duplo: & ſint rediſſeiſitores de cætero irreplegiabiles per commune breve. Et ſicut in ſtatuto de Merton proviſum fuit illud breve de his qui diſſeiſit' fuerint, poſtquam recuperaverint per aſſiſam Novæ diſſeiſinæ, mortis anteceſſoris, aut per alias juratas ulterius de cætero habeat illud breve locum in illis qui recuperaverint per defaltam, redditionem, aut alio modo ſine recognitione aſſiſarum vel juratarum.

Merton cap. 3.

By the Statute of Merton both the Writ of Rediſſeiſin, and of the Post diſſeiſin were given.

This Statute is an Act additionall in three severall points.

1. Where the Statute of Merton gave but ſingle damages, this Act doth give double damages both in the Rediſſeiſin and Poſt diſſeiſin, but the Jury is to give the ſingle, and the Court is to double them.

Marlb. cap 8.

2. Where notwithſtanding the Statute of Merton and of Marlebridge, cap. 8. he might be replevied by the Common Writ, yet by this Act he cannot to be.

2. Where

3. Where the Statute of Merton extended onely to Redisseisins upon recoveries in Assise of Novel disseisin by verdict of the Recognitors, and to Post disseisins upon recoveries by verdict onely; this Act doth extend to recoveries by default, reddition, aut alio modo, as upon demurrer, &c. so as hereby the Redisseisin, and Post disseisin doe lie in many more cases then they lay before.

See before in the Exposition of the Statute of Merton and Marlebridge.

If an Assise be brought against A. and B. and A. is found the disseisor, and B. the Tenant, and the Plaintiffe recovereth, and B. the Tenant disseiseth the Plaintiffe again, the Plaintiffe shall have no Redisseisin, but a Post disseisin, because a Redisseisin lieth not but against him that was party to the former Disseisin.

CAP. XXVII.

POstquam aliquis posuerit se in inquisitionem aliquam ad proximum diem, allocetur ei essonium: sed ad alios dies sequentes per essonium non differatur captio inquisitionis, sive prius habuit esson', sive non. Nec admittat' esson' post diem datum prece partium, in casu in quo partes consentiunt venire sine essonio.

The Statute of Marlebridge did provide, Quod postquam aliquis posuerit se in inquisitionem aliquam, &c. non habebit nisi unicum essonium, &c. By which Statute it was not certainly limited when he should have that one essoine, and thereof ensued a great mischiefe, for the Defendant would not be essoined but at the Habeas corpus, and then the Jurors should lose their issues, and the inquest should not bee taken, to the great vexation and losse of the Jurors. Marlb. cap. 13. 9 H. 5. 12. Westm. 1. cap. 41.

And therefore this Statute chiefly for the ease of the Jurors provideth, that the Defendant should have but one essoine, and that essoine must be at the first day, and that is at the Venire facias, and if he neglect that next time, he shall never have it after.

This Act is to be intended onely of a plea personall, and of a common essoine, and not of an essoine de service le Roy, for that he may cast when he will. See the Exposition upon the Statute of Marlebridge cap. 13. 7 E. 2. essoin 81, 83. Dier 15 El. 324. b

And albeit the words of this Act are generall, yet it must be understood onely in cases where an essoine doth lie, which is implied by this word allocetur, and therefore if the Defendant come in by Exigent, or Cepi corpus, and joyne issue ad proximum diem, he cannot be essoined, for that he either remaineth in ward, or goeth by Mainprise, and therefore before this Statute could not be essoined, and this is a branch of restraint, and not of enlargement. 35 H. 6. 53.

¶ Nec admittatur essonium post diem datum prece partium.] And the reason is, for that seeing this day is given by the prayer and agreement of the parties without any essoine, this Statute doth enact, that post diem datum prece partium, no essoine shall be admitted.

CAP. XXVIII.

W. 1. cap. 41.

CUm per ſtatutum Weſtm. 1. ſtatuatur quod poſtquam tenentes ſemel comparauerint in Curia, non allocetur eis eſſonium in brevibus Aſiſarum: eodem modo de cætero obſervetur de petentibus.

¶ In brevibus Aſiſarum.] This Act extendeth not to Aſſiſes of Novel diſſeiſin no more then the ſaid Statute of W. 1. here recited doth: See before the Expoſition of the Statute of W. 1. and the rather for that this Act ſaith de petentibus, and the Plaintiffe in an Aſſiſe of Novel diſſeiſin is called querens and not petens, but this Act extendeth to Mordaunc', Juris utrum, and Attaints, and doth remedy the miſchiefe of the Demandants ſide, which was omitted in the Statute of W. 1. And note that a Writ of Attaint is here comprehended under this word Aſſiſa, becauſe it hath the quality of an Aſſiſe, viz. to have a Jury returned the firſt day, and ſo in equall miſchiefe.

¶ Eodem modo.] This is an Act of reference, that in all caſes where the Act of W. 1. doth take away the common eſſoin from the Tenant after appearance, there this Act doth take it from the Demandant after appearance. See more of this matter in the Expoſition upon the ſaid Act of W. 1.

CAP. XXIX.

BReve de tranſgreſſione ad audiendum & terminandum de cætero non concedatur coram aliquibus Juſticiariis, exceptis Juſticiariis de utroque banco, & Juſticiariis itinerantibus, niſi pro enormi tranſgreſſione, ubi neceſſe eſt apponere feſtinum remedium. Et dominus Rex de gratia ſua ſpeciali hoc duxit concedendum. Nec etiam de cætero concedatur breve ad audiend' & terminand' appella coram Juſtic' aſſign', niſi in ſpeciali caſu, & certa cauſa, cum dominus Rex hoc præceperit. Sed ne hujuſmodi appellati, vel indictati diu detineantur in priſona, habeant breve de Odio & Atia, ſicut in Magna Charta, & aliis ſtatutis dictum eſt.

Mag. Chart. c. 26 W. 1. cap. 11. Gloc'. cap. 9.

¶ Breve de tranſgreſsione.] Albeit the Statute mentioneth only a Writ, becauſe commiſſions were in thoſe dayes moſt commonly graunted by Writ, as the commiſſion to Juſtices in Eyre, Juſtices of Oier and Terminer of Gaole Delivery, &c. yet this Act doth not onely extend to authority graunted by Writ, but by commiſſion alſo.

Tran

Transgression here is taken in a large sense, for any outrage or misdemeanour.

Commissions of Oier and Terminer are of three sorts.

One generall at the suit of the King, as to hear and determine all manner of Treasons, Felonies, Riots, Routs, Trespasses, &c. 2 E. 3. cap. 8.

Another particular at the suit of the party, and that in two sorts: One naming particularly the party grieved, as Rex dilectis & fidelibus suis A. B. & C. salutem. Ex gravi querela D. accepimus quod E. F. & G. & alii malefactores, & pacis nostræ perturbatores in ipsum D. apud N. vi & armis insultum fecerunt, &c. And the other is more generall, and of this form, Rex dilectis, &c. Ex clamosis querimoniis diversorum hominum de Com' N. ad nostrum sæpius pervenit auditum, quod A. Episcopus Winton', &c. plures & diversas oppressiones, &c. 29 E. 3. 37.

The third is aswell at the suit of the King, as of the party, all in one Writ or Commission, as hereafter in this Chapter shall be touched.

The mischief before the making of this Act was, that Commissioners of Oier and Terminer, &c. were procured, and named by the parties whom the matter concerned; so as the Commissioners were neither indifferent, nor of sufficient knowledge and learning. And the mischief was the greater, for that when a man sued out a Commission of Oier and Terminer at the suit of the party against divers persons for taking of his goods, and for esloigning the same, to the end to waste and convert the same to their own uses; the party that sued the Oier and Terminer should have a Writ to the Sheriffe, rehearsing this matter, and command him to arrest the goods, and to put them in safeguard untill it be otherwise provided or adjudged by the Justices of Oier and Terminer, &c. and if upon this suit it were found for the Plaintife, the Justices of Oier and Terminer might restore the party to his goods, or give damages to him for them; wherein it doth vary from an Action of Trespasse sued before Justices of the one Bench or the other: and where the party in particular is to be restored to his goods, or to recover damages, the suit is properly by Writ, according to the words of this Act (Breve de transgressione:) and by the Statute of 34 E. 3. the Commissioners or Justices named in the Writ are to be named by the Court, and not by the party. Regist. 126, 127. F.N.B. 112. f. F.N.B. 112. f. Regist. 123. 34 E. 3. cap. 1.

The ancient form of Commissions of Oier and Terminer were of all Treasons, Felonies, &c. Grievances, Extortions, and Deceits made to the King and to his people, aswell at the suit of the King, as of the party, &c. 42 Ass. p. 5.

If a Commission of Oier and Terminer be discontinued or exp'red, &c. the Indictments and Records shall be removed into the Kings Bench, as to their proper center. 44 E. 3. 31. F.N.B 243. 38 H. 8. Commiss. Br.

¶ Exceptis Justiciariis de utroque banco.] Here is remedy for both the said mischiefs, for the Justices of either Benches are presumed to be men of integrity, indifferencie, skill, and knowledge.

Hereof you may read in Stamford, Plac. cor. 55, 56.

¶ Nisi pro enormi transgressione, ubi necesse est apponere festinum remedium.] Here it is called, Enormis transgressio.

In the Statute of 2 E. 3. cap. 2. it is called, Grand Leads, or horrible Trespasses.

Fitzherbert saith, that this Writ is to be granted when a great assembly, insurrection, or heinous misdemeanour, or Trespas is committed in any place, then the manner and use is to make such a Commission, to hear and determine such misbehaviours. F.N.B. ubi supra.

The Register termineth it, Enormis seu horribilis. Regist. 125. a.

And if the Trespas be not Enormis seu horribilis, there lyeth a Writ of Supersedeas, or Revocation, Quia non enormis, seu horribilis. Regist. 124. b. 12 Ass. p. 21.

Magna Charta, cap. 8. W. 1. ca. 42

¶ Dom' Rex de gratia ſua ſpeciali, &c.] This is an Act of Grace, for hereby the King is reſtrained of his power to grant Commiſſions of Oier and Terminer to whom he will at his pleaſure.

Nota.

The ſtile of the Record before Juſtices or Commiſſioners of Oier and Terminer, ſometimes have been, Coram Rege & concilio ſuo apud S. &c. and ſometime, Coram concilio Regis apud, &c. whereof take one Record for example, filed thus:

Paſc. 11 E. 3. Coram conc. regis.

Placita coram concilio Regis apud Weſtmon' de termino Paſchæ, Anno regni Regis E. 3. 11. Nicholas Keriels caſe in a Commiſſion of Oier and Terminer.

Brit. fol. 5. 22 E. 3 Coron. 97, 98. 4 H. 6. 15. Regiſt. judic. 76. 3 H. 7. cap. 1. 9 H. 4. 2. 13 H. 4. 10. 17 E. 3 13. 22 E. 4. 19. Dier 120.

¶ Nec etiam de cætero concedatur.] An Appeal doth lye either by Writ Originall, or by Bill.

The Originall Writ iſſueth out of the Chancery. By Bill, as in the Commitie before the Sheriffs and Coroners; alſo before Juſtices of Gaol-delivery, if the appellée be in priſon before them, and (as it appeareth by this Act) before Commiſſioners of Oier and Terminer, before Juſtices of Niſi prius, and by Bill alſo before the Juſtices of the Kings Bench.

44 E. 3. 44. tit. Coron. F. 95.

It ſeemed to Fitzherbert, in abridging of the caſe of 44 E. 3. that Juſtices of Peace having power by the Statute of 34 E. 3. (which there is called, Le novel Statute) might receive an Appeal by Bill, becauſe they had power to hear and determine Felonies; but that Statute doth give them power to hear and determine Felonies at the ſute of the King, and the Book at large ſpeaketh onely of Juſtices of Gaol-delivery.

¶ Sed ne hujuſmodi appellati, vel indictati diu detineantur in priſona, habeant breve de Odio & Atia.] See before in Magna Charta, cap. 26. & 29. Gloc. cap. 9. this branch well explained.

CAP. XXX.

Aſſignentur de cætero duo Juſticiarii jurati, coram quibus, & non aliis capiantur Aſſiſæ novæ diſſeiſinæ, mortis anteceſſoris, & attinctæ: & aſſocient ſibi duos, vel unum de diſcretioribus militibus com', in quem venerint: & capiant aſſiſas prædictas, & attinctas, ad plus ter per annum, viz. ſemel inter quindenam Sancti Joannis Baptiſtæ, & gulam Auguſti: & iterum inter feſtum Exaltationis ſanctæ Crucis, et Octob. Sancti Michaelis: et tertio inter feſtum Epiphaniæ, et feſtum Purificationis beatæ Mariæ. Et in quolibet com', ad quamlibet captionem aſſiſæ, antequam recedant, ſtatuant diem de reditu ſuo; ita quod omnes de com' ſcire poſsint eorum adventum; et de termino in terminum adjornent aſſiſas. Si per vocationem warranti, per eſſon', vel per defectum recognitorum, ſi ad unum diem captio earum differatur. Et ſi aliqua de cau-

cauſa viderint, quod utile ſit; quod aſsiſæ mortis anteceſſoris per eſſonium, vel vocationem warranti reſpectuate adjornentur in banco, liceat eis hoc facere, et tunc mittant Juſticiar' de banco recordum cum brevi originali. Et cum loquela pervenerit ad captionem aſsiſæ, remittatur loquela cum brevi originali per Juſticiar' de banco, ad priores Juſticiar': coram quibus capiatur aſsiſa. Sed de cætero dent Juſtic' de banco in hujuſmodi aſsiſis ad minus quatuor dies per annum, coram præfat' Juſtic' aſsignatis; ut parcant laboribus et expenſis. Atterminentur inquiſitiones capiendæ de tranſgreſs' placitat' coram Juſticiar' de utroque banco: niſi ita enormis ſit tranſgreſsio, quod magna indigeat examinatione. Atterminentur etiam inquiſitiones coram eis de aliis placitis placitatis in utroque banco, in quibus facilis eſt examinatio, ut quum dedicitur ingreſſus, vel ſeiſina alicujus, vel in caſu quum de uno articulo ſit inquirend'. Sed inquiſitiones de groſsis et pluribus articulis, qui magna indigeant examinatione, capiantur coram Juſtic' de bancis, niſi ambæ partes petant, quod inquiſitio capiatur coram aliquibus de ſocietate, cum in partes illas venerint: quod de cætero non fiat niſi per duos Juſtic', vel unum, cum aliquo milite de com', in quem partes conſentiunt. Nec atterminentur hujuſmodi inquiſitiones coram aliquibus Juſticiariis de banco, niſi ſtatuatur certus dies & locus in com', in præſentia partium: & dies & locus inſerantur in brevi de judicio per hæc verba: Præcipimus tibi quod Venire facias coram Juſticiariis noſtris apud Weſtmonaſt', in octa. Sancti Michaelis, niſi talis & talis tali die & loco ad partes illas venerint, xii, &c. Et cum hujuſmodi inquiſitiones captæ fuerint, retornentur in bancis, et ibi fiat judicium, et irrotulentur. Et ſi omiſſa forma prædicta aliquæ inquiſitiones capiantur, pro nullis habeantur: excepto quod aſsiſæ ultimæ præſentationis, et inquiſitiones ſuper Quare impedit atterminentur in proprio com' coram uno Juſticiar' de banco, et uno milite, ad certos tamen diem et locum in banco ſtatutos, ſive defendens conſentiat, ſive non: et ibi ſtatim reddatur judicium. Habeant de cætero omnes Juſticiarii de bancis in itineribus clericos irrotulantes omnia placita coram eis placitat', ſicut antiquitus habere conſueverunt. Item ordinatum eſt, quod Juſti-

ciarii

ciarii ad aſsiſas capiend' aſsignati non compellant juratores dicere præciſe, ſi ſit diſſeiſina vel non, dummodo dicere voluerint veritatem facti, et petere auxilium Juſtic'. Sed ſi ſponte velint dicere, quod diſſeiſina eſt, vel non, admittatur eorum veredictum ſub ſuo periculo. Et de cætero non ponant Juſtic' in aſsiſis, aut juratis aliquos jurat', niſi eos qui ad hoc prius fuerunt ſummoniti.

This Statute conſiſteth of many branches, whereof we ſhall ſpeak in their order: and firſt it is to be ſeen what miſchiefs were before the making hereof: the principall whereof we ſhall touch.

1. Before the making of the Statute of Magna Charta, Aſſiſes were onely to be taken in the Court of Common Pleas, which was miſchievous to the Recognitors of the Aſſiſe: it is provided by Magna Charta, that they ſhall be taken in the proper County once every year, and that remedy was too ſhort, and therefore they are by this Act to be taken oftner.

2. Another miſchief was, that the Juſtices of Aſſiſe were not ſometime but apprentices of the Law, and a Knight aſſociate to them which oftentimes were favourable.

3. And if the Recognitors of the Aſſiſe had not given their verdict, the Juſtices could not (before this Act) have adjourned the Record into the Court of Common Pleas.

4. Alſo, if a forein Plea had been pleaded, or forein Voucher had, they could not have adjourned it into the Court aboveſaid.

27 E. 1. cap. 4. York 12 E. 2, ca. 3

5. Before the making of this Act, all Jurors, together with the parties, came up to the Kings higher Courts of Juſtice, where the cauſe depended, & propter tantam, & intolerabilem populi noſtri jacturam, non ſolum ad eorundem juratorum exoneracionem, ſed etiam ad celerem partibus in curia noſtra placitantibus Juſtitiam exhibendam, &c. And this is the firſt Act that gave the Writ of Niſi prius.

6. Alſo before this Act ſome Juſtices did rule over the Recognitors, to give a præciſe or direct verdict without finding the ſpeciall matter.

Now the remedies do follow.

¶ Aſsignentur de cætero duo Juſtic' jurati, coram quibus et non aliis, &c.] Hereby it appeareth what an honourable Opinion the Law hath of the Kings Juſtices ſworn, that they are omni exceptione majores.

27 E. 1. cap. 4.

But this branch hath been manifoldly altered, for by the Statute of 27 E. 1. cap. 4. theſe Inquiſitions and Recognitions were to be taken coram aliquo Juſticiar' eorundem, coram quibus placitum deductum fuerit, aſſociato uno milite comitatus illius, &c.

12 E. 2. cap. 3.

By the Statute of York, they are to be taken before one Juſtice of the one place or the other, having aſſociate to him, Un piode home de païs, chivalier, ou auter.

14 E. 3. cap. 16.

But by the Statute of 14 E. 3. they may be taken before any Juſtice of the one Bench or the other, or the Kings Serjant ſworn, which is intended of any Serjant at Law, for that every Serjant is ſworn.

Bro. Niſi prius. 37

See the form of the *Poſtea* hereafter in this Chapter.

And this Act is extended to the Kings Attorney, being joyned with one of the Juſtices or Serjants; and albeit the King make choice of ſome Serjants to be of his Councell and fee, yet in a generall ſenſe all be called the Kings Serjants, becauſe they be all called by the Kings Writ.

¶ Ad

¶ Ad plus terræ per annum.] Hereby the former time given by Magna Charta is inlarged.

These dayes are altered by later Statutes.

By 27 E. 1. it is provided they ſhall be taken tempore vacationis. Vide 14 E. 3. 27 E.1. & 14 E.3. ubi ſupra.

¶ Quindena Sancti Johannis Baptiſtæ.] This return amongſt others is taken away by the ſtatute of 32 H. 8. 32 H.8.cap.21.

¶ Gula Auguſti.] Gule of Auguſt. This is alſo mentioned in the Statute of 27 E. 3. &c. the Feaſt of S. Peter ad vincula is on this day, being the firſt day of Auguſt, as it appeareth in Pl. Com. where it is ſaid, Al feaſt de S. Peter en la Gule de Auguſt. 27 E.3. ſtat.3. F.N.B.63.i. Pl.Com.318.

The reaſon why it is called Gula Auguſti, you may reade in Durand, in his Booke De rationali divinorum; Lib. 7. De feſto Sancti Petri ad vincula.

This I have added, not out of any curioſity, but that the Reader might underſtand what he reads, which hath beene mine endeavour throughout all this worke.

¶ Statuant diem de reditu ſuo.] That is, by Proclamation in open Court.

¶ De termino in terminum adjorment Aſsiſas.] See the Expoſition upon the Statute of Magna Charta. Et vide lib. 4. fol. 4. Vernons Caſe. & lib. 8. fo. 57. Le Countee de Rutlands caſe. Mag. Chart. c. 12.

¶ Per vocationem warranti.] Forein pleas are taken within the equity of this Act, and ſo are demurrers dubitfull, and other pleas and proceedings, &c. as well before as after verdict. Mag. Chart. c. 12. Br. adjorn. 29. 47 Aſſ. 1. 49 Aſſ. 23 48 E. 3. 7.

In an Aſſiſe, the Tenant pleads a releaſe made in a forein County, whereupon the Record is adjourned into the Court of Common Pleas; that Court may graunt a Niſi prius into the forein County, for albeit in this caſe the Court of Common Pleas hath by this Act delegatum poteſtatem for the triall of the releaſe, yet all incidents thereunto are therewith graunted. 22 Aſſ. p. 11.

¶ Per eſſonium.] This muſt be intended of an eſſoin ultra mare, for the common eſſoin, or de ſervicio Regis lieth not in this caſe.

¶ Remittatur loquela.] That is, the Record of the Aſſiſe, together with the originall Writ ſhall be remanded to be taken, &c. in the proper County before the former Juſtices.

¶ Atterminentur etiam inquiſitiones coram eis de aliis placitis, &c, in quibus eſt facilis examinatio, &c. Sed inquiſitionem de groſſis & pluribus articulis quæ magnæ indigeant examinatione, &c. niſi ambæ partes petant, &c.] Upon this Statute a Writ in the Regiſter is framed, Quod inquiſitiones, quæ magnæ ſunt examinationis, non capiantur in patria, &c. de ſuperſedendo, &c. Regiſt. 186.

¶ In brevi de judicio in hæc verba.] Præcipimus tibi, quod venire facias coram Juſticiariis noſtris apud Weſtm. in Octabis Sancti Michaelis, niſi talis & talis, tali die & loco ad partes illas venerint, &c. 42 E.3.cap.11.

The

The judiciall Writ now in use hath [prius] before [venerit,] and thereof it taketh the name of Nisi prius.

14 E. 3. cap. 16. 33 E. 3. attaint 77

Although the Statute of 14 E. 3. speak not of an attaint, yet is an attaint within it, for the effect of that Ordinance is, that in all cases where a Nisi prius is graunted, it shall be graunted before Justices of Assise.

23 E. 3. 23. 24 E. 3. 23. 25 E. 3. 39. 14 E. 3. Nisi prius 16. F. N. B. 241. a.

Albeit this Act be generall, yet a Nisi prius shall not be graunted where the King is party, or where the matter toucheth the right of the King, without a speciall warrant from the King, or the assent of the Kings Attorney.

32 H. 6. 9. F. N. B. 241. a. 11 E. 3. Visne 59.

The Duke of Exeter being Plaintiffe in Trespasse, for the Duke a Nisi prius was prayed, and it was denied, for that the Duke was of great power in that County, and if triall should be had in the Country, inconvenience might thereupon follow.

¶ Et cum hujusmodi inquisitiones captæ fuerint, retornentur in bancis, & ibi fiat judicium, & irrotulentur,] Herewith agreeth the Statute of York ubi supra.

By the Statute of 14 E. 3. cap. 16. the Chiefe Justice of that place shall return the Record, and shall return the verdict under his seale.

The return of the Justices is, Ad quem diem hic venerunt partes prædictæ, & Justiciarii ad assisas coram quibus, &c. miserunt hic record' in hæc verba; And this returne is called the Postea, because the Record beginneth thus: Postea die & loco infrà contentis coram (and nameth the Justices of Assise) Justiciariis ipsius domini Regis ad assisas in Com' N. capiend' assignat' per formam statuti venerunt tam le Pl' quam le Def. &c.

Lovre de entries. Rast. 101. Hil. 19 H. 7. Rot. 409. in Communi Banco. 2 H. 7. 10. simile. Dier 5. Mar. 163.

If one of the Justices of Assise die before the returne, a Certiorari may be awarded out of the Court of Common Pleas to the survivor to certifie the verdict; If both the Justices die, the Clerk of the Assise may bring it in without a Certiorari, or a Certiorari may be awarded to the Executors, or Administrators of them to certifie the Record.

Statute of York. 12 E. 2. c. 4. 14 E. 3 c. 16. 17 E. 3. 23.

But this Act was defective, for hereby the Justices of Nisi prius might take verdicts and inquisitions, but they could not Record non-suits of the Demandant or Plaintiffe, or defaults of the Tenant or Defendant, which was remedied by the Statute of York.

¶ Et si omissa forma prædicta aliquæ inquisitiones capiantur, pro nullis habeantur.] For the rule of Law is, Non observata forma infertur adnullatio actus; but that rule is to be understood, De essentiali forma, and not De accidentali.

Regula.

¶ Excepto quod Assisæ ultimæ præsentationis, & inquisitiones super Quare impedit atterminentur in proprio Com', &c. & ibi statim reddatur judicium.] The reason of making of this branch was in respect of the daunger of laps, and therefore in favour of the Patrons this clause was added, that the Justices of Nisi prius have power to give judgement in these two Actions.

4 Mar. Dier 135. 9 El. Dier 260.

And albeit the words of this branch be, Et ibi statim reddatur judicium, yet if the Justices of Nisi prius doe not give judgement, upon returne of the Postea judgement may be given by the Court to which the return is made, for by these words the higher Court is not restrained; and this branch giving to the Justices of Nisi prius power to give judgement, they have thereby power includedly, as incident, given to award execution, that is, a Writ to the Bishop, but that Writ is not returnable; but after the Record be returned into the Common Bench, if the former Writ be not executed, that Court may graunt a Writ

Incident.

Sicut

Sicut alias, returnable into that Court, all which is worthy of ſingular obſervation.

And Juſtices of Niſi prius have power to inquire of incidents. 18 E.3.49,50.

Alſo Juſtices of Niſi prius may amerce Jurors, and demand them upon a pain, and alſo puniſh them for miſdemeanors done in their preſence, which are in deſpite of the King, and thereupon make proces, and what lieth in aide and furtherance of the buſineſſe they may record, likewiſe they may record a prayer to be received. 17 E.3.23.

¶ Habeant de cætero omnes Juſticiarii de bancis in Itineribus Clericos irrotulantes omnia placita coram eis placitat', ſicut antiquitus habere conſueverint.] Hereby it appeareth that the Juſtices of Courts did ever appoint their Clerks, ſome of which after by preſcription grew to be Officers in their Courts; as here it is put for example, that the Juſtices of the Benches in their Circuits had Clerks that enrolled all Pleas pleaded before them as auncientlie they uſed to have, that is, as by the Common Law. Dier 1. Eliz. 175.

Now the cauſe of the making of this branch, was, that the King was informed that he might erect Offices for entring and inrolment of Records in his Courts of Juſtice, and ſpecially before Juſtices of Aſſiſe, which this branch declareth to belong to the Juſtices, and that they had enjoyed the ſame of auncient time, that is, by the Common Law.

And the reaſon thereof is twofold. 1. For that the Law doth ever appoint thoſe, that have the greateſt knowledge and skill, to performe that which is to be done. 2. The Officers and Clerks are but to enter, inroll, or effect that which the Juſtices doe adjudge, award, or order, the inſufficient doing whereof maketh the proceeding of the Juſtices erroneous, then the which nothing can be more diſhonourable and grievous to the Juſtices, and prejudiciall to the party; therefore the Law, as here it appeareth, did appropriate to the Juſtices the making of their owne Clerks and Officers, and ſo to proceed judicially by their own inſtruments: And that this was the Common Law, the King cannot graunt the Office of the Shire or County Clerk, (who is to enter all judgements and procedings in the County Court) for that the making of the Shire Clerk belongeth to the Sheriffe by the Common Law, as in Mittons Caſe it appeareth, Et ſic de cæteris. Lib.4.fol.32. Mittons Caſe.

¶ Juſticiarii ad aſsiſas capiend' aſsignat' non compellant juratores dicere præciſe ſi ſit diſſeiſina, vel non, dummodo dicere voluerint veritatem facti, & petere auxilium Juſtic'. Sed ſi ſponte voluerint, &c.] The firſt queſtion upon this branch was, Whether in caſe of Aſſiſe, if the iſſue were joyned upon a collaterall matter out of the point of the Aſſiſe, whether upon this ſpeciall iſſue the Jury might give a ſpeciall verdict. Lib.9.fo.1,11,13 Dowmans Caſe. See the firſt part of the Inſtitutes, ſect.366,367.

2. The ſecond queſtion was, Whether it did extend to all other Actions, or onely to theſe Actions wherein the Defendant or Tenant might plead a generall iſſue. 45E.3.20. 42E.3.1. 40 E.3.2.

3. Thirdly, whether in all Actions the Jury might give a ſpeciall verdict upon a ſpeciall iſſue, upon an abſque hoc, or otherwiſe. 41 E.3.10.47 E.3 19. 16 E.3. verdict 21. 9 H.7.3.

In the end it hath been reſolved, that in all Actions reall, perſonall, and mixt, and upon all iſſues joyned generall or ſpeciall, the Jury might finde the ſpeciall matter of fact pertinent, and tending only to the iſſue joyned, and thereupon pray the diſcretion of the Court for the Law: and this the Jurors might doe at the Common Law, not onely in caſes betweene party and party, whereof this Act putteth an example of the Aſſiſe, but alſo in Pleas of the Crown Dier 28 H.8.32. 2 Mar.115. 9 El. 260. 11 El.279. 13 El.30.32 H.8. 47. Pl.Com.92. 3 E.3. Cor. 284, 286.43aſſ.31.44E. 3.44. 26 H.8.5.

at the Kings suit, which is a proofe of the Common Law, for if this Act had made a new Law, and that other like cases betweene party and party had béene taken by equity, yet the King had not béene bound thereby: and note the next precedent clause of this Act, and the subsequent are both in affirmance also of the Common Law.

¶ Et de cætero non ponant Justic' in assisis, aut juratis aliquos juratores, nisi eos qui ad hoc prius fuer' summoniti.]

Lib. 9. fol. 13. Dowmans Case.

Where this branch saith non ponant Justic' in assisis, the meaning is that the Justices shall not suffer the Sheriffe to put into the pannell any men which were never summoned: for before this Act if the Sheriffe had made a pannell, and the Jurors had not appeared, the Sheriffe would have impannelled others of the same County who were never summoned, which was a wrong to them that were so newly returned, and is now prohibited by this Act, whereupon any so unduly returned may have his Action against the Sheriffe, for this Act is made for the relefe of them that were so unduly returned.

CAP. XXXI.

CUm aliquis implacitat' coram aliquibus Justic', proponat exceptionem, & petat quod Justic' eam allocent, quam si allocare noluerint, si ille qui exceptionem proposuerit, scribat illam exceptiouem, et petat, quod Justic' sigillum suum apponant in testimonio, Justiciarii apponant sigilla sua. Et si unus apponere noluerit, apponat alius de societate. Et si forte ad querimoniam de facto Justiciariorum venire fac' dominus Rex recordum coram eo, & si illa exceptio non inveniatur in rotulo, et querens ostendat exceptionem scriptam sub sigillo Justic' appenso, mandetur Justiciario, quod sit ad certum diem ad cognoscendum sigillum suum, vel ad dedicendum. Et si Justic' sigillum suum dedicere non possit, procedatur ad judicium secundum illam exceptionem, prout admittend' esset vel cassand'.

At the Common Law, before the making of this Act, a man might have had a Writ of Error for an Error in Law, either in redditione judicii, in redditione executionis, or in processu, &c. and this Error in Law must be apparent in the Record, &c. For the Writ of Error saith, Quia in Recordo & processu, &c. error intervenit manifestus, &c. Or for Error in fait, by alledging matter out of the Record, as death of either party, &c. before judgement: Now the mischiefe before this Statute was, that when the Demandant or Plaintiffe, or the Tenant or Defendant did offer to alledge any exception, (as in those dayes they did ore tenus at the barre) praying the Justices to allow it, and the Justices over-ruling it so as

as it was never entred of Record, this the party could not aſſign for error, becauſe it neither appeared within the Record, nor was any errour in fact, but in Law, and ſo the party grieved was without remedy, for whoſe relief this Statute was made.

¶ Cum aliquis implacitatur.] This Act doth extend aſwell to the Demandant or Plaintife, as to the Tenant or Defendant in all Actions reall, perſonall, and mixt; and regularly it extendeth not to a ſtranger to the Record, which is not to come in lieu of the Tenant, &c. For example, if the Bailife of a Franchiſe demand Conuſans, and the Juſtices over-rule the ſame, he cannot pray the Juſtices to ſeal a Bill, becauſe he is no party to the Record: but yet one that offereth to be received, and is denyed, albeit he be none of the parties to the Writ, yet becauſe he is privie in eſtate, and to be in loco tenentis, he ſhall have the benefit of this Act; and ſo it is of the Vouchée, though he be no party to the Writ, becauſe he is in loco tenentis. F.N.B. 21.n. & 22.a. 20 E.3. Conuſans 46. 17 E.3.23.a.

¶ Coram aliquibus Juſticiariis.] Albeit the letter of this branch ſeemeth to extend to the Juſtices of the Com'pleas only, by reaſon of theſe words, Et ſi forte ad querimoniam de facto Juſtic' Venire fac' Dominus Rex recordum coram eo, (which is by Writ of Errour into the Kings Bench) yet that is put but for an example, and this Act extendeth not onely to all other Courts of Record (for upon Judgements given in them a Writ of Errour lyeth in the Kings Bench) but to the County Court, the Hundred, and Court baron, for therein the Judges were more likely to erre; and albeit, of Judgements given in them a Writ of Errour lyeth not, but a Writ of falſe Judgement in the Court of Common Pleas, yet the caſe being in the ſame, or greater miſchief, the purview of this Statute doth extend to thoſe inferiour Courts.

¶ Proponat exceptionem.] This extendeth not onely to all Pleas dilatory and peremptory, &c. and (as hath been ſaid) to prayers to be received, Oier of any Record or Deed, and the like; but alſo to all challenges of any Jurors, and any materiall Evidence given to any Jury, which by the Court is over-ruled. 11 H.4. 52, 65. 9 Aſſ.p.8. 16 E.3 Quare non admiſit 3. Regiſt. 182. 21 E.4.2.b. 21 E.4. 12. b. F.N.B. 21.n.

¶ Juſticiarii apponant ſigilla ſua.] Here is an expreſſe commandment given to the Juſtices; and yet if one refuſe, and any of the other ſeal the Bill, it ſufficeth, but if they all refuſe, it is a contempt in them all; for it lyeth not in the power of the Juſtices that denyed to perfect the purview of this Act, to take advantage of their own wrong, and the party grieved may have a Writ grounded upon this Statute to the Juſtices, commanding them to put their Seals Juxta formam ſtatuti, & hoc ſub periculo quod incumbit nullatenus omittatis. *Nota. Aid of Exception.* Regiſt. 182.

And though no time be appointed by this Act, when the Juſtices ſhall put their Seals, the party muſt pray the ſame before Judgement; but if they deny it, then may they be commanded after Judgement to put their Seals, and then the putting of their Seals after Judgement ſhall be ſufficient. 11 H.4. 52, 63. Regiſt. ubi ſupr. F.N.B. 22.a.

¶ Et querens oſtendat exceptionem ſcriptam ſub ſigillo.] Albeit the party grieved be dead, yet his heirs or Executors, &c. according to the caſe, ſhall have a Writ of Errour upon this Bill of Exception.

In this caſe the Plaintife can alledge no diminution, for he muſt hold himſelf to the matter in the Bill ſealed; and if it be not there, it was his folly to omit it. 11 H.4. ubi ſupr.

¶ Mandetur Juſticiario quod ſit ad certum diem.] Albeit ſome have holden, that the Juſtices may bring in the Bill under their 11 H.4. 52, 63.

seal, and acknowledge it, yet the surer way is to follow the order prescribed by this Act.

If the Justice dye, yet shall there a Scire facias go against his Executor or Administrator; for the death of the Judge, which is the act of GOD, cannot prejudice the party, nor make the purview of this Statute to be of no force.

1. Part of the Institutes, fol. 102. As if a man be outlawed, and at the time of his Outlawry he was beyond the seas in war in the Kings service, and brings a Writ of Errour to reverse his Outlawry, and obtains a Certificate of the Marshall of the Kings host under his Seal (as he ought to do) In this case notwithstanding the Marshall dye, yet may he assign the same for Errour, and upon shewing of the Certificate have a Scire fac' to the Executors or Administrators of the Marshall.

¶ Et si Justiciarius sigillum suum dedicere non possit, procedatur, &c.] On the other side, if the Judge deny his Seal, then may the Plaintife in the Writ of Error take issue thereupon, and prove it by witnesses; for it lyeth not in the Judge in this case to frustrate this excellent Law made for advancement of Justice and right.

Booke of Entries, Rast. 275, 323. Ver. N. B. 54 For the order of proceeding herein according to this Act, see the Book of Entries.

CAP. XXXII.

Statut. de Religiosis. Anno 7 E. 1. CUm viri religiosi, & aliæ personæ Ecclesiasticæ implacitent aliquem, & implacitatus fecerit defaltam, ob quam tenement' amittere debeat: quia Justiciar' hucusque tenuerunt, quod si implacitat' fecerit defaltam per collusionem, ut cum petens occasione statuti per titulum doni, vel alterius alienationis, seisinam de tenement' consequi non posset, per illam defaltam consequeretur, & sic fieret fraus statuto: Ordinat' est per dominum regem, & concessum in hoc casu, quod postquam defalta facta fuerit, inquiratur per patriam, utrum petens habeat jus in sua petitione, vel non. Et si compertum fuerit, quod petens jus habuerit, procedatur ad judicium pro petente, & recuperet seisinam suam. Et si jus non habuerit, incurratur tenement' proximo domino feodi, si illud petat infra annum a tempore inquisitionis captæ. Et si infra annum non petat, superiori domino incurratur, si petat infra dimidium annum post illum annum. Et sic habeat quilibet dominus post proximum dominum, spacium dimidii anni ad petendum successivè, quousq; perveniatur ad regem, cui ad ultimum pro defectu aliorum dominorum tenementum incurratur. Et ad calumniandum Juratores inquisitionis, admittantur quicunque capitales domini feodorum, & similiter pro Rege qui calumniare

niare voluerint. Et remaneat terra, postquam judicium datum fuerit in manu domini Regis quousque tenem' per petentem, vel per aliquem capitalem dominum disrationetur, & oneretur Vic' ad respondend' inde ad scaccarium.

Notwithstanding the Statute of Magna Charta, and the Statute of De Religiosis, Anno 7 Edw. 1. yet this evasion was found out, that religious and Ecclesiasticall persons did recover lands by default; which, albeit it were by consent and collusion, yet the Justices did hold that these religious and Ecclesiasticall persons came not to the land per titulum doni, vel alienationis, nor was within the generall words of the Statute of 7 Edw. 1. Aut alio quovismodo, arte, vel ingenio sibi appropriare præsumat: for that Recoveries being prosecuted in course of Law were by Law presumed to be just and lawfull, it was holden by the Justices, that they were not within the former Statute; and yet these Recoveries were done in fraudem legis, for remedy whereof this Statute was made.

Magna Chart. cap. 36. Stat. de Religiosis 7 E. 1. 35 H. 6. 25.

¶ Et implacitatus.] All Actions brought for any lands or tenements, wherein a free hold, inheritance, or a long term is recovered, as within this Statute, as Præcipes quod reddat, Quare impedit, Droit de gard, Ejectione firmæ, Quare ejecit infra terminum, Warrantia Chartæ, Convenit to levie a Fine, Execution per Elegit, Statute Merchant, or Statute Staple, &c.

2 E. 3. 10. 10 E. 3. 17. 21 E. 3. 5. 24 E. 3. 27. 38 E. 3. 12, 27. 3 E. 4. 12, 13. 1 E. 2. Collusion 11. 7 E. 3. ibi. 17. 16 E. 3. ibid. 21. 34 E. 3. ibid. 46 20 H. 6. 38.

This Act doth extend to them that are no parties to the Writ, as to the Vouchee, and Tenant by receit, and the like.

And this Statute doth extend by equity when the Abbot, &c. is Tenant or Defendant, as when a Writ of Right is brought against an Abbot, &c. and after the Plee joyned, the Demandant maketh default, and is Nonsuite, the collusion shall be inquired, and this case wherein the Abbot is Tenant is within the same mischief, and therefore within the equity of this Law: and so it is if a Quare impedit be brought against a Prior of the Church of D. and the Plaintiffe become Nonsute, the Defendant shall recover the presentment, and the collusion shall be inquired.

5 E. 2. Collus. 19 2 E. 3. 18. 6 E. 3. 23, 25. 19 E. 3. Collusion 18.

¶ Fecerit defaltam.] This Act doth not extend onely, according to the letter, to Recoveries by default, but to all manner of Recoveries by verdict, or otherwise, if they be had by collusion.

If it be by default, then a Judiciall Writ called a Quale jus grounded upon this Statute is awarded, which Writ consisteth upon five parts:

Regist. judic. 16, 17.

1. It reciteth the Recovery.

2. The doubt of the fraud, Et quia dubitatur de fraude inter eos prælocuta contra statutum.

3. A commandement to the Sheriffe to return a Jury, Præcipimus tibi quod Venire fac' coram Justiciar' nostris apud Westmonast' duodecim, &c. the charge of the Jury is ad recogn' super sacramentum suum hæc tria; 1. Quale jus idem abbas habuit in prædict' messuagio: 2. & Quis prædecessorum fuit inde seisitus ut de jure Ecclesiæ suæ præd': 3. & Quantum illud messuagium valet per annum.

20 E. 3. Collusion 34.

4. The fourth is another commandement to the Sheriffe, Et interim messuagium illud in manum nostram capias, &c. & quod de exitibus ad scaccarium nobis respondeas.

5. The Sheriffe is commanded, Et Scire facias capitalibus Dominis feodi illius mediatis, & immediatis, quod tunc sint ibi audituri juratam illam, si voluerint.

Which Writ I have the more at large rehearsed, for that it giveth a great light to all the parts of this Act.

And

And it is to be obſerved, that if the Jury finde that his predeceſſor was ſeiſed of it in his Demeſne as of fee in the right of his Church, before the ſaid Statute de Religioſis, Anno 7 E. 1. this is a good verdict for the Demandant without finding of any Licenſe; for though there were no Licenſe, the alienation was good: But if they finde that his predeceſſor was ſeiſed after the Statute, then they ought to finde a Licenſe, or otherwiſe the land belongeth to the Lord or King.

13 E. 3. Colluſion 32. 16 E. 3. ibid. 42. 34 E. 3. ibid. 40. 20 H. 6. 38.

The value of the land is inquired of, becauſe the iſſues thereof are to be by this Act anſwered to the King.

20 H. 6. 38. Stamf. Prærog. 84. b.

If there be an iſſue joyned in the Action brought by the Abbot, the Jury ſhall not onely inquire of the iſſue, but of the colluſion, but as concerning the colluſion, it is but an Inqueſt of Office, whereof no Attaint lyeth.

38 E. 3. 12. 45 E. 3. 8. 50 E. 3. 22. 14 Aſſ. 13. 5 E. 3. 29. 6 E. 3. 11.

If a Recovery by verdict were not within the purview of this Act, ſuch an iſſue of diſadvantage might be joyned, and ſo ſeint Evidence might be given, as this Statute ſhould be of little force.

20 H. 6. 38. 33 H. 6. 25. 6 R. 2. Colluſion 40.

And if the Jury do not inquire of the colluſion, ſo as the Abbot, &c. recover by verdict, yet the colluſion ſhall be inquired of by a ſpeciall Writ, and not by a Quale jus.

33 H. 6. 25.

If an Abbot bring an Aſſiſe, and the Tenant plead a forein Releaſe, they of the forein County cannot inquire of the colluſion, but a ſpeciall Writ ſhall be granted.

6 E. 3. 11. 17 E. 3. 5

If the Tenant appear, and confeſſe the Action, or Judgement be given upon a Nihil dicit, or a departure in deſpight of the Court, theſe alſo are within this Statute, and the Colluſion ſhall be inquired, and ſo if a Recovery be had upon a demurrer in Law, that Recovery is alſo within the equity of this Statute.

29 E. 3. 35. 6 R. 2 Colluſion 40. 31 H. 6. 10.

In ſome caſe no Colluſion ſhall be inquired at all, as if a perſon bring a Juris utrum, and the Jury finde that the land is the right of the Church, this ſufficeth without inquiring of the Colluſion.

¶ Et ſi compertum fuerit quod petens jus habuerit.] This is either by Jury upon triall of the iſſue, or by Quale jus, if the Tenant make default.

¶ Procedatur ad judicium.] Hereby it appeareth that the Quale jus ſhould be ſued out after the default, and before Judgement, and ſo it is ſaid the uſe hath been; and if the Colluſion be found, the Lord, &c. ſhall enter, though Judgement be never given.

Kelwey 134.

5 E. 3. 29.

Regiſt. Judic. 16, 17.

But yet if Judgement be given upon the default, yet may the Quale jus be ſued out, and ſo it appeareth by the Judiciall Regiſter, and many other authorities, but Execution ſhall ceaſe untill the Colluſion be inquired.

34 E. 3. Colluſion 46. 13 E. 3. ibid. 28. 12 E. 3. Judgement 163. 4 E. 3. 8. Regiſt. Judic. 16, 17.

In a Writ of Right, if Judgement ſhall be given for the Abbot, &c. the Colluſion ſhall be inquired; for albeit the Judgement ſhall be given between them, yet the Lord by this Statute ſhall enter: and ſo it is of a Recovery by default in a Ceſſavit.

¶ Et ſi jus non habuerit, incurratur tenementum proximo Domino feodi, ſi illud petat infra annum, &c.] Here be the certain times appointed when the Lords mediate and immediate ſhall enter, whereof ſufficient hath been ſaid in the expoſition of the Statute de Religioſis, 7 E. 1.

¶ Et ad calumniandum juratores inquiſitionis, admittantur quicunque capitales Domini feodorum.] Hereupon, as hath been ſaid, the Sheriffe ſhall warn the Lords mediate and immediate to appear, and take their challenges.

41 E. 3. 3.

If any of the Lords mediate or immediate be within age, in reſpect of theſe words,

words, Quicunque Domini feodorum, the Court will advise whether any thing shall be done to his prejudice, during his minority.

¶ Et similiter pro Rege qui clamare voluerit.] The King is always (in judgement of Law) present in Court, and therefore any man may challenge for the King, but by the Statute of 33 E. 1. they which challenge for the King must shew a cause certaine, and the truth thereof is to bee tried. Stat. de Inquis. Anno 33 E. 1.

Observe well what Exposition hath béene made of this Act, and how the Judges extended the same by equity, for otherwise the Churchmen by advice of their learned Councell (whereof they had the best) would have had some evasion or other out of the letter of the Law.

Sée the Exposition before of the Statute De Religiosis, anno 7 E. 1.

CAP. XXXIII.

Quia multi tenentes erigunt cruces in tenementis suis, aut erigi permittunt, in præjudicium dominorum suorum, ut tenentes per privilegium Templariorum & Hospitaliorum tueri se possent contra capitales dominos feodorum: Statutum est, quod hujusmodi ten' capitalibus dominis, aut Regi incurrantur. Eodem modo quo statuit alibi de tenementis alienatis ad manum mortuam. Fleta l. 2. cap. 43. Lib. 5. cap. 34. Doct. & Stud. Li. 2. ca. 34. & 46. Rot. Pat. 2 E. 3. Rot. claus. 18 E. 3.

For the better understanding of this Statute, it is to bee knowne that the order of the Templers, otherwise Knights of the Temple being men professed, were by Gelasius the Pope founded Anno Domini 1117. which was Anno 18 H. 1. 18 H. 1.

These were called Templarii, because they were first founded in some of the Edifices adjoyning and belonging to the Temple, and had the charge and keeping of the Lords Sepulchre, and not onely entertained Pilgrims that came to sée the Sepulchre, &c. but in their armour conducted Christians that had a desire to sée the City of Jerusalem, and other places in the Land of Palestine, and to guard them from the Saracens and Infidels.

Some after, viz. Anno Domini 1120. which was in Anno 21 H. 1, the Hospitallers, commonly called Milites Sancti Johannis Jerosolymitani, being professed Friers of S. John of Jerusalem, under the rule of S. Augustine, were founded, Honorius then being Pope, and they were called Hospitularii, Hospitallers, because they had the care of hosting and providing Hospitals for Pilgrims, &c. travelling to Jerusalem, &c. and for their Safe-conduct against Saracens and Infidels. These two orders, (but especially the Templers) did so overspread throughout Christendome, and so exceedingly increased in possessions, revenues, and wealth, and specially in England, as you will wonder to reade in approved Histories, and withall obtained so great and large privileges, liberties, and immunities for themselves, their Tenants and Farmers, &c. as no other order had the like.

At

Councel of Vienna, Anno Dom. 1311. 4 E.2. Kelwey 6 H.8. fol. 169, 170.

At the Councell of Vienna holden Anno Domini 1311. which was Anno 4 E.2. Clemens quintus then being Pope, the order of the Templers was by that Councell diſſolved throughout all Chriſtendome, and their poſſeſſions and revenues here in England given to the Hoſpitallers by Act of Parliament, Anno 17 E.2.

Anno 17 E.2. Vet. Mag. Chart. fol. 42. ſecond pt. 5 E.3.36. 35 H.6.46. 32 H.8.cap.24.

But the Hoſpitallers continued here in England till an Act of Parliament made in 32 H.8. by which Act they were diſſolved, ſo as albeit both theſe orders mentioned in this Act are diſſolved, and therefore this Act may ſeeme to be obſolete and out of uſe, yet will we not omit the Expoſition of it for two cauſes; 1. For that we have hitherto omitted not one; and 2. it may ſerve for very good uſe, as hereafter ſhall appeare.

¶ Erigunt cruces.] The reaſon wherefore Croſſes were erected, was, for that the Knights of both the ſaid orders were Cruce ſignati, and becauſe that was the enſigne of their profeſſion, and for that their Tenants enjoyed great priviledges, to the end they might be known to be the Tenants of the ſaid orders, and thereby freed from many duties and ſervices which other Tenants were ſubject unto, did erect Croſſes upon their houſes; and many Tenants of other Lords perceiving the ſtate and greatneſſe of the Knights of both the ſaid Orders, and withall ſeeing the great priviledges their Tenants enjoyed, did ſet up Croſſes upon their houſes, as their very Tenants uſed to doe, to the prejudice of their Lords.

¶ In tenementis ſuis.] The Croſſe was erected upon their houſes, but both the houſe and lands holden by one tenure were forfeited to the Lord, and therefore the Act ſaith, In tenementis ſuis.

21 H.7.34. ¶ Aut erigi permittunt.] This word [permit] or [ſuffer] hath in the Law two ſignifications; Firſt, where he that ſuffereth it, is party, and then it is equivalent to his owne Act; as if a man ſuffereth a recovery againſt him, and the like: the other ſignification is when a ſtranger doth the Act whereunto he is not party; as here if a ſtranger of his own head erecteth a Croſſe upon the Tenants houſe, if after notice the Tenant doth ſuffer it, this is a permiſſion within this Act; even as in Waſte in houſes, if it be done by a ſtranger, the Tenant muſt anſwer for it, if he repaire it not before the Action brought; ſo if after notice the Tenant doth not put down the Croſſe, but doth by colour thereof any thing to the prejudice of the Lord, he is within this Statute.

¶ In præjudicium dominorum ſuorum.] Somewhat muſt be done to the prejudice of the Lord, for if the Tenant erecteth, or ſuffereth to be erected a Croſſe upon his houſe, this is no forfeiture of his Tenancy; but if after the erection of the Croſſe, he claimeth and putteth in ure any of the priviledges of either of the ſaid orders againſt the Lord to his prejudice, then is the Tenancy forfeited.

Regiſt. fol. 20, 21. ¶ Per privilegium Templariorum et Hoſpitaliorum.] The Tenants of the Knights of both theſe orders enjoyed great priviledges, as well againſt the King, as againſt the other Lords; as to be free from tenths and fifteens to be paid to the King, to be diſcharged of purveyance, that they ſhould not be ſued for any Eccleſiaſticall cauſe before the Ordinary, Sed coram conſervatoribus privilegiorum ſuorum; Alſo of ancient time they claimed that a Felon might take ſuch houſes having ſuch Croſſes for his ſafety, as well as any Church, and many others: Now if a Croſſe be erected, and any of theſe, or other priviledges claimed and put in ure by the Tenant, &c. then was his land forfeited to the Lord of whom the land in truth was holden.

See hereafter c. 43

If after the Croſſe levied, the Prior of S. John of Jeruſalem had diſtrained for rent or ſervice, and the Tenant had acknowledged the tenure of him, the very

very Lord might enter by the purview of this Statute, and so if the Tenant doe prove any Will whereof he is made Executor before the Conservator of the privileges, the Lord may enter, Et sic in similibus.

¶ Eodem modo.] This is an Act of reference as well to the Statute De religiosis, Anno 7 E. 1. as to the 32. Chapter of this Parliament of Westm' the second; and therefore if the King take benefit of this Act, he ought to graunt the lands over in such sort, as is prescribed by the said Act of 7 E. 1.

And albeit the state of the Tenancy was not hereby changed, as in the case of the Mortmaine, (whereunto this Act referreth) yet such were the height, power, and greatnesse of these orders, that this Act doth put the matter prohibited by this Act in equipage, with an alienation in Mortmaine.

CAP. XXXIV.

PUrview est, que si home ravist feme espouse, damesselle, ou auter feme desormes, per la ou el ne soit assentus, ne avant, ne apres, eyt judgement de vie et de membre. Et ensement per la ou home ravist feme, dame espouse, damaselle, ou auter feme a force, tout soit que el soy assent apres, eyt tiel judgement come devant est dit, sil soit attaint a le suit le Roy, et la eyt le Roy sa suit. De mulieribus abductis cum bonis virorum suorum, habeat Rex sectam de bonis sic asportatis. Et si uxor sponte reliquerit virum suum, et abierit, et moretur cum adultero suo, amittat in perpetuum actionem petendi dotem suam, quæ ei competere posset de ten' viri sui, si super hoc convincatur, nisi vir suus sponte, et absque cohertione Ecclesiastica eam reconciliet, et secum cohabitare permittat, in quo casu restituatur ei actio. Qui monialem à domo sua abducat, licet monialis consentiat, puniatur per prisonam trium annorum, et satisfaciat domui à qua abducta fuerit, competenter: & nihilominus redimatur ad voluntatem Regis.

31 E. 1. Endictment 31.

¶ Purview est, que si home ravist feme espouse, damesselle, ou auter feme desormes, per la ou el ne soit assentus, ne avant, ne apres, eyt judgement de vie et de membre.] This clause is intended of an appeale to bee brought by the party ravished, for if she give consent either before or after, she shall have no appeale, but if shee consented neither before nor after, then shee shall have an appeale of rape, and there is no Law that gives a woman an appeale of rape but this.

13 E. 3. Coron. 122.

Hereby the auncient Law concerning the election given to her that is ravished is taken away. Vide Westm' 1. cap. 13.

See the first part of the Institutes, sect. 190.

6 R.2.c.6.5 E.4.6 Lo. 5 E.458. 1 H.6.1. 9H.7.25. Pl.Com.45. lib.3. fol.61. Shelleyes Caſe.

Afterwards by the Statute of R.2. a greater puniſhment is inflicted upon the party ravished, if ſhe after conſent to the raviſher, viz. that as well the ravished as the raviſher ſhould be diſabled to challenge inheritance, dower, or joynt-feoffement, &c. and that the next of blood ſhould enter, &c.

11H.4.13.1H.6.1

And moreover the husband of her that is ſo raviſhed and after gives her conſent, or if ſhe have no husband, her Father, or other next of her blood ſhall have the appeale of rape, wherein no wager of battell ſhall be allowed; ſo as this Act of R.2. gave an appeale in caſe where no appeale lay before, and alſo to other perſons, ſo as the woman that never conſented may have her appeale upon this Statute, and if ſhe give conſent afterwards, then the appeale of rape is given by the Statute of 6 R.2.

28 H.6.Coro.459

If a woman be raviſhed by her next of kin, and conſenteth to him, and hath neither husband nor Father, the next of kin to him ſhall have the appeale, for he hath diſabled himſelfe by the rape, whereby he becomes a Felon.

De frangent. priſonam. 1 E.2. 14 E.3. cap.9. 9 E.4.36. 22 E.4. 23. Broke Coron. 203.

¶ Judgement de vie et de membre.] That is to ſay he ſhall be attainted of felony.

In the appeale being the ſuit of the party, the pardon of the King doth not diſcharge the party, as it doth upon the indictment at the ſuit of the King.

¶ Et enſement per la ou home raviſt feme, &c. a force, tout ſoit que el aſſent apres, eit tiel judgement come eſt avandit ſil ſoit atteint a le ſute le Roy, &c.] Whereby it appeareth that the firſt clauſe is to be intended of the ſuit of the party, this branch providing expreſly for the ſuit of the King.

W. 1.c.13 13 E.3 Utlag.49. Firſt part of the Inſtit.ſect.190.

See the Expoſition of the 13. Chapter of Weſtm.1. and the firſt part of the Inſtitutes, ſect.190.

7 H.3. Treſpaſſe 244. Temps E.1. ibid.241.

¶ De mulieribus abductis cum bonis virorum ſuorum habeat Rex ſectam de bonis ſic aſportatis.] At the Common Law the husband might have had an Action of Treſpaſſe, De uxore abducta cum bonis viri.

This is alſo prohibited by the Statute of Weſtm. the 1. cap.13. and a further puniſhment inflicted then was at the Common Law, and therefore in the originall Writ, De uxore abducta cum bonis viri, it is concluded Contra formam Statuti in hujuſmodi caſu proviſo, meaning the ſaid Statute of Weſtm.1. for this Act of Weſtm.2. extendeth onely to the ſuit of the King: and if the Writ be brought at the Common Law omitting the words, Contra formam Statuti, then it is Si A. fecerit, &c. tunc pone, &c. quod ſit, &c. but if Contra formam Statuti be added, then the Writ is, Si A. fecerit, &c. tunc attachies B. ita quod eum habeas, &c.

Regiſt.97.2. F.N.B.89.o. 42 Aſſ.p.16. Dier 256. Regiſt.ubi ſup. 14 H.6.2.

And albeit the words be, Habeat Rex ſectam, yet may the husband alſo have his Action, as is aforeſaid.

¶ De mulieribus.] That is to ſay uxoribus, for of auncient time mulier was taken for a wife.

43 E.3.23.44 Aſſ. 13.7 R.2. Treſpaſſe 206.

If the wife be taken away, and after be divorced, or if ſhee die, yet the husband ſhall have his Action, De uxore abducta cum bonis viri; for in this Action he ſhall not recover his wife, but damages. And he cannot have an Action for taking her away as his ſervant, becauſe the Law gives him an Action in another forme.

47 E.3. Action ſur leſtat. 37.

If the wife be infra annos nubiles, viz. under the age of twelve years at the time of taking away, ſome have holden that the husband ſhall not have a Writ De uxore abducta cum bonis viri. But I hold the Law is to the contrary, for ſhe is Uxor untill diſagreement.

¶ Cum

℄ Cum bonis virorum.] The Plaintiffe muſt in his count ſhew the goods in certain. 43 E. 3. 23.

Albeit the words of the Writ be Rapuit, yet here it is taken for a violent taking away, and not when carnall knowledge is had, ſo as this Action may be brought againſt women aſwell as men. 43 E. 3. ubi ſupr.

℄ Et ſi uxor ſponte reliquerit virũ ſuum, & abierit, & moretur cum adultero, amittat in perpetuum actionem petendi dotem ſuam, &c. niſi vir ſuus ſponte, & ſine coertione Eccleſiaſtica eam reconciliet, & ſecum cohabitare permittat, &c.] In this caſe of elopement, and remaining with the adulterer, &c. the wife could not be barred of her Dower by the Common Law, no though a Divorce were ſued and had for the ſaid adultery, as you may read in the firſt part of the Inſtitutes, ſect. 36. Fleta lib. 5. ca. 22. Brit. cap. 109. Mirror ca. 5. § 5. 1 Part of the Inſtitutes. ſect. 36. Cuſtumier de Norm. cap. 101.

℄ Si ſponte reliquerit, & abierit, & moretur cũ adultero, &c.] Albeit the words of this branch be in the Conjunctive, yet if the woman be taken away not ſponte, but againſt her will, and after conſent, and remain with the adulterer without being reconciled, &c. ſhe ſhall loſe her Dower; for the cauſe of the bar of her Dower is not the manner of the going away, but the remaining with the adulterer in Adowtry without reconciliation, that is the bar of the Dower: See more of theſe words (Reliquerit & Abierit) in this Chapter. 43 E. 3. 19. Note Dower Barred

If the wife goeth away with her husbands agreement and conſent with A. B. if after A. B. commit adultery with her, and ſhe remain with him without reconciliation, ſhe ſhall be barred of her Dower by this branch; whereof you ſhall read in an ancient Parliament Roll a rare and ſtrange caſe, which was the firſt Judgement that I finde given upon this branch, and the Judgement was given in Parliament; and the caſe, which I have taken out of the Record it ſelf, was this:

Sir William Paynel Knight, and Margaret his wife did demand the third part of the Mannour of Torpul, as the Dower of the ſaid Margaret after the death of John de Camoys her firſt husband, that Mannour being then in the ſeiſin of the King: The Kings Attorney anſwered, that ſhe ought not to be endowed, Quia receſſit a marito ſuo in vita ſua, & vixit ut adultera cum prædicto Guilielmo, & non fuit viro ſuo reconciliata ante mortem ſuam, & ſic per formam *ſtatuti inde prius editi non debet inde dotari. Rot. Parliam. 9 E. ſancti Joh Bapt. An. 30 E. 1. Rot 2 *Viz this ſtatute of W. 2. cap. 34.

The Demandants replyed, and pleaded a Deed of the ſaid John Camoys under Seal, in theſe words:

Omnibus Chriſti fidelibus ad quos hoc præſens ſcriptum pervenerit, Johannes de Camoys filius & hæres domini Radulphi de Camoys, ſalutem in domino. Noveritis me tradidiſſe & dimiſiſſe ſpontanea mea voluntate domino Guiliel. Paynel militi Margaretam de Camoys filiam & hæredem Johannis de Bacesden uxorem meam. Et etiam dediſſe, conceſſiſſe, & eidem domino Guilielmo relaxaſſe, & quietum clamaſſe omnia bona, et catalla quæ ipſa Margareta habet, vel de cætero habere poſſit, & etiam quicquid mei eſt de præd' Margaretæ bonis, vel catallis cum ſuis pertinen'. Ita quod nec ego, nec aliquis alius nomine meo in prædicta Margareta, bonis, et catallis ipſius Margaretæ cum ſuis pertinen' de cætero exigere ſeu vendicare poterimus, nec debemus imperpetuum. Volo et concedo, et per præſens ſcriptum confirmo, quod prædicta Margareta cum prædicto domino Guilielmo ſit, & maneat, ex voluntate ipſius Guilielmi. In cujus rei teſtimonium ſigillum meum appoſui, &c. hiis teſtibus. Conceſſio mirabilis & maudita.

And concluded their replication thus; Virtute cujus ſcripti dicit, quod non vixit, ut adultera cum prædicto Guilielmo, ſed ut uxor ejuſdem Guilielmi.

Whereupon the Kings Attorney demurred in Law, and the Record saith, Et super hoc processum est ad judicium, quod non debet dotari.

By this Record it appeareth, that she was barred of her Dower by vertue of this branch, whereof the Kings Attorney took advantage: and in the Record it is further contained, that the Demandants procurarunt quasdam alias literas Episcoporum de purgatione adulterii, quæ recitantur in memorand'. Et quia super testimonio Episcoporum non sunt judicia in curia regis faciend', licet literæ Episcoporum in curiam regis fuer' portatæ, nisi iidem Episcopi ad mandatum regis ipsi regi rescriberent.

This Deed, for the strangeness thereof, we have recited at large de verbo in verbum.

46 E.3. Bar. 214. 1 E.4.1.20 H.7.2 21 H.7.13. But the husband may give Licence to a man to entry his wife to his house, and this shall be a good bar in an Action brought de uxore abducta cum bonis viri.

¶ Moretur cum adultero.] Albeit she doth not continually remain in Avowtry with the adulterer, yet if she be with him and commit adultery, it is a tarrying within this Statute.

3 E.3.2 6E.3.29. Also if she once remain with the adulterer in Avowtry, and after he keepeth her against her will; or if the Avowterer turn her away, yet she shall be said morari cum adultero within this Act.

If the wife doth elope from her husbands house of habitation, and commit adultery in any other the lands or Mannours of her husband, this without the free reconciliation of the husband is within the purview of this Statute: See hereafter in this Chapter for this point.

And there be parvæ moræ, and magnæ, and both of them within this branch.

¶ Nisi vir suus sponte, & absque cohertione Ecclesiæ eam reconciliet, & secum cohabitare permittat.] Note that cohabitation is not sufficient without reconciliation made by the husband sponte so as cohabitation onely in the same house with the husband availeth her not; à Fortiori, though she remain with the Adulterer in any of the lands or Mannours of her husband, yet she shall be barred of her Dower by this branch, without the husbands free reconciliation, albeit it hath been otherwise holden: and the reason that they yielded, is because it is no elopement, whereas it appeareth before that the words of Reliquerit & Abierit are not of the substance of the bar of Dower, but the adultery, and the remaining with the adulterer, as is aforesaid: and albeit she and the adulterer remain within any of the lands or Mannours of the husband yet (the words being, Si uxor sponte reliquerit & abierit) she hath left and gone from her husband in that case, which is a perfect offence. See the first part of the Institutes, sect. 36. for bars of Dower, whereunto you may adde a case in Tr. 9 E.2. fol. 65. in libro meo. What if a woman say that she is conceived with childe by her husband whether he lived, and in truth is not, whereby the next heir is disturbed, she shall lose her Dower, if she acknowledge the same before the Justices.

19E.3. Dower 94

8 E.2. Dower 153. F.N.B. 150.

43 E. 3. 19. Brit. fol. 258. b.

Tr. 9E.2. fol. 65. b. in libro meo.

And albeit she doth cohabite, and be reconciled, yet if it be by the coherion of the Church, she shall be barred of her Dower.

Regist. 71. 267. 6 E.3.17. F.N.B 233. 22 E. 3 2. Rot. Pat. part 3. lib. 9. 72. D. Hussey's case. 3 E.3.3. 8E.3.52. 29 E.3.24.29 Ass. 35. 22 R.2. Dam. 130. 12 H.7. Kelw. 20, 21. F.N.B. 90. h. 140.

¶ Qui monialem a domo suo abducat, licet monialis consentiat, puniatur per prisonam trium annorum, & satisfaciat domui a qua abducta fuerit competenter, & nihilominus redimatur ad voluntatem regis.] Monialis, i. Monacha, Nonna, quasi non nupta, sed Deo consecrata, he that carrieth a Nonne out of his Cloister, the Abbot or Prior, &c. of the house shall not have an Action of Trespas for the taking of him away, but his remedy is by the Writ of Apostata capiendo; but

but that Writ doth not ſo for a Rape: and therefore the Common Law did give an Action of Treſpaſſe for taking her away, as the Lord might have an Action of Treſpaſſe at the Common Law for his Villein: and this Act was made to give a further puniſhment; for the Writ in the Regiſter doth not recite this Act, but the Plaintiffe ſhall not take advantage of this Act, unleſſe he conclude, Contra formam ſtatuti, &c.

Note the Writ *De moniale abducta ſuit*, Quare vi et armis clauſuras ipſius Prioriſſæ *apud* L. fregit, et ſororem Joſiam Aſhe commonialem ſuam ibid' exiſtent' cepit, et abduxit, per quod divinum ſervitiũ in Eccleſia ipſius Prioriſſæ Sanctæ Helenæ London' multipliciter ſubtractum fuit, et dimitutum, et alia enormia, &c. Regiſt. 71, 267.

¶ Et nihilominus redimatur ad voluntatem regis.] So as albeit the Abbeſſe or Priorelle ſhall recover damages, and the Defendant habe Jugement to remain in priſon by three yeers, yet he ſhall be inlarged and ranſomed at the Kings ſuit in a legall proceeding, Et ſic è converſo.

CAP. XXXV.

DE pueris maſculis, ſive femellis, (quorum maritagium ad aliquem pertineat) raptis & abductis, ſi ille qui rapuit non habens jus in maritagio, licet poſtmodum reſtituat puerum non maritatum, vel de maritagio ſatisfecerit, puniatur tamen pro tranſgreſsione per priſonam duorum annorum. Et ſi non reſtituerit, vel hæredem poſt annos nubiles maritaverit, & de maritagio ſatisfacere non potuerit, abjuret regnum, vel habeat perpetuam priſonam. Et ſuper hoc habeat querens tale breve: Si A. fecerit te ſecurum, &c. tunc pone per vad', &c. B. quod ſit coram Juſticiariis noſtris, &c. oſtens' quare talem hæred' infra ætatem exiſtentem, cujus maritagium ad ipſum A. pertinet, apud C. inventum, tali loco rapuit & abduxit, contra' voluntatem ipſius A. & contra pacem, &c. Et ſi hæres ſit in eodem comitatu, tunc addatur iſta clauſula. Et diligenter inquiras ubi ille hæres ſit in baliva tua, & ipſum ubicunque inventus fuerit capias, & ſalvo & ſecure cuſtodias, ita quod eum habeas coram præfat' Juſticiariis noſtris ad præfatum terminum, ad reddend' cui prædictorum A. & B. reddi debeat. Et fiat ſecta verſus partem de qua queritur, quouſque per diſtrictionem venerit, ſi habeat per quod diſtringi poterit, vel per contumaciam (ſi non ſit juſtificabilis) exigatur, & utlagetur. Si fortè hujuſmodi hæres ducatur, & transferatur in alium comitat', tunc Vic' illius comitatus

See the firſt part of the Inſtitutes, ſect. 203.

fiat

fiat tale breve sub hac forma: Questus est nobis A. quod B. nuper talem hæredem infra ætatem, & in custodia sua existent', tali loco in comitatu tali rapuit, & de comitatu illo ad talem locum in com' tuo abduxit, contra voluntatem ipsius A. et contra pacem, &c. Et ideo tibi præcipimus, quod prædictum hæredem, ubicunque eum in baliva tua invenire poteris, capias, et salvo et secure eum custodias, ita quod eum habeas coram Justiciariis nostris, &c. tali loco et die, quem diem idem A. habet versus prædictum B. ad reddend' cui de jure reddi debeat. Et si hæres antequam inveniri poterit, vel antequam restituatur querenti, obierit, nihilominus procedat placitum inter eos, quousque terminetur, cui restitui deberet, si superstes fuisset. Nec excusabitur aut alleviabitur ille, qui injustè rapuit hujusmodi hæred' de pœna supradicta per mortem hæred', cujus extitit male fidei possessor dum vixit. Et si querens obierit ante placitum terminatum, si jus ei competebat ratione proprii feodi sui, resummoneatur loquela ad sectam hæred' querentis, et procedat placit' debito ordine. Si vero per alium titulum competat ei jus, sicut titulo donationis, venditionis, aut alio hujusmodi titulo, tunc resummoneatur loquela ad sectam executor' querentis, et procedat placit' ut prædictum est. Eodem modo si moriatur pars defendens antequam placit' terminetur, vel hæres restituatur, procedat placit' per resum' inter querentem, vel ejus hæredem, seu executores, et executores defendentis, vel ejus hæredes, si executores non sufficiant, quoad satisfactionem de valore maritagii secundum quod in aliis statutis continetur, sed non quoad pœnam prisonæ, quia quis pro alieno facto non est puniendus. Eodem modo cum pendeat placitum inter partes de custodia terræ, vel hæredis, vel utriusque per commune breve, quod incipit: Præcipe tali, &c. quod reddat, &c. fiat resummonitio inter hæredes et executores querentis, et similiter hæredes aut executores defendentis, si mors alteram partem præveniat ante placitum terminatum. Et cum perveniatur ad magnam districtionem, detur terminus, infra quem tres com' teneantur ad minus, in quorum quolibet comitatu fiat publica proclamatio, quod deforciator veniat ad bancum ad diem in brevi contentum, responsurus querenti. Ad quem diem si non venerit, & procla-

proclamatio sic semel, secundo, & tertio testificatum fuerit, procedatur ad judicium pro querente: salvo jure defendentis, si postmodum inde loqui voluerit. Eodem modo fiat in brevi de transgressione cum quis queritur se ejectum fuisse de hujusmodi custodiis.

This Act of Parliament have made divers alterations and additions to the Statute of Merton cap. 6. as hereafter in the Expolition of this Act shall appeare. Merton cap. 6.

¶ De pueris masculis sive femellis.] The Statute of Merton extended onely to heires males, and this Act extendeth by expresse words to heires females also. Lib. 9. fol. 72. D. Hussey's Case.

Also the Statute of Merton concerning this matter extended to heires infra 14. annos; and this Act extendeth to all that are post annos nubiles.

¶ Si ille qui rapuerit jus non habens.] The Statute of Merton extended to Lay men onely, this Act extendeth as well to Ecclesiasticall persons, regular or secular, as to Lay men. D. Hussey's Case, ubi supra. 7 E. 3. 11.

¶ Raptis & abductis.] The words of the Statute of Merton are Vi abductis & detentis.

¶ Per prisonam duorum annorum, &c.] The Statute of Merton gave imprisonment donec emendaverit delictum, &c. This Act gives the imprisonment of two yeares, albeit the Ward be deliuered unmarried, or though amends be made.

The King may pardon this imprisonment for two yeares, which was added by this Act. P. 34 E. 1. Coram Rege Rot. 30.

¶ De maritagio satisfacere non potuerit.] The Defendant shall be intended sufficient to satisfie the Plaintiffe, if the Plaintiffe doth not pray that the Jurors should inquire of his sufficiency. 8 E. 3. 52. 22 R. 2. damages 130.

¶ Abjuret regnum, vel habeat perpetuam prisonam.] And in this case the election is not given to the Defendant, but it is in the discretion of the Court to give judgement either of abjuration, or perpetuall imprisonment. Lib. 9. fol. 73. D. Hussey's Case.

This punishment is also added to the Statute of Merton.

Albeit the party that is by judgement abjured return again, yet shall he not be hanged, because he was not abjured for felony, but he may be punished for his contempt, and remanded.

¶ Et super hoc habeat querens tale breve, &c.] By this branch the Writ of Ravishment of Gard is given, and the forme of the Writ is here expressed.

The Statute of Merton extended to the Writ of Right of Ward. Temps E. 1. gard 133. 3 E. 2. ibid. 6. 11 H. 3. ibid. 141. 11 E. 2. ibid. 117. 33 E. 3. ibid. 163. 1 E. 3. 19, 20. 4 E. 3. 5. 17 E. 3. 42. 26 E. 3. 65. 6 R. 2. gard 166. 13 H. 4. 17. F. N. B. 140. e. 39. f.

A Gardein in socage cannot have a Ravishment of Ward upon this Act, but onely a Gardein in Chivalry, but the Gardein in Socage shall have a Ravishment de Gard. But it was adjudged some after the making of this Act, that by the 24. Chapter of this Parliament, which giveth the Writ In consimili casu cadente sub eodem jure & simili indigente remedio, the Gardein in Socage shall maintain a Writ of Ravishment of Ward for the body, and a Writ De ejectione custodiæ for the land.

For

32 E.3.gard 31. 8 R.2. gard 166. For the cuſtome of the City of London concerning Orphanage, ſee 32 E.3. 8 R. 2.

9 E.3.37,38. 22 E.3.19. 24 E.3.49. In this Writ if the iſſue be found for the Plaintiffe, yet upon the contert of this Act the Jury ſhall enquire, 1. of the value of the mariage, 2. of the age of the Ward, and 3. whether he be maried or no: and for the firſt and ſecond they muſt give a direct verdict; for the other they may give a conditionall verdict, as to ſay, whether he be maried or no they know not, and if he be maried then aſſeſſe greater damages, which enquiry is but an inqueſt of office.

9 E.3.37,38. 14 E.3 gard 157. 19 E.3. gard 172, 127. 16 E.3.ibid.107. 17 E.3.57. 45 E.3 15. 47 E.3.19. 11 H.4.80. 21 H.5 41. 32 H 6 3. 11 H.7.5. Now albeit the verdict be conditionall, yet in this caſe the judgement ſhall not be conditionall, but in this caſe the Plaintiffe may have judgement to recover the mariage and leſſer damages, and have execution of the body, and if the Sheriffe return that he is maried, then may the Plaintiffe have a Scire facias for the greater damages, and have judgement to recover them, and ſo it is in an Action of Detinue, &c.

¶ Rapuit et abduxit.] There be two ſorts of Raviſhments of Wards, that is to ſay, Raviſhments in deed, and Raviſhments in Law, and this Statute extends to both of them.

First part of the Inſtit. ſect. 102. Raviſhments in deed, as when one take and carry away a Ward; and Raviſhments in Law be, as if the Ward enter into Religion, this is a Raviſhment in Law, for which the Soveraigne ſhall anſwer, for that his admiſſion of him is a Raviſhment in Law.

8 E.3.52. If a man or a woman marry a Ward to his or her daughter, or to any other, this is a Raviſhment in Law.

11 H.4.24. 30 E.3.6.b. A man procureth a Ward to goe from his Gardein, this is a Raviſhment in Law.

38 E.3.18.38 Aſſ. If one raviſh a Ward, or eject the Lord to the uſe of a ſtranger without his privity, yet if the ſtranger agree thereunto, he is the raviſher or ejecter.

18 E.3.25.41 E.3. 15. First part of the Inſtitutes, ſect. 114. many authorities there cited. This Act is intended of a Gardein in Chivalry, as hath been ſaid: and though the Father ſhall have a Writ of Raviſhment of Ward, Quare filium ſuum & hæredem rapuit, cujus maritagium ad ipſum pertinet; and albeit the anceſtor ſhall have the like Action for the taking of his collaterall heire apparent, yet none of thoſe are within this Statute, but remain at the Common Law.

See the firſt part of the Inſtitutes, ſect. 114.

7 H.4.9. The Count in the Raviſhment of Ward upon this Act muſt not be by Vi & armis.

Dier 12 El. 289. ¶ Si forte hujuſmodi hæres ducatur et transferatur in alium comitatum.] A man cannot have a Writ of Raviſhment of Ward in the County of York; and ſuppoſe the raviſhment in the County of Derby, Et quod abductus fuit ab eodem Comitatu uſque Com' Eborum. But his originall muſt be in the County of Derby, and by this branch he ſhall have the Writ here mentioned, Queſtus eſt nobis directed to the Sheriffe of York, whither the body is carried.

34 E.3.gard 164.

40 E.3.6. 21 E.3.45. If the Ward be reſiant in another County, then where the land is, the Lord may have a Writ of Right of Ward in that forein County where the Ward is reſiant.

46 E.3. bre 776. 18 E.3.Scire fac' 10. 34 E.1. gard 129. 30 E.3.14. 9 E.4.50. ¶ Et ſi hæres obierit.] Albeit the body ſhall be recovered in the Writ of Raviſhment of Ward given by this Act, yet it is expreſſely provided by this branch that the death of the heire ſhal not abate the Writ; but otherwiſe it is in a Writ of Right of Ward, for in that caſe the death of the heire ſhall abate the Writ; and ſo it is if the heire (hanging the Writ) commeth to his full age, the Writ of Right of Ward ſhall abate, but not the Raviſhment of Ward, but if he be of full age at the time of the Writ of Raviſhment brought, then the Writ ſhall abate for the words of the Writ, Cujus maritagium ad ipſum pertinet.

¶ Et

¶ Et si querens obierit ante placitum terminatum.] Two joynt Lords or two coparceners of a Seignory bring a Writ of Ward, and one of the Plaintiffes die, the Writ is abated, and the survivor shall not have a resummons, for this Act giveth the resummons either to the heir, or to the Executors, and not to any survivor, who may have a new originall; and so it is if the baron and feme be Plaintiffes, and the husband dieth; the Writ shall abate, and no resummons shall be sued, because one of the Plaintiffes is alive, to whom the Wardship surviveth, et pars querens non obiit; and the nature of a resummons is to continue the originall Writ, for by the Common Law no resummons did lie but against him that was party to the originall, or which came in by voucher or receit, &c. so long as the Tenant lived, and onely where the Plea was put without day, without any laches or default in the party, as upon a conusans granted and failer of right by the demise of the King, the non venu of the Justices, or when the parell demurred for nonage, or upon the allowance of a protection and the like; but if the Proces be not continued by the negligence of the Plaintiffe, no resummons lieth. 19 E.3. Scire fac' 119. 38 E.3.36. 24 E.3.48. 5 H.7.38.

Also no resummons lieth for the Defendant or Tenant, because resummons is compounded of re, sub, & moneo: and the Defendant or Tenant never sued out summons, and therefore can have no resummons, neither shall a resummons be graunted but against him that was formerly summoned, and upon the resummons by this Act the party cannot vary from the former plea, but onely for matter that commeth of puisne time, as a release, &c.

And where some have holden that the makers of this Act were not learned in the Law, because the resummons is given to the heire, where by Law the heire cannot have the Wardship being but a chattell, the makers of the Law knew that as well as the Objector, for it is said in 9 E.3. that they were sage gents that were at this Parliament, but seeing no resummons in this case did lie by the Common Law, the makers of this Act gave the resummons to the heire when the Wardship accrued ratione proprii feodi, for there the inheritance of the tenure might come in question which concerned the heir more then the Wardship, hac vice, could concern the Executors, and as if the Defendant make his Testament, and deviseth the Ward to another, yet the resummons shall be awarded by the next subsequent clause of this Act against the Executors, although they have nothing in the Ward, and, for their insufficiency, against the heire who cannot claime the Ward being but a chattell; so in novo casu providebant novum remedium, and in one case charged the heire of the Defendant, whom the Law could not charge, and in another gave remedy to another heire upon good reason, who by Law had none. 11 H.4.54.p Hill. 9 E.3.22. 18 E.3. 4,5. 24 E.3.48,49. 18 E.3.4. b.

¶ Eodem modo si moriatur pars def. &c.] If a Writ of Ward be brought against two, and one of them die, no resummons shall be sued by this branch, because one of the Defendants are alive, and he shall have the Ward by survivor, and this branch giveth the resummons either against the Executors or heire, Et pars defendens non est mortuus. 50 E.3.7.b.

And the nature of a resummons (as hath been said) is to continue the originall.

If the Plaintiffe in the Writ of Ward dieth, and a resummons is sued by the heire, upon the next precedent branch, if the Defendant dieth the heire shall have a resummons against the Executors of the Defendant, for the words of this branch be, Inter querentem, vel ejus hæredem seu executores, & executores defendentis, &c. 24 E.3.48.

Though this branch saith, eodem modo, yet for so much, as is otherwise provided for, there is no reference by these words to the former clause, for a resummons lieth not against the heirs of the Defendant, if the Executors 7 E.3.48. 18 E.3. 4,5. 24 E.3.49.

have aſſets, and it is a good plea for the heire to ſay that the Executors have ſufficient; but if the Executors have aſſets for part, and the heire aſſets for part, yet no reſummons is given againſt them both by this Act.

And in a reſummons againſt the Executors upon this Act of Parliament pleinment adminiſter is a good plea; but then the Plaintiffe ſhall have judgement maintenant to recover the Ward; and in a reſummons againſt the heire for the inſufficiency of the Executors, it is a good plea for him, that he hath nothing by deſcent in fee-ſimple.

If the Executors have not aſſets, ſo as the heire is to be charged, yet ſhall damages onely be recovered againſt him: But the puniſhment ordained by this Act ſhall not be inflicted upon him, for that ſhould be againſt a Maxime of the Common Law here rehearſed, Quod quis pro alieno facto non eſt puniendus, & pœna ex delicto defuncti hæres teneri non debet; And againe, In hæredes non ſolent tranſire actiones, quæ pœnales ex maleficio ſunt: And, Toties in hæredem damus actionem de eo quod ad eum pervenit, quoties ex dolo defuncti convenitur non toties ex ſuo. Bracton.

And, Filius non portabit iniquitatem patris.

¶ Eodem modo cum pendeat placitum inter partes de cuſtodia terræ, vel hæredis, vel utriuſque, per commune breve Præcipe tali, &c. quod reddat, &c.] Per commune breve. Hereupon it is called, Breve de communi cuſtodia, that is, Breve de recto de cuſtodia, and to that Writ onely the Statute of Marlebridge extended. Marlb. cap 7.

¶ Et cum pervenerit ad magnam diſtrictionem, detur terminus.] The Statute of Marlebridge gave a Proclamation, Si ad magnam diſtrictionem non venerint, &c. ſo as by that Act the grand diſtreſſe muſt be returned before the Proclamation iſſued, but by this Act the Proclamation is to iſſue when the grand diſtreſſe is graunted, for the words be, Cum pervenerit ad magnam diſtrictionem, detur terminus, &c. Marlb. cap. 7. 14 E. 3. Proclam. 8. 30 E. 3. 10, 11. 49 E. 3. 19.

Alſo the Statute of Marlebridge provided, that bis vel ter, &c. infra medietatem anni ſequentis the Proclamation ſhould be made, ſo as the Counties were put in certain when the Proclamation ſhould be made; now this Act abridgeth the three months to three months, and ſets the time of the Proclamation in certaine. This branch extendeth onely to the Writ of Right of Ward, as the Statute of Marlebridge did, vide in the end of this Chapter. Marlb. cap. 7.

This branch reſtraining the Common Law, extendeth not to the vouchée, but onely to the Defendant in Déed, and not to the Defendant in Law. 29 E. 3. 48. 13. Proclam. 9.

If Propter brevitatem temporis there were but two Proclamations made, the Plaintiffe ſhall not have a Writ, Cum allocatione comitat', becauſe he purſued not the Statute, and it was his folly that the Writ contained not longer time. 2 H. 4. 1.

In a Writ of Ward againſt two, the one appeareth, and the other makes default, or if the one have nothing, and the other is diſtrained, no Proclamation ſhall be awarded againſt the one of them, for both of them make but one Defendant, and therefore either againſt both, or againſt none. 19 E. 3. Procl. 5. & 10. 17 E. 3. 70. 14 H. 4. 37.

If a diſtreſſe with a Proclamation be graunted, and the Defendant hath nothing but within a franchiſe, the Sheriffe ſhall make the Proclamations in the County, and the Bayly of the liberty ſhall diſtraine him. 2 H. 4. 1.

The Proclamation muſt be graunted in the ſame County where the originall is brought; and therefore if the Plaintiffe ſurmiſe that the Defendant hath ſufficient in a forein County, he ſhall have a diſtreſſe at the Common Law, but not with Proclamation by this Statute. 17 E. 3. 70, 71.

¶ Veniat

¶ Veniat ad bancum.] This extends not to Juſtices in Eyre, nor to Commiſſioners of Oier and Terminer, but the Plaintife may have an Action of Treſpaſſe before them at the Common Law. 3 E. 3. Proclam. 17. 29 E. 3. 37.

¶ Ad quem diem ſi non venerit, &c.] See 17 E. 3. 19. here in the next Paragraph, by which it appeareth that he muſt come Ad quem diem, & non ad alium. 17 E. 3. 19.

¶ Procedatur ad judicium.] At the Cõmon Law he could not have Judgement by default without Plea of the party, &c. but Diſtreſſe infinite; if upon the Proclamation returned the Defendant be demanded, and appear, and taketh a day by Præce partium, and at that day make default, the Plaintife ſhall not have Judgement upon this Statute, becauſe he made not default at the return of the Diſtreſſe, for this Act ſaid, Ad quem diem ſi non venerit. 22 E. 3. 19.

And where it is ſaid, (Procedatur ad judicium) yet upon this default no Judgement can be yet given, but the Court muſt award a Writ to the Sheriffe, to inquire of the value of the marriage, of the age of the Ward, and whether he be marryed, &c. as is aforeſaid; and upon the return of that Writ, then Judgement ſhall be given. 42 E. 3. 1. 38 E. 3. 21.

But if the Defendant appear at the return of the Proclamation, and confeſſe the Action, the Plaintife ſhall have Judgement of the damages in his Count.

¶ Salvo jure defendentis, ſi poſtmodum inde loqui voluerit.] Some have conceited upon theſe words [Inde loqui voluerit] that if a man recovereth in a Writ of Right of Ward by default, that the Defendant might have a Writ of Right of Ward, and recover again that which he formerly loſt; but by reaſon of this word [Poſtmodum] thoſe words ſhall be intended, that he may have a Writ of Right of Ward after that another Tenant of the ſame land happen to dye his heir within age, but for the ſame Wardſhip, whereof Judgement is given in the Writ of Right of Ward, the Defendant is barred. 16 E. 3. Gard 108

¶ Eodem modo fiat in brevi de tranſgreſsione cum quis queritur ſe ejectum fuiſſe de hujuſmodi cuſtodiis.] The Writ here intended, is an Ejectment de gard, Breve de ejectione cuſtodiæ, which is a Writ at the Common Law. De Attornato inde. 3 E. 3. 7. 30 E. 3. 10, 11.

Inter H. & R. de quadam tranſgreſſione eidem H. per præfatum R. illata ut dicitur. Regiſt. 162.

By this branch, Proclamation ſhall be made in this Writ of the Ejectment of gard, which ſhall not be made in the Raviſhment de gard. Regiſt. ubi ſupra. 14 E. 3. Procl. 7.

CAP. XXXVI.

QUia domini cur', & alii qui cur' tenent, & Seneſcalli, volentes gravare ſubditos ſuos, cum non habeant legalem viam eos gravandi, procurant alios movere querelas verſus eos, & dare vadium, & offerre plegios, vel impetrare brevia, & ad ſectas hujuſmodi querentium compellunt eos ſequi comitatum, hundredum, wapentachium, &

cur', quouſque finem fecerint cum ipſis pro voluntate ſua: Statutum eſt, quod hoc de cætero non fiat. Et ſi quis per hujuſmodi falſas querimonias fuerit attachiatus, replegiet diſtrictionem ſuam ſic captam, & poni fac' loquelam coram Juſticiariis, coram quibus ſi Vicecomes, vel alius balivus, vel dominus, poſtquàm ſit diſtrictus formaverit querimoniam ſuam, advocaverit juſtam diſtrictionem ratione hujuſmodi queremoniarum coram eis factarum, & replicet', quod hujuſmodi querimoniæ movebantur verſus eos malitiosè, ad inſtantiam ſeu procurationem Vic', aut aliorum balivorum, aut dominorum, admittatur illa replicatio. Et ſi ſuper hoc convicti fuerint, verſus dominum Regem redimantur, & nihilominus hujuſmodi ſic gravatis damna in triplo reſtituantur.

This Act was made in affirmance of the Common Law, and to adde a greater punishment then the Common Law did; for the delinquent shall be ransomed at the Kings suit, and the party grieved shall recover treble damages, where he should recover but single at the Common Law.

43 E. 3. 20. F. N. B 98. m. Regiſt. judic. 37.

If A. procures B. to sue an Action in any Court of Record, or other inferiour Court against C. he may have an Action of Deceit against A. at the Common Law, and recover his single damages.

¶ Quia domini curiarum, et Seneſchalli, &c.] This Act extendeth to Court Barons, Leets, and to County Courts, Tourns, Hundreds, and not to the Courts at Westminster (they being afterwards named in this Act, &c.) but they remain at the Common Law.

41 E. 3. Avowry 78. 11 H. 4. 91. 13 H. 4. 2. 8 E. 4. 5

13 H. 4. 2, 3. 41 E. 3. Avowry 78.

Though Seneschalli be here named, yet Bailifes, and other Officers are within this Act, and the Bailife, or other officer may be punished, without naming the Lord.

¶ Volentes gravare ſubditos ſuos.] Subditos is here taken for any man that is subject to their Jurisdiction, and so it is to be taken in all other like places.

22 E. 3. 15. 11 H. 4. 91. 13 H. 4. 2.

¶ Procurant alios movere querelas, &c.] These words are generall, and therefore if the Lord, Bailife, Steward, or any other officer procure any man to sue a lawfull Action, he shall be punished by this Act, Quia culpa eſt ſe immiſcere rei ad ſe non pertinenti.

¶ Replegiet diſtrictionem ſuam.] This Act extendeth onely to a Replevin, and not to an Action of Trespasse, or any other Action.

13 H. 4. 2. b.

And here a Distresse is taken for an Attachment.

¶ Advocaverit juſtam diſtrictionem ratione hujuſmodi querimoniar', &c.] By the letter of this branch the Defendant must make an Avowry, but it must be extended further then the letter; for admit that the Lord, &c. will (to save himself from treble damages) make no Avowry, but plead that the goods were not distrained, &c. or the like plea, whereupon issue being joyned, the Plaintife after proof of the issue may give in evidence for the treble damages the purview of this Act, and that the Lord now Defendant, procured

procured a suit, &c. contrary to this Act, and that he is guilty of the Distresse, or Attachment, & therefore ought to yeeld treble damages; and if this be found by the Jury (although it were not pleaded) the Pl' shall recover treble damages; for it lyeth not in the power of the Defendant by his false plea to excuse himself of treble damages given by this Act: as if the Disseisor alieneth to persons unknown, and in an Assise brought against the Disseisor he plead Nul ten' de franktenement nosme in le briefe, & si trove ne soit nul tort nul disseisin, the Plaintife may give in evidence, that the said alienation was made to defraud the Plaintife of his Action, and that the Disseisor took the profits, in which case he is to be relieved by the Statutes of 1 R. 2. 4 H 4. and 11 H. 6.

Vide lib. 5. fol. 60 Gooches case, a Statute given in evidence, and not pleaded.

1 R. 2. cap. 9. 4 H. 4. cap. 7. 11 H. 6. cap. 4. 9 H. 6. 14, 15. lib. 1. cap. 123. Chudleys case.

See before cap. 35. in the case of Ravishment of Ward.

¶ Malitiose, ad instantiam, seu procurationem Vicecom', aut aliorum balivorum, seu dominorum.] Here it is to be observed that the procurement is the substance, and that doth imply that it was done malitiosè; and therefore if the Jury finde the procurement, and that it was not done maliciously, yet the Court shall (for that it judicially appeareth to them) adjudge it done maliciously.

22 E. 3. 15.

¶ Versus dominum regem redimantur, &c.] That is, they shall be fined to the King in that suit brought by Replevin.

CAP. XXXVII.

QUia etiam Balivi, ad quos ex officio pertinet districtiones facere, gravare volentes subditos suos, ut ab eis pecuniam extorqueant, mittunt ignotos ad faciend' districtiones, ea intentione, ut subditos gravare possint, per hoc quod sic districti non habentes notitiam personarum non permittunt hujusmodi districtiones super eos fieri: Statutum est, quod nulla districtio fiat nisi per balivos notos & juratos. Et si alio modo districtiones fecerint, & de hoc convicti fuerint, si gravati breve de transgress. impetraverint, restituant gravatis damna [*alias in triplo*] & versus regem graviter puniantur.

This Act is made in affirmance of the Common Law, and for reformation of an abuse by Sheriffes, who used to make Bailifes to distrain, who were unknown, to the intent that the owner of the cattell might make Rescous, and thereupon the Sheriffe, &c. to extort money from him; wherefore remedy is given by this Act.

¶ Nulla districtio fiat.] At the time of the making of this Act, this Processe lay in an Action of Debt, (for the Capias in that case is given by the Statute of 25 E. 3.) so as this Statute extending to an Action of Debt, although the latter Act give a Capias, yet the Capias coming in lieu of the Distresse is within this Act.

Lib. 3. fol. 12. Sir William Herberts case. 25 E. 3. cap. 15.

¶ Nisi

¶ Niſi per balivos nòtos, & juratos.] By this Act the Baliffes muſt both be known and ſworn: an Act yet ſtanding in force, and worthy to be put in execution: Fleta both render this branch thus:

Fleta.

Proviſum eſt quod nulla diſtrictio fiat per balivos regis, niſi jurati fuerint & noti, & ſi quis alio modo diſtringeret, & de hoc convincatur ad ſectam diſtricti, cui in hoc caſu conſulitur per breve de tranſgreſſione, damna reddet gravato, & verſus regem graviter punietur.

Mirror ca. 5. § 5.

Of this branch the Mirror ſaith thus, Leſtatute de diſtreſſes eſt diſtinguiſhable, car in diſtreſſes torcious ſans garrant tient lieu le judgement de robbery, & per garrant cheſcun eſt reſceivable conus & diſconus. But the Statute is in the negative, and neceſſary to be obſerved.

¶ Damna.] Some Editions have alias in triplo, but the originall is damna, and not in triplo, and therewith agreeth Fleta.

CAP. XXXVIII.

Fleta lib. 4. cap. 5. See 21 E. 1. Stat. de non ponendis. 34 E. 1. Ordinat. &c. dit ſuper Chart. cap. 9. Marlbr. cap. 24. For Jurors. See Cuſtumier de Norm. cap. 69

QUia etiam Vic' Hundredarii, & Balivi libertatum conſueverunt gravare ſubditos ſuos ponendo in Aſſiſis & juratis homines languidos, et decrepitos, perpetua vel temporali infirmitate languentes, homines etiam tempore ſummonition' ſuæ in patria non commorantes, ſummonendo etiam effrenatam multitudinem juratorum, ita ut à quibuſdam eos in pace dimittendo pecuniam extorqueant, et ſic fiunt aſſiſæ et juratæ multotiens per pauperiores, divitibus pro ſuo dando domi commorantibus: Statutum eſt, quod de cætero non ſummoneantur in una aſſiſ. plures quam xxiv. Senes etiam videlicet ultra 70. annos, perpetuo languidi, vel tempore ſummonitionis infirmi, vel in patria non commorantes, non ponantur in juratis, vel minoribus aſsiſis. Nec etiam ponantur in Aſſiſis vel juratis, licet in proprio com' capi debeant aliqui qui minus ten' habeant, quam ad valentiam viginti ſolidorum per annum. Et ſi hujuſmodi aſsiſæ & Jurat' extra comitatum capi debeant, non ponantur in eis aliqui qui minus tenement' non habeant, quam ad valentiam xl. s. per annum, illis exceptis qui teſtes ſunt in chartis, vel aliis ſcriptis, quorum præſentia neceſſaria eſt, dum tamen potentes ſint ad laborandum. Nec debet iſtud ſtatutum extendi ad magnas Aſsiſas, in quibus oportet aliquando ponere Milites in patria non reſidentes, propter paucitatem Militum, dum tamen tenement' habeant

beant in comit'. Et ſi Vic' vel ſubbalivi ſui, vel balivi libertatum contra iſtud ſtatutum in aliquo articulo venerint, et ſuper hoc convincantur, reſtituant dampna gravatis, & nihilominus ſint in miſericordia domini Regis. Et habeant Juſticiarii ad aſsiſas capiend' aſsign', cum in com' venerint, poteſtatem audiendi querimonias ſingulorum conquerentium, quoad articulos in iſto ſtatuto contentos, & juſticiam in forma prædicta exhibend'.

The miſchiefe doth plainly appeare by the preamble, and the end of theſe miſchiefes was, that the Sheriffes by ſuch meanes did pecuniam extorquere, &c.

See the firſt part of the Inſtitutes for the antiquity and right inſtitution of trials by twelve men, and of the number of twelve. Sect. 234. and Magna Charta cap. 29.

¶ In una aſsiſa plures quam 24.] This was but the abuſe of the Sheriffe, for though the Writ, which is his warrant, is but twelve, yet regularly he muſt returne twenty foure, and no more, unleſſe it be in ſpeciall caſes: Supponendo, inquit Fleta, ſuperfluam hominum multitudinem, ita quod quaſdam in pace dimitterent prece vel precio; but in a Writ of Right there be forténe Jurors returned onely. 2 H. 7. 8. Fleta ubi ſupra. Dier 1. Mar. 98. Fleta ubi ſupra.

¶ Senés ultra 70. annos, &c.] This Statute is a direct prohibition in it ſelfe, and therefore the party grieved may have his Action upon this Act againſt the Sheriffe without giving any notice either of this, or of ſickneſſe, or non-commorancy, and yet the uſe is to ſue out a Writ grounded upon this Act to the Sheriffe that he returne them not. F.N.B. 166. d. F.N.B. ibid. a.

But without queſtion notice by word were good, if notice were requiſite; and this ſeemeth to be in affirmance of the Common Law, for if a Coroner be ſenio confractus, it is a good cauſe to remove him, and the Prophet David ſaith, Dies noſtrorum in ipſis ſeptuaginta anni. F.N.B. ibid. a. Regiſt. 177. Pſalme 89. 10.

¶ Perpetuo languidi.] As if he be morbo paralyſi percuſſus, or if hée bée leproſus, or ſtricken with any other continuall ſickneſſe.

It alſo extended to men that are blinde, deafe, of no ſound memory, or ſo lame as they cannot well goe nor ſtand, and theſe ſhall take the benefit of this Statute, of what age ſoever they bee; and this point is in affirmance of the Common Law, for theſe be good cauſes to remove a Coroner. F.N.B. 164. Regiſt. 177.

¶ Tempore ſummonitionis infirmi.] This muſt be ſo intended, ſo infirme as he is not able to ſerve; and this is alſo in affirmance of the Common Law.

¶ In patria non commorantes.] The Statute of Articuli ſuper Chartas doth adde to this, that albeit they be commorant in the ſame County, yet muſt the Jurors have two qualities, viz. two of the moſt, and one of the leaſt, that is moſt neare the place, moſt ſufficient, and leaſt ſuſpicious, or otherwiſe the Demandant ſhall render double damages, and bee grievouſly amerced. Art. ſuper Chart. cap. 9. Regiſt. 177. F.N.B. 165. Regiſt. ubi ſup.

See what a Coroner ought to be, viz. Qui melius ſciat et poſſit officio illi intendere. Regiſt. ubi ſupra.

At

F.N.B. 166. d. If any be returned contrary to the purview of this Act, he cannot be challenged, neither can the party grieved alledge the matter for his diſcharge, but he muſt take his remedy by Action againſt the Sheriffe upon this Act.

Now may it be a queſtion, Who is the party grieved that ſhall have his Action, if the Sheriffe returne magis remotos, minus ſufficientes, & magis ſuſpectos? whereunto heare what Sir William Herle Chiefe Juſtice of the Common Pleas ſaith. This Statute may be intended, in caſe where the Demandant or Plaintiffe is delayed of his ſuit by ſuch return of the Sheriffe, that he by the Statute ſhall recover damages againſt him, or where the Tenant or Defendant after he hath loſt his land, or cauſe by the oath of them that be ſo returned contrary to the forme of the Statute, and after he doth convict them in an attaint, and thereby be reſtored, then he may have his Action upon the Statute to recover his damages, &c. and thereunto Hill Juſtice agréed, which (as concerning the Tenant or Defendant) muſt of neceſſity be intended of this Act of W. 2. for the Statute of Articuli ſuper Chartas give double damages onely to the Demandant, and not to the Tenant: alſo hereupon it followeth that the Act of Articuli ſuper Chartas is but an Expoſition of this Act, and addeth a further penalty.

8 E. 3. 30. 7 E. 3. 26. bis.

Art. ſuper Chart. cap. 9. More ſhall be ſaid hereof, when we come to the ſaid Statute of Articuli ſuper Chartas.

¶ Vel in minoribus aſsiſis.] For as hath béene ſaid, this Act extends not to a Writ of Right, as hereafter in this Act by expreſſe words it appeareth.

2 H. 5. c. 3. Stat. 2. 27 Eliz. cap. 10. ¶ Qui minus tenementa habeant quam ad valenciam viginti ſolid' per annum, &c.] Theſe ſummes of 20. s. and 40. s. are altered by later Statutes, viz. by 2 H. 5. and 27 Eliz.

See the firſt part of the Inſtitutes, ſect. 464.

Stat. of York c. 2. 6 H. 3. Proc. 209. 8 H. 3. ibid. 210. Kelw. 97. Regiſt. judic'. 6. b. 7. b. 56, 58. 69. ¶ Exceptis qui teſtes ſunt in Chartis, &c.] Here is an exception of witneſſes named in the Déed, who in many caſes are joyned to the Jury without regard had to age or yearely revenue, both becauſe the Sheriffe hath an expreſſe warrant to ſummon or diſtrain them by name, and for that their preſence is neceſſary, and yet with this caution, Dum tamen potentes ſint ad laborandum.

¶ Et habeant Juſtic' ad aſsiſas capiend' aſsignat'.] This clauſe is in the affirmative, and therefore the party grieved may take his remedy upon this Act, either before Juſtices of Aſſiſe, or in any other Court that have conuſans thereof: for Juſtices of Aſſiſe could not have power in this caſe without expreſſe words, but other Judges have power without any expreſſe words, and therefore if the meaning be to exclude other Judges, then thoſe that be named, there muſt be words negative, viz. and not in any other Court, nor before any other Judges.

CAP.

CAP. XXXIX.

QUia Justiciarii (ad quorum officium spectat unicuique coram eis placitandi justiciam exhibere) frequentius impediuntur, quo minus officium suum debit' modo exequi possint, per hoc quod Vic' brevia originalia et judicialia non retornant, per hoc etiam quod ad brevia domini Regis falsum' retornant responsum: Providit dominus Rex et ordinavit, quod illi qui timent malitiam Vic', liberent brevia sua originalia et judicialia in pleno com', vel *in* retro com', ubi fit collatio denariorum domini regis, et capiatur billettum de Vic' presente, vel Subvic', in quo billetto contineantur nomina petentium et tenentium in brevi nominat', et ad requisitionem illius qui breve liberavit, apponat' billetto sigillum Vic' vel Subvic' in testim', et fiat mentio de die liberationis brevis. Et si Vicecomes vel Subvicecomes hujusmodi billetto sigillum suum apponere noluerit, capiatur testimonium Militum, et aliorum fide dignorum qui præsentes fuerint, qui sigill' sua hujusmodi billetto apponant. Et si Vic' brevia sibi liberata non retornaverit, et super hoc ad Justiciarios perveniat querimonia, mandetur per breve de judicio Justic' ad assisas capiendas assign', quod inquirent per eos qui presentes fuerint quando breve Vic' liberatum fuit, si sciverint de illa deliberatione, et inquisitio returnetur. Et si compertum fuerit per inquisitionem, quod breve fuit ei liberat', adjudicentur querenti vel petenti damna, habito respectu ad qualitatem et quantitatem actionis, et ad periculum quod ei evenire posset, per dilationem quam patiebatur. [*Anno 2 E. 3. cap. 5. apud Not'.*] Et per istam viam fiat remedium quando Vic' respondet, quod breve adeo tarde venit, quod præceptum regis exequi non potuit. Multociens etiam capiunt placita dilationes per hoc quod Vicecom' respondet, quod præcepit balivis alicujus libertatis, qui nihil inde fecerint; et nominet libertates, quæ nunquam retornum brevium habuerunt. Propter quod, ordinavit dominus Rex quod Thesaurarius et Baron' de Scaccario liberent Justiciar' in rotulo omnes libertates in quibuscunque com' qui habent retornum brevium.

Fleta li. 2. cap. 61. Art. super Chart. cap. 16.

Et ſi Vic' reſpondet quod retornũ fecit balivo alterius libertatis, quam alicujus contentæ in prædict' rotulo, ſtatim puniatur Vicecom' tanquam exhæredator regis & coronæ ſuæ. Et ſi forte reſpondeat quod mandavit balivo alicujus libertatis, quæ veraciter retorn' habet [*qui inde nihil fecit,*] mandetur Vicecom' quod non omittat propter aliquam libertatem prædict', quin exequatur præceptum domini regis, & quod Scire faciat balivis, quibus fecit retorn' quod ſint ad diem in brevi contentum ad reſpondendum, quare de præcepto domini regis executionem non fecerint. Et ſi ad diem venerint, & ſe acquietent, quod retornum brevis non fuit eis factum, ſtatim condemnetur Vicecom' domino illius libertatis, & ſimiliter parti læſæ per dilationem in reſtitutionem damnorum. Et ſi ad diem non venerint balivi, vel venerint, & ſupradicto modo ſe non acquietaverint in quolibet brevi de judicio, quam diu durat placitum, præcipiatur Vicecomiti quod non omittat propter libertatem, &c. Multotiens etiam Vicecom' falſum dant reſponſum, quo ad illum articulum quod de exit', &c. mandantes aliquando et mentientes, quod nulli ſunt exitus, aliquando quod parvi ſunt exitus, cum de majoribus reſpondere poſsint, aliquando non facientes mentionem de exitibus. Propter quod ordinatum eſt et concordatum, quod ſi querens petat auditum reſponſionis Vicecom', concedatur ei. Et ſi offerat verificare, quod Vicecom' de majoribus exitibus Regi reſpondere potuit, fiat ei breve de judicio ad Juſtic' ad aſsiſas capiendas aſsignatos, quod inquirant in preſentia Vicecomitis, ſi intereſſe voluerit, de quibus et quantis exit' Vic' reſpondere potuit à die impetrationis brevis uſque ad diem in brevi contentum [*al' receptionis vide P. 27 H. 8. cap. 10. f. 3. & P. 20 H. 6. cap. 10. fol. 25.*] & cum inquiſitio retornata fuerit, ſi de pleno prius non reſponderit, oneretur de ſuperpluſagio per extractas Juſtic' libertates ad ſcaccarium, & nihilominus graviter amercietur pro concelamento. Et ſciat Vicecom' quod redditus, blada in grangia, et omnia mobilia, præter equitaturam, indumenta, & utenſilia domus continentur ſub nomine exituum.

Et præcepit dom' Rex, quod Vic' pro hujuſmodi falſis reſponſionibus, ſemel & iterum, (ſi ſit neceſſe) per Juſtic' caſtigentur.

Et

Et ſi tertio deliquerint, alius non apponat manum quam dominus rex. Multotiens etiam falſum dant reſponſum, mandando quod non potuerunt [*exequi*] præceptum regis propter reſiſtentiam poteſtatis alicujus magnatis, de quo caveat Vic' de cætero, quia hujuſmodi reſponſio multum redundat in dedecus domini regis & coronæ ſuæ.

Et quam cito ſubbalivi ſui teſtificentur, quod invenerunt hujuſmodi reſiſtentiam, ſtatim (omnibus omiſsis) aſſumpto ſecum poſſe comit' ſui, eat in propria perſona ſua ad faciend' executionem.

Et ſi inveniat ſubbalivos ſuos mendaces, puniat eos per priſonam, ita quod alii per eorum pœnam caſtigentur.

Et ſi inveniat eos veraces, caſtiget reſiſtentes per priſonam, a qua non deliberentur ſine ſpeciali præcepto dom' regis. Et ſi forte Vic', cum venerit, reſiſtentiam invenerit, certificet cur' de nominibus reſiſtentium, auxiliantium, conſentientium, præcipientium & fautorum, & per breve de judicio attachientur hujuſmodi per corpora ad veniendum ad cur' Regis. Et ſi de hujuſmodi reſiſtentia convincantur, puniantur ſecundum quod domino regi placuerit. Nec intromittat ſe aliquis miniſter domini Regis de pœna hujuſmodi infligenda, quia dominus rex hoc ſibi ſpecial' reſervat, pro eo quod hujuſmodi reſiſtentes cenſentur pacis ſuæ & regni perturbatores, [13 *E.* 1. *de Mercatoribus*, *Articuli ſuper Chartas*, *cap.* 16.]

Here is a Maxime of the Law recited, viz. Ad officium Juſticiariorum ſpectat, unicuiq; coram eis placitanti juſtitiam exhibere.. *Maxim.*

By this Chapter there be five miſchiefs, or rather abuſes of Sheriffs rehearſed and provided for, which we ſhall handle in order, as they ſhall ariſe in this Chapter.

The firſt miſchief was, that the Sheriffe returned not the Writs to him directed, but imbezeled the ſame, and commonly the Demandant or Plaintiffe for default of proof was without remedy, or elſe without the effect of a juſt remedy being againſt a Sheriffe, for the which a remedy is provided by this Act in manner inſuing.

¶ Illi qui timent malitiam Vicecom' liberent brevia ſua originalia, & judicialia in pleno com', vel in retro com' ubi fit collatio denariorum domini regis, et capiatur bilettũ, &c.]

This branch was taken to be ſhort, for it was no more but Capiatur bilettum, and no commandement to the Sheriffe to receive the Writs and to make a Bill; but by the Statute of 2 E. 3. the Sheriffe and under-Sheriffe are commanded, that they ſhall receive the ſaid Writs, and make a Bill, and ſo throughout. 2 E. 3. cap. 5.

So as now it is a contempt in the Sheriffe or under-Sheriffe, if he make it not,

and in default of them it ſhall be alſo a contempt in the others appointed to ſeal it, if they refuſe.

26 Aſſ. 48. 38 Aſſ. 13. 42 Aſſ. 12. 8 H. 6. 1. 1 H. 6. 1. F.N.B. 93. b. 31 E. 3. Procl. 55. Regiſt. 85, 86. 19 H. 6. 29. Bract. lib. 5. fol. 441. b.

In this ſpeciall caſe the Demandant or Plaintife ſhall have an Action againſt the Sheriſe for not returning the Writ, whereas regularly for not returning of a Writ the Sheriſe ſhall be amerced quouſque; but for a falſe return, or for imbezeling of a Writ, an Action doth lye at the Common Law againſt the Sheriff.

And the Demandant or Plaintife, if he fear the malice (as this Act ſpeaketh) of the Sheriſe, he may cauſe the Sheriſe or under-Sheriſe to be called into the Court, and deliver the Writ to him of Record, that he may take the benefit of this Statute.

Fol. 501, 626.

See the Action brought upon this branch of the Statute, in the Book of Entries Raſtall.

¶ Retro comitatus.] As after the County Court, as to Pleas, be ended; it is holden further, for the collection of the Kings money, that is, his green Wax.

¶ Et per iſtam viam fiat remedium quando Vicecomes reſpondet quod breve adeo tarde venit, &c.] The ſecond miſchief was, the Sheriſe would return a Tarde, which by this purview is prevented; and ſo it is if the Writ be delivered to the Sheriſe of Record, as hath been ſaid.

Bract. li. 5. fo. 441

Where Bracton further in the ſame place ſaith, Et unde infiniti ſunt caſus de genere iſto ubi Vicec' per fraudem reſcribit, & prætendit non cauſam ut cauſam.

¶ Multotiens etiam capiunt placita dilationes per hoc, quod Vicec' reſpondet quod præcepit balivis alicujus libertatis, &c.] Here is the third miſchief, that great delays are uſed by the falſe return of Sheriſes in making of Mandates to ſained liberties, ſuppoſing them to have return of Writs, where in troth there be no ſuch liberties, for redreſſe whereof the remedy followeth.

¶ Quod Theſaurarius, et Barones de ſcaccario, &c.] Albeit it be inrolled in the Chancery, that ſuch a man hath return of Writs, yet is not that within the purview of this Act, for that the Record of the Court of Exchequer is onely preſcribed by this Act, and therefore a Certiorari may be awarded out of the Chancery to the Exchequer to the Treaſurer, that he bring in the Roll of the Liberties in his hand to the Juſtices, before whom the return is made.

11 E. 4. 4. 2.

¶ Omnes libertates.] This muſt be underſtood of a Baſtife of a Franchiſe or Seigniory, which have return of Writs, and not to a Baſtife created Itinerant, (for example) in the County of S. and to have return of all Writs, and execution of the ſame by the Kings Letters patents; for ſuch a Grant is void, for in effect it taketh away the Office of the Sheriſe; and therefore where ſuch a return was made upon a Mandate to ſuch a new found Baſtife, the Court was in purpoſe to have puniſhed the Sheriſe by this branch of this Act, tanquam exhæredatorem domini regis.

2 H. 4. 4.

¶ Statim puniatur Vicecomes tanquam exhæredator regis, et coronæ ſuæ.] Becauſe he ſain a Liberty or Franchiſe againſt the King, to the diſheriſon of the King and of his Crown, foraſmuch as no man can have ſuch a Liberty or Franchiſe, but from the Crown.

This puniſhment ſhall be by ranſome and impriſonment.

¶ Quæ

¶ Quæ veraciter retornum habet, qui nihil inde fecit mandetur Vicecomiti, quod non omittat.] Here is the fourth mischief, that where there was indeed a Bailife of a Liberty, who truly had return of Writs, yet he upon a Mandat to him would do nothing; remedy is hereby provided, that it shall be commanded to the Sheriff, Quod non omittat, &c. quin exequatur præceptum domini regis, &c.

This branch concerning the Non omittas, is in affirmance of the Common Law; and therefore Bracton who wrote before this Statute, treating of this matter, saith, Et quo casu cum baivi nihil inde fecerint, propter defectum eorum, præcipietur Vicecomiti, quod non omitteret propter libertatem talem, quin, &c. Bract. li. 5. fo. 442 a. Regist. 82. F.N.B. 68. f. & 74. a.

¶ Nihil inde fecit.] This Nihil is to be understood, not onely where nothing at all is done, but also where the Bailife of the Liberty maketh an insufficient return, for that is Nihil in Law; and therefore a Non omittas, &c. shall be thereupon granted; for, Idem est nihil, & insufficienter dicere. 4 H. 6. 25. b. 5 H. 7 28. F.N.B. 74. a. 2 H. 6. 15. Simile. 19 H. 6. 28. 21 H. 6. 28. 8 E. 4. 5. b. Simile.

¶ Et quod scire faciat balivis.] This seemeth to be added by this branch to the Common Law.

¶ Multotiens etiam Vic' falsum dant responsum quoad illum articulum de exitibus.] Now cometh the fifth mischief, that the Sheriffes would return so small issues, in which case by the Common Law the Plaintife could not have an averment against the return of the Sheriffe; for the Sheriffe is but an Officer to the Court, and hath no day in Court to answer to the party: but this is remedied in this case by this branch. Fleta lib. 2. ca. 61. 21 H. 7. 8. b.

¶ Et si offerat verificare, &c.] Here is the remedy given, and the mean prescribed, how the averment shall be proved, and the Plaintife must in his averment allege what the value of the issues be. 27 H. 8. 3. 20 H. 6 25. 22 E. 4. 10. 10 H. 7. 11. a.

See the Book of Entries for the Judiciall Writ to the Justices of Assise. Rast. 383.

Also where it is here said, Vicecomites falsum dant responsum, this branch mentioning Sheriffes extended not to Bailifes of Liberties, which is holpen by the Statute of 1 E. 3. 1 E. 3. cap. 5. Ver. N.B. fo. 53.

¶ A die impetrationis usque diem in brevi contentum.] These issues, that is, the value of the land must be inquired, from the teste of the Writ, until the day of the return of it; and it is holden, that this Act extendeth not to the return of issues upon Juroys after issue joyned. 27 H. 8. 3. 20 H. 6. 25. 22 E. 4. 10. 10 H. 7. 11. a. b.

¶ Et cum inquisitio retorn' fuerit, si de pleno prius non responderit, oneretur de surplusagio, &c.] As if the Sheriffe return but 10. s. issues, and it be found before the Justices of Assise, that the issues amounted to 50. s. the Sheriffe shall be charged with 40. s. by this branch, and so after that rate and proportion. 27 H. 8. 3.

¶ Et sciat Vicecomes, quod redditus, blada in grangia, et omnia mobilia, præter equitaturam, indumenta, & utensilia domus continentur sub nomine exituum.] By this branch is explained what shall be accounted Issues, for the better direction of Sheriffes in this case, that is to say, not onely the rent and revenue of the land, but the Corn in the grange, and all other moveables, as Hay in the barn, and other moveable or personall goods whatsoever, except those things belonging to his Fleta li. 2. ca. 62. 27 H. 8. 3. 24 E. 3 29.

riding,

riding, his apparell and utenſils of houſe: and certainly this is a good and neceſſary Law, if it were put in execution according to the purview of this Act.

¶ Alius non apponat manum quam dominus Rex.] That is, that the delinquent ſhall be puniſhed Coram domino rege; that is, in the Kings Bench, his Court of ordinary Juſtice.

¶ Multotiens etiam falſum dant reſponſum mandando, quod non potuerint exequi præceptum regis propter reſiſtentiam.] Now we are come to the firth miſchief, or rather the abuſe of Sheriffes, as by theſe words, Falſum dant reſponſum, appeareth.

Fleta li. 2. ca 62. ¶ Caveat Vicecomes de cætero quia hujuſmodi reſponſio multum redundat in dedecus domini regis, et coronæ ſuæ.] Hereby ſuch a return is forbidden.

W 1. cap. 17. For this matter, ſee the Expoſition upon the Statute of W. 1.

¶ Statim (omnibus omiſsis) aſſumpto ſecum poſſe comitatus ſui eat in propria perſona ad faciend' executionem.] This branch is in affirmance of the Common Law, as appeareth in the Expoſition upon the ſaid Statute of W. 1. where you may read of this matter at large.

¶ Et ſi inveniat ſubbalivos ſuos mendaces.] This is plain, and needeth no explanation.

¶ Et ſi inveniat eos veraces, caſtiget reſiſtentes per priſonam, a qua non deliberentur ſine ſpeciali præcepto dom' regis.] This is evident in it ſelf.

Fleta li. 2. ca. 62. ¶ Et ſi forte, cum venerit, reſiſtentiam invenerit.] Albeit by the penning of this Act it may ſeem, that the Sheriffe ſhould take poſſe comitatus after complaint made, poſt querimoniam factam; yet ſeeing he may take poſſe comitatus by the Common Law, he may either take it poſt, vel ante querimoniam.

But he muſt take it after reſiſtance, and not before, for Sequi debet potentia juſtitiam, non præcedere.

¶ De nominibus reſiſtentium, auxiliantium, conſentientium, præcipientium & fautorum, & per breve de judicio attachientur.] Fautorum; this word is of a large extent, whereof you may

16 R. 2. cap. 5. read in the Statute of 16 R. 2. and in Engliſh it properly ſignifieth a Favourer.

¶ Secundum quod domino regi placuerit.] That is, according to that which ſhall be upon due proceeding adjudged coram Rege, in the Kings Court of Juſtice.

¶ Nec intromittat ſe aliquis miniſter domini regis, &c. quia dominus rex hoc ſibi ſpecialiter reſervat.] That is, as hath been ſaid, that the delinquents ſhall be puniſhed coram rege, in his Court of Juſtice; for no man can be puniſhed by abſolute power, but ſecundum legem, &

Magna Charta, cap. 29. conſuetudinem Angliæ, as hath been ſaid before in the Expoſition of Magna Charta, and elſewhere hath been often ſaid.

CAP.

CAP. XL.

CUm quis alienat jus uxoris ſuæ, concordat eſt quod de cætero ſecta mulieris, aut ejus hæredis non differatur poſt obitum viri per minorem ætatem hæredis, qui warrantizare debet, ſed expectet emptor (qui ignorare non debuit quod jus alienum emit) uſque ad ætatem warranti ſui, de warrantia ſua habenda.

The miſchiefe before this Statute was, that when the husband alened the right of his wife, this working a diſcontinuance, and the wife driven to her Cui in vita, or her heire to his Sur cui in vita, thoſe juſt Actions were delayed oftentimes, when the purchaſer vouched the heire of the baron being within age, untill his full age, which is remedied by this Act.

And this Act reſtraineth the Common Law, and therefore it is taken ſtricti Juris, as ſhall appeare in the Expoſition hereafter. 18 E.4.1[illegible] 14 H.7. [illegible]

¶ De cætero ſecta mulieris aut ejus hæredis.] This ſuit of the wife or her heire extendeth onely to a Cui in vita, or a Sur cui in vita, which are the proper Actions upon an alienation made by the baron of the right of his wife, the former words being [cum quis alienat jus uxoris ſuæ,] for if the wife be Tenant in taile, and the baron alened in fée and died, and the wife died, the iſſue in taile cannot have a Sur cui in vita, but he muſt have his Formedon in the Diſcender by the Statute of W.2.cap.1. and in this Action the purchaſer may vouch the heire of the baron, and for his nonage the paroll ſhall demurre, for that Action is out of this Statute. 46 E.3. age 76.

¶ *Per minorem ætatem hæredis qui warrantizare debet.] This by the contert of this Act extendeth onely to the heire of the baron who made the alienation, and therefore the heire of a ſtranger is out of this Statute. *Contr. judicat' in 14 E.1. in Banco Rot. 81. Buck. The later Authorities have over-ruled the judgement given the next yeare of the Statute. 7 E.2.age 139. 46 E.3. ibid. 76.

† The baron aliens to A. hath iſſue two daughters & dies, the wife brings a Cui in vita againſt A. who voucheth the daughters as heirs to the baron, whereof the one onely was within age, the paroll ſhall not demurre; although all the coparceners, which make but one heire, are not within age, and the words Per minorem ætatem hæredis, yet ſeeing by the Common Law the paroll for the whole ſhould have demurred, judgement ſhall be given for the Demandant, and the Tenant ſhall attend for his Warranty for the whole in this caſe, untill the full age of the coparcener, that then is within age. 6 E.3.46. 17 E.3. 59. Lib.1.fol.15. Sir William Pelhams Caſe. Lib.4. fol.50. A.Ognels caſe. Li.6.fo.5.Markal † 3 E.2. vowcher, 210. 8 E.2. judgement 240.

¶ Sed expectet emptor.] As the Actions, wherein the vouchee ſhall be, and the heire to be vouched are ſet downe in certaine, ſo the perſon that is to vouch is alſo ſpecified, ſo as if any other vouch the heire of the husband, the paroll ſhall demurre for his nonage, and therefore the purchaſer or buyer of the husband is onely he, by reaſon of this word emptor, that is bound by this Statute.

Therefore this emptor muſt have three properties:

1. He muſt be emptor, that is, purchaſer immediately from the baron, and therefore if this emptor alien in fée, the alienee is emptor, that is a purchaſer, but becauſe he is not the immediate purchaſer from the baron (albeit he may vouch the heire of the baron as aſſignée) yet is not he bound by this Statute. 7 E.2.age 139. 6 E.3. 49. Pl.Com. 17,47.

2. He

20 E. 2. age 126. 19 E. 3. ibid. 2. 9 E. 3. 4. 18 E. 4. 16

2. He that is an emptor within this Act must be the Tenant in Déed against whom the Cui in vita, or Sur cui in vita is brought, and therefore in the case before, if the second alienée vouch him that was immediate emptor, yet if he vouch the heire of the husband, the paroll shall demurre for his nonage, and the Demandant shall not have judgement maintenant, because the Cui in vita, &c. was not brought against him that was immediate emptor, as Tenant in Déed of the land, but he came in as vouchée; so it is if he that was immediate emptor commeth in by receit upon default of Tenant for life, he is not bound by this Act, causa qua supra.

Vide Mich. 14 E. 1. ubi. sup. adjudged that this Statute extendeth to the second vouchee, but the later books are to the contrary in this point also.

3. a He must be ipse emptor, and not alter ipse, and therefore if the immediate emptor dieth, albeit his heire sitteth in his auncestors seate, and is alter idem, yet is not the heire bound by this Act, because hee is not ipse idem.

a 16 E. 3. age 47. 47 E. 3. ibid. 76. 14 H. 7. 19.

b Now what estate an emptor shall have, he that purchaseth any estate of freehold, be it in fee-simple, fee-taile, or for life, he is an emptor or purchaser within this Act, and yet the words of this Act be, Qui alienat jus uxoris suæ.

b 3 E. 2. vowchee 210. 8 E. 2. jugement 140. Gloc'. cap. 3.

For this word [alienare] see the Statute of Glouc', and the next Chapter ensuing.

Also if the baron alien, though it be for no valuable consideration, yet is he an emptor, that is a purchaser within this Statute.

3 [illegible] 2. vowcher 210. 8 E. 2. judgement 140. Rast. fol. 135.

¶ Usque ad ætatem warranti sui.] And at the full age of the vouchée the Tenant shall sue a resummons.

For the order of proceeding herein see the Books of Entries.

3 E. 2. ubi supra. 8 E. 2. ubi supra. 9 E. 3. 4. 6 E. 3. 46. 32 H. 8. cap. 28.

¶ De warrantia sua habenda.] This Act doth extend as well to a warranty in Law, for example, in respect of a reversion, &c. as to a warranty in Déed. And albeit the Estat. of 32 H. 8. doth notwithstanding the alienation of the husband, &c. give to the wife and her heires a right to enter, as by that Act appeareth, so as the wife or her heires are not driven to their Action, as at the time of the making of this Act they were, and therefore this Act may seeme to some to be of no great use, yet for divers points of notable learning, and for the distasting of like cases standing upon like reason, as you have perceived, we held it very profitable and necessary to be explained.

CAP. XLI.

STatuit Dominus Rex, quod si Abbates, Priores, Custodes hospitalium, & aliarum domorum religiosarum fundatarum ab ipso, vel à progenitoribus suis alienaverint de cætero tenementa domibus ipsis ab ipso vel à progenitoribus suis collata, tenementa illa in manum domini Regis capiantur, et ad voluntatem suam teneantur, et emptor amittat suum recuperare, tam de tenementis quam de pecunia, quam paiavit. Si autem domus illa à com', baron' vel ab aliis fundat' fuerit, de ten' sic alienat' habeat ille, à quo vel à cujus anteceſſore ten' sic alienat' collatum fuerit, breve ad recuperand' ten' illud in dominico, quod tale est: *Præcipe*

tali

tali Abbati, quod juſte, &c. reddat B. tale ten' quod eidem domui collatum fuit in liberam eleemoſynam per præd' B. vel anteceſſores ſuos, & quod ad prædict' B. reverti debet per alienationem, quam prædict' Abbas fecit de prædicto ten' contra formam collationis prædictæ, ut dic'. Eodem modo de ten' dat' pro Cantaria *ſuſtinenda* vel luminari in aliqua Eccleſia vel capella, vel alia eleemoſyna ſuſtentanda, ſi ten' ſic dat' alienetur. Et ſi forte ten' ſic dat' pro Cantaria, luminari, paſtu pauperum, vel alia eleemoſyna ſuſtentanda vel faciend', non fuerit alienat', ſed ſubtracta fuerit hujuſmodi eleemoſyna per biennium, competat actio donatori aut ejus hæredi ad petendum tenement' ſic datum in dominico, ſicut ſtatutum eſt in Statuto Gloceſt' de tenementis dimiſsis ad faciendum vel reddendum quartam partem valoris tenement', vel majorem. Gloc'. cap. 4.

At the Common Law, as it appeareth by Glanvill. Nec Epiſcopus, nec Abbas, quia eorum Baroniæ ſunt de eleemoſyna Domini Regis, et anteceſſorum ejus, non poſſunt de dominicis ſuis aliquam partem dare ad remanenciam ſine aſſenſu & confirmatione domini Regis. Glanv. l. 7. cap. 1.

The meaning whereof is, that ſeing thoſe that hold of the King per baroniam, did hold of the King in Capite, that therefore, by his opinion, they could not alien any part thereof without the Kings aſſent; but yet if the Biſhop with the aſſent of his Chapter, or the Abbot with the aſſent of his Covent, and the like, had alienes the land, the eſtate of the alienée could not have bén avoided. Lib. 5. fol. 10, 11. de jure Regis Eccleſiaſtico.

See the Charter of H. 1. of the foundation of the Abbey of Reading in the 26. yeare of his raigne, wherein you ſhall reade, Qui autem, Deo annuente, canonica electione Abbas ſubſtitutus fuerit, non cum ſuis ſecularibus conſanguineis, ſeu quibuſlibet aliis, eleemoſynas monaſterii male utendo diſpendat, ſed pauperibus, et peregrinis, & hoſpitibus ſuſcipiendis curam gerat, terras cenſuales non ad feodum donet.

So as no doubt the alienation was againſt the minde of the founder, et contra formam donationis. yet they having a fee-ſimple, the Common Law reſtrained them not from alienation, concurrentibus his quæ in jure requiruntur.

So as the miſchiefe was, when the alienation was a barre to the Succeſſor.

¶ Si Abbates, Priores, cuſtodes hoſpitalium, et aliarum domorum religioſarum.] Seing this Act beginneth with Abbots, &c. & concludeth with other religious houſes, Biſhops are not comprehended within this Act, for they are ſuperiour to Abbots, &c. and theſe words [other religious houſes] ſhall extend to houſes inferiour to them that were mentioned before. 40 E. 3. 27. 46 E. 3 forfeiture 18. li. 2. fo. 46. Leveſes de Cant. caſe. 2 Mar. Dier 109. 33 H. 8. cap. 30. 34 & 35 H. 8. c. 15 Art. ſuper Chart. cap. 11. Vide hic poſtea cap. 47. 33 E. 3. aide le Roy 103.

Alſo Biſhops are not properly religious, that is, regular, but ſecular: but yet this Act doth referre to inferiour houſes that are Eccleſiaſticall and ſecular, as hereafter in this Chapter ſhall appeare.

See the firſt part of the Inſtitutes, fol. 133.

See Brook tit. Alienation 15.

¶ Fundatarum ab ipſo, vel à progenitoribus ſuis.]

F.N.B.211.h. Albeit he that giveth the firſt land upon raiſing and creation of the houſe be the founder, though it be much leſſe then the lands after given to the houſe in liberam eleemoſynam, yet this Act doth extend not onely to lands ratione fundationis, but alſo to lands ratione dotationis, ſo they were given in liberam eleemoſynam. Vide hereafter in this Chapter.

40 E.3.27.F.N.B 211. Vet.N.B. 142. 46 E.3.forfeiture 18. Capit. eſchear' Vet.Mag.Chart. 161. ¶ Alienaverint.] This Act ſpeaketh of an alienation made by Abbots, &c. but it muſt be intended of alienations with the aſſent of the Covent, or elſe the ſucceſſor might recover the ſame by a Writ of Entry ſine aſſenſu capituli; for where Acts of Parliaments give remedy, it is ever intended that it ſhall not be illuſory.

And albeit this Act ſpeaketh of the Abbots that alien, it is underſtood when the Abbots alien with conſent, as is aforeſaid, thereby is a right veſted in the King; and albeit the Abbot dieth, yet the King may have an office to finde his right, and recover the land in the time of the ſucceſſor; and ſo may a common perſon have remedy in that caſe, as ſhall be ſaid hereafter.

See the books laſt laſt before mentioned. And ſome have ſaid, that this alienation is intended when the alienation is in fée, and not when the eſtate is made but for life, or in taile; but then ſhould the Statute bee of ſmall effect, for then might hée make many gifts in taile, or multiply leaſes for many lives, without reſerving the accuſtomed rent, and thereby utterly overthrow the houſe, as in former times it hath done.

Hil. 38 E.3.Rot. 14. Coram Rege Abbot de Stonleys Caſe. As you may reade that it was found by inquiſition in the raigne of E.3. that Thomas de Pipe, Abbot of the Monaſtery of Stonely, in the County of Warwick (of the foundation of King Henry fitz Empreſſe (which was H.2.) and that he gave to the ſaid houſe in liberam eleemoſynam, the Manor of Stonely in the ſaid County) alienavit diverſis hominibus particulariter, prout patet inferius, viz. Iſabellæ de Beneſhale Concubinæ dicti Abbatis, & Johanni filio eorundem Abbatis & Iſabellæ primogenito filio unum meſſuagium, & unam carucatam terræ, & decem mercatus redditus cum pertin' in Fynham. Habendum & tenendum ad terminum vitæ eorundem Iſabellæ & Johannis abſque aliquo inde reddendo annuatim: And found alſo divers other leaſes for lives of parts of the ſaid Manor made to divers perſons, to and for the benefit of the ſaid Abbot, and of his Concubine, and of her and his baſtards; but it is beſt to uſe the words of the Record it ſelf, Abſq; aliquo inde reddendo vel præ manibus inde de eiſdem percepto, ſed tantummodo ad opus & proficuum ipſius Abbatis; & maxime pro ſuſtentatione & inventione prædictorum Iſabellæ & puerorum eorundem Abbatis & Iſabellæ, qui excedunt numerum monachorum ſuorum miſſas celebrantium, ſi forte deponeretur de ſtatu ſuo, &c.

45 E.3.18. F.N.B.211. Sometime alienare is taken for alienum facere, and therefore if land be recovered in value, &c. the founder ſhall have a Writ of contra formam within this Statute.

7 H.6.2. If the Abbot with conſent of the Covent doth charge the land, this is not within this Act, for no land or tenement is alienedo.

F.N.B. 211. Regiſt. ¶ Collata.] Lands and Tenements given in frée almoigne after the foundation ratione dotationis, are within this word [collata] which extendeth as well to lands ratione dotationis, as to lands ratione fundationis.

13 H.7.5.8.45 E.3 18. Stamf.Prer. F.N.B. 212. ¶ In manum domini Regis capiantur.] The King in this caſe muſt have an office found for him, and a Scire fac' againſt the ter-Tenant, by the intendment & conſtruction of this Act, for all neceſſary incidents are to be underſtood, & in the Scir' fac' the ter-tenant is not concluded by any trial had againſt the Abbot.

23 E.3. contr' collat.3. ¶ Si autẽ domus illa à Comite, Barone, vel aliis fundata fuerit] Having provided remedy when the King was founder, now this Act provideth when a Subject is founder.

¶ Tenementum ſic alienatum.] Theſe words couple all that hath béene ſaid before to this branch.

¶ Collatum

¶ Collatum fuerit in liberam eleemoſinam.] So as of neceſſity the lands and tenements within the purview of this Act muſt be given in Frankalmoigne, for ſo be the words of the Writ framed and formed by this Act. Regiſt. 238. F.N.B. 211. a. 1. Part of the Inſtitutes, ſect. 136, 137.

Fleta treating hereof, ſaith, Alia eſt cauſa cum res detur in eleemoſina, & alienetur, in quo caſu proviſum fuit quod breve de ingreſſu ad recuperandum hujuſmodi tenementum alienatum in dominico. Vide capit' Eſchaetrie, Vet' Magna Charta 161. What Free almoigne is. Fleta lib. 5. ca. 24.

¶ Habeat, &c. breve ad recuperandum.] This branch ſaith, Habeat breve: But what if the alienation be of ſuch a Tenement or Hereditament, as there lyeth no Writ of Contra formam collationis? As for example, if an Advowſon be alienedContra formam collationis, the founder ſhall preſent, becauſe he can have no Writ; for when a right is given, the Law with it will give a remedy, ſo as this Act is to be underſtood, that his remedy ſhall be by Writ, where a Writ doth lye. 29 E. 3. Contra formam collat. 8. F.N.B. 211. f. 32 E. 3. Ceſſavit 24. Fleta l. 5. c. 34 For this Writ.

After a recovery had by force of this Writ againſt the Abbot, there muſt be a Scire fac' (as hath been ſaid) againſt the Tenant of the land, who is not concluded by any triall, &c. had againſt the Abbot, &c.

Vide 32 E. 3. tit. Breve 291. for the form of this Writ. 32 E. 3. Bre. 291.

The heir ſhall have this Writ for an alienation in the time of his anceſtor, for the right of Action once veſted in the anceſtor cannot dye. 17 E. 3. Contra form. collat. 1.

This Writ alſo lyeth againſt the ſucceſſor for an alienation made by the predeceſſor, notwithſtanding theſe words in the Writ, Prædictus abbas; or the heir may have an Action againſt the ſucceſſor. 32 E. 3. Bre. 291. 2 H. 4. 17. F.N.B. 211.

* This Action of Contra formam collationis conſiſteth onely in privity for none but onely for the founder, or donor, or his heir, and not for any ſtranger. Regiſt. 238. Vet. N.B. 242. Lib. intrat. Raſt. 126. See the laſt clauſe of this Chapter.

¶ Eodem modo de tenemento dato pro Cantaria ſuſtinenda, vel luminari in aliqua Eccleſia, ſeu Capella, vel alia eleemoſina ſuſtinenda, ſi tenementum ſic datum alienetur.] Eleemoſina: See the firſt part of the Inſtitutes, ſect. 133, &c. Et le Cuſtumier de Norm. cap. 32. Tenure per omoſne, & le lattin com' ſur ceo. *7 R. 2. Ceſſavit 18. F.N.B. 211.

This is a clauſe of reference, Eodem modo, &c. But this clauſe extendeth not to the lands or tenements parcell of the foundation of the Abbey, or Priory; for the former branches of this Act had made ſufficient proviſion for them. 7 H. 4. 20.

But this clauſe extendeth to lands or tenements given to any Eccleſiaſticall perſon, that is, either Religious, as Abbots, Priors, &c. or Secular, as Perſons of Churches, Deans, &c. for the finding of a Chauntery Prieſt, or of a light, or any other charitable or almsdeeds, or when a Chauntery is incorporated, and lands given for maintenance of the ſame. 10 H. 6. 5. b.

And this branch being generall, viz. De tenemento dato pro Cantaria, &c. the ſame extendeth aſwell to Biſhops, and all other Secular perſons, or Eccleſiaſticall, as Religious, conſiſting of one ſole perſon, or aggregate of many: and ſo note the diverſity betwéen this and the former branch, and the ſeverall reaſons of the ſame. Regiſt. 238. F.N.B. 209. k.

By theſe words [Eodem modo] if lands were given to an Abbot, Pro Cantaria ſuſtinenda, aut pro paſtu pauperum, or other ſuch ſervice in certain; and the Abbot alienedwith conſent of the Covent, yet the Contra formam collationis did lye againſt the Abbot upon this branch, by reference to the former branch. 18 E. 3. 5. 2. 32 E. 3 Bre. 291. cap. Eſchaet. Vet. Magn. Chart. 161 See the firſt part of the Inſtitutes, ſect. 530.

¶ Et ſi forte tenementa ſic data, pro Cantaria, luminari, paſtu

paſtu pauperum, vel alia eleemoſina ſuſtinenda, vel facienda, non fuerit alienata, ſed ſubtracta fuerit hujuſmodi eleemoſina per biennium.] By this branch is a Ceſſavit given, where lands were given to finde a Chaplein to ſing Divine Service, or to finde a light in ſuch a Church, &c. or to diſtribute certain Bread and Beer every day, week, or moneth to poor people, &c.

Regiſt. 238. F. N.B. 209. k. Capit' Eſchaet' Vet. Magna Charta 162. 1. Part of the Inſtitutes, ſect. 137. 7 H. 4. 20. F. N. B. 210. E. 7 E. 4. 11. per Catesby, 1. Part of the Inſtitutes, ſect. 137

¶ Tenementa ſic data, &c.] This branch extendeth not to a gift in tail, for the Donor ſhall not have a Ceſſavit within this Statute.

It is holden, that this branch concerning the Ceſſavit, extendeth not to lands or tenements given by the founder upon the foundation of the houſe; albeit, as it appeareth by the ſaid Charter of H. 1. the lands were generally given, not onely for celebration of Divine Service in the Church, &c. but for ſuſtentation of poor people, or other almes deeds, which are alſo adjudged in Law Divine Service.

11 R. 2. View 65.

And this clauſe, that giveth the Ceſſavit, referreth onely to the laſt branch concerning Chauntries, lights, and other particular almes deeds, and not to the former branch concerning the foundations and dotations in libera eleemoſina in generall; for this branch extendeth not at all to lands given in Free almoigne, as the firſt and ſecond clauſes did, for in Free almoigne no certain ſervice is to be done, and therefore for them no Ceſſavit can lye, but lyeth onely where particular Divine Services are mentioned.

1. Part of the Inſtitutes, ſect. 136 137.

Note here the excellent judgement of the makers of this Act, for they, for alienation of lands given in Free almoigne, that is, for celebration of Divine Services, &c. incertain, gave a Contra formam collationis, but gave no Ceſſavit for ceſſer, becauſe no Ceſſavit could lye for Divine Service incertain; but for Divine Service certain, both a Contra formam collationis, and a Ceſſavit reſpectively by this Act doth lye, albeit as an Adowry for the ſame at the Common Law.

1. Part of the Inſtitutes, ſect. 137 F. N. B. 210. E.

¶ Competat actio donatori, aut ejus hæredi.] In this caſe the heir ſhall upon this branch have a Ceſſavit pro paſtu pauperum, for the ceſſer done in the life of his anceſtor, but ſo ſhall not the heir of the Lord in a Ceſſavit upon the Statute of Gloceſt': and the reaſon of the diverſity is, for that in a Ceſſavit brought upon this branch De paſtu pauperum, no tender of the arrerages ſhall be by the Tenant to the Demandant, becauſe they belong to the poor, and never belonged to the Demandant or his anceſtor; but the rent and ſervice upon the Statute of Gloc' belonged to the Lord to whom the tender was to be made, but his heir is out of that Statute, becauſe the tender of the arrerages in the life of the anceſtor belonges not to him.

F. N. B. 209. k. Pl. Com. 58. b. 12 H. 4. 24. 14 H. 4. 4.

¶ Sicut ſtatutum eſt in ſtatuto Gloc'.] Although this branch hath a reference to the Statute of Gloc', yet it is to be underſtood, to extend to ſuch clauſes of that Act, as may ſtand with reaſon of Law and convenience, as you perceive by an example before remembred. Et ſic de ſimilibus.

CAP.

CAP. XLII.

DE Mareſcallis domini Regis de feodo, Camerariis, cuſtodibus hoſtiorum in itinere Juſtic', & ſervientibus virgam portantibus coram Juſtic' apud Weſtm', qui officium illud habeant de feodo, & qui plus exigunt ratione feodi ſui quam exigere conſueverunt, ſecundum quod multi queruntur ſuper eos qui ſtatut' cur' à multo tempore viderunt & ſciunt, dominus Rex inquiri fecit, quem ſtat' prædict' miniſtri de feodo habere conſueverunt temporibus retroactis, & per inquiſitionem ſtatuit & præcepit, quod Mareſcallus de feodo qui de novo exigit palefridum de Comitibus, Baronibus, & aliis per partem Baroniæ tenent', quando homagium fecerint, & nihilominus ad malitiam eorum alium palefridum, & de quibuſdam (de quibus palefridum habere non debuit) palefridum de novo exigunt, ordinavit quod prædictus Mareſcallus de quolibet Comite & Barone (integram baroniam tenente) de uno palefrido ſit contentus, vel de precio quale antiquitus percipere conſuevit, ita quod ſi ad homagium, quod fecit, palefridum vel precium in forma prædicta ceperit, ad malitiam ſuam nihil capiat.

Et ſi fortè ad homagium nihil ceperit, ad malitiam ſuam capiat. De Abbatibus & Prioribus integram baroniam tenentibus, cum homagium aut fidelitatem pro baroniis ſuis fecerint, capiat palefridum vel precium, ut prædictum eſt.

Hoc idem de Archiepiſcopis, & Epiſcopis obſervand' eſt. De his autem qui partem baroniæ tenent, ſive ſint religioſi, ſive ſeculares, capiat ſecund' portionem partis baroniæ, quam tenent. De Religioſis tenent' in liberam eleemoſinam, & non per baroniam, vel partem baroniæ, nihil de cætero exigat Mareſcallus.

Et conceſſit dominus Rex, quod per hoc ſtatutum non præcludatur Mareſcallus ſuus de feodo in plus petendo, ſi impoſterum oſtendere poterit, quod jus habeat plus petendi.

Camerarii domini Regis habeant de cætero de Archiepiſcopis, Epiſcopis, Abbatibus, Prioribus, & aliis perſonis eccleſia-

eccleſiaſticis, Comit', Baron', integram baroniam tenent', rationabilem fidem cum homagium aut fidelitatem pro baroniis ſuis fecerint. Et ſi per partem baroniæ teneant, capiant rationabilem finem ſecundum portionem ipſos contingentem. Alii vero Abbates, Priores, Religioſi, & ſeculares non tenentes per baroniam, vel partem baroniæ, non diſtringantur ad finem faciend', ſecundum quod de tenentibus per baroniam vel partem baroniæ dictum eſt, ſed ſit Camerarius de ſuperiori indumento contentus, vel de precio indumenti: quod plus honeſtè dictum eſt pro Religioſis quam ſecularibus, quia honeſtius eſt, quod Religioſi faciant pro ſuperiori indumento, quam exuant.

W. 1. cap. 40.

The miſchief before this Statute was, that not onely the Marſhall, and the Chamberlein of the Kings houſe, but ſome inferiour Officers, as the Porters, or two keepers of the Juſtices in Eyre; and likewiſe the bearers of Rods or Staves before the Juſtices at Weſtminſter, did exact of the ſubject exceſſive Fees, more then was due to them: whereupon many that of long time had known the Kings Court, and other the ſaid Courts, did greatly complain; for remedy whereof this Act was made; the particular miſchiefs ſhall be ſpecified in their due places.

The Statute of W. 1. had provided againſt the Extortion by Sergeants, Criers, and Marſhals of Juſtices in Eyre, and of other Juſtices; now this Act provideth againſt the Officers following.

Brit. fo. 1. b. 1. part of the Inſtitutes, ſect. cap. Grand Sergeanty. Fleta li. 2. c. 3, 4, 5 Lib. 10. fo 68, &c. Lib. 6. fo. 20, 21. Lib. 7. fo. 17. Fleta lib. 2. cap. 6

¶ De Mareſchallis domini regis.] **This is intended of the Marſhall of the Kings houſe. Of this Officer** Britton **ſaith thus,** Et que le Mareſchal de noſtre hoſtele teigne noſtre lieu deins la vierge de noſtre hoſtle, &c. **The Steward of the Kings houſe and this Marſhall have a Court of Juſtice, as elſewhere we have ſhewed.**

Fleta ubi ſupra.

¶ De camerariis.] **This is alſo intended of the Chamberlein of the Kings houſe. The L. Chamberlein of the Kings houſhold is a great Officer of the Kings houſe, ſo called becauſe his Office doth principally concern the Chambers, that is, matters above the ſtairs;** Of his Office, Fleta writeth thus, Camerarius autem, & ſubminiſtri cameræ a juriſdictione Sen', & Mar' exempti ſunt, veluti omnes garderobarii, ut in quibuſdam; Non enim extendit ſe juriſdictio Sen' ad modica delicta Camerariorum, vel garderobariorum audienda, vel terminanda, eo quod ex conſuetudine hoſpitii ſunt exempti, dum tamen illi de quibus exigi contigerit cur' coram Seneſch', Cameris Regis & Reginæ, ac garderobæ aſſiduè ſint intendentes; Sed coram ipſis Theſaur' & Camerar' audiantur querimoniæ de hujuſmodi miniſtris & ſubditis ſuis, & terminabuntur, præſente tamen clerico Regis ad placita Aulæ deputato; Ita quod de finibus, & amerciament' ex hujuſmodi placitis provenientibus nihil regi depereat. Debet enim Camerarius decenter diſponere pro lecto Regis, & ut Cameræ tapetis, & banqueriis ornentur, & quod ignes ſufficienter fiant in caminis, & providere ne ullus defectus inveniatur quatenus officium ſuum contigerit. **Obſerve here, what anciently belonged to the Office of the Chamberlein of the Kings houſhold.**

W. 1. cap. 30. See hereafter in the next Chapter towards the end.

¶ De feodo.] **Theſe words are not onely meant of them that have a fee ſimple in their Offices, but ſuch as have any fixed eſtate, either in tail or for life, and ſo are theſe words intended throughout this Act; and the Office of the**

the Chamberlain of the houſhold was never granted in fée: and ſome do hold, that the ſenſe of theſe words [De feodo] are ſuch Officers as have fées due, and belonging to them.

¶ Per inquiſitionem.] Obſerve here, that before the King, the Lords and Commons made this Law, the King did inquire by oath of a Jury ſworne of the truth and certainty of the fées hereafter in this Act ſet downe.

¶ Quod Mareſchallus de feodo qui de novo exigit palefridum, &c.] Before this Act the Marſhall of the Kings houſe claimed and did take for his fée of every Earle, Baron, and of others holding by part of a Barony, when they did their homage, his Palfrey; and notwithſtanding, when they were made Knights, did challenge and take another Palfrey; wherein he did wrong in two reſpects:

1. That in that caſe hee tooke two Palfreyes where hee ought to take but one.

2. That he tooke one of them, that held by part of a Barony, both which are remedies by this Act.

¶ Prædictus Mareſchallus de quolibet Comite et Barone integram baroniam tenente de uno palfrido ſit contentus, &c.] So as by this Act he ought to have but one Palfrey, both at his doing of homage, and at his making of Knight.

¶ Per integram Baroniam.] What a whole Barony is, and of how many Knights fées it conſiſteth, hath béen before ſhewed, Magna Charta cap. 2. Mag. Chart. c. 2.

And if one had divers Baronies, yet ſéeing that he was but one perſon, the Marſhall ſhould have but one horſe, De uno palefrido ſit contentus; and ſo it is of one that is made Knight, though he hath many Knights fees.

¶ Vel de precio quale antiquitus percipere conſuevit.] That we may ſay once for all, the auncient price of the horſe of every Archbiſhop, Biſhop, Abbot, Prior, Earle, or Baron holding by an entire Barony is x. l. Ex perveruſt' Manuſcript.

Alſo the auncient price of the horſe of one that is made Knight, or that doth homage, having no part of a Barony, is v. Marks.

* See the Statute of 4 H. 4. cap. 23. 4 H. 4. cap. 23.

¶ De hiis qui partem Baroniæ tenent, ſive ſint religioſi, ſive ſeculares, capiat ſecundum portionem partis Baroniæ.] As for example, if he hold by halfe a Barony, he ſhall pay v. l. which is halfe the price of the horſe of him, that holdeth by an entire Barony, and ſo according to rate of the value of the horſe, &c.

But the Marſhall ſhall take nothing of religious or Eccleſiaſticall perſons, that hold in liberam eleemoſynam, et non per Baroniam, nec per partem Baroniæ.

¶ Non præcludatur Mareſchallus de feodo in plus petendo, ſi in poſterum oſtendere poterit quod jus habet plus petendi.] Here is a ſaving for the Marſhall of his right of demanding other fées upon better proofe made; but at the making of this Act it appeared by the ſaid inquiſition, that no other fées were due to him, then are here expreſſed; but note there is no ſaving for the Chamberlain.

¶ Camerarii domini Regis habeant de cætero de Archiepiſcopis.] The Kings Chamberlaine, that is, the Chamberlain of the Kings Houſhold ſhall have a reaſonable fine, when any Eccleſiaſticall or Lay perſon, holding by an entire Barony, doe his homage or fealty, and of them that hold by part

part of a Barony a reasonable fine according to the portion which they have. So as nothing is due to the Kings Chamberlain when one is made Knight, as it appeareth by the context of this.

¶ Alii vero Abbates, Priores religiosi et seculares non tenentes per Baroniam vel partem Baroniæ non distringantur ad finem faciend'.] They which hold not by a Barony, nor part of a Barony shall yeeld no fine to the Chamberlain, but the Chamberlaine of them shall have their uppermost garment, or the price thereof; and it is more honest for the Chamberlain to take the price in that case of the Ecclesiasticall person, then of the secular, and the reason is there rendred. Quia honestius est, quod religiosi solvant pro superiori indumento, quam exuantur.

CAP. XLIII.

PRohibeatur de cætero Hospitulariis & Templariis, ne de cætero trahant aliquem in placitum coram conservatoribus privilegiorum suorum de aliqua re, cujus cognitio spectat ad forum Regium: Quod si fecerint, primo restituant damna parti gravatæ, & versus dominum Regem graviter puniantur. Prohibet etiam dominus Rex conservatoribus privilegiorum eorundem, ne de cætero (ad instantiam Hospitulariorum, Templariorum, aut aliorum privilegiatorum) concedant Citationes, priusquam exprimatur super qua re fieri debeat citatio. Et si viderint *hujusmodi* conservatores, quod petatur citatio de aliqua re, cujus cognitio spectat ad forum Regium, hujusmodi conservatores nec citationem faciant, nec cognoscant. Et si aliter fecerint conservatores, respondeant parti læsæ de damnis, & nihilominus versus dominum Regem graviter puniantur. Et quia hujusmodi privilegiati impetrant conservatores, subpriores, præsentator', sacristas, religiosos, qui nihil habent unde læsis, aut domino Regi satisfacere possint, qui audaciores sint ad lædend' dignitatem domini Regis quam eorum superiores, quibus per eorum temporalia pœna potest infligi: Caveant de cætero Prælati hujusmodi obedientiariorum, ne permittant obedientiarios suos assumere sibi jurisdictionem in præjudicium domini regis & coronæ suæ. Quod si fecerint, pro facto ipsorum respondeant sui superiores, ac si de proprio facto suo convicti essent.

¶ Pro-

¶ Prohibeatur de cæterο Hoſpitulariis et Templariis.] The Hoſpitallers and Templars had divers great liberties and privileges, and amongſt the reſt they held an Eccleſiaſticall Court before a Canonill or ſome of the Clergy whom they termed Conſervator privilegiorum ſuorum, which Judge having in Deed more authority then was convenient, yet did he daily in reſpect of the height and greatneſſe of theſe two Orders, and at their inſtance and direction, incroach and hold plea of matters determinable by the Common Law, for Cui plus licet quam par eſt, plus vult quam licet; And this was one great miſchiefe.

Another miſchief was that this Judge likewiſe at their inſtance in caſes, wherein he had juriſdiction, would make generall citations, as pro ſalute animæ, & the like, without expreſſing the matter, whereupon the citation was made, which alſo was againſt Law, and tended to the grievous veration of the Subject, both which miſchiefes, or rather abuſes are remedied by this Act. F.N.B.41.2. 20 E.3. excom.9. 28 E.3.97.20 E.4 20.b.

¶ Cujus cognicio ſpectat ad forum regium.] This branch is in affirmance of the Common Law.

¶ Quod ſi fecerint, primo reſtituant damna parti gravatæ, et verſus dominum regem graviter puniantur.] By this branch the Hoſpitallers and Templers are to yeeld damages to the party grieved, and to be grievouſly fined to the King, if they draw any man in plea before the conſervator of their privileges of any thing determinable in the Kings Courts.

¶ Ad inſtantiam hoſpit' templar' aut aliorũ privilegiatorũ.] Hereby it appeareth that their juriſdiction extended reſpectively, not onely to the Hoſpitallers and Templers, but to perſons privileged, or within their privileges, and for that cauſe the Judge was termed Conſervator privilegiorum.

¶ Prohibet dominus Rex conſervatoribus, &c. ne de cætero, &c. concedant citationes priuſquam exprimatur ſuper qua re fieri debeat citatio.] This branch is in affirmance of the Common Law, as before in this Chapter it hath appeared; And this agreeth with Linwood, who taketh a citation in foro Eccleſiaſtico to be, as the Writ in foro ſeculari, for ſo it is by him defined. Breve idem importat quod præceptum vel citatio, & in eo continetur gravamen, ſuper quo procedit actio ipſius agentis ſeu proſequentis. Linwood de foro compet. cap.2.

¶ Et ſi aliter fecerint conſervatores, &c.] By this branch the party grieved ſhall recover his damages alſo againſt the ſaid Judge, if he graunt any citation, or hold any plea of or for any matter determinable in the Kings Court, ſo as the party grieved ſhall have double remedy, both againſt the Hoſpitallers and Templers, and alſo againſt their Judge, and the King to have a double fine, in reſpect of the wrong done to his Crown, and Dignity, and the unjuſt veration of his Subjects.

¶ Conſervatores.] For this word ſee hereafter cap.47.

Alſo if the Judge did graunt a generall citation without expreſſing the cauſe, by colour whereof the party was troubled, he ſhould yeeld to the party damages, and be grievouſly fined to the King.

¶ Et quia hujuſmodi privilegiati impetrant conſervatores, ſubpriores, præſentatores, ſacriſtas, religioſos, qui nihil habent.]

Before this Act there was another miſchief or abuſe, & that was, that theſe Hoſpitallers and Templers, to defeat the remedy that was given to the party grieved againſt the Judge in the caſes abovesaid by the Common Law, did conſtitute Subpriors, Chaunters, Sextens, and other Religious men, which had nothing to ſatisfie the party grieved, nor the King (whereby it appeareth that the party grieved in the caſes abovesaid had remedy by the Common Law) were more bold to offend againſt the Kings Crown and Dignity then their ſuperiors, &c. for this miſchiefe, or rather abuſe, remedy is here provided.

¶ Qui audaciores ſint.] The wiſdome of the Common Law was ever, that men of ability and ſufficient meanes to live ſhould be called to Offices, and Judiciall places for theſe cauſes:

1. Firſt, for that they would feare to offend; for men that are in place of Judicature, and without meanes, are, as here it appeareth, boldeſt to offend.

2. They to maintaine their countenances are proneſt to bribe and extort.

3. That if they offend, they may be able to ſatisfie the party grieved, and the King his fine: which theſe cauſes doe appeare by this branch.

¶ Ad lædendum dignitatem Regis.] Here it appeareth that incroachment of juriſdiction by Eccleſiaſticall Judges contrary to the Kings Lawes is Crimen læſæ dignitatis Regis: which appeareth by theſe words, and hereafter it is in this branch ſaid, In præjudicium domini Regis & Coronæ ſuæ.

Fleta li. 6. c. 36. reſpondeat ſuperior. 52 H. 3. Stat. de Scac' W. 2. c. 2. & 11. 44. E. 3. 13. 41 Aſſ. 10. 50 E. 3. 5 39 H. 6. 32. 2 H. 6 ca. 10. L. 11. fo 92. The Earle of Devonſhires caſe.

¶ Quod ſi fecerint, pro facto ipſorum reſpondeant ſui ſuperiores, ac ſi de proprio facto ſuo convicti eſſent.] Here is the remedy provided for the laſt mentioned miſchiefe or abuſe, viz. that the ſuperiors, that is, thoſe that appoint ſuch Judges (as are not ſufficient to ſatisfie the party grieved his damages, and the King his fine) ſhall out of their Temporalties ſatisfie the ſame according to the rule of reſpondeat ſuperior.

Hil. 14 E. 3. ex pte remem. Regis in Scac' Rot. 9. Herlizans Caſe. 39 H. 6. 32.

And by the Common Law, if the Coroner be inſufficient, the whole County, who made election and choyce of him, ſhall tanquam electors & ſuperior anſwer for him, and ſo ſhall the Officer anſwer for his Deputy.

CAP. XLIV.

See W. 1. cap. 26, 27, 29.

DE cuſtodibus hoſtiorum in itineribus, virgam portantibus coram Juſtic' de Banco: Ordinatum eſt, quod de qualibet Aſſiſa & jurata quam cuſtodiunt, capiant decem denarios tantum, de Chirographis nihil. De his qui recuperant demandas ſuas verſus plures per defaltam, redditionem, vel alio modo per judicium ſine aſſiſa, vel jurat', nihil. De his qui recedunt ſine die per defaltam petentis vel querentis, nihil capiant. Et ſi quis recuperaverit demandam ſuam verſus plures per unum breve, & per recognitionem aſſiſæ

aſſiſæ vel jurat' de quatuor denariis ſint contenti. Et ſimiliter ſi plures in uno brevi nominati per recognitionem aſſiſæ vel juratæ recupaverint demandam, de quatuor denariis ſint contenti. De his qui faciunt homagium in banco, de ſuperiori panno ſint contenti. De magnis aſſiſis, attinctis, juratis, & duello percuſſo xii. d. tantum capiant. De his qui vocati ſunt coram Juſtic' ad ſequend', vel defendend' placitum ſuum, nihil capiant pro egreſſu vel ingreſſu. Ad placita Coronæ de qualibet duodena xii. d. tantum capiantur. De quolibet priſonario dliberato iv. d. tantum capiantur. De quolibet cujus pax proclamata fuerit xii. d. tantum capiatur. De inventoribus occiſorum, & aliis attachiat' vill', iv. d. De decennariis hominibus, al', de quatuor hominibus & propoſito ac decenariis nihil capiatur. De Chirographariis pro Chirographo faciendo ſtatutum eſt, quod de quatuor ſolidis ſint contenti. De Clericis ſcribentibus brevia originalia & judicialia ſtatutum eſt, quod pro uno brevi de uno denario ſint contenti. Et injungit dominus Rex omnibus & ſingulis Juſticiariis ſuis in fide & ſacramento quibus ei tenentur, quod ſi hujuſmodi miniſtri contra præd' ſtatutum in aliquo articulo venerint, & querimonia ad eos perveneat, pœnam eis infligant rationabilem. Et ſi iterum deliquerint majorem pœnam eis infligant, qua caſtigari merito debeant. Et ſi tertio deliquerint, & ſuper hoc convicti fuerint, ſi ſint miniſtri de feodo, amittant feodum ſuum, & ſi alii ſint, amittant curiam regis, nec redeant ſine ipſius regis ſpeciali præcepto aut gratia.

¶ De cuſtodibus hoſtiorum in itineribus virgam portantibus, &c.] This noble and wiſe King, knowing that Extortion was a grievous burthen to his Subjects, and having provided againſt the ſame by many Laws, as before hath appeared: In this Chapter he ſetteth down in particular, as an addition to his former Acts, what Fees the Porters bearing Verge before the Juſtices of the Common Pleas in their Circuit, the Chirographers, and Clerks writing Writs Original or Judicial ſhould take, which were the due Fees before this Act; but yet it was thought neceſſary that the ſame ſhould be ſet down, and publiſhed by Act of Parliament for three cauſes.

1. That all the Subjects of the Realm might take notice, and know in what caſes to give, and in what not.

2. In caſes where they ought to give, what they were to give in certainty.

3. That the Officers or miniſters take no more then is here preſcribed, under pretence of Expedition, or other pretext whatſoever, nor to take any thing where nothing is due to them, under the pains hereby inflicted.

¶ Et ſi quis recuperaverit demandã ſuam verſus plures, &c.] Where there were many Tenants or Defendants, 4. d. was before this Act exacted for every Tenant or Defendant upon a recovery againſt them, where (they all being but as one Tenant or Defendant) there ought to be given but one 4. d. as it is declared by this Act.

16 Aſſ. 47.

¶ De chirographariis pro chirographo faciendo ſtatutum eſt quod de 4. s. ſint contenti.] Chirographarius cometh of the Greek word χειρογραφεῖν, which is as much to ſay, as a hand writing. ſo called, becauſe he writeth the Chirographs, that is, the Indentures of the Fine, one for the buyer, another for the ſeller; and the Fine is ſaid to be ingroſſed, when the Chirographer maketh the Indentures, and delibers them.

F.N.B. 147. a.

2 H. 4. cap. 8. By the Statute of 2 Henry 4. cap. 8. it is provided, that the Chirographer ſhall take but the ſaid ſumme of 4. s. mentioned in this Act for a Fine levied.

¶ Et injungit dominus rex omnibus, et ſingulis Juſticiariis ſuis in fide, et ſacramento quibus ei tenentur, &c.] By this great injunction, and Commandment of ſo high a nature to the Juſtices, the odiouſnes of Extortion appeareth, and what an high offence it is, for that moſt commonly it is accompanied with Perjury, and that it hath a conſuming quality; whereof the Prophet David ſpeaking againſt the enemies of Almighty GOD, ſaith, Let the Extortioner conſume that he hath, and let the ſtranger ſpoil his labour.

¶ Et ſi tertio delinquerint, & ſuper hoc convicti fuerint.] Convicti fuerint is here taken for adjudicati fuerint.

See W. 2. cap 4.

Though this branch ſaith, Et ſuper hoc convicti fuer', and may ſeem to refer to the third offence, yet cannot he be convicted of the third before he be convicted of the ſecond, nor of the ſecond before he be convicted of the firſt; and the ſecond offence muſt be committed after the firſt conviction, and the third after the ſecond conviction, and ſeverall Judgements thereupon given: for ſo it is to be underſtood in other Acts of Parliament, where there be degrées of puniſhment inflicted, for the firſt, ſecond, and third offences, &c. there muſt be ſeverall Convictions, that is to ſay, Judgements given upon legall proceeding for every ſeverall offence, for it appeareth to be no offence untill Judgement by proceeding of Law be given againſt him.

¶ Si ſint miniſteri de feodo.] This is underſtood of Officers that have any fixed eſtate, although it be not in fee-ſimple, as in the 42. Chapter is ſhewed; for the largeſt eſtate of any of the miniſteriall Offices ſpecified in this Act that ever was granted, was for term of life; and this appeareth by the diverſity of puniſhments impoſed by this Act; for if they have their Offices De feodo, that is, of a fixed eſtate, for the third offence amittant feodum, that is, Officium ſuum; and if they have no fixed eſtate, but at pleaſure, amittant curiam regis, that is, be forjudged the Kings Court.

See before, cap. 2. the ſenſe of theſe words, De feodo.

CAP.

CAP. XLV.

QUia de his quæ recordata sunt coram Cancellario domini Regis, & ejus Justic' qui recordum habent, & in eorum rotulis irrotulatur, non debet fieri processus placiti per summonitiones, attachiamenta, essonium, visus terræ, & alias solemnitates curiæ, sicut fieri consuevit de contractibus & conventionibus factis extra cur': Observandum est de cætero, quod ea quæ inveniuntur irrotulat' coram his, qui recordum habent, vel in finibus content', sive sint contractus, sive conventiones, sive obligationes, sive servitia, aut consuetudines, recognita, sive alia quæcunque irrotulata, quibus curia domini Regis (sine juris & consuetudinis offenso) authoritatem præstare potest, talem de cætero habeant vigor' quod non sit necesse in posterum de his placitare, sed cum venerit conquerens ad cur' domini regis, si recens sit cognitio, vel finis levat', viz. infra annum, statim habeat breve de executione illius recognitionis factæ. Et si fortè à majori tempore transacto facta fuerit illa recognitio, vel finis levatus, præcipiatur Vicecom' quod scire faciat parti, de qua sit querimonia, quod sit ad certum diem coram Justic', ostendens (si quid sciat dicere) quare hujusmodi irrotulat', vel in fine content' executionem habere non debeant. Et si ad diem non venerit, vel fortè venerit, & nihil sciat dicere, quare executio fieri non debeat, præcipiatur Vicecom', quod rem irrotularam, vel in fine content' exequi faciat. Eodem modo mandetur Ordinario in suo casu, observetur nihilominus quod [*W. 2. cap. 9*] supradict' est de medio, qui per recognition' aut judicium obligatus est ad acquietandum. [13 *E. 1. Mercatoribus.*]

Vide devant. cap. 18. Hil. 13 E. 2. fol. 74. b. in libro meo, Adjudged al common ley. 8 E. 3. 28, 29, 44. 21 E. 3. 55 40 E. 3 10. Lib. 3. 3. fo. 12 Sir William Herberts case, lib. 6. fol. 88. Garnons case. 19 H. 6. 5. 20 H 6 20. F. N. B. 265. g. Regist. 298, 299. 1. Part of the Institutes, sect. 505 506, 699. 18 E. 3. 33, 34. Note dictum Wilby. 21 E. 4. 19. b.

Some diversity of opinion hath been, whether there was a Scire fac' at the Common Law before this Act: and the doubt grew for want of distinguishing between personall Actions, and reall Actions; for true it is, that in personall Actions, if the Plaintife after Judgement given, or Recognisance knowledged, sued out no processe of Execution within the yeer, he could have no Scire fac'; but the Plaintife or Cognisee was driven to his Originall, which is to be intended upon the Judgement or Recognisance) as in Actions of Debt, Writs of Annuity, or other personall Actions, wherein debts or damages were recovered, or upon Recognisances.

But in reall Actions, or upon a Fine levied, though the Demandant or Cognisee sued out no Execution within the yeer after the Judgement given, or

Fine

Fine levyed, the Demandant or Conuſee of the Fine after the yeer might have had a Scire fac' for the land, &c. becauſe he could not have any new Originall, either upon the Iudgement or Fine, as he might have in the other caſes.

1 H. 5. 4. Now this Act giveth a Scire facias in perſonall Actions in lieu of a new Originall.

And in reall Actions, two things are remedied by this Act, that is, Firſt, the tedious Proceſſe, which was at the Common Law, is hereby abridged; and ſecondly, the great delays uſed therein are ouſted, as Views of the land, and other ſolemnities uſed in reall Actions.

Regula. And the diſtinction aboueſaid appeareth (if it be well obſerved) in our Books, and therefore the old Rule is hereby verified, Qui bene diſtinguit, bene docet.

And thus much being ſpoken for the cauſe of the making of this Act, let us now peruſe the words.

2 E 3 7,8. 45 E. 3 Scire fac. 134. 16 E. 3. Brc. 651. 15 E. 3. Scire fac. 115. 19 R. 2 ibid. 154. 17 E. 3. 36. 21 E. 3. 1, 4, 16. 14 H. 7. 6, 7. Hil. 13 E. 2. fo. 74 b. in libro meo le caſe del Mr. Hoſpital de T.

¶ Quia de hiis quæ recordata ſunt.] Regularly upon this Act, a Scire fac' cannot be granted but upon a Record; but in many caſes a Scire fac' is granted, partly upon a Record, and partly upon ſuch a ſuggeſtion, without which no proceeding could be upon the Record.

¶ Non debet fieri proceſſus placiti per ſummon', attachiament', eſſon', viſus terræ, & alias ſolemnitates curiæ.] Here be four things particularly named to be ouſted, viz. Proceſſe of Summons, Proceſſe of Attachment, Eſſoins, View of the land, and then generall words, other ſolemnities of Courts.

2 H. 7. 10. & 11. Hill 13 E. 2. ubi ſupra. ¶ Eſſon'.] The Eſſoin of the Tenant or Defendant is not onely reſtrained by this Act, but of the Vouché in aid, who is a ſtranger to the Writ, is alſo reſtrained.

10 E. 3. 30. 12 H. 6. 8. And the Plaintife in the Scire fac' ſhall not be eſſoined, although it is his own delay.

21 E. 4. 19. ¶ Et alias ſolemnitates curiæ.] It hath been reſolved, that a Protection is within theſe words, and that it ſhould not be allowed in a Scire facias.

40 E. 3. 18. 47 E. 3. 3. 37 H. 6. 32. 15 H. 7. 8. *17 E. 3. 46. 18 E. 3. 32. 40 E. 3. 18. 37 H. 6. 32. And divers authorities are againſt it.

*Aid, Age, and Receit ſhall be granted in a Scire facias; for Solemnitates curiæ are properly delays in reſpect of the ſolemn Judiciall proceedings of Court, and theſe words extend not to the right of the party to have his age, or to be received, or to have aid of another.

13 E. 3. Scire fac. 118. W. 2. cap. 5. ¶ In finibus.] Upon a Fine Sur grant & render of an Advowſon, a Scire facias ſhall be granted, for this is a Judiciall, and no Originall Writ, for de advocat, non ſunt niſi tria brevia originalia.

And though Fines be here named, yet Recoveries in reall Actions are within the purview of this Act.

¶ Quod non ſit neceſſe in poſterum de hiis placitare.] This branch is thus to be underſtood, that the Tenant or Defendant, though he be a ſtranger to the recovery, ſhall not plead againſt the recovery any thing that proveth it erroneous or voidable; but he may plead matter that proveth the recovery void, as that it was had coram non judice, or the like.

36 H. 6. 32. 21 E. 4. 23. b. *8 E. 3 56 15 E. 3. Age 43, 95. 10 R. 2 Fauxer de recovery 47. 3 H. 6. 34 b. 7 H. 6. 39. 10 H. 6. 5. 7 H. 7. 13. 12 H. 8. 8. † 1. part of the Inſtitutes, ſect. 505. * Neither ſhall he in a Scire fac' plead any thing againſt the title or matter of the recovery, where he may have an Action, and therein falſifie the ſame.

† But the Tenant or Defendant may plead divers matters after the Iudgement given, to barre the Plaintife of Execution, as Outlawry, or a releaſe of Actions, &c.

¶ Si

¶ Si recens fit cognitio, vel finis levat' infra annum, statim habeat breve de executione.] It hath been ruled that these words have relation to the teste of the recognisance, and not to the day of payment, and therefore if a recognisance be knowledged to pay a summe a year and halfe after, a Scire facias lieth, and no Fieri facias. For receipts see Bract. l. 5. fo. 377. 21 E. 3. 22. b. 21 E. 3. ubi supra.

But I take that rule to be against Law, and that recens cognitio is as much as recens solutio cognitionis; for the words be Statim habeat breve de executione, which he cannot have before the day of payment be past. 10 E. 2. exec. 137. 16 E. 2. ibid. 138. 16 E. 3. Scire fac' 4. 21 E. 3. exec' Statham.

If a judgement be given in a Writ of annuity, the Plaintiffe shall have execution within the yeare after every day of payment by Fieri fac', or Elegit, though it be many yeares after the judgement; And so if a man be bound by Recognisance in C. l. to pay it yearly at five severall dayes 20. l. now immediately after the first day of payment he may have an Elegit, or Fieri facias for the 20. l. and so at the second day passed, &c. and yet in both these cases there is above a yeare after the Judgement given or Recognisance knowledged, therefore these words recens fit cognitio shall relate to the day of payment of the money, which is the effect of the Recognisance, and not to the teste of the Recognisance, which is but the assurance for payment of the money. 8 E. 3. 44. F. N. B. 266. c. 267. b.

And this word recens importeth, when the party may sue for the same, which he cannot doe before the day of payment be past, but this is to be understood, when the severall dayes of payment are contained in the Recognisance it selfe, for if there be a day of payment expressed in the Recognisance, and a condition or defeasance there of the same limiting other dayes of payment, there, these words recens fit cognitio, &c. shall relate to the day of payment expressed in the Recognisance, and not to the condition or defeasance, and if there be no day of payment in the Recognisance, then these words recens cognitio, &c. doe relate to the teste of the Recognisance.

And albeit the Plaintiffe cannot have execution within the yeare, according to the Letter of this Statute, yet if he come within a yeare of the payment, it sufficeth. 8 E. 3. 44.

If lands be granted and rendred by fine, and in the fine it be mentioned that W. holdeth the same for 26. yeares after the terme ended, he shall have a Scire facias albeit he could have no Writ of Execution within the yeare; and so it is if a reversion expectant upon an estate for life be granted by fine, and after Tenant for life liveth many yeares and dieth, the conusee shall have a Scire facias, and yet could he not have a Writ of Execution within the yeare.

If the Demandant or Plaintiffe taketh his Proces of Execution within the yeare, though it be not served within the yeare, yet if he continue the same, he may have Proces of Execution at any time after the yeare.

One that is not party to the Record, Recognisance, Fine, or Judgement, as the Heire, Executor, or Administrator, though they be privy, and though it be within the yeare, shall have no Writ of Execution, but are to have a Scire facias to enable themselves to the suit; and so likewise of the Tenant or Defendants part, for the alteration of person altereth the Proces; otherwise it is in case of a Statute Staple, or Merchant, &c. because the Proces is given by other Acts of Parliament. F. N. B. 267. d. 2 R. 3. 8. 14 H. 7. 16. b.

But if a Judgement be given in the Court of Common Pleas, and within the yeare the Judgement is affirmed in a Writ of Error in the Kings Bench, the alteration of the Court worketh no alteration of the Proces, but he may have his Writ of Execution within the yeare, and not be driven to his Scire facias, though it hath been otherwise holden, but now the common experience and later resolutions are to the contrary. 21 Ass. p. 14. 14 H. 7. 15. 15 H. 7. 5. Lib. 5. fol. 88. Garnons Case.

¶ Et si forte à majori tempore transacto facta fuerit illa recognitio, vel finis levatus, præcipiatur Vic' quod Scire faciat parti de qua fit querimon', &c. quare executionē habere non debeat.]

Upon

20 E.3. Scir' fac' 121. 39 E.3.15. 46 E.3.29.b. 8 H.6.17. 21 E.4.19.

Upon theſe wordes, Scire faciat parti, In a Scire fac' upon a Recogniſance out of the Common Pleas, the Conuſee muſt name all the terre-Tenants at his perill, but in other Courts the Writ is generall againſt all terre-Tenants.

The point of the Writ is Quare executionem habere non debet, and therefore the Tenant ſhall not vouch.

39 H.6.2.

This Statute is in the affirmative, and therefore it reſtraineth not the Common Law, but the party may waiue the benefit of the Scire facias * 27 H.6.2.3 5 H.6 24.30 H.6.5. 19 H.6.49.44 E.3 11.20 E.3. Scir' fac' 121.46 E.3. 29.10 H.4.2,3. † 30 E.3.25.17 E.3 74,76,77. Sir William Herberts caſe, ubi ſupra. given by this Act, and take his originall Action of Debt by the Common Law.

The formes of Scire fac' upon * Recogniſances, &c. and likewiſe upon † fines and recoueries appeare in our Bookes.

And ſeeing the wordes of the Scire fac' be, Quare executionem habere non debet, the Tenant or Defendant may plead any thing in barre of Execution, as hath been ſaid before.

¶ Et ſi ad diem non venerit] * 18 E.3. exec. 57 33 H.6.42.10 H 6 12.2 H 7.3.l.5 E.4. 1. 4 H.7 7. Li. 5. fo.32. Perifers Caſe. The party muſt either be warned, or regularly two nihils returned, and then by default execution ſhall be granted, and how the warning is to be made, it appeareth in our Bookes.

The courſe of the Court of Common Pleas is, that upon a recouery the Plaintiffe ſhall haue execution upon one nihil returned.

¶ Eodem modo mandetur ordinario in ſuo caſu.] This branch is to be thus intended, that if a Scire facias be brought upon a Recogniſance, or upon a Iudgement in a Writ of Annuity, and the Sheriffe return that the Defendant is Clericus et beneficiatus nullum habens laicum feodum, &c. the Plaintiffe ſhall haue a Writ to the Biſhop of the ſame Diocele to warne the Defendant, and upon warning, or two nihils returned, and default made, or if he appeareth, and ſhew no matter, wherefore execution ſhould not be graunted, then a Writ ſhall be awarded to the Biſhop to leuy execution De bonis Eccleſiaſticis.

¶ Obſervatur nihilominus quod ſupradictũ eſt de medio, qui per recognitionem aut judicium obligatus eſt ad acquietand'.] This clauſe was added in majorem rei cautelam, that the proviſion before made at this Parliament cap. 9. in caſe that in a Writ of Deſne, Poſtquam medius venerit in curiam et cognoverit, quod acquietare debet tenentem ſuum, vel ad, udicetur ad acquietandum, ſi poſt hujuſmodi cognitionem aut judicium querimonia perveniat, quod medius non acquietavit tenentem ſuum, tunc exeat breve de judicio, quod Vic' diſtringat medium ad acquietandum tenentem: whereupon fore-iudger is given; now if the Plaintiffe in the Writ of Deſne ſhould onely take his Scire facias, then no fore-iudger ſhould follow thereupon, therefore this clauſe was added, that the former generall wordes of this Act, Sive alia quæcunque irrotulata, &c. ſhould not take away the benefit of the former Act concerning the fore-iudger in a Writ of Deſne, but, as hath been ſaid, this Act being in the affirmative taketh not away neither the Common Law, nor the benefit of the former Act concerning the ſaid fore-iudger; for the Plaintiffe may take aduantage either of the one or other, at his election; wherein it is to be obſerued that an Act of Parliament cannot be made ſo plaine: But note the fore-iudger is given onely againſt him that made the acknowledgement, or againſt whom iudgement was given, and not againſt his heire, and therefore this Act is an addition declaratiue to the former, viz. that a Scir' fac' may in thoſe caſes lie againſt the heire.

Regiſt. judic' fo'. 22, 26. W.2. cap 9.

14 E.3. meſne 9. 46 E.3 31. ſee W.2 cap. 9. more of this matter.

CAP.

CAP. XLVI.

CUm in ſtatuto edito apud Merton, conceſſum fuerit, quod domini vaſtorum, boſcorum, & paſturarum appruare ſe poſsint de vaſtis, boſcis, & paſturis illis, non obſtante contradictione tenentium ſuorum, dummodo tenentes ipſi haberent ſufficientem paſturam ad tenementa ſua, cum libero ingreſſu & egreſſu ad eadem. Et pro eo quod nulla fiebat mentio inter vicinum & vicinum, multi domini vaſtorum, boſcorum, & paſturarum hucuſque impediti extiterint per contradictionem vicinorum ſufficientem paſturam habentium. Et quia forinſeci tenentes non habent majus jus communicandi in boſco, vaſto, aut paſtur' alicujus domini, quam proprii tenentes ipſius domini: ſtatutum eſt de cætero, quod ſtatutum apud Merton proviſum inter dominum & tenentes ſuos, locum habeat de cætero inter dominos vaſtorum, boſcorum, & paſturarum & vicinos, ita quod domini hujuſmodi vaſtorum, boſcorum, & paſtur' ſalva ſufficienti paſtura hominibus ſuis & vicinis, appruare ſibi poſsint de reſiduo. Et hoc obſervetur de his qui clamant paſtur' tanquam pertinentem ad tenementum ſuum. Sed ſi quis clamat communiam paſtur' per ſpeciale feoffamentum, vel conceſsionem ad certum numerum averiorum, vel alio modo, quam de jure communi habere deberet, cum conventio legi deroget, habeat ſuum recuperare, quale habere deberet per formam conceſsionis ſibi factæ. Occaſione molendini ventritici, bercariæ, vaccariæ, neceſſarii, augmentationis cur', aut curtilagii de cætero non gravetur quis per Aſsiſam novæ diſſeiſinæ de communia paſtur'. Et cum contingat aliquando, quod aliquis jus habens appruare, foſſatum aut ſepem levaverit, & aliqui noctant', vel alio tali tempore quo non credant factum eorum ſciri, foſſatum aut ſepem proſtraverint, nec ſciri poterit per veredictum aſsiſæ, aut juratæ, qui foſſatum aut ſepem proſtraverint, nec velint homines de villatis vicinis indictare de hujuſmodi facto culpabiles, diſtringantur propinquæ villatæ circum adjacentes, levare foſſatum aut ſepem, ad coſtum proprium, & damna reſtituere.

Et cum aliquis jus non habens communicandi uſurpet communiam tempore quo hæredes infra ætatem extiterint, vel uxores ſub poteſtate virorum ſuorum exiſtentes; vel paſtura ſit in manu tenentium in dotem, per legem Angliæ, vel aliter ad terminum vitæ, vel annorum, vel per feodum talliatum, & paſtura illa diu fuerint uſi; multi ſunt in opinione quod hujuſmodi paſturæ debent dici pertinere ad liberum ten', & quod hujuſmodi poſſeſſori competere debet actio per breve Nov. diſſeiſ. ſi ab hujuſmodi paſtur' deforceantur: ſed de cæteto tenendum eſt, quod habentes hujuſmodi ingreſſum à tempore quo currit breve mortis anteceſſoris, ſi antea communiam non habuerunt, non habeant recuperare per breve No. diſſ. ſi fuerint deforciati.

℄ Cum in ſtatuto edito apud Merton, conceſſum fuerit, quod domini vaſtorum, boſcorum, & paſturarum appruare ſe poſsint, &c.] Here is the Statute of Merton recited, and becauſe in that Act no mention was made betwéen neighbour and neighbour, the doubt was, whether that Statute extended onely betwéen Lord and Tenant, and therefore many Lords of waſtes, woods, and paſtures have béen letted to make approvement by the contradiction of neighbours, though they had ſufficient paſture; for remedy whereof this Statute was made.

6 H.3. Common 26. 12 H.3. ibi. 25

℄ Per contradictionem vicinorum.] Note it is not ſaid that the Lord could not improve againſt a neighbour, but that the Lords were letted by the contradiction of the neighbours; for by the Common Law the Lord might improve againſt any that had common appendant, but not againſt a Commoner by grant.

℄ Statutum eſt de cætero, quod ſtatutum apud Merton proviſum inter dominos, & tenentes ſuos, locum habeat de cætero inter dominos vaſtorum, &c. & vicinos.] This branch is from the making of this Act, an Expoſition of the Statute of Merton, ſo as now the Statute of Merton doth extend inter vicinum & vicinum; but though it be an Act of Expoſition of a former Act, yet this Expoſition ſhall take effect but de cætero, that is, from the making of this Act of Expoſition. And the reaſon that this Act had a retroſpect to the Statute of Merton was, Quia ſorinſeci tenentes non habent majus jus communicandi in boſco vaſto, aut paſtura alicujus domini, quam proprii tenentes ipſius domini.

Brit. fol. 144, 147 18 Aſſ. Pl. 4. 18 E. 3. 43. 13 H. 7. 13. 32 H. 8. Dier 47. b. 14 Eliz. Dier 13, 16.

Vicinus is properly qui una in eodem vico eſt, but here it is taken for a neighbour, though he dwell in another Town, ſo the Towns and Commons be adjoyning together; and if the Lord hath Common in the Tenants ground, the Tenant may improve within this Act, for there the Lord is in this caſe Vicinus.

Ad Aſſiſas capt' apud Penreth in com' Cumbriæ, coram Roberto de Hereford & ſociis ſuis, &c. die veneris in craſt' inventionis Sanctæ crucis, An. regis Ed. 1. 30. Which Record we have ſéen. In an Aſſiſe brought by John of Rowbery, and Iſabel his wife, againſt Matild of Multon, and others, of 20. acres of paſture and wood in O. the caſe appeareth by the verdict of the Recognitors of Aſſiſe, viz.

Quod

*Quod prædict' Matild, & ſimiliter omnes anteceſſ' ſui domini de Gilleſland à tempore quo Waren' de Gilleſland devenit ad manus antec' ſuorum uſi ſunt hujuſmodi libertate, quod nullus libere tenens infra baron' illam, ſe appruiare poſſet de vaſto ſuo, ſine licentia, & voluntate prædict' Matild, & anteceſſ' ſuorum, nec aliquis temporibus retroactis in aliquo de vaſto ſe appruiavit niſi ſatisfecerit prædict' Matild, ſeu anteceſſ' ſuis; & quæſiti ſi prædict' Matild habeat communiam in ten' de quo, &c. dicunt quod ſic, ratione manerii ſui de Cuquyntyngton, quod quidem maner' diſtat à ten' circit' per unam leucam; quæſiti ſi prædict' Matild habeat ſufficientem communiam extra ten' prædict' cum libero ingreſſu & egreſſu, dicunt quod ſic; Dies datus eſt eis de audo' Iudo' ſuo apud Weſtm', à die Sancti Michaelis in xv. dies, &c. Poſtea à die Sancti Hilar' in xv. dies, Anno Regni domini Regis nunc viceſimo venerunt prædict' Walterus, & Iſab' per attornatum ipſius Iſab', & ſimiliter prædict' Matild per balivum ſuum, et petunt recordum, &c. Et quia conjunctum eſt per aſſiſam iſtam, quod à tempore quo Waren' prædict' devenit in ſeiſina prædict' Matild, ipſi antec', & ſimiliter ipſa Matild tali libertate uſi ſunt, quod nullus libere tenens infra Baroniam illam, ſe poſſet appruiar' de vaſto ſuo ſine licent', & voluntate prædict' Matild, & anteceſſ' ſuorum, nec aliquis temporibus retroactis in aliquo de vaſto ſe appruiavit niſi prius ſatisfecerit prædict' Matild, ſeu ſuis anteceſſoribus. Et ten' quod nec proviſio de Merton', nec ſtatut' domini Regis nunc de appruiament' fact', ſeu faciend', &c. non operat' in caſu propoſito, cum illud de Merton' habeat locum inter dominum appruiant', et tenentem communiam clamantem. Et ſtatutum Regis nunc inter vicinum appruiantem, et vicinum communiam clamantem, et hoc de communia pertin' ad liberum ten', et caſus propoſitus eſt inter dominam comm' clamantem, et tenent' appruiantem, et * hoc de communia non pertinente ad ten', imo uſitata in Baron' prædict' per prædict' Matild, & anteceſſores ſuos ratione dominii ſui in eadem Baronia à tempore prædict'. Conſid' eſt quod prædict' Matild, & alii inde ſine die. Et quod prædict' Walterus, & Iſab' nihil capiant per aſſiſam, ſet ſint in miſericordia pro falſo clamor', &c.*

Note this preſcription. Vide 3 E. 3. 3. 8 E. 3. 37. 46 E. 3. 13, 23. 8. milia.

* Nota hoc.

This Judgement, being given in the ſame Kings time that the ſaid Statute of W. 2. was made, both in reſpect of the ſaid preſcription, together with the Common reſerved at the time of the creation of the tenancie, as by the Record it appeareth, ſtandeth well with the Books of 18 E. 3. and 18 Aſſ. for there was no ſuch preſcription; and there it is holden, that if the Lord had the Common by reſervation at the time of the firſt feoffment, then no approvement could be made by his Tenant againſt him: and note the quality of the Common mentioned in the Judgement.

¶ Et hoc obſervetur de hiis qui clamant paſturam tanquam pertinentem ad tenementum ſuum. Sed ſi quis clamat communiam paſturæ per ſpeciale feoffamentum, vel conceſſionem ad certum numerũ averiorũ, vel alio modo, &c.] **So here it is to be obſerved, that neither this Statute, nor the Statute of Merton doth extend to any Common, but to Common appendant, or appurtenant to his tenement, and not to a Common in groſſe to a certain number.**

12 H. 3. ubi ſupr. 3 E. 2. Cõmon 21

See the Expoſition upon the Stat. of Merton.

¶ Occaſione molendini ventritici, bercariæ, vaccariæ, ne-

ceſſarii, augmentationis curiæ, aut curtilagii de cætero non gravetur quis per Aſsiſam, &c.] Here be five kinds of improvements expreſſed, that both between Lord and Tenant, and Neighbour and Neighbour, may be done, without leaving ſufficient Common to them that have it (any thing either herein, or in the Statute of Merton to the contrary notwithſtanding) and theſe five are put but for examples; for the Lord may erect a houſe for the dwelling of a beaſt-keeper for the ſafe cuſtody of the beaſts aſwell of the Lord, as of the Commoners depaſturing there in that ſoil; and yet it is not within the letter of this Law.

7 H. 4. 38.

¶ Bercariæ.] Bercaria ſignifieth a Sheep-houſe, and is derived from the French word Bergerie, which alſo ſignifieth a Sheep-houſe; and by turning g into c, the legall word is made Bercaria, and ſo it is taken in this Act: In Domeſday it is called Berquarium; it ſignifieth alſo a Tanne-houſe, derived of the Saxon word Berc. For this, ſee the firſt part of the Inſtitutes, ſect. 1. Verbo Bercaria.

Domeſday, tit. Sudſex Piccam, &c.

¶ Vaccariæ,] Vaccaria is derived à vacca, and ſignifieth ſtabulum vaccarum, a Cow-houſe, as Vaccheria doth in Italian.

Fleta betweẽ Bercariæ and Vaccariæ, hath Dayerye; this word I finde not in the printed Books, but in ancient Manuſcripts, and it ſignifieth a Dayery or Milk-houſe; in Latine, Lactarium.

¶ Neceſſarii] Is to be applyed to Curtilagii, both in congruity and by our Books, and Neceſſary ſhall not be taken according to the quantity of the Free-hold he hath there, but according to his perſon, eſtate or degree, and for his neceſſary dwelling and abode; for if he hath no Free-hold there in that Town, but his houſe onely, yet may hee make a neceſſary inlargement of his Curtilage.

32 Aſſ. 5.

¶ Et cum contingat aliquando, quod aliquis jus habens appruare, foſſatum aut ſepem levaverit, & aliqui noctanter, vel alio tali tempore quo non credant factum eorum ſciri, foſſatum aut ſepem proſtraverint, &c.] Forasmuch as the Lord, (as hath been ſaid in the Expoſition upon the Statute of Merton) ought to divide the parts improved, by the hedge, ditch, or other defence: now this branch provideth, that if perſons unknown, either in the night or otherwiſe, ſo ſecretly proſtrate the ditches, hedges, or other fences, as the Lord cannot know againſt whom to bring his Aſſiſe or other Action; and the men of the Towns next adjoyning thereunto round about do not indict the miſdoers of the fact, thoſe next Towns round about ſhall be diſtrained to make the hedge or ditch at their own coſt, and yeeld damages to the Lord; ſed certè opus eſt interprete.

¶ Indictare.] That is, to indict them at the Kings ſuit, either of a Ryot, Force, or Treſpaſſe: But here it is demanded, what time have the next Towns round about adjoyning to indict the miſdoers, ſeeing here is no time appointed? and the anſwer is, that ſeeing no time is appointed, the Law doth appoint (as in many caſes it doth) a yeer and a day for the indicting of the miſdoers; and by the Indictment, the Lord ſhall know againſt whom to bring his Action.

See the firſt part of the Inſtitutes, ſect. 69.

¶ Diſtringantur propinquæ villatæ circum adjacentes levare foſſatũ aut ſepem, ad coſtũ proprium, & damna reſtituere.] For, Vicini vicinorum facta præſumuntur ſcire: If the bordering Towns do not within

within a yeer and a day indict the misdoers, then shall the Lord or other party grieved bring his Action upon this branch against the Towns bordering round about the Town wherein the fact was done, and Judgement shall be given, that they shall at their proper costs make the ditch or hedge, &c. and yeeld damages; and after Judgement given, they shall be distrained to make the hedge or ditch, &c. and so it was holden in the Star-chamber, Hilar. 14 Jac. in Sir William Mallories case.. Hil. 14 Jac. in Camera stellata.

At the Parliament holden the eight day of October in 13 E. 1. at Winchester, remedy is given to the party robbed, upon Hue and Cry, (if the men of the Hundred where the robbery was done, take not the offender) against the men of that Hundred: and there is speciall prohibition made, that the Country shall have no longer space then forty dayes, &c. which prevented the time limited by the Law. 13 E. 1. Stat. de Winchester. Lib. 7. fol. 6, 7. Milborns case. 27 Eliz. cap. 13. 3 E. 3. Coron. 299 Simile.

¶ Et cum aliquis jus non habens communicandi usurpet communiam, &c.] This branch is in affirmance of the Common Law, for no man can have either Common appendant or in grosse by prescription, but by usage time out of minde, which is well expounded by Littleton, section 170. 1. Part of the Institutes, sect. 170

And here is to be observed, that usurpations of Commons in the times of Infants, Feme coverts, Tenant in Dower, Tenant by the courtesie, or otherwise for life or yeers, or Tenant in tail, shall not binde, though there be long possession.

¶ A tempore brevis mortis antecessoris.] That is, A coronatione regis H. 3. which was in the first yeer of his Raign, and between the Coronation of H. 3. and this Act, there was about 69. yeers, but yet that possession by that time, as here it appeareth, maketh no title in Law to the Common, if the commencement thereof can be shewed since the time of the Raign of R. 1. but the said long possession is great evidence, and a strong presumption of the right of the Common, and stabitur præsumptioni, donec probetur in contrarium.

CAP. XLVII.

PRovisum est, quod aquæ de Humbre, Ouse, Trent, Doue, Arre, Derewent, Wharff. Niddiore, Swale, Tese, Tyne, Eden, & omnes aliæ aquæ *in Regno* in quibus Salmones capiuntur, ponantur in defenso, quo ad Salmones capiendos, à die Nativitatis beatæ Mariæ, usque ad diem sancti Martini. Et similiter quod salmunculi non capiantur, nec destruantur per retia, nec per alia ingenia ad stagna molendinorum, a medio Aprilis usque ad nativitatem sancti Johan. Baptistæ. Et in partibus ubi hujusmodi ripariæ fuerint, assignentur conservatores istius statuti, qui ad hoc jurati sæpius videant & inquirant de hujusmodi transgressione, & in prima transgr' puniantur per combustionem retiũ, & ingeniorum suorum. Et si iterato deliquerint, puniantur per

per priſonam quarterii anni. Et ſi tertio deliquerint, puniantur per priſonam unius anni. Et ſic multiplicata tranſgreſſione, creſcat pœnæ inflictio.

Before the making of this Act, Fiſhermen for a little lucre did very much harm, and deſtroy the increaſe of Salmons by fiſhing for them in unſeaſonable times, which were between the beginning of September, and about the midſt of November; and likewiſe for yong Salmons, or Salmon peals, between the midſt of April, and towards the end of June: againſt both which, proviſion is made by this Act.

17 R. 2. cap. 9. W. 2. ca. 41 lib. 2. 46. the B. of Cant. caſe.

Herein the Thames, Thameſis nobile illud flumen is not named, and it was holden, that the generall words extended not to inferiour Rivers, and therefore the Thames is added by another Act in the firſt place.

¶ Ponantur in defenſo.] That is, that by this Act it is prohibited that Salmons, or yong Salmons ſhall be taken between the times mentioned in this Act.

¶ A die nativitatis beatæ Mariæ.] Which is on the eight day of September.

¶ Uſque ad diem Sancti Martini.] Which is the eleventh day of November.

And note, that the day of Saint Martin, and the Feaſt of Saint Martin is all one, and the Feaſt in legall underſtanding beginneth and endeth with the day.

13 R. 2. cap. 19. 17 R. 2. cap. 9.

¶ Salmunculi.] That is, yong Salmons, or Salmon peals, or Salmon ſmelts; for ſo this Act is expounded by another Statute: they are alſo called Salmon ſews, or Salmon ſlues.

¶ Uſque nativitatem Sancti Johannis Baptiſtæ.] This is not taken literally for the Nativity of Saint John Baptiſt, for that is long ſince paſt; but it is taken according to the intention of the makers, untill the day or Feaſt of his Nativity.

And ſuch conſtruction ſhall be made of Covenants, or Bonds to pay money, or do any act; for example, at the Annunciation of our Lady, it ſhall be taken for the Feaſt of the Annunciation, as here the Nativity, &c. is taken for the day of the Nativity.

¶ Ubi ripariæ fuerint.] Ripariæ is a word derived from Ripa, and here it ſignifieth the water, or river running between the banks, be it freſh or ſalt; and thereupon Riparius is taken for a Fiſherman.

¶ Aſſignentur conſervatores iſtius ſtatuti.] And this aſſignation muſt be by Commiſſion under the great Seal, and ſuch a Commiſſion could not have been made without warrant by authority of Parliament; for legall Commiſſions have their due forms, aſwell as Original Writs, and none can be newly framed without Act of Parliament, how neceſſary ſoever they ſeem to be: as in this caſe it was neceſſary that ſuch a Commiſſion ſhould be granted for preſervation of Salmons and of their yong, and for avoiding of the deſtruction of the ſame, being victuall of great and precious account; and what is more neceſſary then increaſe of victuall? yet could it not be newly raiſed without Act of Parliament; but Commiſſions of new inquiries, &c. and of new

Regiſt. 123, 125. 64, 138, 88, &c. F. N. B. 110, 111, 112, 113. 18 E. 3 ca. 1, 4. Stat. 1. Rot. Parliam. 5 H. 4. nu. 36. 2 H. 4. Rot. Parl. nu. 22. Dier 1 El. Scrogs caſe.

invention

invention, have been condemned by authority of Parliament, and by the Common Law.

¶ Conſervatores.] See this word before, cap. 43.

¶ Qui ad hoc jurati ſæpius videant, & inquirant.] Execution of the Law is the life of the Law, and therefore here is provision made for the continuall, due, and ſpeedy execution of the Law.

¶ Jurati.] A new Oath cannot be impoſed upon any Judge, Commiſſioner, or any other ſubject without authority of Parliament, as here it was; but the giving of every Oath muſt be warranted by Act of Parliament, or by the Common Law time out of minde. Stat. de 20 E. 3. 4 H. 4. c. 18. 2 H. 5 ca. 6. 17 E. 4. ca. 2. 1 R. 3. ca. 6. 5 R. 2 cap. 13. 32 H. 8.

The Oath of the Counſellors, Judges, Sheriffes, Under-Sheriffes, Eſcheators, Attorneys, Majors, and Baliffes are eſtabliſhed by Act of Parliament. cap. 46. 21 H. 8. ca. 16. 1 Eliz. c. 1. 28 Eliz. cap. 4. 43 Eliz. cap. 12.

¶ Et in prima tranſgreſsione punietur, per combuſtionem retium.] This ought to be by Indictment at the ſuit of the King, and the puniſhment cannot be inflicted upon the delinquent before upon due condiction, Secundum legem, & conſuetudinem Angliæ, Judgement be given. Stat. de 20 E. 3. ubi ſupra.

And, as hath been ſaid in the like caſe, he cannot be puniſhed for the ſecond offence, before he be adjudged for the firſt, and that ſecond offence muſt be committed after the Judgement given for the firſt; nor for the third, before he be adjudged for the ſecond, and that third muſt be committed after the Judgement for the ſecond; for Quod non apparet non eſt, & non apparet judicialiter in iſto caſu ante judicium. See W. 2. ca. [illegible]

¶ Multiplicata tranſgreſsione, creſcat pœnæ inflictio.] *Regula.* This is a Maxime of the Law, agreeing with thoſe other,

Ex frequenti delicto augetur pœna: *Regula.*
Creſcente malitia creſcere debet & pœna.

CAP. XLVIII.

DE viſu terræ ordinatum eſt & ſtatutum, quod de cætero non concedatur viſus, niſi in caſu quando viſus eſt neceſſarius: Sicut ſi aliquis amittat tenementum per defaltam: & ille qui amiſit ſuſcitet aliud breve ad petendum idem tenement'. Et in caſu quando aliquis per exceptionem dilatoriam caſſat breve poſt viſum terræ, ſicut per non tenuram, vel male nominando villam, vel hujuſmodi, ſi ſuſcitet aliud breve, in hoc caſu & in ſuperiori de cætero non concedatur viſus, dummodo viſum habuerit in prioribus brevibus. In brevi de dote cum petatur dos de tenemento, quod vir uxoris alienavit tenenti aut ejus anteceſſori, cum ignorare non debeat tenens, quale ten' vir uxoris alienavit Glanv. li. 2. ca. 1.

navit ſibi, vel anteceſſori ſuo licet vir non obiit ſeiſitus, nihilominus tenenti de cetero non erit viſus concedendus. In brevi etiam de ingreſſu caſſato per hoc quod petens nominavit male ingreſſum, ſi petens ſuſcitet aliud breve de alio ingreſſu, ſi tenens in priori brevi viſum habuerit, in ſecundo non habebit. In omnibus etiam brevibus per quæ ten' petunt' ratione dimiſsionis, quam petens vel ejus anteceſſor fecit tenenti, & non ejus anteceſſori, ſicut quod ei dimiſit, dum fuit infra ætatem, non compos mentis, in priſona, & conſimilibus, non jaceat de cætero viſus, ſed ſi dimiſſio facta fuerit anteceſſori jaceat viſus ſicut prius.

¶ De viſu terræ ordinatum eſt & Statut', quod de cetero non concedatur viſus, niſi in caſu quando viſus eſt neceſſarius.] There be divers Books in Law, wherein this Statute is cited.

8 E.3. 55. 38 E. 3. 1. 39 E.3. 38. & 18. 46 E.3. 16, 17. 21 H.6. 42.

¶ Per exceptionem dilatoriam.] The Writ muſt be abated by Exception, and therefore if the Demandant be nonſuit, the Tenant ſhall have the view again.

3 E.3. View 135. 12 E.3. ibid. 79. 13 E.3. ibid. 81. 24 E.3. ibid. 95. 22 E.3 9. 29 E.3. 46. 21 H.6. 42.

If the Writ doth abate by Conuſans of the Demandant, and not by the Plea and Exception of the Defendant, the Tenant ſhall have the view in the new Writ.

If the Tenant hath the view, and the Demandant diſcontinue his ſuit, in a new Action the Tenant ſhall have the view.

¶ Sicut ſi aliquis amittat tenementum per defaltam: & ille qui amiſit ſuſcitet aliud breve ad petendum idem ten'.] This branch is not to be underſtood according to the letter, for if one loſe by default in an Aſſiſe, and the Tenant bring a Writ of Right of the ſame lands againſt the recoveror, he ſhall have the view; but this branch is to be underſtood of a Quod ei deforceat upon the recovery by default, which Writ is grounded upon the former Record, ſo as the Tenant hath ſufficient notice thereby; and therefore neither party privie nor eſtranger ſhall have view in this Writ: but otherwiſe it is in the former caſe of the Writ of Right, for that is not grounded upon the Record.

7 E.3 36. 41 E.3. 8 30. 44 E.3. 43. 46 E.3. 34. 50 E. 3. 25.

¶ Et in caſu quando aliquis per exceptionem dilatoriam caſſat breve poſt viſum terræ.] Here be two Examples ſet down of dilatorie pleas in particular, that is to ſay, Non-tenure, and miſnaming of the Town where the lands do lye, both which Exceptions do riſe upon the view.

A Præcipe is brought againſt a Feme, who abateth the Writ for miſnaming of the Town, the wife taketh husband, in a new Writ againſt husband and wife they ſhall have the view; for albeit it be the Act of the wife to take husband, yet for that the husband was not party to the firſt Writ, they ſhall view in the ſecond. 30 E. 3. 8.

¶ Vel hujuſmodi.] Theſe generall words, or the like, are thus to to be expounded, that the Writ muſt abate for ſuch a Plea dilatory, as doth riſe upon the view, as the two particular Examples of Non-tenure, and miſnaming of

of the Towne doe; but when the Writ abate for ſome dilatories which riſe not upon the view, then in a new Writ the view ſhall be graunted; as where the Writ is abated for Joyntenancy, and the new Writ is brought againſt them both, they ſhall have the view, becauſe in the new Writ another perſon is joyned; and ſo it is if any more or leſſe land be contained in the new Writ: But if the firſt Writ after the view abated for default of forme, or for falſe Latin, or by taking of husband, in a new Writ the Tenant ſhall have the view againe, for theſe caſes are not within this word hujuſmodi; for they riſe not upon the view, as the two examples herein expreſſed doe. See Circumſpecte agatis, ſimile. W.2.cap.5.ſimile Lib.11.fol.83.the Poulrers Caſe. 8 E.3.55.18 E.3. 31.21 H 6.42. 6 E.3.25. 27 E.3. 39,40.18 E.3.41 38 E.3.1. 19 E.3. view 111. 33 E.3. ib.184. 30 E.3.8. 21 H.6.42.34H.6 10. 42 E.3.23. 43 E.3.35.29 E.3 17 45.38 E.3.1. 39 E.3.27. 6 E.2. view 163. 5 R.2 ibid.63. 20 E.2. ibid 112. 26 H.6. ibid.14. 21 H.6. 42. 21 H.6.55. 2 H.6.14. 17 E.3.41.b. 22 E.3.9.

And beſides the firſt was no ſufficient Writ, and an inſufficient Writ and no Writ is all one; ſo it is if one of the Tenants after the view dieth, in a new Writ the ſurviving Tenant ſhall have the view againe, albeit the feme came in as a feme ſole by receit, and the husband died, for this did not riſe upon the view, but by the Act of God.

But if the firſt Writ were brought in K. and the Tenant plead that part of the lands extend in L. in a new Writ for the lands in K. and L. though a new Town be added, yet becauſe the new Town was added by force of the plea of the Tenant himſelfe, he was ouſted of view.

It is not required by this Act that the ſecond Writ ſhould be brought freſhly by journers accounts, though it be ſo pleaded in many books.

¶ In hoc caſu & in ſuperiori.] This branch extendeth not to the clauſe of the recovery by default, for in the Quod ei deforceat, the Writ being grounded directly upon the former Record, wherein the Tenant in the Quod ei deforceat recovered in the former Writ, he hath ſufficient notice thereof, and therefore, as hath been ſaid, ſhall not have the view. 41 E.3.8.30. 44 E.3.43. 50 E.3.25.

And therefore theſe words [in hoc caſu] are to be referred to the laſt generall words, viz. [vel hujuſmodi] and theſe words, [& in ſuperiori] are to be referred to the two examples dilatory of nontenure, and miſnaming of the Towne.

¶ In brevi de dote cum petatur dos de tenemento quod vir uxoris alienavit tenenti aut ejus anteceſſori, &c.] This branch extendeth not to a Writ of Dower, unde nihil habet, for therein no view did lie at the Common Law, but extendeth to other Writs of Dower, whether for Dower at the Common Law, or ex aſſenſu patris, ad hoſtium Eccleſiæ, &c. or by cuſtome. 45 E.3.17. Temps E.1. view 172.20E.3.ib.113

At the Common Law if the husband died ſeiſed of the land of eſtate of inheritance, whereof Dower is demaunded, the heire or any claiming under him ſhould not have the view, becauſe it was preſumed that the heire was conuſant what lands his anceſtor had at the time of his death, and herewith agreeth Bracton who wrote before this Statute; Item denegatur viſus in placito dotis de terra et tenemento de quibus vir mulieris nuper obiit ſeiſitus, quia habet tenens quod tantundem valet. 22E.3.9 3E.3.16 8 E.3.55. 2 H.4 20. 5 H.5 4. 34 H.6.3. 35 H.6.59. Bract.Lib.fo.377. 18.E.3.55.

But where the husband alened, there at the Common Law view was granted, which was a delay to the Demandant in Dower (whoſe life did ſpend) and is taken away by this Act.

If the baron demiſe to a feme and dieth, the feme taketh husband, in Dower againſt them they ſhall have the view; for the alienation was not made to the husband, but to the wife, and the Act ſaith tenenti. 30 E.3.fol.8.

¶ Alienavit.] If the Tenant diſſeiſed the husband of the Demandant in a Writ of Dower, he ſhall have the view, for this is no alienation, and therefore remain at the Common Law. 2H.4 1.7H.4 18. 5E.3 6.18E.3.55 30E3.3.26E.3.59

The beſt pleading to counterplead the view in caſe of alienation is, that the Tenant entred by her husband, though the word of the Act is alened. 2 E.4.17.9 E.4.6.

44 E. 3. 31. 18 E. 3 55. 14 H. 4. 32. 3 H. 4. 18. 19 E. 2. view 76. 13 E. 3. ib. 103, 104. 14 E. 3. ibid. 93. 19 E. 3. ibid. 106.

In Dower of a rent the Tenant ſhall not have the view of the land, if the husband died ſeiſed of the rent, nor the Tenant of the land have view thereof, if he had the rent by the releaſe of her husband.

Tenant in Dower of two acres, the Demandant to counterplead the view ſaid, that the Tenant entred by her husband, the Jury found, that ſhe entred into one acre by her husband, and into the other acre by another, the Demandant recovered her Dower in the one acre, and the Tenant had the view for the other.

20 E. 2. view 166. 29 E. 3. 32. 2 E. 2. view 137.

¶ In brevi etiam de ingreſſu caſſato per hoc, &c.] A Cui in vita is taken within this branch, and ſo it is a Sur Cui in vita.

¶ In omnibus brevibus per quæ tenementa petuntur ratione dimiſsionis, quam petens vel anteceſſor fecerit tenenti & non ejus anteceſſori, ſicut quod ei dimiſit dum fuit infra ætatem, dum non fuit compos mentis, &c.] This branch ſpeaketh particularly of three examples, viz. of the dum fuit infra ætatem, & non compos mentis, and in priſona, and generally in conſimilibus.

48 E. 3. 31. 46 E. 3 34. 35 H. 6. 59.

29 E. 3. 30. view 155.

This branch extends not to theſe Writs brought in the Per & cui, for that is a degree further then this branch provideth for.

¶ Per quæ tenementa petuntur.] Yet if any of theſe Writs be brought of a rent, if the Tenant demaund the view of the land, though it be of another thing, then is demanded, the Tenant ſhall be ouſted of the view.

46 E. 3. 29.

Circumſpecte agatis, ſimile. Temps E. 1. view 171. 6 E. 2. ibid 151. 36 H. 6. view 30.

¶ Et conſimilibus.] By theſe words the predeceſſor of a Biſhop, or the like is taken where this branch ſpeaketh de anteceſſore and not de prædeceſſore.

It is to be obſerved that the two examples here put are of a dum fuit infra ætatem, and non compos mentis, and when the heire brings either of theſe Writs of the demiſe of his auncеſtor from whom he claimes the land as heire [& conſimilibus] ſhall be intended of Writs of like nature; and therefore if a Sur cui in vita be brought ſuppoſing that the Tenant had not entred but by one D. late husband of E. mother to the Demaandant, whoſe heire he is, the Tenant ſhall have the view, for he claimeth not as heire to him that made the demiſe, and therefore it is not Actio conſimilis.

Bra. & l. 2. fo. 16. b Britton fol. 19. Fleta lib. 2. ca. 54. l. 3. ca. 7. l. 6. ca. 6. 7. & 14. Firſt part of the Inſt. ſect. 437, 438.

¶ In priſona.] At this time, viz. in 13 E. 1. as hereby it appeareth there lay a Writ of an alienation made by dures, dum fuit in priſona, and the Writ of dum fuit infra ætatem, and this Writ of dum fuit in priſona did lie for the party himſelfe that made the alienation, but ſo doth not the other Writ of non compos mentis, for that lieth not for the party himſelfe, but for his heire.

First part of the Inſt. ſect. 406.

In priſona; Every reſtraint of the liberty of a Freeman is an impriſonment, although he be not within the wals of any common Priſon.

15 H. 3. dures 15. 2 E. 2. ibid. 18. 8 E. 3. 57. 8 Aſſ. 25 43 E. 3. 6. 10. 6 R. 2. dures 12. 11 H. 4. 6. 4 E. 4. 17. 12 E. 4. 7.

If a man be impriſoned by order of Law, the Plaintiffe may take a feoffement of him or a bond for his ſatisfaction, and for the deliverance of the Defendant, notwithſtanding that impriſonment, for this is not by dures of impriſonment, becauſe he was in Priſon by courſe of Law; for it is not accounted in Law dures of impriſonment, but where either the impriſonment or the dures that is offered in the Priſon, or at large is tortious and unlawfull, for executio juris non habet injuriam.

But now albeit the Writ mentioned in this Act is antiquated and gone in deſuetudinem, yet may good uſe be made of this part of this branch. Dum fuit in priſona, ſuch excellent learning may be drawn out of theſe auncient fountains.

It may be gathered upon this Act that the feoffement made by one by dures of impriſonment is not void, but voidable; for if it were void, then no

no Præcipe could have been maintained upon a void alienation, and this branch ſaith, In omnibus brevibus in quibus tenementa petuntur ratione dimiſſionis, &c. dum fuit in priſona. And ſo it is in the caſe of the Infant, with whom he is paralleled in this branch, and whoſe caſes are very like in many reſpects: for as in the caſe of an Infant, if he ſeal and deliver a Deed, he cannot plead Non eſt factum, but muſt avoid it by plea of infancie; ſo it is in the caſe of a Bond made by dures of impriſonment: and as it is in the caſe of the Infant, that a feoffment by livery of ſeiſin made by his own hand is voidable by entry, or Action, and not void; ſo it is in the caſe of a feoffment made by one by dures of impriſonment, and livery made by his own hand, as by this branch it appeareth: and as in the caſe of an Infant, a feoffment made by Letter of Attorney is void, and the Feoffee is a Diſſeiſor; ſo it is in the caſe of a man that maketh it in the ſame manner by dures of impriſonment.

Lib 5. fol. 119. Whelpdales caſe. 1 H.7.15.

Lib 8. fol. 42, 43, &c. Whittingams caſe. 14 Aſſ. p. 20 39 E. 3. 28 41 E. 3. 9. Feoffment & Faits 49 9 H. 6. 6 38 H. 6. 27. 2 E. 4 21.

And as none ſhall avoid the feoffment of the Infant when livery is made by his own hand, but onely he himſelf or his heirs, which are privies in blood inheritable, and neither privies in Law, nor privies in eſtate: ſo it is in caſe of a feoffment made in like manner by dures of impriſonment, it is onely voidable by privies in blood inheritable, and not by privies in Law or eſtate.

Whittingās caſe, ubi ſupra.

And by theſe reſemblances and diverſities this Act is underſtood, and our Books that ſeem prima facie are well reconciled: The dures per minas, aut cauſa metus, belongeth not properly to be treated of here; for this branch ſpeaketh onely dum fuit in priſona; onely for affinity ſake it is to be known, that a man ſhall avoid his Deed for manuas of impriſonment, albeit he were never impriſoned: for a man ſhall avoid his own act for manuas in four caſes, viz. 1 for fear of loſſe of life, 2. of loſſe of member, 3. of mayhem, and 4. of impriſonment; otherwiſe it is for fear of battery, which may be very light, or for burning of his houſes, or taking away, or deſtroying of his goods, or the like, for there he may have ſatisfaction by recovery of damages.

39 E. 3. 28. 11 R. 2 Dures 21. 35 H. 6 17. 38 H. 6. 21, 27 39 H. 6. 5. 7 E. 4. 21.

This fear, by reaſon of manuas, is well deſcribed by Bracton, Metus autem eſt præſentis, vel futuri periculi cauſa, mentis trepidatio, & præſentem debemus accipere metum, non ſuſpicionem inferendi ejus, vel cujuſlibet vani & meticuloſi hominis, ſed talem qui cadere poſſit in virum conſtantem; talis enim debet eſſe metus, qui in ſe continet mortis periculum, & corporis cruciatum.

Bract. l. 2. fo. 16. b.

But there is a great diverſity between the making of a continuall claim, or entry into lands, and the avoiding of a mans own act; for, fear of battery is a good cauſe to make a claim as nær the land as he dare for fear of battery (for the recontinuance of an ancient right is favoured in Law) but it is no cauſe to avoid his own act; wherein it is obſervable, how fear of impriſonment (which is a manner of captivity) is more grievous and odious in Law, then the fear of battery.

13 H. 4. Dures 20 1. Part of the Inſtitutes, ſect. 419.

*See the Stat. de modo levand. Fines.

See more of this matter in the firſt part of the Inſtitutes, ubi ſupra.

¶ Ratione dimiſsionis.] Here, as in many other places [Demiſe] is applyed to an eſtate either in fee ſimple, fee-tail, or for term of life, and ſo commonly it is taken in many Writs.

Li. 4. fo. 127, &c. Beverlies caſe, Rot. Parliam. 50 E. 3. nu. 127. 6 E. 3. 39. 17 E. 3 76. 17 Aſſ. 17. 13 E. 3. Audita querela 26. 20 E. 3 ibid. 27, 18 E. 3. 29. 21 E. 3. 24. 27 Aſſ. 53. 8 H. 6. 30. 15 E. 4. 5.

* But this Act extendeth not to every kinde of demiſe or conveyance; for if the demiſe or conveyance be by Fine or other matter of Record, &c. this branch extends not to it, for regularly conveyances, or other Acts of Record knowledged, or made by one that is Non compos mentis, or by dures of impriſonment, are unavoidable by him or his heirs by Law: Hereof ſee Beverleys caſe, Lib. 4. fol. 127.

And ſuch conveyances, or other Acts of Record knowledged, or made by an Infant, are alſo unavoidable, unleſſe he doth avoid them by Writ of Errour, or Audita querela, during his minority; and therefore this branch is to be underſtood of alienations made in paiis, and not by matter of Record.

1 H. 7. 15. 16 H. 7 5. b. 6 H. 8. Saver def. Br. 50. F. N. B 104. k. l. 16 Eliz. Dier.

A recovery by default againſt an Infant is erroneous, and ſo is a recovery by

3 H. 6. 10. 7 H. 6. 38

by default againſt a man in priſon, though he be lawfully impriſoned; but the infant muſt reverſe it by Writ of Errour during his minority, becauſe his infancie muſt be tryed by inſpection, but the man in priſon may reverſe it when he will.

1. Part of the Inſtitutes, ſect. 438.

CAP. XLIX.

CHancellor, Treaſurer, Juſtices, ne nul de councel le roy, ne Clerke de la Chauncery, ne del Eſchequer, ne de Juſtice, ne dauter miniſter, ne nul del hoſtel le Roy, ne Clerk, ne lay, ne puis reſceiver eſgliſe, ne advowſon de eſgliſe, ne terre, ne tenement in fee per done, ne per achate, ne a ferm', ne a champerty, ne en auter maner, tanque come le choſe eſt en plee devant nous, ou devant ull' de nous miniſtr', ne nul lower ent ſoit pris. Et qui encounter ceſt choſe face, ou per luy ou per auter, ou nul [*bargeine ent*] face, ſoit punie a la volunt le roy, auxibien celuy qui le purchaſera, come celuy qui le fra, 11 *E.* 1. *Champertie* 1. *Articuli ſuper Chartas*, *cap.* 11.

CHancellor, Treaſurer, Juſtices, ne nul de councel, &c.] This is a Law of addition and explanation for the Statute of W. 1. cap. 25. Purveiant que nul miniſter le roy, &c. It was doubted, whether the Chancellour, Treaſurer, Juſtices, and thoſe of the Kings Councell, being perſons of ſuch eminencie, were within theſe words [Nul miniſter le Roy,] and therefore this Act by way of addition and explanation doth adde, Chancellor, Treaſurer, Juſtices, & Councell le Roy.

Alſo this Act is an addition to W. 1. cap. 28. for that extendeth but to the Clerks of the King, or of the Juſtices; this Act addeth, Clerks of the Chancery, and of the Exchequer, and of any other Officer; it addeth alſo thoſe of the Kings houſe, be they of the Clergie or Laity; and alſo that they ſhall take no reward, &c.

And it is to be obſerved, that neither the Chancellor, Treaſurer, any of the Juſtices, or any of the Kings Councell, nor any Clerk herein mentioned, nor any of the Kings houſe of the Clergie or Laity ſhall (hanging the Plea) receive any advowſon, land or tenement, by gift, purchaſe or learm, either for champerty or otherwiſe; ſo as none of theſe perſons here prohibited can acquire any advowſon, land, or tenement, depending the plea, though it be bona fide; and not for champerty or maintenance; partly in reſpect of their greatneſſe, and partly in reſpect of their places, both in the Kings Court, and in the Courts of Juſtice; ſo as the very countenance and places of theſe men, when they become intereſted in the land (eo ipſo) are apparent hinderances of the due and indifferent proceeding of Law and Juſtice. An excellent Law, and worthy to be known, and moſt neceſſary to be put in execution; ſo as true it is, that if any other perſon purchaſe bona fide, depending the ſuit, he is not in danger of champerty: But theſe perſons here prohibited cannot purchaſe at all, neither for champerty nor otherwiſe, depending the Plea. But theſe perſons here prohibited muſt be charged upon this Act, and not for champerty, unleſſe they maintain.

50 Aſſ. p. 3. 32 E. 3 Champerty 6. where the caſes were of ſome of theſe perſons, otherwiſe they could not be law. 4 E. 2. ibid. 12, &c. F. N. B. 172. E. 22 E. 3. 10. 8 E. 4. 1

And

And this is a great addition to the Statute of W. 1. cap. 25. which extended onely where the purchaser (pendente placito) did maintain. 6 E. 3. 33. F. N. B 172. Pl. Com. 88

And in these cases prohibited by this Law, the childe cannot infeoffe the father, nor the father his childe, or the like, as they may do upon the other Statutes.

And the prohibition here for taking of rewards is very remarkable.

¶ Soit punie a la volunt le Roy.] These words are expounded before upon W. 1. cap. 25.

And where both the said Statutes conclude in effect concerning the punishment, Et que le fra; this Act addeth, Auxibien celuy que le purchasera, come celuy que le fra, that is, both the giver, and the taker. See the Statute of Conspiracie, Simile. 33 E. 1. 32 H. 8. cap. 9. Simile.

See the Statute of W. 1. cap. 25. & 28. and the Statute of 28 E. 1. cap. 11. and lastly, the Statute of 32 H. 8. cap. 9. whereby all former Statutes concerning maintenance, champerty, and imbracery are confirmed, and commanded to be put in due execution, and by that Statute excellent provisions are made concerning the same. W. 1. cap. 25, 28. 28 E. 1. cap. 11. 32 H. 8. cap. 9.

¶ Auxibien celuy que le purchasera, come celuy que le fra.] And yet the party grieved may have his Action against the purchaser onely, if he will. 31 E. 3. Champerty 5. See the Statute of 11 E. 3. Vet. Magna Chart. Stat. de Champerty.

We have been the more brief in exposition hereof, because we have treated of this subject before in the exposition of the Statute of W. 1. cap. 25. & 28. and shall have more occasion to speak hereof when we come to the said Act of 28 E. 1. cap. 11.

The cause wherefore this Chapter was published in French, was, for that the said two Chapters of W. 1. whereunto this Act maketh additions, were likewise published in French.

See Articuli super Chartas, cap. 11.

CAP. L.

OMnia prædicta statuta incipiant conservari ad festum sancti Michaelis proximo venturum, ita quod occasione aliquorum delictorum contra aliquod prædictorum statutorum citra prædictum festum perpetratorum, pœna delinquentibus, de quibus mentio fit in statutis, non infligatur. Super vero statutis in defectum legis, & ad remedia editis, ne diutius querentes cum ad curiam Regis venerint recedant de remedio desperati, habeant brevia sua in suo casu provisa, sed non placitent' usq; post festum sancti Michaelis supradictũ.

¶ Omnia prædicta statuta incipiant conservari, &c.] This was very justly added, to the intent that all men dwelling far or neer might be well informed of these Laws before they were punished by them; the Parliament begun post Pasch. and hereby day was given untill the Feast of Saint Michael.

¶ Ad festum Sancti Michaelis.] Albeit there be two Feasts of Saint Michael, Saint Michael the Archangel, and Saint Michael de monte tumba, commonly called, Saint Michaels in the mount in Cornwall; yet that Feast 5 E. 3. 6. 20 H. 6. 23. 3 H. 7. Endictment 22. 1. Part of the Institutes, sect. 99.

Feaſt that is moſt notorious and of greateſt account is to be taken, and that is the Feaſt of Saint Michael th'Archangell celebrated on the 29. day of September, and not the Feaſt celebrated the 16. day of November.

Cambden Brit. 136, 137. Note, that both were the Feaſts of Saint Michael th'Archangel, but the Feaſt of Saint Michael the 29. of September is the moſt notorious, both in Legall proceedings, as Octabis Michaelis, &c. and never Octabis Michaelis Arch'; and common eſtimation for payment of Rents, beginning and ending of Leaſes, and the like.

¶ Super vero ſtatutis in defectum legis & ad remedia editis, ne diutius querentes, cum ad curiam Regis venerint, recedant de remedio deſperati, habeant brevia ſua in ſuo caſu proviſa.] Ad remedia; that is, when any the Statutes made at this Parliament provide remedy for the party grieved, he ſhall have an Action grounded upon this Act for his reliefe therein; and theſe words [Ad remedia] do diſtinguiſh them from thoſe Acts which give the penalty to the King alone. And hereupon they are called in ancient Authors, Brevia remedialia, which are to be framed upon theſe Acts by learned men, whereof Fleta ſpeaking of the Maſters of the Chancery, ſaith, Ipſi autem collaterales & ſocii Cancellarii eſſe; dicuntur præceptores, eo quod brevia (cauſis examinatis) remedialia fieri præcipiunt. And ſometimes they are called, Brevia magiſtralia, becauſe (being out of courſe) it is a maſters piece to frame them as they ought.

Fleta lib. 1. ca. 12

Bract. li. 5. fo. 413

¶ Recedant de remedio.] See before in the Expoſition upon the 24. Chapter of W. 2. the like clauſe.

Statutum

Statutum de Circumſpecte agatis,

Editum Anno 13 Edw. 1.

REX talibus Judicibus Salutem. Circumſpecte agatis de negotiis tangentibus Epiſcopum Norwicenſem, et ejus Clerum, non puniend' eos ſi placitum tenuerint in Curia Chriſtianitatis de his quæ mere ſunt ſpiritualia, viz. de correctionibus quas Prælati faciunt pro mortali peccato, viz. pro fornicatione, adulterio & hujuſmodi, pro quibus aliquando infligitur pœna corporalis, aliquando pecuniaria, maxime ſi convictus fuerit de hujuſmodi liber homo. Item ſi Prælatus puniat pro cimeterio non clauſo, Eccleſia diſcooperta, vel non decenter ornata, in quibus caſibus alia pœna non poteſt infligi quam pecuniaria. Item ſi rector petat verſus parochianos oblationes & decimas debitas vel conſuetas, vel ſi rector agat contra rectorem de decimis majoribus, vel minoribus, dummodo non petatur quarta pars valoris Eccleſiæ. Item ſi rector petat mortuarium in partibus ubi mortuarium dari conſuevit. Item ſi Prælatus alicujus Eccleſiæ, vel advocatus petat à rectore penſionem ſibi debitam, omnes hujuſmodi petitiones ſunt faciend' in foro Eccleſiaſtico. De violenta manuum injectione in Clericum, & in cauſa diffamationis conceſſum fuit alias, quod placitum inde teneatur in Curia Chriſtianitatis, cum non petatur pecunia, ſed agatur ad correctionem peccati, & ſimiliter pro fidei læſione. In omnibus prædictis caſibus habet judex Eccleſiaſticus cognoſcere regia prohibitione non obſtante.

¶ Circumſpecte agatis.] There was alſo at this Parliament holden at Weſtm' Anno 13 E. 1. a Writ deviſed, called Circumſpecte agatis de negotiis tangentibus Epiſcopum Norwicenſem, et ejus Clerum.

Though ſome have ſaid that this was no Statute, but made by the Prelates themſelves, yet that this is an Act of Parliament, it is proved not onely by our Books, but alſo by an Act of Parliament.

Rot. Parl. 25 E. 3. Stat. 3. nu. 62. 19 E. 3. juriſd. 28. 27 Aſſ. p. 7. 10 H. 4 1. 12 H. 7. 23. Pl. Com. 36. b. 2 E. 6. c. 13. verſus finem. l. 4. fol. 47. inter Palmer & Thorp. l. 5. fol. 67. l. 7. fol. 44. Pl. Com. 36. b.

¶ De negotiis tangentibus Epiſcopum Norwicenſem.] The Biſhop of Norwich is here put but for example, but it extendeth to all the Biſhops within this Realme.

¶ In

Glanv. l. 12. ca. 21 Bract. l. 5. fo. 463. & ſæpe alibi. Britton 226. & ſæpe alibi. Fleta lib. 6. ca. 41. Regiſt. 339. W. 2. cap. 5. 4 E. 3. 27. Smith de rep. Anglorum. li 3. ca. 9 F.N.B. 41, &c. Linwood de foro compet. cap. Circumſpecte agatis fol. 71. Liber rub. in Cuſtod. rem. Regis. cap. 48. fol. 41

¶ In Curia Chriſtianitatis.] So called, becauſe as in the ſecular Courts the Kings Lawes doe ſway and decide cauſes, ſo in Eccleſiaſticall Courts the Lawes of Chriſt ſhould rule and direct, for which cauſe the Judges in thoſe Courts are Divines, as Archbiſhops, Biſhops, Archdeacons, &c. Linwoods words are theſe, In Curia Chriſtianitatis, i. Eccleſiæ in qua ſervantur leges Chriſti, cum tamen in foro regio ſerventur leges mundi. In libro rubeo in Scaccar' inter leges H. 1. thus it is contained, Sicut antiqua fuerat inſtitutione formatum ſalutari Regis imperio vera nuper eſt recordatione rmatum generalia comitatuum placita certis locis et vicibus, &c. interſint autem Epiſcopi, Comites, Vicedomini, Vicarii, Centenarii, Aldermani, Præfecti, Præpoſiti, Barones, Vavaſores, Tingrevii, et cæteri terrarum domini diligenter intendentes, ne malorum impunitas, aut gravionum pravitas, vel Judicum ſubverſio ſolita miſeros laceratione confiniant. Agantur primo debita veræ Chriſtianitatis jura, ſecundo regis placita, poſtremo cauſæ ſingulorum dignis ſatisfactionibus expleantur.

Int' leges Regis Edgari cap. 5. Lamb. verbo Senator, Alderman, or Elderman. i. Senator, which ſignifieth the Sherive. i. Præpoſitus, ſeu cuſtos Comitatus.

And if any deſire to look before the Conqueſt concerning this matter, he may read amongſt the Laws publiſhed by King Edgar, Celeberrimus autem ex omni ſatrapia conventus bis quotannis agitor, cui quidem illius Dioceſis Epiſcopus & Aldermanus interſunto, quorum alter jura divina, alter humana populum edoceto.

Thus much by reaſon of this word [Chriſtianitatis] having bëen ſaid, let us return to our Act.

¶ Mere ſpiritualia.] Sic dicta, quia non habent mixturam temporalium: They are here called mëere ſpirituall, for that they have no mixture of the temporalties, and becauſe they are corrections pro ſalute animæ.

Britton fol. 11. b. Bracton l. 5. fol. 403, &c. Fleta l. 2 cap. 53. li. 6. ca. 36. &c. Linwood cap. de foro compet. fol. 7. li 7. fo. 44. Kennes Caſe. See hereafter in this Chapter verbo Mortuary. Linwood ubi ſup.

Britton ſaith, Que ſeint Eſgliſe eyt conuſance de juger de pure ſpiritualite; Hereſie, Schiſmes, holy Orders, and the like are mere ſpirituall things; Note it appeareth by the conſtitution of John Stratford, Archbiſhop of Canterbury in a Synod in London Anno Domini 1280. §. quidam etiam, &c. that adminiſtration of the goods of a man dying inteſtate, was granted to Ordinaries, Conſenſu Regis et magnatum regni Angliæ tanquam pro jure et Eccleſiaſtica libertate ab olim extiterit ordinatum. And Linwood ſaith, that Probate of Teſtaments, De conſuetudine Angliæ, et non de jure communi, belong to Court Chriſtian: which I have added for three cauſes.

1. That theſe things being temporall, and not mëere ſpirituall, as our Act ſpeaketh, belonged not ab initio to the Court Chriſtian.

2. That the Eccleſiaſticall Judges derive their Juriſdiction therein by Parliament, and the cuſtome of the Realme, and not from any forein power.

3. And laſtly, that herewith our Records and Books doe accord and agrë.

2 R. 2. tit. Teſtam. 4. 12 H. 7. 12. b. See hereafter verbo Mortuary.

¶ Pro mortali peccato, viz. fornicatione, adulterio, &c.] There be two examples put in particular of mëere ſpirituality for correction of theſe offences.

In ancient time the Kings Courts, and ſpecially the Lëets had power to enquire of, and puniſh fornication and adultery by the name of Letherwite, and it appeareth often in the Book of Domeſday that the King had the fines aſſeſſed for theſe offences which were aſſeſſed in the Kings Courts, and could not be inflicted in curia Chriſtianitatis.

¶ Et hujuſmodi.] Theſe are to be taken for offences of like nature, as the two offences here particularly expreſſed be, as ſolicitation of any womans chaſtity, which is leſſer then theſe, and for inceſt, which is greater; and herewith agreëth Linwood, who expounding this Act ſaith, Non intelligas de omni mortali peccato, ſed de tali cujus punitio de ſua natura ſpectat ad forum Eccleſiaſticum; nam ſi de ratione cujuſlibet peccati mortalis cognoſceret eccleſia, ſic periret temporalis gladii juriſdictio.

Linwood ubi ſup. Kennes caſe ubi ſupra.

¶ Pro

¶ Pro quibus aliquando infligitur pœna corporalis, aliquando pecuniaria.] Here pœna pecuniaria muſt be intended by way of commutation of penance, as it is clearly expounded by the Statute of Articuli ſuper Chartas; Item ſi Prælatus imponat pœnam pecuniariam alicui pro Peccato, & repetat illam, regia prohibitio locum habeat: And ſo doth Britton take it. Art. ſuper Chart. cap. 2. Britton 11.b. F.N.B. 53.a.

Vide Artic' contra prohibit' regiam Vet' Magna Charta, pro Cœmeterio non clauſo. Vet. Mag. Chart.

The Pariſhioners ought to repaire the incloſure of the Church-yard, becauſe the bodies of the moſt common ſort are buried there, and for the preſervation of the burials of thoſe, that were, or ſhould have been whiles they lived the Temples of the Holy Ghoſt: And cœmiterium is derived of the Greek verb κοιμάω, that is, dormio, and therefore cœmeterium eſt quaſi dormitorium, quia mortui dormire dicuntur uſque ad reſurrectionem. And alſo if the Church-yard be not decently incloſed, the Church which is domus Dei cannot decently be kept, and therefore this the Pariſhioners ought to doe per conſuetudinem notoriam & approbatam, and the conuſans thereof is allowed by this Act. Regiſter. Brit. fo. 11. lib. 5. fo. 67 Jeffreys caſe Regiſt. 44.b.

¶ Eccleſia diſcooperta, vel non decenter ornata.] In the ſame manner the Pariſhioners by this Act ought to repaire the Church, for that it is the place where Divine Service is celebrated, and the bodies of the Pariſhioners of the beſt quality are buried; in reſpect whereof this Law doth allow the Eccleſiaſticall Court to have conuſans thereof, and for the providing of decent ornaments for the celebration of Divine Service.

¶ Eccleſia diſcooperta.] This is intended not onely of the body of the Church, which is parochiall, but alſo of any publique Chappell annexed to it; but it extendeth not to the private Chappell of any, though it be fixed to the Church, for that muſt be repaired by him that hath the proper uſe of it; for qui ſentit commodum, ſentire debet & onus; and this the Pariſhioners ought to doe per conſuetudinem notoriam & approbatam, and the conuſans thereof is allowed to them by this Act, but the Chauncell is to be repaired by the Parſon, &c. Regiſt. ubi ſupra. F.N.B. 50.n. Britton fol. 11. Regiſt. 44.b.

¶ Oblationes, decimas debitas, vel conſuetas.] Oblationes in the Canon Law are thus defined: Art' contra prohibitionem Vet. Mag. Chart. Art. Cleri cap. 1, 2. 2 E. 6. cap. 13. Cap. Cler. quæſt. 13.

Oblationes dicuntur quæcunque à piis fidelibuſq; Chriſtianis offeruntur Deo & Eccleſiæ, ſive res ſolid', ſive mobiles.

¶ Decimæ.] It appeareth by the auncient Writ, De recto de advocatione decimarum, and by the like ancient Writ of Indicavit, whereof you may reade before in W. 2. cap. 5. verſus finem, that the right of tithes was tried in the Kings Court. Regiſt. fol. 29. & 35. F.N.B. 30.b. * 18 E. 3. cap. 7. F.N.B. 30.g.

* And this appeareth by an Act of Parliament in Anno 18 E. 3 cap. 7. and it is agréed in 4 E. 3. that before the Statute (meaning W. 2. cap. 5.) every Parſon was ouſted to demand tithes in Court Chriſtian. 4 E. 3. 27. 38 E. 3. 13. 38 H. 6. 20.

Bracton lib. 5. fol. 401. ſaith Quod decimæ ſunt ſpiritualitati annexæ: and Britton, who was Biſhop of Hereford, and learned in the Lawes of this Realme, treating of what things the Church hath conuſans, omitteth tithes. Bract. lib. 5. fo. 401. Brit. ubi ſupra. * Inſt' leges Edw. Regis, cap. 8. fol. 128. having ſpoken of tithes, ie is ſaid, *Hæc prædixit beatus Auguſtinus & cōceſſa ſunt à Rege Baronibus & populo.*

Hereby it appeareth that the recitall in the Statute of 1 R. 2. that purſuit for tithes of right ought, and of ancient time did pertaine to the Spirituall Court, muſt bée intended by force of former Acts of * Parliament, (as things annexed to the Spirituality) as of W. 2. of this Act made in

13 E. 1. Articuli Cleri, cap. 1. &c. 18 E. 3. cap. 1. and is confirmed by later Acts of Parliament, as 27 H. 8. cap. 20. 32 H. 8. cap. 7. and 2 E. 6. cap. 13.

Now of tithes there be three kindes, prædiall, perſonall, and mixt, and this Act extendeth to them all, and for perſonall tithes ſee the Statute of 2 E. 6. cap. 13.

And true it is, that of auncient time the Parſons did ſue for ſubtraction of tithes in Court Chriſtian, but if the right of tithes had come in queſtion, it ſhould have bin tried by the Common Law; and therefore in libro rubeo inter leges Henr. 1. ſpeaking of purſute for tithes in Court Chriſtian, it is ſaid, Si Rex patiatur; but at this day it is without queſtion, as hath bin ſaid, that for ſubtraction of tithes the conuſans by force of divers Acts of Parliament doth belong to the Eccleſiaſticall Court.

See the Act of 2 E. 6. cap. 13. 39 E. 3. juriſdict. 8 E. 4. 14. 7 E. 6. 79. Doct. & Stud. 166, 167.

℣ Vel conſuetas.] By this Act modus decimandi, reall compoſition, or by preſcription, or cuſtome is eſtabliſhed, for hereby are tithes divided into two parts, in decimas debitas, and that is quota pars, the tenth part, and into decimas conſuetas, and that is a duty perſonall due by cuſtome & uſage to the Parſon, &c. in ſatisfaction of tithes; as a yearely ſumme of money, or other duty, and theſe are here called decimæ conſuetæ, and for this modus decimandi the Parſon &c. may ſue in Court Chriſtian, and is warranted by this Act.

8 E. 4. ubi ſupra. F. N. B. 41, 43.

There is alſo a reall ſatisfaction for tithes, as if of ancient time land hath bin given by the conſent of the Patron and Ordinary to the Parſon and his Succeſſors in ſatisfaction of tithes out of other lands, this is alſo a good diſcharge of tithes, but for this or the like reall ſatisfaction he cannot ſue in Court Chriſtian, but at the Common Law: Of this reall ſatisfaction you may reade a notable Record in 25 H. 3. which was before the making of this Act, and the effect thereof is this:

Mich. 25 H. 3 Coram Rege Rot. 5. Wikeſh.

See the Regiſter fo. 34. and Glanv. li. 12. cap. 21. for this forme of Writ.

Samſon Foliot brought a prohibition againſt Thomas Parſon of Swindon, Quare ſecutus eſt in Curia Chriſtianitatis de laico feodo ipſius Samſon in Draicot, &c. the Defendant pleaded that non eſt ſecutus placitum, &c. de laico feodo, ſed verum vult dicere, et dicit quod revera coram judicibus delegatis petiit ab eodem decimas feni de quodam prato in Walcot infra parochiam ſuam de Walcot, &c. et nihil petiit in parochia de Draicot, &c. Et Samſon dicit quod anteceſſores ſui antiquitus dederunt 2. acras prati Eccleſiæ de Draicot pro decima feni, quam prædictus Thomas petit, et in eodem prato, quas eadem Eccleſia adhuc habet, et ſemper hucuſque habuit, unde videtur quod illud quod prædictus Thomas petit decimas eſt in laico feodo, & quod pratum illud de quo idem Thomas petit decimas eſt in Draicot ſicut breve dicit & non in Walcot, & de hoc ponit ſe ſuper patriam, &c. Whereupon ſeverall iſſues being joyned, the Jury gave this verdict, that the ſaid Thomas purſued his plea in curia Chriſtianitatis de laico feodo prædict' Samſon, &c. petendo ab eo decimas feni, of the ſaid meadow of the ſaid Samſon in Draicot, unde anteceſſores ſui dederunt Eccleſiæ de Draicot duas acras prati pro decima feni quam prædict' Thomas modo petit, et quas eadem Eccleſia adhuc habet, & ſemper hucuſque habuit. And found that the ſaid meadow, &c. did lie in Draicot, &c. and therepon judgement is given for the Plaintiffe in the prohibition, and that he ſhould recover 20. marks damages, &c. Which Record, both for the antiquity thereof, and for that it agreeth with our Books, being a leading caſe, I have recited the more at large.

See the like ground of prohibition, Regiſt. fol. 38. 8 H. 6. 14. 8 E. 4. 14 F. N. B. 41. g. & 43. k.

That bounds of Pariſhes are to be tried by the Common Law. 39 E. 3. 23. 14 H. 4 27. 5 H. 5. 18. 34 H. 6. 10, 11. 22 E. 4. 24. 12 H. 7 22.

A man ſeiſed of 8. acres of meadow, and one of paſture, for the tithes whereof he hath bin paid time out of mind v. s. iv. d. afterwards the owner builds a Corn-mill upon the ſame, he ſhall pay no tithes for the Corn-mill, becauſe the land was diſcharged per modum decimandi: what things be indecimable by the Law, and ought not to pay tithe, Vide lib. 11. fol. 48, 49. F. N. B. 53. g. &c. ſee the Statute of 45 E. 3. 31 H. 8. cap. & 2. E. 6. cap. 13. for diſcharge of Tithes. I have read of an auncient Concord de modo decimandi,

Mich. 26 & 27 El. in Commu. Banc. Rot. 2617. Lords caſe adjudged. 45 E. 3. c. 31 H. 8. cap. 2 E. 6. ca. 13 9 H. 5 fol. 9. 50 E. 3. 10.

which

which is worthy to be read at large, whereof we will give you the effect, Concordia fact' inter Willum Mallet, & rectorem Eccleſiæ de Aure, Heyton, Bathon' & Wellen' Dioces' ex una parte, & nobilem virum Johannem de Acton militem ex altera, de modo decimandi omnia in Parochia de Aure per conſenſum Epiſcopi, & capituli Bathon' & Wellen', unde placitum fuit prius in cur' captum. M. 9 E. 1. Incip. 10. in com' banc. Rot. 63. Somerſet

¶ Dummodo non petatur 4. pars.] So as at this day in caſe when one perſon of the preſentation of one patron demand Tithes againſt another perſon of the preſentation of another patron in Court Chriſtian, amounting to a fourth part, &c. the right of Tithes at this day is to be tryed at the Common Law. See W. 2. cap. 5.

¶ Mortuarie.] Dr, a corſe preſent. Mortuarium is a gift left by a man at his death, pro recompenſatione ſubtractionis decimarū perſonalium, & oblationū. In 2 H. 5. the opinion was againſt the Mortuaries, becauſe they were not contained in the Statute (meaning Artic' Cleri.) There is no Mortuary due by Law, but onely by Cuſtome, which is proved by the words of this Act, viz. Ubi mortuarium dari conſtrevit. And this Act alloweth the Conuſans thereof to Court Chriſtian. Brit. fol. 11. b. Artic. Cler. cap. 2 10 H. 4. 1. 2 H. 5. 10, 21 H. 8 cap. 6.

See the Statute of 21 H. 8. cap. 6. where Mortuaries ought to be paid, for what perſons, and how much, and in what caſe none is due. 21 H. 8. cap. 6.

Some have ſaid, that the King hath a Mortuary after the deceaſes of every Archbiſhop and Biſhop; true it is, that the King after their deceaſes hath ſix things, viz. (to uſe the words of the Records) 1. Optimum equum ſive palefridum ipſius Epiſcopi cum cella, & freno. 2. Unam chlamydem ſive clocam cum capella. 3. Unum ciphum cum cooperrorio. 4. Unum pelvem cum lavatorio ſive aquar'. 5. Unum annulum aureum. 6. Necnon * mutam canum, quæ (ſaith the Record) ad dominum regem ratione prærogativæ ſuæ ſpectant, & pertinent. Inter communia Hil. 2 E. 2. in Scacc. poſt mort. epiſc. Bath & Wel. Tr. 36 E. 3. ibid. poſt mortem epiſc. Cirenceſt. Hill 5 E. 4. ibid. Rot. 47. poſt mortem archiep. Ebor.

And there is a ſpeciall Writ that iſſueth out of the Exchequer, after the deceaſe of the Biſhop, for anſwering of the ſame. And in the Records this is called, Multa Epiſcopi, or Multura Epiſcopi, derived à Mulcta, for that it was a Fine, or finall ſatisfaction given to the King, that they might have power to make their laſt Wills and Teſtaments, and to have the probate of other mens Teſtaments, & the granting of Adminiſtrations: for true it is that is ſaid, Nullā habebant Epiſcopi authoritatem præter eam quam à rege acceptam referebant, jus teſtamenta probandi non habebant, adminiſtrationis poteſtatem cuiquam delegare non poterant, nec ipſi quidem teſtamenta facere de jure communi, dum id illis regnante Henrico 3. conceſſum erat, & confirmatum vivente Edw. 1, &c. * *Muta* cometh of the French word, *Mente de chiens.* Lib. Matthei Parker, publiſhed Anno dom. 1573. Rot. clauſ. 7 H. 3 m. 16. Rot. Par. 36 H. 3. m. 1.

Linwood, who wrote in the Raign of H. 6. ſaith, Beneficiatus non poteſt teſtari de communi jure, ſed de conſuetudine in Anglia. Tit. de conſuet. cap. nullus. fo. 19

So as this duty, which the King hath after the death of Archbiſhops and Biſhops, is not any Mortuary. See before in this Chapter, verbo mere ſpiritualia.

¶ Si prælatus alicujus Eccleſiæ, vel ejus advocatus petat à rectore penſionem.] This Act giveth Conuſans of ſuit for a Penſion, when a Prelate or Prior demand a Penſion of a Parſon of a Church. Regiſt. fol. 47. F. N. B. 52. b.

But this muſt be intended of a Penſion which had his eſſence by ſome Ordinance made by the Ordinary upon a controverſie for Tithes, or the like; by which Ordinance the Tithes are to be injoyed by the one, and he is to pay a Penſion for the ſame to the other: for this Penſion, becauſe it beginneth by an Eccleſiaſticall Act, and by an Eccleſiaſticall Judge, he may take his remedy by force of this Act in the Eccleſiaſticall Court; but if a Penſion be claimed by preſcription, there, ſeeing a Writ of Annuity doth lye, and that preſcriptions muſt be tryed by the Common Law, becauſe the Common & the Canon Law do therein differ, they cannot ſue for ſuch a Penſion in the Eccleſiaſticall Court, no more then if a Penſion be granted by Deed by a Parſon with the conſent of the Prior and Ordinary. 3 E. 3. 17. 6 E. 3. 54, 55. 7 E. 3. 40, 41. 17 E. 3. 32. 19 E. 3. Preſcription 98. 31 E. 3. ibid. 26. 31 E. 3. Juriſd. 26. 16 E. 3 Annuity 24. 40 E. 3. 3. b. Regiſt. 38. a. 11 H. 4. 68. 8 H. 6. 23. 7 E. 6. Dier 79.

A Writ of Annuity must be brought therefore at the Common Law: and all this hath notably appear by a Judgment in the next yer after the making of this Statute, where the case was, that the Abbot and Covent of Leicester did by their Deed under their Covent seal, bearing date Anno 25 H.3. grant to the Abbot of Saint Ebrulfe and his successours a yeerly Rent or annuity, for certain Tithes granted by the Abbot and Covent of Saint Ebrulfe to the Abbot of Leicester and his successors; for which annuity or yerly Rent (being granted out of no lands) the Abbot of Saint Ebrulfe brought a Writ of Annuity against the Abbot of Leicester: wherein the Judgement was, Et quia cognitio placiti petendi annuū redditum directe secundum consuetudinem regni spectat ad curiam domini Regis, & in ea debet hujusmodi placitari, et prædictus Abbas de sancto Ebr. petit quendam annual' redd' sibi debitum per præd' contractum in præd' scriptis contentum inter prædecessorem suum, & prædec' præd' Abbatis Leicest', et non aliquas decimas. Considerat' est, quod prædictus Abbas de sanct. Ebr' recuperet de cætero præd' annuum redditum versus præd' Abbatē de Leic', et similiter arreragia sua de tempore istius Abbatis de sanct. Ebr', quæ taxantur per Justic' ad lx. l. et Abbas de Leicest' in misericordia, &c. Postea venit prædict' Abbas de Leicest', et satisfecit præd' Abbati de sancto Ebr' de lx. l. ad tres vices, et etiam de aliis arreragiis præd' redditus usq; ad hunc diem a tempore impetrationis brevis, de tempore præd' Abbatis de sancto Ebrulpho, &c.

Pasch. 14 E. 1. in Banc. Rot. 69. Lei. est.

And upon this diversity this Statute is well explained, and all our Books reconciled.

See the Statute of 21 H.8.ca.6. where Mortuaries ought to be paid, for what persons, and how much, and in what cases none is due.

¶ De violenta manuum injectione in clericum.] Note a diversity between a Spirituall man of the Church consecrated to the service of God, and goods dedicated to Divine service, or meerly Ecclesiasticall: for laying of violent hands upon the person of any, infra sacros ordines, the Ecclesiasticall Court hath Conusans; but for the violent taking away, or consuming of the Ornaments of the Church, or goods dedicated to Divine service, that Court hath no Conusans, for that is not given to them; as for taking away of the Bible, the Book of Divine Service, the Chalice, and the like, or for the taking away of an Image out of the Church; but remedy must be taken for these at the Common Law.

7 H.3. Prohibition 30. 5 H.3. Prohibition 29. 31 E.3. Bre. 258. M33 E.3 Rot. 23. Coram Rege casus prioris Sancti crucis juxta turrim London. 8 R.2. Monstr. des faits 184.

And I finde a Record that William de Brinckle recovered at the Common Law by verdict, against Otho Parson of the Church of Beston, x. l. pro fabricatione unius bullæ Papalis de ordinibus, alterius bullæ de legitimatione, et tertiæ bullæ de veniam exorantibus pro animabus antecessorum suorum. And yet these were accounted in those dayes Spirituall; but by the ancient Common Law they have jurisdiction of no goods or chattels, but such as be de testamento et matrimonio.

Tr. 4 E.3. Rot. 100 Coram Rege Essex. Bract. li. 5. fol. 401, &c. Brit. 11. b. Regist. 34.

And for laying violent hands upon one of the Clergie, the end of that suit is onely pro salute animæ, by Excommunication, or corporall Penance: but if a Clergie-man be arrested by Processe of Law, he cannot for this sue in the Ecclesiasticall Court. And if the Clerk sue in Court Christian for damages for the battery, he is in case of Premunire, for in that case the Ecclesiasticall Judge ought to proceed ex officio, onely to correct the sin.

Artic. contra Prohib. Regiam. Vet. Magna Charta. Artic. Cleri. cap. 1, 3. 11 H.4. 81. 18 H. 6.6. 20 E.4.10.b. Regist. 49. b. F.N.B. 41, 51.k. 52. f. 53.

¶ In causa defamationis concessum fuit alias.] Where it is said here, Concessum fuit alias, by it appeareth that the Conusans of defamation that concerneth meer Spirituality, was granted by Act of Parliament, implyed by this word [Concessum] for otherwise it could not be granted.

Hil. 7 H.3. Prohib. 30. Regi. 49.a. Vide supra verbo Mortuary. Artic. cont. Prohibit. Regiam. Vet. Mag. Chart. Regist. 46, 47, &c. 54. F.N.B. 51. I.K. 52. d.m 53.a. f. 18. E.4.6

Defamations granted to the Conusans of Ecclesiasticall Judges ought to have their incidents; First, that it concerns matter meerly Spirituall, as to call him Heretike, Schismatike, or the like: 2. That it concerns meer Spirituall matter onely, and not mixt with any matter determinable at the Common Law.

3. Although

3. Although the Defamation be meerly and onely Spirituall, yet he that is defamed cannot ſue there for amends or damages, but the ſuit there ought to be for correction of the ſin, pro ſalute animæ, and they muſt expreſſe in particular the defamation in their Libell in Court Chriſtian. 22 E.4.20.33E.3. Bre.912.12 H.7. 22. Lib.4.fol.20. Inter Palmer & Thorp. Artic. Cleri, cap. 4.

If a man give evidence to an Inqueſt to indict one, he cannot ſue for this defamation in Court Chriſtian.

The Prior of Laund libelled in the Spirituall Court againſt Robert Lee, and John Lee, for calling the Prior Churls ſon, rotten churl, and cankerd churl, and a Prohibition was granted, for the words concerned no Spirituall matter, and therefore he could not ſue for them in the Eccleſiaſticall Court, neither could he have any Action for them at the Common Law. Tr. 19 H.8. Coram Rege Spilm. Report.

If a man call one a perjured man, he muſt take his remedy at the Common Law. 30 H.8.Br.Act. 16 ſur le caſe 104. M.22H.8.Coram Rege Spilm.

A ſuit was in the Eccleſiaſticall Court for calling one Falſe knave, and for the ſame cauſe a Prohibition was granted, and knave ab initio was no word of reproach, but ſignified a man-ſervant, and a knave-childe a man-childe; and this caſe was between March and Bele of Kent. 23 E.3. Statut. de Labourers. Vide ſtat.de Labourers. 23 E.3.

¶ Pro læſione fidei.] This is to be underſtood where the thing to be done is meer Spirituall, and neither Temporall, nor mixt with the Temporalty, be it reall or perſonall, becauſe the Eccleſiaſticall Court cannot hold plea of the principall; and where they cannot hold plea of the principall, they cannot hold plea of the acceſſory, Quia cujus juris (i. juriſdictionis) eſt principale, ejuſdem juris erit acceſſorium. 22 Aſſ.p.7. 2 H.4 10. 11 H.4. 88. 38 H.6.29.20E.4 10.b. Kelw.39. Bract. lib. 5. fol. 401. & 406. b.

And again, Juriſdictionem non mutat fidei interpoſitio, ſacramentum præſtitum, nec ſpontanea renunciatio partium, &c. Et illud idem dicendum erit de debitis, et catallis quæ non ſunt de teſtamento, vel matrimonio.

More ſhall be ſaid of theſe matters when we come to the Statute of Artic. Cleri, Anno 9 E.2. Vide R. Book of Entries, 444. Vide Ver. Magn' Chart', part 2. fol.70. Prohibitio formata de Stat. Articuli Cleri.

Statutum

Statutum de quo Warranto,
Editum Anno 18 Edw. I.

Statutum de quo Warranto novum Anno 18 E. 1. *qualiter brevia de quo Warranto debent terminari, & de cætero terminari.*

QUia brevia de quo warranto et etiam judicia ſuper placita eorundem reddend' diutinam ceperunt dilationem, eo quod Juſticiarii in judiciis illis reddendis de voluntate domini regis non fuerunt hucuſque certiorati: Idem dominus rex ad parliamentum ſuum poſt Paſch. apud Weſtm', anno regni ſui xviii. de gratia ſua ſpeciali, & propter affectionem quam habet erga Prælatos, Comites, et Barones, et cæteros de regno ſuo conceſsit, quod omnes de regno ſuo quicunque fuerint, tam religioſi, quam alii, qui per bonam inquiſitionem patriæ aut alio modo verificare poterunt, quod ipſi & anteceſſores eorum vel prædeceſſores uſi fuerint libertatibus quibuſcunq; de quibus per brevia prædicta fuerint implacitati ante tempus regis Rich' conſanguinei ſui aut toto tempore ſuo, et hucuſque continuerint: ita quod libertatibus illis non ſunt abuſi, quod partes adjornentur ulterius uſque certum diem rationabilem coram eiſdem Juſticiar': infra quem dominum regem adire poſsint cum recordo Juſtic' ſigillo ſuo ſignat' et redire. Et dominus Rex confirmabit per literas ſuas patentes ſtatum eorum. Et illi qui non poterunt ſeiſinam anteceſſorum ſeu prædeceſſorum verificare eodem modo, quo prædictum eſt; deducantur & judicentur ſecundum legem & conſuet' regni. Et illi qui habent chartas regales ſecundum chartas illas judicentur. Præterea dominus Rex de gratia ſua ſpeciali conceſsit, quod omnia judicia quæ reddenda ſunt in placitis de quo Warranto per Juſtic' ſuos apud Weſtm' poſt Paſch' prædictum, & pro ipſo domino Rege ſi partes quæ amiſerunt ad ipſum dominum regem revenire voluerint, tale habebunt remedium de gratia domini regis ſicut ſuperius ſcriptum

ptum eſt. Conceſsit etiam idem dominus Rex ad parcend' miſis & expenſis populi de regno ſuo : quod placita de Quo warranto de cætero placitentur & terminentur in itinere Juſtic', & quod placita adhuc pendentia readjornentur in ſingulis com' ſuis uſque adventum Juſticiar' in partibus illis.

The miſchiefe before this Statute, as here it is rehearſed, was that there had béen [dictina dilatio] in Writs of Quo warranto, becauſe the Judges would not proceed to judgement (the ſame being finall) without being certified de voluntate Regis by the Writ de libertatibus allocandis, which was not onely a great delay, but a great charge to the Subject: But the truth is, that this Kings Officers to get thanks of the King by filling of his cofers, cauſed very many Writs of Quo warranto for liberties to be brought; for where it is ſaid in our Chronicles, that theſe Writs of Quo warranto were for lands and tenements, therein they are miſtaken, for it appeareth that after, that is to ſay, in the 31. yeare of his raigne the King did bring a Quo warranto againſt the Lady of S. to know by what warrant ſhe claimed to hold the Mannor of C. which belonged to his Crown, as that which of ancient time was ancient demeſne; and there it is affirmed and not denied, that this was the firſt Writ that ever was ſéen to be brought for lands: But certaine it is, that there were an exceeding number of Writs of Quo warranto brought as well againſt the Prelates and other of the Clergy, as againſt the Nobles and others of the Realme for their liberties, franchiſes, and priviledges, for that partly by length and proces of time, and partly during the troubleſome times and civill broiles and wars in the raignes of King John and H. 3. many of their Charters, Records of allowances, and other evidences and monuments were deſtroyed, waſted or made away; amongſt others a Quo warranto was brought againſt John Warren Earle of Surrey, who appearing before the Juſtices ſpake boldly and ſtoutly againſt this kinde of proceeding, as our Hiſtories doe teſtifie. 31 E. 1. fol. 356. Vide Bract. l. 5. 367. Polydor, Triver. Abingdon. Hollingſ. pag. 280. a. b.

Certain it is, that as well the Lords Spirituall and Temporall, as the Commons aſſembled in this Parliament did complain hereof to the King, and beſought him that he would be pleaſed of his grace and favour, for it was a legall courſe which was attempted and proſecuted in the Kings name, but a matter of great rigour and extremity inuented and eagerly followed by his Officers, to the generall diſtaſte and griefe of the whole Realme.

The noble and wiſe King knowing that ſummum jus was ſumma injuria, and not intending to take advantage of the extremity of his Laws in ſo hard a caſe did of his grace and favour (for ſo the Act ſpeaketh) Ex ſpeciali gratia et etiam propter affectionem quam habet erga Prælatos, Comites, Barones, & cæteros de Regno ſuo, provide by this Act remedy for the ſaid miſchiefe.

Bracton and Fleta treating of a Quo warranto, both of them almoſt totidem verbis ſayen, Eſt etiam alia actio, quæ dicitur duplex, in uno brevi, & ubi duæ concurrunt actiones, ſcilicet in perſonam, et in rem: primo in perſonam, quod quis ſit ad reſpondendum quo warranto teneat aliquam libertatem ſeu aliam rem. In rem, cum præterea addatur in, fine quam Rex clamat ut jus & hæreditatem ſuam vel eſchaetam ſuam, vel de antiquo dominico Coronæ ſuæ, vel hujuſmodi, vel quam talis clamat in N. contra coronam et dignitatem Regis. Bract. l. 5. fo. 367. Fleta l. 5. cap. 9.

¶ De gratia ſua ſpeciali.] This, as hath béen ſaid, is an Act of grace, for it bindeth the King in this particular of his prerogative, Quod nullum tempus occurrit Regi, for by this Act continuance of poſſeſſion of liberties from the beginning of the raigne of R. 1. till this Act, which was under an hundred yeares, ſhould be a barre to the Crowne, if ſo it were found by inquiſition, Acts of grace. Mag. Chart. ca. 8. W. 2. cap. 10, 29. 2 E. 3. fol. 28, 29.

First part of the Instit. sect. 190.

sion, which was the time of prescription that bound the Subject in case of prescription.

¶ Qui per bonam inquisitionem patriæ, vel aliquo alio modo verificare poterint, &c.] This is as much to say, as to prove by inquisition, or verdict of the Country, who are to enquire of the fact, that is, of the possession by the time aforesaid, or to prove by matter of Record (whereof Juries are not to enquire) that is, by allowance before Justices in Eyre, &c. implied necessarily in these words, [Vel aliquo alio modo] that must be alio modo, then by matter in fait inquirable by the Country; so as albeit it be said, that a possession of liberties warranted also by allowance is within this Statute, that doth not exclude, but that a possession found by inquisition is within the expresse letter and meaning of this Act.

2 E. 3. 28, 29. Roger Mortimers Case upon this branch.

¶ Libertatibus quibuscunque.] This extends to all liberties, as well to those that lie in point of Charter, as conusans of pleas, felons goods, and the like; as to those that may be claimed by prescription, as waife and stray, and the like.

2 F. 3. ubi supra.

The remedy is conformable to the mischiefe, for the mischiefe was, as hath been said, concerning liberties, and not concerning lands; and the Quo warranto was framed for franchises which belong to the Crown, and such as the Subject hath, are derived from the Crown, Libertates regales ad coronam spectantes ex concessione regum à Corona exierunt.

31 E. 1. fol. 886. Bract. ubi supra. Tr. 29 E. 1. coram Rege. Rot. 57 the Bishop of Durhams Case.

¶ Ante tempus consanguinei sui Ric. aut toto tempore sui.] This is King Richard the first, and here is called consanguineus, because the King derived not lineally from him, for he was elder brother to King John, who was Grandfather to King Edw. 1. Note here this disjunctive [aut] so as the time of prescription, as hath been said, in the case of a Subject is the time limited by this Act.

¶ Ita quod libertatibus illis non sunt abusi.] This clause extendeth not onely to misuser, disuser, and non-user of liberties, but to faux claime of them, and the like.

¶ Regem adire possint cum recordo.] Here is an excellent pattern, that the King be informed by the Judges, and by the Record it self, before he make any graunt or confirmation thereof; so carefull were they in those dayes, that the King, before he passed any thing, might be truly informed.

¶ Et dominus Rex statum eorum affirmabit.] In those dayes such faith were given to verdicts of twelve men, as they were vere dicta, and dicta veritatis, so as upon one inquisition, &c. the King by this Act was to affirme the liberties according to the verdict, &c.

¶ Deducantur & judicentur secundum legem cõmunem.] That is according to the Kings prerogative of nullum tempus occurrit Regi. Hereby it appeares that the Kings prerogative is part of the Law of England, and comprehended within the same.

¶ Et illi qui habent Chartas regales secundum Chartas illas et earundem plenitudinem judicentur.] Here is an excellent rule for construction of the Kings Letters Patents, not onely of liberties but of lands, tenements,

ments, either things which he may lawfully grant, that they have no strict or narrow interpretation for the overthrowing of them, Sed secundum earundem plenitudinem judicentur, that is, to have a liberall & favourable construction for the making of them available in Law, usq; ad plenitudinem, for the honor of the King. Also hereby is implied that they are to be construed secundū earū plenitudinem, that is, as fully and beneficially as the Law was taken at that time when they were made: and certainly these ancient Laws were directions to the sages of the Law, for the construction of the Kings Charters, and Letters Patents, as it appeareth in our Books. Lib.6.fol.5,6. Sir John Molins Case. 6 E.3.54,55. 7 E.3.40,41. 18 E.3. consuetis 39. 34 Ass.14. 40 Ass.23. 1 H.4. 12. 14 H.6.12. 33 H.6.22. 35 H.6 54. 9 H.7.11. 10 H.7.13,14. 16 H.7.9.

¶ Præterea dominus Rex de gratia sua speciali concessit, quod omnia judicia que reddenda sunt in placitis de Quo warranto per Justic' apud Westm' post Pasch' prædict', & pro ipso domino rege, si partes quæ amiserunt ad ipsum dominum regem revenire voluerint, tale habebunt remedium de gratia domini regis, sicut superius est, concessum.] This was a speciall grace indeed of the King, that though judgements had been given in any of his Courts at Westminster since the feast of Easter in Pleas of Quo warranto for him against any of his Subjects, (which judgements in Law against the Subjects were fatall) yet, those judgements notwithstanding, the parties grieved should be within the remedy of this Act.

¶ Concessit etiam idem Dominus Rex ad parcend' missis et expensis populi de regno, quod placita de Quo warranto de cætero et placitentur et terminentur in Itineribus Justiciar'.] The costs, charges, and expences of the Subjects in these cases were excessive, and therefore, to meet with this mischiefe, and that the Subject might receive Justice in his own Country, as it were at his owne doores, it is likewise of the Kings speciall grace that Pleas of Quo warranto should be heard and determined in the Eyres of the Justices.

Of this branch we finde a notable case in our Books, and I will cite the case as I finde it of Record, and as it may be gathered in our Books. The Archbishop of York was in possession of Prisage of Wines in the Port of Hull, and in the raigne of E.2. in the time of John Archbishop, the same franchise was seised into the Kings hands; after the decease of John Archbishop, William Archbishop his successor sued in Parliament in the raigne of E.3. by Petition of right to be restored to the said Franchise; and afterward by Parliament the Petitioner was restored to the possession of the said Franchise, and by the same award it was adjudged that the said William Archbishop the petitioner should answer the King, when and where he pleased; and the like award was made upon the petition of the said William Archbishop in the Parliament the morrow after the Feast of S. Katherine in the fourth yeare of the same King; whereupon the King brought a Writ of Quo warranto against the said William Archbishop returnable in the Court of Common Pleas, to know by what warrant he claimed to have Prisage of Wines in the Port of Hull; Parning that famous Serjant (who after was Chiefe Justice, and after that Lord Treasurer of England, and lastly Lord Chancellor of England) of Councell with the Archbishop, pleaded to the jurisdiction of the Court, and demanded judgement, if the Archbishop ought to make any answer there, for that King Edward, Grandfather of E.3. made a Statute (intending this Statute of 18 E.1. which provided, that the Pleas of Quo warranto should be pleaded before Justices in Eyre in the Counties, and that it was ordained by a Statute made in the time of King E.3. at his Parliament at Northampton (which was in 2 E.3.) that by a Writ under the Great, or 5 E.3.65. 6 E.3.5; &c.

privy Seale, no diſturbance ſhould be that comm on right ſhould not be done to all, and wee intend not (ſaith hee) that againſt the ſaid Statute, which is a Law common to all, that wee ought to anſwer in this Court. The matter concerning this Act of 18 E. 1. was not denied, but Sir William Herle Chiefe Juſtice, that gave the rule, relying upon the award in Parliament, that the Archbiſhop ſhould anſwer the King when and where hee would, and there it is ſaid, that the award of Parliament was the higheſt Law that could bee, and thereupon Serjant Parning anſwered over.

Now when Juſtices in Eyre ceaſed, then this branch for the eaſe of the Subject, and for ſaving of their coſts, charges, and expences, loſt his effect, for with Juſtices of Eyre this branch lived, and with them it died.

Rog. Hovenden poſter. pte annalium, fol. 313. Mat. Paris. Camden Brit. 129.

Some have ſuppoſed that Henry the ſecond, did firſt inſtitute Juſtices in Eyre, whereof one ſaith, Juſticiarii Itinerantes conſtituti per Henr. 2. 1 Qui diviſit Regnum ſuum in ſex partes, per quarum ſingulas tres Juſticiarios Itinerantes conſtituit; and they likewiſe agree, Quod hoc inſtitutum ſub Edwardo 3. evanuit.

Wherein how men otherwiſe learned, but not skilfull in legall antiquities have miſtaken both theſe points, we ſhall in a word or two ſatisfie the learned Reader.

Lucubr. Ockham

Theſe Juſtices Itinerants, were alſo called perluſtrantes; they were firſt inſtituted ad dilationes amputandas, & ad ſubditorum labores, ſumptuſque ſublevandos.

Mirror c. 2. § 15.

It appeareth by the Mirror, who had ſeene the old Rolls in the raignes of ancient Kings, and namely of King Alfred, and wrote of the Lawes from the time of King Arthur, who ſaith, Que auncientment ſoloient les Royes en proper perſons eroer de paiis in paiis pur inquirer, Oier & Terminer les peches, & pur redreſſer de torts, & ceux queux ne ſont my attaine en tielz Eires des perſonel treſpaſſes faitz avant remeint al judgement de Dieu. Et puis pur multiplication de peches ne purront my les Royes touts faire per eux meſmes & pur ceo ilz envoieront lour Comiſſaries, que ſont ore appels Juſtices errants, que nount power de Oier & Terminer nul perſonel treſpaſſe forſque pur choſe attaine, & nient termine in le darraine Eire ou puis fait, (which agreeth with our Bookes) and further ſaith, Eſtoiet auncient ordein que les Royes per eux, ou per lour chiefe Juſtices, ou per Juſtices generals a tours pleas Oier & Terminer erraſſent de 7. ans, in 7. ans per my touts Counties pur receiver les Rolles de touts Juſtices aſſignes, des Coroners de inquiries, des eſcheators, de Viſcounts, de Hundreders, de Bailies, & de touts Seneſchals, &c. And again, Cheſcun paiis ſoloiet deſtre garnie per 40. jours per generall ſummons, &c. All which agreeth with our Bookes; and after he ſaith, Abuſion eſt que Juſtices & lour Miniſters, que occient le gent per faux judgement, ne ſont diſtreints al fere de autres homicides, que fiſt le Roy Alfred que fiſt pender 44. Juſtices in un anne tant come homicides pur lour faux judgements: And there he nameth thoſe corrupt Juſtices, which is to be intended of Juſtices Itinerant, for there were not ſo many reſident.

Bract. l. 3. fo. 108, 115, 116, &c. Brit. fol. 127, &c. Fleta l. 1. c. 15, &c 2 E. 3. 27. 4 E. 3 41 6 E. 3. 55. 23 E. 3. 21. 6 E. 2. Aſſ. b. 496. 14 H. 7. 21. 15 H. 7. 5.

Mirror c. 4. § Le office des Juſtices in Eire. ca. 5. § 1. The books above ſaid, ubi ſupra.

And the inſtitution of Juſtices Itinerant, and the circuit of Juſtices in the Countries had his ground from holy Scripture, for there it is ſaid, Judicabat quoque Samuel Iſraelem cunctis diebus vitæ ſuæ, & ibat per ſingulos annos circuiens Bethel, & Galgala, & Maſphatti; & judicabat Iſraelem in ſupradictis locis, revertebaturque in Ramatha; ibi enim erat domus ejus, et ibi judicabat Iſraelem.

1 Sam. c. 7. ver. 16.

As to the ſecond point, that Juſtices in Eyre ſhould ceaſe in the raigne of Edward the third, they have not onely erred in fonte, but in fine alſo, for they ceaſed not in the raigne of King Edward the third, for it is enacted by Act of Parliament after that Kings raigne, (in reſpect of the troubles and forreine affaires) that no Eyres ſhould be

should be holden during two yeers; and after in 16 R. 2. that no Eyre should be holden till the next Parliament; but thus much in a case so evident shall suffice. We have added thus much, not of curiosity, nor of a spirit of contradiction, but for two respects; the one, that when our Historians do meddle with any Legall point, or matter concerning the Law, we would advise them, that they would before they write, consult with those that be learned, and apprised in the Laws of this Realm: the other, that truth might be manifested, and prevail.

Rot. Parliam. An. 6 R. 2. nu. 35. 16 R. 2. nu. 12.

But hereof more largely shall be spoken in the Treatise concerning the Jurisdiction of Courts.

Statut. de Weſtminſter 3. Editum

Anno 18 Edw. 1. Ad Parliamentum poſt feſtum Hil. & Paſchæ.

In the Parliament Roll it is intituled,

Statutum Regis de terris vendendis & emendis.

1. Part of the Inſtitutes, ſect. 140.

IT is called the Statute of Weſtm. 3. becauſe two notable Parliaments had been before holden at Weſtminſter, the one called Weſtm. 1. and the other called Weſtm. 2. In reſpect whereof, and of the excellencie of it, this Parliament being holden at Weſtminſter, is called Weſtm. 3.

CAP. I.

QUia emptores terrarum & tenementor' de feodis Magnatum & aliorum dominorum in præjudicium eorundem, temporibus retroactis, multotiens in feodis ſuis ſunt ingreſſi, quibus libere tenentes eorundem magnatum & aliorum terras & ten' ſua vendiderunt, tenend' infeod' ſibi & hæredibus ſuis de feoffatoribus [*& hæredibus*] ſuis, & non de capitalibus dom' feodorum, per quod iidem capitales domini eſchaetas, maritagia, & cuſtodias terrarum & tenement' de feodis ſuis exiſtentium ſæpius amiſerunt: quod quidem eiſdem Magnatibus & aliis dominis quam plurimum durum & difficile videbatur, & [*ſic*] in hoc caſu exheredatio manifeſta. Dominus Rex in Parliamento ſuo apud Weſtmon' poſt Paſch. anno regni ſui 18. videlicet in quindena Sancti Johan. Bapt. ad inſtantiam Magnatum regni ſui, conceſſit, providit, & ſtatuit, quod de cætero liceat unicuique libero homini, terras ſuas, ſeu tenementa ſua, ſeu partem inde ad voluntatem ſuam vendere, ita tamen quod feoffatus teneat terram illam, ſeu tenement' illud de capitali domino feodi illius per eadem ſervitia & conſuetudines, per quæ feoffator ſuus illa prius tenuit.

Lib. 3. fol. 23, 24. Walkers caſe.

¶ Quia emptores terrarum, &c.] The cauſe of the making of this Statute, appeareth by the Preamble, and by that which hath been ſaid upon the

the Expoſition of the 32. Chapter of the Statute of Magna Charta; where alſo the principall parts of this Act are explained, yet ſome things are thereunto neceſſarily to be added. Mag.Char.c.32.

At the Common Law, if A. had made a feoffment in fee to B. Reddend' inde, ſive Tenend' de ſe & hæredibus ſuis per 6.d. pro omnibus ſervitiis, & fac' capitalibus dominis feodi pro prædict' A. & hæredibus ſuis omnia ſervitia debita, &c. 31 Aſſ.p.30.2E.3 33. 49 E.3.10.

In this caſe by the firſt Reddend' or Tenend' the land had been holden of the Feoffor, and all the ſervices due ſhall be done to him; for to do ſervice for a man, is to do it to him; qui pro me aliquid facit, mihi feciſſe videtur.

If the Tenant had made a feoffment in fee before this Statute generally, without reſervation of any tenure, the feoffee ſhould have holden of the Feoffor, as he had held over; For example, if he had holden by Knights ſervice, the Feoffee by creation of Law had holden by Knights ſervice of the Feoffor, in reſpect of the tenure over by him; and therefore if the Lord had confirmed the eſtate of the Feoffor, viz. the Peſne, to hold by fealty onely (which was Socage) the tenure between the Tenant and the Feoffor ſhould be Socage alſo, becauſe the tenure created by Law followeth the tenure, in reſpect whereof it was created. 3 Aſſ.8. 33 E.3. Annuity 52. 22 Aſſ.53. 45E.3 15.b. 4 H.6.20. 49 E.3. 10.

¶ Quod de cætero liceat unicuique libero homini, terras ſuas, ſeu tenementa ſua, ſeu partem inde ad voluntatem ſuam vendere.] By the Common Law, the Tenant might have made a feoffment in fee of the whole tenancie to be holden of the chief Lord; but notwithſtanding the Lord might, during the life of the Feoffor, take him for his Tenant, and avow upon him (in reſpect of the former fealty, ſervice, and priority) albeit the Feoffee gave notice, and tendred him all the arrerages, which now this Statute hath altred. 33 E.3. Avowry 255. 4 H.6. 20. 12 E.4.16. lib.3. fol. 23. Walkers caſe.

See the Expoſition upon the 32. Chapter of Magna Charta. Mag.Chart.c.32

¶ Vendere] Is here not onely taken for a ſale, but for any alienation by gift, feoffment, fine, or otherwiſe: But ſale was the moſt common aſſurance.

¶ Libero homini.] i. Libere tenenti; to every Free-holder. Hereby are excluded not onely nativi, but alſo nativè tenentes, Copy-holders, or Tenants at will, according to the cuſtome of the Mannour.

¶ Ita tamen quod feoffatus teneat terram illam, ſeu tenementum illud de capitali domino feodi illius.] The generall words of this Act take not away neceſſary incidents, as that the Feoffee of all, or of part, ſhall give notice, and tender the arrerages before the Lord ſhall be compelled to avow upon him: neither do theſe, or the former words [De cætero liceat] take away the fine for licenſe of alienation, &c. of lands holden of the King in capite, for that belongeth to the King by the ſaid Statute of Magna Charta. See Magna Charta. cap. 32. 4 H.6.20. 8 E.4. 12. Mag.Chart.c.32.

Theſe generall words have a tacite exception, viz. unleſſe all the Lords mediate and immediate do aſſent thereunto; for, Quilibet renunciare poteſt beneficio juris pro ſe introducti. 27 H.8.26.2 E.2. Avowry 185.

¶ Capitalis dominus] Is here taken for the next immediate Lord, and ſo by degrees upward to every Lord Paramount, albeit the Act ſpeaketh in the ſingular number: and it is to be known, that all the lands and tenements in England are holden either mediately or immediately of the King, and therefore he is Summus dominus ſupra omnes. *33 H.6.7.8 E.3. 283. 17 E.3.59. 46 E. 3. Petition 19. lib.6. fol.5,6. Sir John Molyns caſe. Eodem libr. fol. 130,131. Bewlies caſe.

* If the King be Lord, A. Peſne, C. Peſne, and Tenant, the Tenancie cometh to the hands of the King by forfeiture or conveyance, the King granteth the lands to another in fee, [Tenend' de capitali domino per ſervitia debita, & conſueta]

ſueta] this grant ſhall revive not onely the immediate tenure of C. but of A. and of the King alſo, albeit the Tenend' de capitali domino be in the ſingular number, (as here the Statute ſpeaketh) yet is it as much as capitalibus dominis.

¶ Per eadem ſervitia & conſuetudines, per quæ feoffator ſuus illa prius tenuit.] A. holdeth lands by Knights ſervice, and giveth the ſame to B. in tail, to hold of him in Socage; B. maketh a feoffment in fee, the Feoffée ſhall not hold of the Lord in Socage, as the Feoffor held, but by Knights ſervice, as A. the Donor held: for by the feoffment the reverſion in fee holden by Knights ſervice is drawn out of the Donor, and paſſeth to the Feoffee; and the Feoffee in this caſe cannot hold of the Donor: and this caſe is not againſt the letter of the Law, but within the intent and meaning thereof; for the meaning of this Law was, that the Feoffee ſhould hold of the Lord, as the Feoffor did when the Feoffée held of the ſame Lord: and this Act was made for the advantage of the Lords; and therefore in conſtruction the Feoffée ſhall hold, not as the Feoffor, but as the Donor held.

2 E.2. Avowry 181. 10 E.3. 26. 18 E.3.7. 31 E.3. Gard 116. 48 E. 3.8.1 H.5.5 E.4.8 15 E. 4. 13. Tr. 18 Eliz. in communi banco, in Wyats caſe. Per cur' which I heard and obſerved.

If the husband ſeiſed of land in the right of his wife make a feoffment in fee, the Feoffée ſhall hold as the wife held, for the husband had nothing but in her right.

Alſo if the Tenant that holds by priority make a feoffment in fee, the Feoffée ſhall not hold by priority; for this Act ſaith, Per eadem ſervitia, by the ſame ſervices, and not according to every collaterall quality.

1. Part of the Inſtitutes, ſect. 139. Lib. 9. fol. 123. Anth. Lows caſe.

If Tenant in Frank almoign alien in fee, that Feoffée ſhall not hold of the Lord per eadem ſervitia, albeit he be a man of the Church; but he ſhall hold of the Lord by fealty onely: for by the firſt words of this Act he ſhall hold of the Lord, but he cannot hold of the Lord per eadem ſervitia, becauſe it is againſt the nature of the tenure in Frank almoign, to hold of any but of the Donor or his heirs; and generall words of an Act ſhall not be taken to work any thing againſt the nature of the thing, or the rule of Law; but he ſhall hold by fealty onely, which was as free a tenure, and as neer to the former, as can be, and therefore by conſtruction [eadem ſervitia] the ſame ſervices ſhall be taken as neer the ſame ſervices as may be.

45 E.3. 15. b.

And this Act extendeth to lands holden by fee farm.

Mag. Chart. cap. 30. verb. Conſuetud.

¶ Conſuetudines] Is here taken for ſervices, as in the Writ De conſuetudinibus & ſervitiis, and not for cuſtomes.

22 E.3. Dower 131. 38 Aſſ. 17. 2 E.4.6. 7 E.4.12

If the Peſne releaſe to the Tenant, the Tenant ſhall hold per eadem ſervitia & conſuetudines, as the Peſne did; and ſo if the Tenant in feoffe the Peſne, the Peſne ſhall hold per eadem ſervitia, as he did before: and ſo it is if the tenancie come to the meſnalty by Act in Law, as by eſcheat or deſcent, the Peſne ſhall hold per eadem ſervitia & conſuetudines, as he held before; for albeit the Tenure between the Tenant and the Peſne in theſe caſes be extinct, yet the Seignior Paramount, which alſo was iſſuing out of the tenancie, remaineth ſtill.

10 Aſſ. p. 29. W. 2 cap. 9. Le caſe de Forjudger.

If there be Lord Peſne, Peſne, and Tenant, and the firſt Peſne dyeth without heir, and the meſnalty eſcheat to the ſecond Peſne; or if the Peſne grant the meſnalty to the Peſne, the meſnalty that which is neereſt to the tenancie doth drown the more remote meſnalty, and the Tenant ſhall hold per eadem ſervitia & conſuetudines, as he held before: But the ſecond Peſne ſhall hold of the Lord Paramount per eadem ſervitia & conſuetudines, as he held before the extinguiſhment of his meſnalty for the cauſe aforeſaid.

C 4P.

CAP. II.

ET ſi partem aliquam earundem terrarum, ſeu tenementorum alicui vendiderit, feoffatus illam teneat immediate de capitali domino, et oneretur ſtatim de ſervitiis quantum pertineat ſive pertinere debet eidem capitali domino pro particula illa ſecundum quantitatem terræ ſeu ten' ſic vendit'. Et ſic in hoc caſu decidat capitali domino ipſa pars ſervitii per manus feoffati capiend', ex quo feoffatus debet eidem capitali domino juxta quantitatem terræ ſeu ten' venditi; de particula illius ſervitii ſic debiti eſſe intendens & reſpondens.

¶ Feoffatus ille partem illam teneat immediate de capitali domino pro particula illa.] [Particula illa] is underſtood of a part in ſeveralty, and not in common, and therefore it is holden that if the Tenant make a feoffement in fee of the moity or third part, &c. of the Tenancy, that ſuch a feoffee is not within the purview of this Statute; for a moity or a third part, &c. pro indiviſo is not particula, for that word implieth a part in ſeveralty. 29 H. 8. tenures Br. 64. 17 E. 3. 15.

And this branch by reaſon of this word [feoffatus] is underſtood when part of the Tenancy peravaile is aliened, and not when part of the meſnalty. 17 E. 3. 15.

¶ Pro particula illa.] Is underſtood of ſervices dividible and apportionable, and not of entire ſervices, be they annuall or not annuall, whereof you ſhall reade notable matter, when entire ſervices by alienation of part ſhall be multiplied, and when not, and what ſervices ſhall be extinct by the purchaſe of part by the Lord, and what remaine, and what ſhall be apportioned, in Bruertons Caſe in the firſt part of the Reports, and in Talbots Caſe in the eight part. Lib 6. fol. 1. Bruertons caſe. Li. 8. fol. 105, 106. Talbots caſe. Firſt part of the Inſtitut. ſect. 222. verbo annual. Whereunto you may adde for the caſe of ſuit-ſervice. Mich. 18 E. 1 in Banco Rot. 232 Ro. Lutterels caſe 12 E. 4. 16. 6 H. 7. 7

Alſo when the Lord purchaſeth part, he ſhall hold that part pro particula of the Lord Paramount by the purview of this Statute.

¶ Secundum quantitatem terræ.] The Statute doth ordain that the feoffee of part ſhall hold pro particula of the Lord, but it is neceſſary to be known how the ſame ſhall be apportioned: for Parum proficit ſcire quid fieri debet, ſi non cognoſcas, quo modo ſit facturum: Therefore admit that there be Lord and Tenant of twenty acres of land by fealty, and x. s. rent, the Lord doth purchaſe two acres, and taking the rent to be apportioned accordingly to the quantity of the land doth diſtrain for ix. s. and the Tenant maketh reſcous, the Lord brings his Aſſiſe, the Tenant pleads nul tort, the Recognitors of the Aſſiſe ſhall extend the land according to the value, and not according to the quantity, and that the Lord ought upon the true valuation of the ſaid two acres ſo purchaſed to have but viij. s. vj. d. *Regula.* 18 E. 2. avowry 218. 4 Aſſ. 5. 12 E. 4. 16. Pl. Com. 82.

In this caſe, albeit the Plaintiffe did miſtake the juſt reſidue upon the apportionment, yet ſhall he recover ſo much as is found by the Jury to be due; for it were too hard, and a cauſe of multiplication of ſuits, and againſt the meaning of the makers of this Act, that the Lord ſhould be driven in his Aſſiſe or Avowry, &c. to hit the juſt ſumme due upon the apportionment, but

but though he demand more, yet shall he recover but that just summe which is implied in these words, Secundum quantitatem terræ, i. Secundum quantitatem valoris terræ: But if he demand lesse in that Action, he shall not recover the greater.

Pasch 39 El. Rot. 233. coram Rege inter Collins & Harding. Hil. 42 El. in Communi Banco. int' Ewer & Moile. Tr. 43. El. in Communi Banco. Rot. 243.

And so it is, if a man make a lease for yeares reserving a rent, if he graunt away part of the reversion, the rent shall be apportioned by the Common Law, and albeit the graunte of part demand or claime more in his Action of Debt, or Avowry then is due, yet shall he recover so much as the Jury shall finde upon a just apportionment to be due, against a former opinion reported by Sir Iames Bendloes, Hil. 6. & 7 E. 6. that the rent in that case should not be apportioned, but lost; but the Law hath been often adjudged to the contrary for foure reasons:

1. For that it is a rent service, and not a bare contract, and rent services were apportionable at the Common Law.

2. It is incipent to the reversion, which is severable, Et accessorium sequitur naturam sui principalis.

3. The rent, being a rent service, is severable by recovery of part in an Action of Waste, or upon surrender in part.

4. Lastly, it is a generall case, and specially in case of Wast, which many times are void for a third part.

And where the case hath been put of a lesse for yeares, the same Law holdeth in the case of a lease for life, whereupon a rent is reserved, for the apportionment of the rent, whereby it appeareth that there was an apportionment at the Common Law, pro particula secundum quantitatem valoris, &c. for to name of these cases our Act doth extend unto.

CAP. III.

ET sciendum est quod per prædictas venditiones seu empciones terrarum seu ten', aut partis alicujus earundem nullo modo possunt terræ seu ten' illa in parte vel in toto ad manum mortuam devenire, arte vel ingenio, contra formam statuti super hoc dudum editi. Et sciendum est quod istud statut' tenet locum de terris venditis tenend' in feodo simplici tantum. Et quod se extendit ad tempus futurum. Et incipiet locum tenere ad festum sancti Andreæ Apostoli proxim' futur' Anno regni Regis E. filii Regis H. xviii.

¶ Ad manum mortuam devenire, arte vel ingenio, contra formam statuti super hoc dudum edit'.] This is understood of the Statute de 7 E. 1. De Religiosis, and by this branch that Act is in no sort impeached by this, but standeth in full force: and note the manner of saving of former Statutes in auncient times by generall words, which is the surest way.

22 Ass. 42. 3 Ass. 18 4 H. 6. 20. 11 H. 8. 38. Kelwey.

¶ In feodo simplici.] And therefore if Tenant for life graunt his estate to severall parts to severall persons, yet may the lessor distrein for the whole

whole rent in every part, for this Act extendeth onely to Tenants in fée-ſimple.

But yet Tenant for life, and Tenant in taile are not wholly excluded by force of theſe words [in feodo ſimplici] out of this Statute, for where the whole fée-ſimple paſſeth out of the Lord, there this Act extendeth to eſtates for life and in taile; as if an eſtate for life or in taile be made of land, the remainder in fée, there then Tenant for life or in taile ſhall hold de capitali domino by force of this Act, but otherwiſe it is when a reverſion remaineth in the Donor or Lessor.

For if a man at this day make a gift in taile, Tenend' de capitalibus dominis feodi, &c. theſe words are void, and he ſhall hold of the Donor.

1 E. 3. 3. 4 H. 6. 20
21. 22. 20 E. 3. avowry 131.

20 E. 3. ubi ſupra.
38 E. 3. 7. 4 H. 6. 20, 21, &c.
Lib. 2. fol 92. Bingham's Caſe.
Lib. 3. fol. 8. Heydon's Caſe.

Statutum de Judaiſmo.

Ad Parliamentum tentum poſt feſtum Sancti Hilarii, & poſt Paſch', Anno 18 E.1.

PUr ceo que le roy ad vieu que mults des males & diſheriſons des probes homes de ſa terre ſont avenus per les uſurers que les Jewes ont fait en arere, & que mults des peches ent ount ſurs de ceo, meſque luy et ſes aunc' eyent ent grand pren de la Jewrie tout en ceo en arere, ment pur quant en le honor de Dieu et pur le common pren del people ordein le roy et eſtablie que nul Jew deſormes ne priſt rien a uſury ſur les terres rents ne ſur autres choſes, & que nul uſury ne curge * de S. Edward procheinment paſſe en avant, mes que les covenants avant faits ſoient tenus ſave que les uſurers mes ceſſent.

* That is from the feaſt of S. Edw. next beſore paſſed, which is the 18 day of March.

By the preamble hereof, two great miſchiefes did follow before the making of this Statute upon Jewiſh uſury; now the difficulty was how the ſame ſhould be remedied. The miſchiefes were theſe:

1. The evils and diſheriſons of the good men of the land.

2. That many of the ſins or offences of the Realme had riſen and been committed by reaſon thereof, to the great diſhonor of Almighty God.

The difficulty how to apply a remedy, was, conſidering what great yearly revenue the King had by the Uſury of the Jewes, and how neceſſary it was that the King ſhould bee ſupplied with treaſure; what benefit the Crowne had before the making of this Act appeareth by former Records; as take one for many: from the 17. of December in the 50. yeare of H. 3. untill the Tueſday in Shrovetide the ſecond yeare of Edward the firſt, which was about ſeaven yeares, the Crowne had foure hundred and twenty thouſand pounds fifteene ſhillings and foure pence De exitibus Judaiſmi; at what time the ounce of ſilver was but 15. d. and now it is more then treble ſo much, ſo as the recitall of the Preamble is true, Meſque luy & ſes auncestres eyent ent graund pren de la Jewrie.

Rot. Patent Anno 3 E.1.m. 14, 17 26. William Middleton reddit. compotum.

Many

Many prohibitions were made both by this King and others, some time they were banished, but their cruell Usury continued: and soon after they returned, and for respect of lucre and gain, King John in the second yeer of his Raign granted unto them large liberties and privileges, whereby the mischiefs rehearsed in this Act without measure multiplyed. Tempore R. 1. Vet. Mag. Chart. fol. 144. Rot. Chart. 2. Johan. nu. 49, 53. 18 H. 3 Dors. clauſ. m 27. Dors. Pat. 55 H. 3. m. 10.

Our noble King Edw. 1. and his father H. 3. before him, sought by divers Acts and Ordinances to use some mean and moderation herein, but in the end it was found, that there was no mean in mischief, and as Seneca saith, Res profecto stulta est nequitiæ modus. And therefore King E. 1. as this Act saith, in the honour of God, and for the common profit of his people, without all respect (in respect of these) of the filling of his own Coffers, did ordain, that no Jew from thenceforth should make any bargain, or contract for Usury, nor upon any former contract should take any Usury, from the Feast of Saint Edward then last past; so in effect all Jewish Usury was forbidden. Rot. 2 E. 1. m. 1, 3, 5. Rot. clauſ. 3 E. 1. m. 8, 10, 13 16, 23. Rot. Pat. 3 E. 1. m. 36. & 7. Dors. clauſ. 7 E. 1. m. 6.

The King of France, Anno domini 1253. 37 H. 3. banished out of France all the Jews perpetually, saving Merchants, and such as should get their living by the work of their hands; but soon after they returned again. Matth. Paris, pag. 833.

This Law struck at the root of this pestilent weed, for hereby Usury it self was forbidden; and thereupon the cruell Jews thirsting after wicked gain, to the number of 15060. departed out of this Realm into forein parts, where they might use their Jewish trade of Usury, and from that time that Nation never returned again into this Realm.

Some are of opinion, (and so it is said in some of our Histories) that it was decreed by authority of Parliament, That the usurious Jews should be banished out of the Realm; but the truth is, that their Usury was banished by this Act of Parliament, and that was the cause that they banished themselves into forein Countries, where they might live by their Usury; and for that they were odious both to God and man, that they might passe out of the Realm in safety, they made Petition to the King, that a certain day might be prefixed to them to depart the Realm, to the end that they might have the Kings Writ to his Sheriffes for their safe conduct, and that no injury, molestation, damage, or grievance be offered to them in the mean time: One of which Writs we will transcribe: Holl. fol. 285. Walſ. hypod. 72. Florilegus Cron. Dunstable. Banish the trade, and banish the tradesman. Divers Kings had banished the Jews, and yet they returned, but no King banished their Usury before.

Rex Vic. G. Cum Judæis regni nostri universis certum tempus prefixerimus a regno illo transfretandi, nolentes quod ipsi per ministros nostros, aut alios quoscunq;, aliter quam fieri consuevit, indebite pertractentur: Tibi præcipimus quod per totam balivam tuam publice proclamari, et firmiter inhiberi facias, ne quis eis infra tempus prædictum, injuriam, molestiam, damnum inferat, seu gravamen. Et cum contingat ipsos cum catallis suis, * quæ eis concessimus, versus partes London, causa transfretationis suæ, dirigere gressus suos, salvum et securum conductum eis habere facias sumptibus eorundem. Proviso quod Judæi prædicti ante recessum suum vadia Christianorum quæ penes se habent, illis quorum fuerint, si ea acquietare voluerint, restituant, ut tenentur. Teste rege apud Westm. 18. die Julii, Anno 18 E. 1. Rot. clauſ. 18 E. 1 m. 6. 18 Julii. The like Writs to other Counties, & intituled, *De Judæis regni Angliæ exeuntibus.* * Nota.

This Statute de Judaismo was made at the Parliament post festum Hilarii, Anno 18 E. 1. At which Parliament the King had a Fifteenth granted to him pro expulsione Judæorum. And this Writ was granted in July following, the King beginning his Raign, Novemb. 16. for the Parliament knew, that by banishing of Usury, the Jews would not remain. And thus this noble King by this means banished for ever these infidell usurious Jews; the number of which Jews thus banished, was fifteen thousand and threescore. Parliam. 18 E. 1. post festum Hil. & Pasch. at which Parliament the Stat. of W. 3. *de Quia Emptores terrarū* was made.

But lucre and gain, which King Iohn had, and expected of the infidell Jews, made him impie Judaisare; for to the end they should exercise the Laws of their Sacrifices, (which they could not do without a Priesthood) the King by his Charter granted them to have one, &c. which, for the great rarity thereof, and for that we finde it not either in our Books, or Histories, that we remember, we will rehearse in hæc verba:

Rot. Chart. 1. Regis Johan. part. 1. m. 28. Chart. 171

Rex omnibus fidelibus suis, & omnibus, et Judæis, et Anglis Salutem. Sciatis nos concessisse, & præsenti charta nostra confirmasse Jacobo Judæo de Londoniis Presbytero Judæorum Presbyteratum omnium Judæorum totius Angliæ. Habendum et tenendum, quam diu vixerit, libere & quiete, & honorifice & integre, ita quod nemo ei super hoc molestiam aliquam, aut gravamen inferre præsumat. Quare volumus et firmiter præcipimus, quod eidem Jacobo, quoad vixerit, Presbyteratum Judæorum per totam Angliam garantetis, manuteneatis, et pacifice defendatis. Et si quis ei super eo forisfacere præsumpserit, id ei sine dilatione (salva nobis emenda nostra) de forisfactura nostra emendari faciatis tanquam dominico Judæo nostro, quem specialiter in servitio nostro retinuimus. Prohibemus etiam ne de aliquo ad se pertinente ponatur in placitum, nisi coram nobis aut coram capitali Justiciario nostro, sicut charta regis Richardi fratris nostri testatur. Teste S. Bathonienſi Episcopo, &c. Dat' per manus * H. Cantuarienſis Archiepiscopi Cancellarii nostri apud Rothomagum 31 die Julii, Anno regni nostri primo.

This King had a most troublesom and dishonorable Raign, God raising against him for his just punishment two potent enemies, Pope Innocent the 3. and Philip King of France. And besides (which was the worst) he lost the hearts and love of his Baronage and Subjects, and at the last had a fearfull end.

* H. id est, Huberti.

Walter Archbishop of Canterbury, and Chancelor of England, born in Westdereham in Norfolk, and brought up by Ranulph de Glanvile chief Justice of England, founded the Monastery of Westdereham, Premonstratensis ordinis. Vide Lib. de antiquitate Britannicæ ecclesiæ, cap. 42. Hubertus pa. 134. worthy to be read and observed.

At this Parliament also of this noble King E. 1. in the 18. yeer of his Raign, another kinde of Jews were severely punished, viz. the Judges of the Kings Bench, and of the Common Pleas, the Barons of the Exchequer, and the Justices Itinerants, except two, whom for their honour we will name (in memoria æterna erit justus) viz. Sir John of Metingham chief Justice of the Common Pleas, and Elias de Bekingham one of his companions, [Qui positi fuerunt in fornace, & prodierunt aurum:] For they had dealt uprightly in their places, and had never stained their hands with sordid Bribery. But let us return to our naturall Jews.

The richest of these soon after this Parliament, by force of the Kings Writ having imbarked themselves with their treasure in a tall ship of great burthen, when the ship was under sail, and gotten down the Thames towards the mouth of the River beyond Quinborough, the Master of the ship confederating with some of the Mariners, invented a Stratagem to destroy them; and to bring the same to passe, commanded to cast anchor, and rode at the same till the ship at an ebbe lay on the dry sands; the Master and his confederates, in further execution of their wicked plot, moved and inticed those rich Jews to walk with the Master on land, for their recreation and preservation of health, which they did: At last, when the Master understood the tide to be coming in, he stole away from them, and got him back to the ship, whither he was, as it was before plotted, drawn up by a cord; the Jews made not so much haste as he did, because they knew not the danger, but when they perceived in what perill they were in (that had shewed no mercie to numbers that cryed to them) cryed to him for help: his wicked and prophane answer to them was, That they ought rather to cry to Moses, by whose conduct their fathers passed through the red sea, and that he was able to deliver them out of those raging flouds which now came in upon them; and within a short space swallowed up them all: The Master, and such other as were consenting to this foul fact, were before the Justices Itinerants indicted, convicted of murther, and hanged.

Chron. de Dunstable & Vet. Manuscr. Itiner. Kanc. coram Justic. Itiner. An. 18 E. 1

And hereby it appeareth, that Divine vition did follow these cruell Jews, wicked and wretched men; for the debts of cruelty are seldom unpaid.

We will here adde a Record de Priore de Bridlington, the information or charge is not in the Record, this onely we finde:

Et

Et quia praedictus Prior cognoscit quod praedicta pecunia praed' Judaeo debebatur, viz. 300. *l. nec ei solvebatur ante exilium Judaeorum, & * quicquid remansit de eorum debitis, aut catallis in regno post eorum exilium domino Regi fuit; Consideratum est quod dominus Rex recuperet pecuniam praed', & dictum est eidem Priori quod non exeat villa antequam domino Regi de praed' pecunia satisfaciat. Et respondeat Iohannes Archiepiscopus Eborum, quia praecepit dicto Priori solvere valett' suo praedictam pecuniam in deceptionem regis, contra * sacramentum & fidelitatem suam domino Regi datam, &c. Idem in alio Rot. Anno* 22 *E.*1. *Rot.*5.

Pl. Parlam. post Pasch. apud London. 21 E. 1. Rot. 4

* Note a good exposition upon this Statute.

What offence it is to deceive the King of any of his forfeitures.

* For in doing of his fealty he is sworn.

The Archbishop confessing the same, was adjudged to be in misericordia regis, sed idem dominus Rex reservat sibi ipsi taxationem misericordiæ.

This light touch we have given to this branch of this Act, to the end it may be a precedent and pattern in like cases to apply the like remedy, and will leave the Reader to peruse the residue of this Act, which is worthy to be read, and needeth not any Exposition.

Modus

Modus levandi Fines,

Edit. Anno 18 Edw. 1.

QUant le briefe original ſoit lie en preſence des parties devant Juſtices, donques dira un countour iſsint: Sir Juſtice, conge daccord': le Juſtice dirra, que dirra? Sir Robert, & noſmera un des parties. Donques quant ils ſerront agree de la ſumme de pecune que eſt done al Roy, donques dirra le Juſtice, Cries la peace. Et puis dirra le countour, iſsint que la peace eſt tiell, a vous conge, que William & Alice ſa feme, que cy. ſont, recogniſont le mannour de B. ove les appurtenances contenus en le briefe, eſtre droit du R. come cell' que il ad de lour done, A. aver & tener a luy & a ſes heires, de W. & Alice, & les heires A. come en demeſne, rent, ſeigniories, courts, plees, purchaſes, gardes, mariages, reliefes, eſcheats, molins, avowſons de Eſgliſes, & touts auters franchiſes, & franke cuſtomes al avantdits manours apperteignant, rendant per a N. & ſes heires, chiefes ſeigniours de fee, ſervice due, & cuſtomes pur touts ſervices. Et fait aſſavoir, que order de ley ne ſuffre mye, que final accorde ſoit leve en la court le Roy ſans briefe original, & ceo a tout le meins devant iv. Juſtices en bank, ou en Eyre, & non pas aillours, & en preſence des parties noſmes en briefe, queux ſoient de pleine age, & de bone memorie, & hors de pryſon. Et ſi feme covert de baron ſoit un des parties, donques covient que el ſoit primerment confeſſe de iv. Juſtices avantdits. Et ſi el naſſent al fine, ne ceo liver' mie. Et la cauſe pur que tiel ſolempnitie doit eſtre fait' en cel fine eſt, pur ceo que fine eſt ci hault barre, & de ci graund force, & de ci puiſſant nature en ſoy, que el forclos nemy ſolement ceux queux ſont parties & privies a la fine, & lour heires, mes touts auters gentes de mound', queux ſont de pleine age, hors de pryſon, & de bone memorie, & deins les iv. meres, le jour del fine levie, ſils ne met-

mettront lour claime de lour action pur le pays, deins lan & le jour.

For the antiquitie of fines, it is certaine that they were frequent before the Conquest.

For what end and purpose fines, or a finall concord were first instituted, and wherefore it is called finis, it appeareth in the said auncient Authors, ubi supra, which wrote before this Act, * and by others, and further by an ancient Record of Parliament, Anno 19 E. 1. in these words, Nec in Regno isto provideatur, vel sit aliqua securitas major vel solemnior, per quam aliquis statum certiorem habere possit, vel ad statum suum verificandum aliquod solemnius testimonium producere, quam finem in curia Domini Regis levatum, qui quidem finis sic vocatur, eo quod finis et consummatio omnium placitorum esse debet. See the Record, for it is notable.

Pl. Com. 368. a. Glanv. li. 8. c. 1, 2, &c. Bract. lib. 5. fol 435. lib. 3. fol. 106. li. 4. fol. 256. Brit. fo. 91. & 216 Fleta l. 6. ca. 52. Lib. 2. cap. 12. Lib. 5 fo. 38. Teys Case. Li. 4. fo. 125 Beverlies Case.

* Int' placita de Parliam. apud Asheridge, Anno 19 E. 1. Rot. 12. r The Case of Margery, late the wife of Tho: Weyland.

For the hautesse and puissant force and nature of a fine, somewhat shall be said hereafter in this Chapter, in the meane time the true pleading of a fine is not, that I. S. Levavit quendam finem, sed quod quidam finis se levavit, &c. without alledging of any season.

For the parts of a fine, see Teyes Case, lib. 6.

27 E. 1. cap. 1. acc' First part of the Inst. sect. 441.

¶ Un countor.] That is to say, a Serjant, as before it hath béne said.

Dier 12 Eliz. 291. Pl. Com. 254. Stowels Case. & 432. Stapletons Case. Li. 6. fo. 38, 39. Teyes Case.

¶ Conge daccorder.] i. Licentia concordandi.

For this license a fine is due to the King, which is called Finis pro licentia concordandi. And the reason that this fine is taken, is for that the King loseth by reason of this concord the fines or amerciaments, which should have béne due to him upon the Judgement or non-suit, and other advantages.

This fine Pro licentia concordandi is an ancient flower of the Crown, and is called the Kings silver, and the post fine, and it is called the post fine in respect of the primer fine, or the fine in the Hamper; For in every reall Action of lands or tenements of the yearly value of 5. marks, there is due in the Hamper upon the originall vi. s. viij. d. viz. for every v. marks of land vi. s. viij. d. and if it be under v. marks, no fine in the Hamper upon the originall is due: A Writ of covenant to levy a fine (whereupon fines in these dayes are usually levied) is holden a reall Writ, for which a fine in the Hamper is paid. Now the fine pro licentia concordandi, or the post fine is also certain, for it is as much as the primer fine, and halfe as much more. As for example (Quia exempla illustrant) a Writ of covenant is brought to levy a fine of land, of the yearly value of v. marks, there is vi. s. viij. d. due presently for the primer fine, or fine in the Hamper, but the fine pro licentia concordandi, or the post fine is not due till Conge d'accorder be graunted by the Court, in this case the post fine is x. s. that is as much, and halfe as much as the primer fine was, but if the land be under v. marks, so as no primer fine is due, yet shall there be a fine pur conge daccorder, and that is also certain, viz. vi. s. viij. d.

And note there is no post fine due, but when there is conge daccorder, and in the Court of Common Pleas there is a speciall Clerk for the entring of the Kings silver in a Roll, which is also endorsed upon the Writ of Covenant.

And these fines Pro licentia concordandi are not against Magna Charta c. 29. for it is an ancient revenue of the Crown.

And the post fine is paid (as here it appeareth) for the concord, for that is the foundation and substance of the fine, for after that, and the Kings silver entred, though the conusor dieth, the fine is good, and the land passeth, but if the Kings silver be not entred, the fine may be reversed in a Writ of Error.

Dier 5 El. 220. b. Lib 5. fol. 39. Teyes Case.

If

6 Eliz. Dier 227. If a man bring two originall Writs of Covenant, the one for land in Suff. of the yearly value of vi.l. and another in Eſſex of xvi.l. and albeit there be two originals, yet there is but one concord, and for that concord one entire fine is due and not ſeverall.

Lib. 5. fol. 39. Toyes Caſe. ¶ Que donera.] The printed bookes are faulty, for they be Que dirra: which ſhould be Que donera, that is the conuſée, that he may give it, and the Serjant nameth him.

Now the conuſée doth pay the fine, pur licence daccorder, as here it appeareth, and if there be more then one in the fine, then he, in whom the fée repoſeth by the fine, payeth the ſame.

And this fine pur conge daccorder doe belong to the King in ſo high degrée of his prerogative, that they paſſe not by his generall graunt of all fines, albeit the grant be ex certa ſcientiâ, ſpeciali gratia, & mero motu, &c.

¶ Quant ils ſont agree del ſomme de pecunie.] Which is eaſily done, for the fine upon a juſt computation of the primer fine, is, as is aforeſaid, certaine.

¶ Cries la peace.] Some hath it, Treates le peace, that is, draw the peace: here peace is taken for the concord, and the Serjant ſhall ſay, Le peace eſt tiel ove voſtre conge.

¶ Que William & Alice ſa feme, que cy ſont, recognisſont le Mannor de B. ove les appurtenances, &c.] Here it appeareth that they which levy the fine ought to doe it in perſon, and in open Court expreſſed in theſe words [que cy ſont;] and the reaſon thereof was, that the Judges in open Court might upon the view, and other good meanes diſcerne of their age, Ideocy, Non compos mentis, and Coverture, and whether thoſe that appeare were the ſame perſons, all which might better be diſcerned in open Court, and the Judges informed of the truth thereof, where ſome people of moſt of the parts of the Kingdome are many times preſent; and men will be more fearfull to offer any thing that is unjuſt in open Court (which is the publike ſeat of Juſtice) then in a private Chamber, and this was in reſpect of the hautelle and puiſſant force and nature of a fine.

Star. de Carlile. 15 E. 2. But this is altered by a later Statute, whereby it is provided, that if any perſon aged or decrepit, impotent, or by caſualty be ſo oppreſſed or holden, that by no meanes he is able to come before the Juſtices in Court, that in ſuch caſe two or one of the Juſtices, by aſſent of the reſidue of the Bench, ſhall viſit the party ſo diſeaſed, and ſhall receive his conuſance upon the plea, and forme of the plea, that he hath in Court, whereupon the ſame fine ought to be levied; And if there goe but one, he ſhall take with him an Abbot, a Prior, or a Knight of good fame and credence; and hereof the Writ of Dedimus poteſtatem had his beginning; and at the firſt was not graunted, but where the party was ſo aged, decrepit, or impotent, as he could not come to the Court, and accordingly the Writ of Dedimus poteſtatem was framed, Ac præfatus A. adeo impotens exiſtat, quod abſque maximo ſui corporis periculo uſq; ad Weſtm' ad diem in brevi prædict' comparere non poſſit, ad recognitionem quod in hac parte requiritur faciend' laborare non ſufficit; which forme albeit it continueth to this day, yet is the conuſans taken of them that be in health, and able to travell. And where that Act ſpeaketh of a Juſtice, a Dedimus poteſtatem is graunted to a Serjant at Law, ſworn to the King, as common experience teacheth; And the Chiefe Juſtice of the Court of Common Pleas may take a conuſans of a fine, virtute officii ſui, without any Writ of Dedimus poteſtatem.

Vet. N. B. fo. 103. Br. tit. fines 120.

1 H. 7. 9. a.

Here

here is a forme of the moſt principall fine, viz. the fine ſur conuſance de droit come ceo que il ad de ſon done.

It is to be known that there are two kinds of fines, viz. one executed, and the other executory. Executed, that is, where the preſent eſtate paſſeth unto, or is ſuppoſed in the conuſee, for ſuch a fine is a feoffement of Record, as this fine come ceo, or ſur releas, or confirmation, or ſur ſurrender. 41 E.3.14. 21 E.4.14.

Executory, as when no eſtate is veſted in the conuſee until it be executed by Entry or Action, as fines ſur graunt et render by the conuſee, which muſt be made upon a fine come ceo, or ſur releas, &c. or other fine which is executed, or otherwiſe the conuſee could not make any graunt and render of that land, &c. which he had not; more ſhall be ſaid hereof in the Expoſition upon the Statute of 27 E.1. De finibus. 50 E.3.9. 28 E.3. 95. 44 Aſſ.36. 21 E.3.fines 23. 7 H.4.16. 1 H.7.12,22, 23,&c.

¶ Recogniſont, &c.] Recognoverunt is the auncient and uſuall word in a fine for the conveyance of lands, &c. and very apt, for it is made a plea of land depending when either the Demandant or Tenant doth acknowledge the land to be the right of the other Per amicabilem compoſitionem, et finalem concordiam, as Glanvill ſaith. 31 E.1.grant 90. 7 E.3.14.24 E.3. 26 39 E.3.1. 50 E.3.fines 1. Glanv.l.8.ca.3. Glanv.l.8.ca.11

The agreement of the parties have altered the forme of the conuſans here expreſſed, and doe adde, Et illud remiſit et quietum clamavit, &c. Alſo the fine ſur conuſans de droit come ceo, doth now comprehend a clauſe of warranty, which is here omitted.

¶ Le Mannor de B. ove les appurtenances.] Of what hereditaments a fine may be levied? Regularly it may be levied of any thing whereof a Præcipe quod reddat doth lie, as of land, rent, &c. or whereof a Præcipe quod faciat, as the Writ of cuſtomes and ſervices, or whereof a Præcipe quod permittat, as to have common a way, &c. or to be ſhort, whereof a Præcipe quod teneat doth lie, as the Writ of Covenant is levy a fine and the like. But of ancient times fines were levied of other things, then will be at this day allowed, and yet thoſe ancient fines ſhall be holden now as available, as they were taken to be when they were levied. 13 E.1.attaint 71. 2 E.3.19. 21 E.3. 44. 32 E.3.6 cire fac' in ration. diviſis. 50 E.3.23 4 E.4.2.18 E.4. 22. 19 E.4.23. 21 E.4.4.

A fine cannot be levied of a Manor, or lands, that is ancient demeſne, for that ſhould be a wrong to the Lord of whom the land is holden, for by the fine it ſhould be come frank fee, and not impleadable in his Court, &c. and if any ſuch fine be levied, the Lord ſhall reverſe the ſame in a Writ of deceit, for res inter alios acta alteri nocere non debet. 17 E.3.fol.31. 21 E.3.20.44 E.3. 7 H.4.44.8 H.4. 23.8 E.4.6.

¶ Come in demeſne, rents, ſeigniories, courts, pleas, &c.] At the time of the making of this Act, the forme was to enumerate in generall whereof the Manor conſiſted, but that forme is now alſo altered, and that clauſe wholly omitted at this day.

¶ Le ordre del Ley ne ſuffer my que finall concord ſoit levy en la Court le Roy ſans briefe originall.] Hereby it appeareth that this Act is a declaration of the Common Law, and the ignorance or error of ſome Judges was the cauſe of declaring of the Law herein.

Firſt, if there be no originall Writ, yet the fine is not void, but voidable by Law, and therefore the Act ſaith [Le ordre del Ley ne ſuffer] and that is by Writ of Error, and that holdeth alſo when there is an originall Writ, and the fine is levied as well of that which is contained in the Writ, as of ſome other thing not contained: as if the Writ of Covenant be of the Manor of D. and the fine is of the Manor of D. and likewiſe of the Manor of S. it is voi- 7 E.3.64. 24 E.3. 28. 18 E.4.22. 19 E.2.2. Lib.3. fol.5. Owen & Morgans Caſe.

dable for the Mannor of S. by Writ of Error. It holdeth also when the fine is levied immediately to a person not named in the Writ of Covenant; as if A. be Plaintiffe in the Writ of Covenant against G. and C. levieth the fine to A. and B. it is voidable by Writ of Error, but the learning must be further expressed.

10 E.3.35,54. 18 E.3.9. 19 E.3. Abbot 13.20 E.3. bre 686.26 Ass.37 29 E.3.3.38 E.3. 17. 18 E.4.22. 19 E.4.2,3.21 E.4 4. b.

For as concerning the thing whereof the fine is levied, it is to be knowne that in case of a fine sur grant & render, which containeth a double fine, there is a great diversity betweene the fine sur conusans de droit come ceo, &c. for that must be levied of the land, &c. in the originall, but the grant and render may be of another thing then is expressed in the originall: As A. bringeth a Writ of Covenant against B. for the Mannor of D. B. cannot levie a fine to A. of a rent to be issuing out of the Mannor of D. but he must levie the fine of the Mannor of D. according to the Writ, and his Covenant therein expressed, but A. may grant and render to B. a rent out of the same Mannor contained in the fine, but not out of any other land, neither can the grant and render be of any thing collaterall to the land, &c. contained in the Writ, or of another nature, and neither issuing out of, nor incident to the land, &c. contained in the originall.

24 E.3.35.

If two doe levy the fine, the graunt and render may bee to one of them.

6 E.2. fines 117. 7 E.3.37 64. 10 E.3.32.16 E.3. fines 8. 18 H.7. fines Br.111. 30 H.8.Bro. fines 108.

As concerning the persons to be named in the fine, the fine sur conusans de droit come ceo, &c. cannot be levied to any person that is not party to the Writ of Covenant, neither can the grant and render of the land, &c. be immediately in primo gradu to any that is no party to the Writ, but immediately or in 2. gradu, &c. it may: For example, if a Writ of Covenant be brought by A. against B. of the Mannor of D. B. levy a fine to A. come ceo, A. may grant and render the same to B. for life, or in taile, the remainder to F. in fee; for albeit the Writ of Covenant be inter A. querent' et B. defore', so as F. is a meere stranger to the Writ, yet seeing he taketh it by way of remainder depending upon an estate warranted by the fine, it hath been allowed in our Books, and hath been compared to a Deed indented betweene A. and B. whereby A. doth give lands to B. to have and to hold to B. for life, or in taile, the remainder to C. (who is a stranger to the Deed) in fee.

18 E.3.12.8 H.4. 5.21 E.4.4. 5 H 7.41.

¶ Briefe originall.] It is not said, Briefe originall enter les parties, but generally, and therefore a fine may be levied by a vouchée to the Demandant, or by the Demandant to him, and so likewise by Tenant by receit to the Demandant, or by the Demandant to him, and yet they are not parties to the Writ.

2 E.3.19. 10 E.3. 5. 18 E.4.22. 19 E.4.2,3. 21 E 4.4.b. See 27 E.1.cap.1

In ancient times fines were levied upon originals that were mist, as in the Assise of Darrein presentment, Quare impedit, or the like, which later times have thought to be against the height and force of a fine. For the forme of the originall Writ it is to be observed, that if a fine be levied of eight severall things, as of a Mannor, a Rectory, a house, &c. after the naming of the Mannor, the forme is, Ac de rectoria, necnon de messuagio; for the fourth, Ac etiam; for the fifth, Præterea; for the sixth, Ac ulterius; for the seventh, Ac etiam; for the eighth, Ac insuper; and if there be more, then to begin again: And I have known a Chirografe of a fine discovered of forgery by not observing this order.

¶ Et ceo a tout le meyns devant 4. Justices en banke.] The Statute of 27 E.1. saith, Quia fines in Curia nostra levati, &c. and by the Statute of 4 H.7. it is provided that after the engrossing of every fine to bee levied, &c. in the Kings Court, before his Justices of the Common Pleas, &c. so as the number of Justices here mentioned are not requisite

27 E.1 c.1. 4 H.7 c.24. 32 H.8.c.36

at

at this day: but before the making of this Statute, the Justices before whom the fine was levied, were named in the fine, and specially upon the making of this Act, to the end the number of the Justices might appear; for though the number of four be not required, yet there must be above the number of one. And this is the reason that a fine levied Coram Thom. Brian milite, & sociis suis Justiciariis de communi banco, were not good; because no other Judge of that Court was named but one, and before one a fine cannot be levied in respect of the solemnity thereof. But many Writs that come out of the Chancery, are Coram Thoma Brian & sociis suis.

1 H.7. 10,11. per les Justices.

¶ Et non pas ailours.] A fine cannot be levied, to have the force of a finall Concord by any that hath power tenere placita, but onely before the Justices of the Court of Common Pleas, or before Justices in Eyre (whiles they ride) & non pas ailours, saith this Act: and therefore the King cannot grant power to hold plea for the levying of Fines, against this negative Statute.

50 Ass. p. 9. 44 E. 3 38. 31 H. 8. Fines Bro. 110.

¶ Et en presence des parties nosmes en le briefe.] The Vouchee and Tenant by receit are not named in the Writ, and yet they may (as hath been said) levie a fine to the demandant, or the Demandant to them; and these words being in the affirmative do not restrain them.

¶ Et si feme covert de baron soit un des parties, donques covient que el soit primerment confesse devant iv. Justices avantdits.] This must be understood where the husband and wife do levie a fine, for there she ought to be examined; but where the husband and wife do take by a fine, and depart with nothing, there the feme covert is not to be examined.

24 E. 3. 62. 42 E. 3. 37. 46 E. 3. 15. 3 H. 6. 4. 8 H. 6. 4.

If a fine be levied of land to the husband and wife, and the husband and wife grant and render the land, there the wife shall be examined, and the examination must ever be upon the Writ; and therefore a baron and feme upon a fine levied to them of land cannot grant and render a rent out of the land, because that rent is not contained in the Writ.

25 E. 3. 44. 4 E. 3 41. 5 E. 3. 24. 6 E. 3. 22. 10 E. 3 26. 18 E. 2. Fines 121. 4 E. 3. ibid. 43 16 E. 3. ibid. 6.

The examination must be solely and secretly, and the effect thereof is, whether she be content of her own free good will, without any menace or threat to levie a fine of these parcels, and name them unto her, every thing distinctly contained in the Writ, so as she perfectly understand what she doth; and if the Judge doubteth of her age, he may examine her upon her oath.

25 E. 3. 44.

But what if the woman cannot speak any language that the Judge doth understand, as Cornish, Welsh, Dutch, or the like? then there shall be a Latimer, that is, an Interpreter upon his oath to interpret truly.

45 E. 3. tit. Examination 22.

¶ Et sil nassent al fine, ne ceo liera mie.] This is so to be understood, that it ought not to be received, if she be not examined, and freely assent, as is aforesaid; but if the fine be received, and recorded, the feme covert or her heirs shall not be received to aver that she was not examined nor assented: for this should be against the Record of the Court, and tending to the weakning of the generall assurances of the Realm.

¶ De pleine age, & de bone memorie, & hors de pryson.] See W. 2. cap. 48. hereof, and see Beverlies case, lib. 4. 123, 124, &c. See Lib. 2. fol. 58. in Beckwiths case.

Lib. 2. fol. 58. Beckwiths case.

℄ Et la cauſe pur que tiel ſolempnitie doit eſtre fait en cel fine eſt, pur ceo que fine eſt ci hault barre, & de ci graund force, et de ci puiſſant nature en ſoy, que el forclos nemy ſolement ceux queux ſont parties & privies a la fine, & lour heires, mes toutes auters gentes de mond', queux ſont de pleine age, hors de pryſon, & de bone memorie, & deins les iv. meres, le jour del fine levie, ſils ne mettront lour claime de lour action pur le pais, deins lan et le jour.]

Here are four things to be obſerved:

1. Firſt, the cauſe that ſuch ſolemnity is uſed in the levying of a fine, wherein three things are to be obſerved; 1. for that it is ſo high a bar, 2. of ſo great force, 3. of ſo puiſſant a nature.

2. The end, to make an end of troubles and controverſies, and to eſtabliſh concord, peace, and repoſe in mens poſſeſſions and inheritances; and therefore a fine is called Finalis concordia.

3. The means to attain to the ſame, viz. to forcloſe two kinde of perſons, viz. parties and privies preſently, and alſo the ſtrangers in the world, in futuro.

Bract. li. 5, fo. 405 &c. Britt. 216. b. Fleta li. 6. ca. 53. W. 2. cap. 1. 1. Part of the Inſtitutes, ſect. 441.

4. A two-fold proviſion full of right and equity is made for ſtrangers; firſt, that they be of full age, out of priſon, of good memory, and within the four ſeas; ſecondly, that they put in their claim within the yeer and the day, after the fine levied.

* This is altred by the Statute of 4 H. 7. cap. 24.

By this Act, if any ſtranger were within age, or in priſon, or non compos mentis, or beyond the ſeas at the fine levied, *he is totally and for ever excepted; ſo as he after his full age, or coming out of priſon, or recovering his memory, or coming into the Realm, or any of their heirs need not to make any claim: and hereby a woman covert was bounden, if claim were not made within the yeer & day; and the reaſon was, for that ſhe had a husband that was able to put in his claim: but if the husband were within age at the time of the fine levied, though the wife were of full age, the infancie of the husband (who was to make the claim, the wife being ſub poteſtate viri) ſhould priviledge the ſtate of the wife for ever. So as by the Juſtice of the ancient Com' Law, whereof this Act is a *declaration, two kinde of ſtrangers to the fine were exempted & provided for; firſt, ſuch as by preſumption of Law had not ſufficient underſtanding, as the Infant, or non compos mentis; or had no notice, as the man in priſon, or beyond ſea, of the fine levied to make claim: And ſecondly, for ſuch as had ancient rights, who are ever favoured in Law, if they made their claim within the yeer and day.

This Act was made An. 18 E. 1 * Vide Mich. 15 E. 1. in banco Rot. 107. Eſſex. Paſch. 10 E. 1. Rot. 72. in banco Heref. John de la Cumbes caſe. Pl. com. 357.

℄ Parties et privies, & lour heires.] Parties are thoſe that are parties to the originall.

℄ Privies.] Firſt, this is to be underſtood of privies in blood, not onely of the heirs by the Common Law, which are here named; but heirs by the cuſtome, here comprehended under this word [Privies] as Borough engliſh, Gavelkinde, or the like, which claim as heirs by cuſtome: and is not intended of privies in eſtate, as Joyntenants, the Donor and Donée, Leſſor and Leſſee, or the like: alſo this is to be underſtood of privies in ſucceſſion, as Biſhops, Abbots, and the like.

Lib. 3. fol. 23. Walkers caſe. Pl. com. 363. per Brown. W. 1. ca. 39. 6 E. 2. View 161. 40 Aſſ. Pl. 2. 19 E. 2. Count. de Vouch. 114. 12 E. 3. ibid. 326. Pl. com. Howels caſe.

℄ Mes

¶ Mes auxy toutes auters gentes de mond'.] In theſe wozds are included aſwell Tenant foz yéers, Tenant by Statute Merchant, and Staple, Copyholders, and Cuſtomary-holders, as Tenants of Free-hold and inheritance, if they be out of poſſeſſion oz ſeiſin at the time of the fine levied, foz a fine levied by a ſtranger cannot barre him that is in poſſeſſion. And albeit the wozds of this Law are very generall, yet do they not abzogate the Statute of W. 2. De donis conditionalibus, which pzovideth foz pzeſervation of eſtates in tail. Quod ſi finis ſuper hujuſmodi tenementa impoſterum levetur, finis ipſo jure ſit nullus, nec habent hæredes hujuſmodi, aut illi ad quos ſpectat reverſio, &c. neceſſe apponere clameum.* But that bzanch de donis conditionalibus continued in fozce, notwithſtanding this Act, as to the right of the eſtate tail, untill the Statute of Anno 4 H. 7. by which Act, and by the Statute of Anno 32 H. 8. an eſtate in tail is barred by fine with pzoclamations levied, and had accozding to theſe Acts.

Lib. 5. fol. 123. Saffyns caſe. li. 9. fol. 105. Mary Podgers caſe. 41 E. 3. 13. lib. 2. 93. Bingham lib. 3. 84, &c. Caſe de Fines, fo. 77. Fermors caſe. li 4. fo. 125. li. 8. 100. 72. li. 9, 87, 139. li. 10 90, 97. lib. 11. fol. 69, 71, 78. 33 E. 3. Eſtoppel 380. 21 E. 3. 21. 8 H. 4. 9 Dier 22 El. 373. 4 E. 4. 12. Stanf. Prærog. 69. * 4 H. 7. cap. 24. 32 H. 8. cap. 36.

a In ſome caſe the party himſelf ſhall not be concluded of his averment againſt the expreſſe fine; as if two Joyntenants be in fee, and they accept a fine Sur conuſans de droit come ceo a eux, & les heires de lun, the eſtate is not changed, and they may plead the fozmer feoffment to them and their heirs, and that by Law they could have no other fine. a 6 R. 2. Eſtoppel 211.

And in ſome caſes pzivies in blood, and inheritable alſo ſhall have an averment againſt the fine, notwithſtanding this Statute: and therefoze if Tenant in tail accept a fine Sur conuſans de droit come ceo, &c. yet the iſſue in tail, that is pzivie, and heir in tail ſhall aver continuance of poſſeſſion in the father; foz it ſtandeth well with the fine, which is [Come ceo que ad de ſon done;] and ſo it is in the caſe above, if Tenant in tail had granted, and rendzed the land to the Conuſoz, the iſſue in tail might have averred continuance of poſſeſſion in the father, foz the fine was executozy, and nothing veſted in the Conuſoz untill execution: But if Tenant in tail levie a fine Sur conuſans de droit come ceo, the iſſue in tail, though he be not barred by the fine, yet he ſhall not againſt this fine aver continuance of poſſeſſion in the father, and that diverſity was holden foz Law after this Statute; neither after this Statute could the iſſue in tail have generally pleaded, that partes finis nihil habuerunt, but was ouſted thereof by this Statute, albeit ſome have relyed much upon theſe wozds in this Act, Rite levatus; now the Statutes of 4 H. 7. and 32 H. 8. and the Expoſition thereof ubi ſupra, make this out of queſtion.

42 E. 3. 9. 41 E. 3. 14. 8 Aſſ. 33. 4 E. 3 469. 13 Aſſ. 8. 8 H. 4. 8, 9. 12 E. 4 15, &c. Lib. 3. fo. 88, 89. in caſe de Fines.

46 E. 3. 14. 13 E. 3 Replication 62. 17 E. 3. 53. 33 E. 3 Eſtoppell 280. 22 E. 3. 17. 33 H. 6 18. Lib. 3. fol. 88, 89. Caſe de Fines.

¶ Le jour del fine levie.] This is to be underſtood of a compleat fine, which giveth a double notice, one by the ſolemnity of the fine in Court, and another by tranſmutation of poſſeſſion in the Country; As foz example, one that hath a defeaſible title in land accepts a fine thereof Sur conuſans de droit come ceo, &c. and granteth and rendzeth the ſame to the Conuſoz, who ſueth not execution within the yeer and day, this fine ſhall not bar him that had the ancient right, becauſe it is no compleat fine without poſſeſſion, within the meaning of this Act, foz that by intendment he that had right cannot take notice of the fine without tranſmutation of poſſeſſion, and ſo out of the meaning of the Law.

Note a fine Sur conuſans de droit come ceo, &c. is ſaid to be levied when the Writ of Covenant is returned, and the concozd and the Kings fiver duly entred, this maketh the land to paſſe, and from this ſhall the yéer and day be accounted, albeit the fine be ingroſſed afterward.

4 E. 3. 46. Opinio al cont. 7 E. 3. 37. Acc. 13 E. 3. Replication 62. 11 R. 2. Eſcheat 13. 14 H. 4. 32. per Hankford. Pl. com. 357. b. Dier 3 Mar. 117. This is altred by the Statute of 4 H. 7. and five yeers given, &c. 22 H. 6. 13. Pl. com. 432.

¶ Si ils ne mettront lour claime, &c.] Foz the pzeſerving of ancient

Pl. com. 358, 359, &c. in Stow. caſe.

ancient rights at the Com' Law, there were 4. maner of claims, wherof two were by matter of Record, & two by Act in the Country; by matter of Record, as by a Præcipe quod reddat, according to the truth of the caſe brought within the yær and day by him that right had, or in ancient time by an entry or a claim, entred in the Record of the * foot of the fine; but firſt it muſt have bèn made in open Court, [Appono clameu' meum tali liti vel concordiæ, &c.] And two by Acts in the Country, as by an actuall entry into the land, by him which right had, and whoſe entry was congeable, or by a continuall claim which amounted to an entry; but all theſe muſt be done by him that had a preſent right of action, or a preſent right of entry, for no other perſon could make any claim: and therefore if there were Tenant for life, or in tail, the Reverſion or Remainder over in a fee, he that had right of Reverſion or Remainder expectant upõ an eſtate for life, or in tail, could make no claim, becauſe he had neither preſent right of action nor of entry; and therefore in that caſe the Tenant for life, or in tail muſt make his claim, and that claim either by action or entry upon the foot of the fine, or by lawfull entry or continuall claim, ſhould not onely have preſerved their own right, but alſo the right of them in Reverſion or Remainder; but if no claim were made by the particular Tenant, the right of them in the Remainder or Reverſion were for ever bound by the Common Law.

b This is altred in two reſpects by the ſaid Act of 4 H. 7. for thereby the claim muſt be by action or entry, and therefore a claim entred upon the foot of the fine at this day is not available. Alſo they that have a right of a Reverſion or Remainder expectant upon an eſtate tail, or for life, ſhall have five yærs after their title come unto them, as by that Act appeareth.

The words of this Act be, [Silz ne mittont lour claime] and yet in ſome caſe the right of one that might claim, and doth not, ſhall be preſerved; c as if a Diſſeiſor be diſſeiſed, and the ſecond Diſſeiſor levie a fine, in this caſe if the firſt Diſſeiſor enter within the yær, this ſhall preſerve the right of the Diſſeiſee, becauſe the firſt Diſſeiſor by his entry avoided the whole eſtate given by the fine, and yet the Diſſeiſee might have entred himſelf [& ſic de ſimilibus;] but it muſt not have been an empty fine that ſhould have barred the right of a ſtranger, but a fine compleat, as hath been ſaid.

d This Law continued untill the Parliament in the four and thirtieth yær of E. 3. and then the Statute of Non-claim was in that Parliament made, which took away the effect and force of this Law, and of the Common Law in this point, whereby great contention aroſe, and few men were ſure of their poſſeſſions, which continued till the e Parliament, Anno 4 H. 7. and then that miſchief was reformed, and the ancient Common Law excellently moderated by the Statute of 4 H. 7. See the Statute of 32 H. 8. which Acts have for the common quiet and repoſe of all been with great wiſdom and judgement expounded; and that a fine with Proclamations and five yeers paſt doth bar the Lord in ancient demeſne of his Writ of Deceit, and likewiſe a Writ of Errour is alſo thereby barred.

And though this Act of 18 E. 1. be repealed, yet may it ſerve in many reſpects to explain the Statutes of 4 H. 7. and 32 H. 8. For the true underſtanding of the Common Law, and of former Statutes, is the ſure maſter Expoſitor of the latter.

To the former Reports or Expoſitions (wherein are former Authorities out of the Lord Dier & Pl. com. cited) two things are neceſſary to be added; the firſt, wherein the Statute of 4 H. 7. is altred, or ſtrengthened by any latter Act of Parliament: ſecondly, what other caſe heretofore adjudged upon any branch of either of the ſaid Statutes, and not heretofore publiſhed, or any other matter, may ſerve for the ſtrengthening of fines, being the common aſſurance of the Realm, or of the eſtates of the Subjects, concerning free-holds and inheritances.

As

* Vide infra Paſch. 18 E. 1. Bract. li. 5. fo. 436 nu. 7. Fleta lib. 6. cap. 52. Hil. 16 E 2. in cui in vita. Pl. com. 359. See 1. Part of the Inſtit. ſect. 416.

a Mich. 15 E. 1. in banco Rot. 107. Eſſex. Lucia filia Johan. de Northope. But there it is adjudged, that if Tenant for life, the Reverſion over, and an Eſtrãger that hath nothing in the land levie a fine, without deveſting or diſplacing of any of the eſtates, he in the Reverſion ſhall not be bound to make any claim, becauſe *Partes fin. nihil habuerint.*

b 4 H. 7. cap. 24. See Paſch 18 E. 1 Rot. 1. Robert Bakuns caſe, a claim made upon the foot of the fine. Weſtmerl. And in the ſame roll Rob. de Huſtings made the like claim for 5. s rent. Northampt.

c 16 E. 2. Cont. claim 10. Pl. com. 358. b.

d See the 1. part of the Inſtitutes, ſect. 441.

e 4 H. 7. cap. 24. 32 H. 8. cap. 34. Lib. 1. fol 96. Shellings caſe. Lib. 2. fol 15, 16 Wiſemans caſe. 93. Binghams caſe. Lib. 3. fo. 84 &c. Le caſe de Fines, & ibid. 77, &c. Fearmors caſe. Lib. 4. fol. 125. Beverlies caſe. Li. 5. fo. 124 Lib. 8. 100, 72. Li. 9. 87, 104, 105 106, 139, 140, 141 Lib. 10. 50, 96, 97 Lib. 11. 69, 71, 78 Pl. com. 360, 361. Stowels caſe.

As to the first, where by the Statute of 4 H. 7. it is ordained that after the ingrossing of the fine, &c. the same fine be openly and solemnely read and proclaimed in the same Court the same Terme, and in three Termes then next following the same ingrossing, in the same Court, at foure severall dayes in every Terme. By the Statute of 31 Elizab. it is enacted, that all fines with Proclamations shall bee proclaimed onely foure times, that is to say, once in the Terme, wherein it is ingrossed, and once in every of the three Termes holden next after the same ingrossing; and that every fine proclaimed, as is aforesaid, shall bee of as great force and effect in Law to all intents, and purposes, as if the same had beene fifteene times proclaimed, according to the Statutes heretofore made: A beneficiall Law; for the fewer Proclamations, the safer. See the Statute of 1 Mar. for strengthening of fines when Proclamations bee not made, &c. by reason of adjournement of any Terme.

31 Eliz. cap. 2.

1 Mar. Parl. 2. c. 7

It hath beene resolved that this Act extendeth where but part of the Terme is adjourned, for it is a favourable Law, and to be taken by equitie.

Dier 3 El. fo. 186.

Another Statute is made for the establishment of fines and recoveries in Anno 23 Eliz. which is evident, and whereupon we have knowne no question made, and therefore referre the Reader to the whole Chapter, being a profitable and beneficiall Law, and of the most part of freeholders of this Realm necessary to be known.

23 El. cap. 3. Vide lib. 5. fol. 40. Dormers case. eodem Lib. fol. 28. & 39. & 43, 44, 45. for amendment of fines, &c.

As to the second, betweene Sunie & Howes, Trin. 32 Eliz. in Communi Banco, the case was, Thomas Cotton was Tenant in taile of the moity of certaine lands, and of the other moity hee was Tenant for life, the remainder to William Cotton his eldest sonne in taile, William Cotton went beyond Sea to Antwerpe, and after the said Thomas Cotton Anno 19 Elizab. levied a fine of the whole with Proclamations, and within the yeare William Cotton died at Antwerpe, and never came into England; William his sonne being within age entred Anno 31 Eliz. And it was adjudged that for the moity whereof Thomas Cotton was Tenant in taile, William the sonne of William was barred by this Act of 4 H. 7. but for the moity of William the Father, the entry of his sonne William was lawfull; for albeit that William the sonne could not take advantage of the clause that give benefit to him that is beyond Sea, and his heires to enter, or take his Action within five yeares after they bee within this land, because in this case William the Father after the fine levied never was within the land; yet for that persons out of the Realme at the time of the fine levied, amongst others having a present right, are excepted out of the body of the Act (which worketh the barre) therefore where he that is beyond Sea at the time of the fine levied, and never returnes, is within the exception out of the body of the Act, and hee and his heires may enter or take his Action at any time: but in case hee doth returne, hee and his heires must enter or take his Action within five yeares after his returne: and so it is of an infant being party to the fine, and having a present right, if he dieth during his infancy, he or his heires may enter or take his Action at any time: and so it is of a person that is Non compos mentis by the Act of God, if hee die whiles hee is Non compos mentis; or a man in Prison, which is by Act in Law, if hee die in Prison; or a feme covert, which is by her owne Act, if shee die whiles shee is covert, being no parties

Tr. 32 Eliz in Communi Banc. Cottons Case.

See Pl. Com. fol. 366. a. the opinion of Brown and Saunders, lege, & perlege nil temere.

parties to the fine. For all these are within the reason of the rule be-
fore given of him that is out of the Realme (which going out of the Realme
was his own Act) and never returned.

See the Statute of 21 Jacobi Regis cap. 2. for the strengthening of the
estates of the subjects against the King and his successors.

STATUTUM

Statutum de finibus levatis,

Editum Anno 27 Edw. I.

QUia fines in curia noſtra levat' finem litibus debent imponere, & imponunt, & ideo fines vocantur, maxime, cum poſt duellum et magnam aſsiſam in ſuo caſu ultimum locum finalem teneant imperpetuum, jamqne per aliquod tempus præteritum tam tempore claræ memoriæ domini Henrici Regis avi noſtri quam noſtro partes eorundem finium & earum partium hæredes contra leges & conſuetudines regni noſtri antiquitus uſitatas ſuper hujuſmodi finibus adnullandis et evacuandis admittebantur, proponentes quod ante finem levatum à tempore levationis ejuſdem, & poſtea petentes ſeu querentes aut eorum anteceſſores de tenementis in finibus contentis, aut de aliqua parte eorundem ſemper fuerunt ſeiſiti, & ſic fines hujuſmodi rite levat' per juratores patriæ falſo ſubornatos & malitioſe procuratos multotiens evacuabantur et adnullabantur minus juſte: Nos volentes ſuper præmiſsis remedium adhibere in Parliamento noſtro ad Weſtm', ſtatuimus, quod dictæ exceptiones ſeu reſponſiones vel inquiſitiones patriæ ſuper hujuſmodi exceptionibus ſeu reſponſionibus nullo modo contra hujuſmodi recognitiones et fines de cætero admittantur. Et nos vero volumus, quod ſtatutum iſtud tam locum habeat ad fines prius levat' quam impoſterum levand'. Et videant Juſtic', quod notæ & fines in curia noſtra impoſterum levand' publice et ſolempniter legantur, et quod placita interim ceſſent omnino, et hoc fiat per duos dies in ſeptimana ſecundum diſcretionem Juſtic'.

¶ Quia fines in curia noſtra levati finem litibus debent imponere, et imponunt, et ideo fines vocantur, maxime cum poſt

duellum & magnam aſsiſam in ſuo caſu ultimum locum finalem teneant imperpetuum jamque per aliquod tempus præteritum.] Herewith doe agrée all our ancient Authors, viz. Glanvill,

Glanv. li. 8. ca. 3. Nota quod talis dicitur finalis concordia eo quod finem imponit negotio, adeo ut neuter litigantium ab eo de cætero liceat desedere.

Bract. l. 5. fol. 435 Li. 3. 106. Lib. 4. 246. Bracton, Item ſi per concordiam, & finem fact', quæ ſimiliter peremptoria eſt, quia dicitur finalis concordia, & ideo finalis, quia imponit finem litibus.

Britton fo. 90, 91. Britton fol. 90. & 91. Sont aſcuns choſes corporels que home ne purra my bien purchaſer ſans aide de noſtre Court, ſicome fees, & propretes & dount per accord del purchaſer, et del donour, coviendra lever fine en noſtre Court parmy la quel tiel manner de purchaſe tiendrent effect & eſtablete.

See before in the Expoſition of the Statute, called Modus levandi fines, in the Parliament Roll, Anno 19 E. 1. Rot. 12. the Caſe of Margery late wife of Thomas Weyland.

¶ Jamque per aliquod tempus præteritum tam tempore claræ memoriæ domini Henrici Regis patris noſtri quam noſtro partes earundem finium & earum partium hæredes (contra leges et conſuetudines Regni noſtri antiquitus uſitatas) ſuper hujuſmodi finibus, &c.] The miſchiefe, or rather the abuſe before this Statute, was in allowance of averments by parties and privies for annulling of fines levied Contra leges et conſuetudines Regni noſtri antiquitus uſitatas, &c. Whereby fines were many times unjuſtly avoided: and what ſuch averments were, and wherefore they were admitted, is declared by Stoner, one of the Juſtices of the Court of

6 E. 3. fol. 28. Common Pleas, who reported that he heard Sir William Bereford Knight, then Chiefe Juſtice of that Court ſay, that in ancient times parties and privies could not avoid fines, [proponentes] as this Act ſaith, Quod ante finem levatam & tempore levationis ejuſdem, & poſtea petentes ſeu querentes aut eorum anteceſſores de tenementis in finibus contentis, aut de aliqua parte earundem ſemper fuer' ſeiſiti. But afterwards (in the raigne of H. 3. in the time of inſurrections and civill warres by the Graundées of this Realme) it was uſed by the maintenance of the Graundées, that parties and privies might avoid fines by ſuch averments, which averments in the raigne of E. 1. were continued untill the making of this Act all which was affirmed by Sir William Herle

4 E. 3. 46. Chiefe Juſtice, and further he ſaid, that the ſame appeared alſo by this Statute De finibus, as in truth it doth.

¶ Partes earundem finium et earum partium hæredes, &c.] So as this Act taketh away the ſaid averment, which by the maintenance of the Graundées of the Realme had unjuſtly crept in by parties and privies; for the miſchiefe before this Statute was, as hath béen ſaid, that when the conuſans de droit, &c. was made to him that had never any thing before, and the conuſée graunted, and rendred the ſame back again at the ſame inſtant to the conuſor for life, or in taile with remainder over, who alwaies was ſeiſed, and in poſſeſſion of the land; privies (by colour that there was no tranſmutation of poſſeſſion) were againſt Law permitted to avoid fines by the averment aforeſaid.

And albeit this Statute extendeth to averments taken by parties and privies, and extendeth not to averments made by ſtrangers, that are no parties nor privies to the fine, yet by the Common Law the hauteſt and puiſſant force

and

and nature of fines was first, that a meer ſtranger could not have a generall averment againſt a fine; and therefore it is reported by Shard, one of the Juſtices of the Court of Common Pleas, that it was reſolved by the Sages of the Law, that the parties, or their heirs ſhould have no averments againſt fines levied contrary to the fine to avoid it; and that a ſtranger ſhould have no generall averment directly to avoid a fine, if it were not upon ſome ſpeciall matter, for he that is Tenant after the fine levied, is intended Tenant under the eſtate of ſome of the parties to the fine, to whom by the Common Law a generall averment is not given more then to the party or privie: and the ſpeciall matter which giveth him the averment is, that after that he pleads that the parties to the fine had nothing in the land at the time of the fine levied, he doth formerly adde, that either he himſelf, or ſome other whoſe eſtate he hath, was ſeiſed at the time of the fine levied, &c. But yet that matter is not traverſable, but a mean to traverſe and avoid the fine, and therefore the Tenant that pleads that Plea doth conclude, Et de hoc ponit ſe ſuper patriam, without a further replication; for Littleton himſelf that famous Lawyer reporteth, that it was adjudged in the time of Sir John Iune, chief Juſtice of the Court of Common Pleas (who was conſtituted chief Juſtice of that Court, Februar. 9. Anno 14 H.6. and continued untill the 20 of Jan. Anno 17. of the ſame King, and then was made chief Juſtice of the Kings Bench) that when the Tenant pleads in bar againſt a fine, Quod partes finis nihil habuerunt in ten' tempore levationis finis, nec aliquis eorum aliquid habuit, ſed quidam T. B. adtunc fuit ſeiſitus, &c. cujus ſtatum, &c. Et de hoc ponit ſe ſuper patriam, & prædictus querens ſimiliter. And if it be found, that the parties to the fine had nothing, &c. the fine ſhall be avoided, though the ſpeciall matter of the ſeiſin of himſelf, or of a ſtranger at the time of the fine levied be not found. And ſo it is in the caſe of the like Plea to avoid a recovery, or in caſe of a counterplea of a Voucher, & the like: all which you may read in that Report; & this kind of pleading remains at the Com: Law ſince the Statute of 4 H.7.

17 E.3.54. Wakes caſe. 13 E.3. Replication 62. 32 E.3. Voueh. 96 13. ibid. 119. Garranty 37. 41 E.3.14. 14 H.4 33. b.

40 E.3.30. b. Dier 12 Eliz. 290 291. 33 H.6.21. 22 H.6 57. 17 E.3.53. 32 E.3. Replication 63. 42 E.3.21 19 R.2. Replication 53. 14 H.4. 53. 12 E.4.13. 3 H.7.9. Dier 12 Eliz. 291. 33 H.6.21, &c. ubi ſupra. 40 E.3.30. b. 41 E.3. fol. 14. Dier 12 Eliz. 290 291.

Dier ubi ſupra. Pl.com. 354. 432.

¶ Et earum partium hæredes.] This is not intended of an heir in blood onely, but of the heir of the land; for Hæres dicitur ab hæreditate: and therefore if the heir apparant be ſeiſed of land, and the anceſtor levie a fine of the ſame land, and dyeth, this ſhall not bar the heir, for he claims not the land, whereof the fine is levied, as heir unto him.

13 E.3. Replie. 62. 17 E.3.53.

See in the Parliament Roll of Anno 14 E.3. a notable caſe of an averment taken by a ſtranger againſt a fine, and afterwards adjudged, which caſe is abridged by Fitzherbert, 13 E.3. tit. Voucher 119. but more effectually in the Parliament Roll.

Rot. Parliam. An. 14 E.3. nu. 31. The caſe of Sir John Stanton, and Anne his wife in a Formd. 13 E.3. Voueh. 119.

But ſeeing the learning concerning averments of parties, and privies, and of ſtrangers hath been delivered as is aforeſaid, it is objected, that when Joyntenancie is pleaded by fine in abatement of the Writ, that a ſtranger for maintenance of his Writ could not take any generall averment againſt the fine. And this being agreed unto them, as is aforeſaid, then they proceeded, that in the caſe of a fine the Demandant could have no replication thereunto, as to ſay that the other Joyntenant not named in the Writ by his Deed releaſed before the Writ brought, or that they both infeoffed A. which reinfeoffed the Tenant; and this was ſaid to be in reſpect of the height, and puiſſant force and nature of the fine: But to this it was anſwered, that the ſame held at the Common Law in caſe of Joyntenancie by Deed, and therefore that could not be the cauſe thereof. Then another reaſon was ſought for, and that was, that the land was the free-hold of another, and therefore it ſhould not be put in Tenancie (that is, in plea of Law in danger to be loſt) without the party himſelf: But if the fine or Deed were made by the Demandant himſelf to the Tenant & another, then he might conteſſe and avoid the fine; as to ſay, that ſince that time the Joyntenant infeoffed him, or the like, becauſe the Demandant was party. But again it was affirmed, that that reaſon could not hold in reſpect of the ſtrangers

32 E.3. Voueh. 96 13. ibid. 119. Garranty 37. 41 E.3.14. 14 H.4 33. b. 40 E.3.30. b. Dier 12 Eliz. 290 291. 33 H.6.21. 22 H.6 57. 17 E.3.53. 32 E.3. Replication 63. 42 E.3.21 19 R.2. Replication 53. 14 H.4. 53. 12 E.4.13. 3 H.7.9. Dier 12 Eliz. 291. 33 H.6.21, &c. ubi ſupra. 40 E.3.30. b. 41 E.3. fol. 14. Dier 12 Eliz. 290 291. Dier ubi ſupra. Pl.com. 354. 432. 13 E.3. Replie. 62. 17 E.3.53. Rot. Parliam. An. 14 E.3. nu. 31. The caſe of Sir John Stanton, and Anne his wife in a Formd. 13 E.3. Voueh. 119. 22 E.3.4. 24 E.3 36, 78, 79. 29 E.3 18. 18 Aſſ. 6. 21 Aſſ. 28. 25 Aſſ. P. 3. 43 Aſſ. 6. 23 Aſſ. 13. 15 E.3 Maint. de Bre. 55 3 E.3. ibid. 13, 14 Itiner. North. 17 E.2. ibid. 1. 1 E.3.5. 2 E.3.30 24 E.3.79. 4 E.3 30. 8 E.3. 35. 24 E.3.79.

free-hold, for that might hold alſo where Joyntenancie is pleaded without fine or Deed, but there it is evident that the Demandant ſhall maintain his Writ, and try a third perſons free-hold, nay the Judges themſelves were ſometimes ſo fearfull to weaken the ſtrength and force of fines, and ſometime ſo bedazled with the bright ſolemnity of the fine, as Sir John Stoner chief Juſtice of the Court of Common Pleas did ſee, that an averment ought to be had againſt a fine, both by conſcience and the Law of God; and yet leſt the fine ſhould be avoided, he would be adviſed. This doubtfulneſſe grew, for that the true diverſity was not obſerved between averments, where they were made by parties and privies, and where by ſtrangers, nor the true pleading thereof reſolved upon.

12 E.2. Aſſ. 116.

13 E.3. Garranty 17.

Now, that truth (the mother of Juſtice) might not be ſuppreſſed, it hath been reſolved, that againſt a Joyntenancie pleaded by fine, the Demandant may confeſſe and avoid the fine, as to ſay, that the Joyntenant not named releaſed before the Writ brought, or that they both infeoffed one, who reinfeoffs the Tenant, or the like; for theſe or the like Pleas confeſſing and avoiding the fine, do in no ſort weaken the ſtrength or force of the ſame.

3 E.3.25.b.24 E.3 79. 14 H.6.8,25. Dier 13 Eliz.290 291.

But againſt Joyntenancie by fine the Demandant cannot take a generall averment, that the Tenant is ſole ſeiſed, for that ſhould ſeem to weaken the force of the fine: and the Statute of Conjunctim feoffatis, Anno 34 E.1. extends not to Joyntenancie by fine, but to Joyntenancie by Deed onely, to take the generall averment againſt the Deed, that the Tenant is ſole ſeiſed: and thus are all the Books (whereof there be many) that ſeemed prima facie to diſagree, well reconciled. And this Statute De conjunctim feoffatis, extends not onely to Aſſiſes, but to Writs of Dower, and other reall Writs of Præcipe quod reddat, * but not to Writs of Gard, or the like.

Stat. de Conjunctim feoffatis, 34 E. 1. cap. 1. 17 E.2. Maint. de Bre 1. Regiſt. 12. 1 E.3.5.2 E.3.20 4 E.3.30. 8 E.3. 33.15 E.3. Maint. de Bre. 55. 3 E.3. ibi. 13, 14. 18 Aſſ. 6 21 Aſſ. 28. 22 E.3 45.46. 22 Aſſ. 54. 23 Aſſ. 13. 24 E.3 76, 79. 29 E.3. 18 43 Aſſ. p. 6. 32 Aſſ. p. 4. 37 Aſſ. p. 3. 41 E.3.15. 49 E.3 17. 7 R.2. Maint. de Bre. 8.

† Green chief Juſtice, Anno 24 E.3. granted, that this Act of 34 E.1. was made more in damage of the people, then in amendment of the Common Law.

† 9 H.6.1. 34 H.6 16.

Confirmatio-

Confirmationes Chartarum de libertatibus Angliæ & Foreſtæ. *Anno* viceſimo quinto Edwardi primi.

CAP. I.

EDward per la grace de Dieu Roy Dangleterre, Seigniour Dirlande, & Duke Daquitaine, a touts ceux que ceſtes letters preſents oiront, ou verront, Salutem. Saches nous al honor de Dieu, & de ſaint eſgliſe, et au profit de noſtre realme, avoir grant pur nous, et pur nous heires, que la chartre des franchiſes, et la chartre de la foreſt, les queux fuerent faitz per commen de tout royalme en le temps le roy Henry pier, ſoient tenus en touts lour points, ſans nul blemiſment, et volons que meſmes cels chartres deſous noſtre ſeale ſoient envoyes a nous Juſtices auxi bien de la foreſt, come as autres: et a touts les viſcontes des counties, et a touts nous autres miniſtres, et a touts nous cities parmy le realme enſemblement ove nous briefes, en les queux ſerra contenus que ils facent les avantdits chartres publier, et que ils facent dire al people, que nous les avons grants en touts points, et a nous Juſtices, Viſcontes, Maires, et autres miniſtres, que les loies de la terre de ſous nous ount a guier meſmes les chartres en touts lour points empledes devant eux en jugement, facent allower: ceſtaſcavoir le grande chartre come ley common, et la charter de la foreſt, en amendement de noſtre realme.

For the ſtile of the Kings, and for the King that ſpake firſt in the plurall number [Nous] as our King here doth, ſee Magna Charta, cap. 1. and the firſt part of the Inſtitutes, ſect. 1.

℄ Per ſes letters patents:] Acts of Parliaments are many times in form of Charters, or Letters Patents. Vide Magna Charta, cap. 1. & liber 8. fol. 1, &c. in caſu Principis.

The title of theſe Statutes is, Confirmationes Chartarum de libertatibus Angliæ & Foreſtæ, and true it is, that hereby the ſaid Charters are expreſly confirmed: But they are alſo excellently interpreted (which is a confirmation

tion in Law) for here is nothing enacted, but it is included within Magna Charta.

℄ Al honour de Dieu, et de saint esglise, et au profit de nostre realme.] This is, or should be the true end of all Parliaments. See Magna Charta in the title thereof, and all succeeding Parliaments have in effect followed this precedent.

℄ Per commen de tout realme.] That is, by the common assent of the Realm by authority of Parliament; and many times per communitatem Angliæ: it signifieth also an Act of Parliament; for it cannot be per communitatem Angliæ, but by Parliament, as hereafter shall be shewed.

℄ Soient envoyes a nous Justices, &c. & a touts nous cities, &c. ensemblement ove nous briefs.] Before Printing, and till the Raign of H. 7. Statutes were ingrossed in parchment, and by the Kings Writ proclaimed by the Sheriffe of every County: this was the ancient Law of England, that the Kings commandments issued, and were published in form of Writs (as here it was:) An excellent course, and worthy to be restored.

℄ Que les loyes de la terre de sous nous ount a guier mesmes les chartres, &c.] This is a clause worthy to be written in letters of gold, viz. that our Justices, Sheriffes, Maiors, and other Ministers, which under us have the Laws of our Land to guide them, shall allow the said Charters in all their points, which in any Plea shall come before them in Judgement: And here it is to be observed, that the Laws are the Judges guides, or leaders, according to that old rule, Lex est exercitus judicum mitissimus ductor, or Lex est optimus Judicis Zenagogus, and Lex est tutissima cassis.

There is an old Legall word, called [Guidagium] which signifieth an office of guiding of travellers through dangerous and unknown wayes; here it appeareth, that the Laws of the Realm hath this office to guide the Judges in all causes that come before them in the wayes of right Justice, who never yet misguided any man, that certainly knew them, and truly followed them.

℄ Le grand chartre come ley common, et la chartre de la foreſt, en amendement de nostre realme.] The sense hereof is, that the great Charter, and the Charter of the Forest are to be holden for the Common Law, that is, the Law common to all; and that both the Charters are in amendment of the Realm; that is, to amend great mischiefs and inconveniences which oppressed the whole realm before the making of them.

CAP. II.

ET volons, que si nul judgement soit done desormes encountre les points des chartres avantdits per Justic', ou per autres de nous ministres, que encountre les points des chartres tenont plee devant eux, soit defaite, & pur nient tenus.

That

Whatsoever judgement is given against the Statute of Magna Charta, or of Charta de Foresta is made void by this Act, and may be reversed by Writ of Erroz, because the judgement is given against the Law, for this Act saith, Soit defait, & pur nient tenus.

CAP. III.

ET volons que meſmes ceſtes charters deſous noſtre ſeale ſoient envoyes as Eſgliſes Cathedrals par my noſtre royalme, et la demoergent, et ſoient deux foits per an lieus devant le people.

Here it is to be obſerved what care was taken for the preſervation of theſe Charters, and of this Act of Parliament, for it is good chance to obtaine, but great wiſedome to keep.

CAP. IV.

ET que Archeveſques et Eveſques denuncent les ſentences dexcommengement countre touts iceux, que countre les avantdits chartres vendrount en dict ou en fait, ou en eide, ou en counſeil, ou en nul point enfraindrant, ou countre vendront. Et que cels ſentences ſoient denuncies & publies deux foits per an per les prelates avantdits. Et ſi meſmes les prelates en nul de eux ſoient negligentes en la denunciation ſuiſdit faire, per les Archeveſques de Canterbrie, & Deverwike, que pur temps ſerront, ſicome covient, ſoient repris & deſtreintx a meſme cel denunciation faire en la forme avantdit. Stat. de Tallagio, &c. cap. 5.

This Excommunication the Prelates could not pronounce without warrant by authority of Parliament, becauſe it concerned Temporall cauſes.

CAP. V.

ET pur ceo que aſcuns gents de noſtre realme ſoy doubtent, que les eides & les miſes, queux il nous ount fait avant ſes heurs pur nous guerres et auter boſoignes de lour graunt et lour bon voluntie, en quel maner que faits ſoient, puiſſont turner en ſervage a eux & a lour heires, pour ceo

ceo que ils ſerront autre foits troves en rolle, & auxint priſes que ount eſte faits parmy le royalme per nous miniſters en noſtre noſme. Nous avons grantes pur nous & pur nous heires, que mes tielx eides, miſes ne priſes, ne trerons a cuſtome pur nul choſe que ſoit fait, ou que per rolle, ou en autre maner poet eſtre trove.

See hereafter for this word, Stat. de Tallag. non conced. 34 E. 1.

¶ Eydes et miſes.] Auxilia at this time was a generall word, not onely including aides due by Law, and tenure, as aide pur faire fits chivalier, pur file marier, &c. but aides alſo graunted by the free will of the Subjects in Parliaments, which afterwards were called Subſidies; and here this word eides is taken for an aide graunted by authority of Parliament.

See the Statute 1 of 34 E. 1. ubi ſup.

¶ Miſes] Are properly taken for expences or charges, but here in this Act they are taken for tasks, taxes, tallages, or takings.

Vide Calvins Caſe. Lib. 7. fol. 7, 8, &c.

¶ Pur nous guerres, &c.] The King had obtained by free conſent, and good will in Parliaments precedent Aids, Subſidies or Tasks for the maintenance of his Warres in forein parts, which howſoever they were graunted in full Parliament, yet (as here it appeareth) many men doubted, might turne in ſervage of the Subjects of the Realme, for that it was holden that they ought not to contribute to the maintenance of the Kings Warres out of the Realme; And thereupon Bohun Earle of Hereford, and Eſſex High Conſtable of England, and Bigot Earle of Norffolk, and Suffolk, and Marſhall of England, for that it concerned matter of Armes and Warre, exhibited a Petition to the King in French, in Anno 25 E. 1. before the making of this Act, which I have ſeen aunciently recorded, on the behalfe of the Commons of England, concerning the ſaid matter, and thereupon the King at this Parliament yelded to this Act, that ſuch aides, tasks, or takings ſhould not be drawn to cuſtome for any thing that had bæn done in that behalfe.

But yet this matter was never in quiet untill it was more particularly explained by divers Acts of Parliament, which we have drawn into one body of a Law divided into ſeverall branches.

1 E. 3. c. 5. & c. 7. 25 E. 3. cap. 8. 1 E. 3. cap. 5. 4 H. 4. cap. 13. 18 E. 3. cap. 7. 4 H. 4. cap. 13.

1. No man ſhall be charged to arme himſelfe, or to finde men of armes, or any Hoblers or Archers (other then thoſe that hold by ſuch ſervices, or devoires of the King, or of other Lords) if it be not by common conſent, and graunt in Parliament.

2. No man ſhall be compelled to goe to the Kings Warre out of his Shire, but where neceſſity of ſudden comming of ſtrange enemies into the Realme.

Lib. 7. cap. 7. 8. Calvins Caſe. Rot. Parl. 1 H. 5. nu. 17. 7 H. 5. nu. 9, &c. See 25 E. 3. cap. 7. Rot. Parl. 4 H. 4. nu. 48. 20 R. 2. nu. 48. 4 H. 4. cap. 13. 11 H. 7. c. 7. 19 H. 7 c. 1. vid. Rot. clauſus 44 E. 3. Sir Rich. Pembrughs Caſe. Vide Mag. Chart. c. 20. verb. exile. Confirm. Chart 25 E. 1.

3. No man ſhall be charged to give any wages either to the preparers or conveyors of Souldiers, or to the Souldiers to goe into Scotland, Gaſcoin, or elſewhere; but that men of Armes, Hoblers, and Archers, choſen to goe into the Kings ſervice out of England, ſhall be at the Kings wages from the day they depart out of the Counties where they were choſen, till they return.

Which Acts of Parliament are but declarations of the ancient Law of England.

And according to this ancient Law, the Commons after the ſaid declaratory Acts of Parliament did, when this point concerning maintenance of Warres out of England came in queſtion, make their continuall claim of their auncient freedome and birth right, as in 1 H. 5. and in 7 H. 5. &c. the Commons made profeſtation that they were not bound to the maintenance of Warre in Scotland, Ireland, Calice, France, Normandie, or other forein parts, and cauſed their protestations to be entred into the Parliament Roll where they yet remain; which in effect agreeth with that, which upon like occaſion was made in this Parliament of 25 E. 1.

But

But here may be obſerved, that when any ancient Law or Cuſtome of Parliament is broken, and the Crown poſſeſſed of a precedent, how difficult a thing it is to reſtore the Subject again to his former freedome and ſafety.

Now how of ancient time Soldiers were levied, muſtered and entred of Record, &c. (an excellent military policy) which will conduce much to the finding of the true ſenſe of this, and other Statutes, concerning this matter, ſée the third part of the Inſtitutes. Cap. Felony in Soldiers that depart, &c. in the Expoſition of the Statute of 18 H. 6. cap. 19. Sée the Statutes of 11 H. 7. cap. 7. and 19 H. 7. cap. 1.

CAP. VI.

ET auxint avons graunt pur nous, et pur nous heires, as Archeveſques, Eveſques, Abbes, Priors, et as autres gents de S. Egliſe, as Countes, Barons, et a tout la Communalty de la terre, que mes per nul beſoigne tiels manners des aides, miſes, ne priſes, ne prendrons forſque de common aſſent de tout le Royalme, et pur le common profit de ceo: ſaves les auncient aides, et priſes dues et accuſtomes.

The cauſe of the making of this branch, and of ſuch ſpeciall mentioning of the Clergy was, that the King did againſt the auncient Lawes and Cuſtomes of the Realme collect money by Commiſſion without aſſent of Parliament, not onely of Earls, Barons, and Communalty, but of the Clergy, who in thoſe dayes claimed a priviledge, and immunity from ſecular aides and Subſidies, (by pretext of a late conſtitution made by Pope Boniface:) The Clergy ſtood ſo ſtoutly in defence of their priviledge, that Sir Robert de Brabazon the Kings Chiefe Juſtice pronounced openly in the Kings Bench, (in terrorem) that from thenceforth no Juſtice ſhould be done for them at their ſuit, but Juſtice ſhould bée done againſt them in the Kings Courts at any other mans ſuit. But at this Parliament this branch gave ſatisfaction to all, for hereby it is enacted that every aide and taſk and other taking muſt have two ſpecial properties, the one in the Creation, viz. that it bee given by the common conſent of the whole Realme in Parliament; the other in the execution, viz. that it be given and imployed for the common benefit of the whole Realme, and not for private or other reſpects; which words, [Et pur le common profit de ceo] in the impreſſion of Tottell are injuriouſly omitted.

Vid. Stat. de 34 E. 1 De Tallagio non concedendo.

¶ Saves les auncient aides et priſes dues et accuſtomes.] The auncient aides are here intended, Aide pur file marier, pur faire fits chivalier, and reliefes by reaſon of tenures, and the auncient takings or ſeiſures are here intended, ſuch as were due to the Crown, Jure prærogativæ, as waiſes, ſtrayes, the goods of Felons, and Out-laws, Deodands, and the like, [ratione tenuræ] as Heriots, and ſuch other as did lie in ſeiſure or taking by reaſon of any tenure or cuſtome.

CAP. VII.

ET pur ceo que touts le pluis de la comminaltie du Realme ſeiſent durement greve de la maletot des leyns, ceſtaſcavoir, de cheſcun ſacke de leyn quarant ſoulz, et nous ont pries, que nous les voudrons releſſer: Nous a lour prier les avons pleinment releſſes. Et nous avons graunt pur nous et pur nous heires, que mes celes ne prendrons ſans lour common aſſent, & lour bon volunte. Sauve a nous et a nous heires la cuſtome des leyns, pealx, et quires avant grauntes per la comminaltie avantdit. En teſmoignances des queux choſes nous avons fait faire ceſtes nous letters overts. Teſmoigne Edwarde noſtre fits a Londres le x. jour Doctobre, lan de noſtre reigne. xxv.

See before the Statute of Magna Charta cap. 30.

¶ Et pur ceo que tout le pluis de la comminaltie du Realme ſeiſent durement greve de la maletot des leynes. s. de cheſcun ſacke de leyn 40.s. &c.] The grievance was that the King had lately, without common aſſent of Parliament, ſet a charge of forty ſhillings upon every ſack of woll, here called by the name of maletot, that is, the ill toll or charge, for the word [Impoſition] was not yet heard of in any Record.

See more of this matter in the Expoſition upon the 30. Chapter of Magna Charta.

This is an excellent precedent, that when grievances are found out, and proved, that they bee put downe and overthrowne by Authority of Parliament.

¶ Et nous avons graunt pur nous & pur nous heires, que mes celes ne prendrons ſans lour common aſſent et lour bone volunt.] This is worthy of obſervation, whereof you may reade in the Expoſition of the 30 Chapter of Magna Charta.

¶ Avant graunts per le comminaltie avantdit.] By the Comminalty aforeſaid, that is, by Act of Parliament, for the Comminalty of England cannot graunt but by Parliament.

Rot. Pat. 3 E. 1. m. 8 & 9. Mich. 26 E. 1 int' retorn' brev. in Scacc'. per communitatem Angliæ, &c. vid. Magna Chart. cap. 30.

* Art. ſuper Chart. cap. 1.

And ſome ſay that the Comminalty are here named for three reſpects: 1. For that they are the greater part. 2. For all Aids and Subſidies begun with them. 3. For that the farre greater benefit to the King comes from them. For in Subſidies the Comminalty filleth the Kings coffers; but ſome have ſaid that * commune and Comminalty doe ſignifie as much as the people, that is, all the Subjects of the Realme, and ſo it was taken in divers Parliaments in this Kings raigne, and in this alſo, ſo as commune ſhould ſignifie the people, and Commons a part of them.

¶ Les cuſtomes de leynes.] The Cuſtomes here intended to be granted

ted by Parliament, were 6. s. 8. d. for the transportation of a sack of Wooll, and 6. s. 8. d. for every 300. Pelts transported, and 13. s. 4. d. for the transportation of a last of Leather.

These customes were granted to King Edw. 1. as it appeareth in Rot. patent. 3 E. 1. 'Cum Prælati, Magnates, & tota communitas regni nostri nobis concess' quandam novam consuetudinem de lanis, pellibus, & coriis tam in Anglia, quam in Hibernia, & Wallia regnum nostrum exeuntibus imperpetuum nobis, & hæredibus nostris, percipiend' in forma subscripta, viz. de quolibet sacco lanæ dimidiam marcam, de singulis trescentis pellibus lanutis quæ faciunt unum saccum dimidiam marcam, & de qualibet lasta coriorium unam marcam, illorum scilicet coriorium, pellium, & lanarum, quæ portus Angliæ, Hiberniæ, & Walliæ regnum nostrum exibunt, &c.

Rot. Pat. 3 E 1. m. 1. & 9. Rot. Finium. 3 E. 1. Acc. Mich. 26 E. 1. in Scacc. inter retorn. brevium ex rem Thesaur. See in the Exposition upon the Statute of Magna Chart. ca. 30.

Stat. de Tallagio non concedendo,

Edit. Anno 34 Edw. 1.

CAP. I.

NUllum tallagium, vel auxilium per nos, vel hæredes noſtros in regno noſtro ponatur, ſeu levetur ſine voluntate, et aſſenſu Archiepiſcoporum, Epiſcoporum, Comitum, Baronum, Militum, Burgenſium, et aliorum liberorum com' de regno noſtro.

Albeit that this Act is not next in courſe of time, yet being next in matter, we have thought good to handle this Act before others.

There were two cauſes of the making of this Act; the firſt was, that where King E. 1. having conceived juſt diſpleaſure againſt the French King, for the injury done unto him, in with-holding Aquitaine, and other his Inheritance in France; and where the French King had grievouſly, and with ſtrong hand vexed and over-laped Guy Earl of Flanders, and had won much of his lands from him: King Edw. the firſt intending to aid and aſſiſt the ſaid Earl, and to reſcue him out of the hands of the French King, who was ready to devour him and his Earldom, did require ſpecially of Humfrey le Bohun Earl of Hereford and Eſſex, and Conſtable of England, and of Roger Bigot Earl of Norffolk and Suffolk, Marſhall of England, and of all the Earls, Barons, Knights, and Eſquires, and of all Free-holders of 20. l. land within his Kingdom, whether they held of the King in capite, or of other whatſoever, to contribute to his wars in Flanders in reſcue of the ſaid Earl, or finde able men to go with him on that journey: which the Conſtable and Marſhall, and many of the Nobility, and of the Knights and Eſquires, and ſpecially John Ferrers taking part with them, and all the Free-holders abovеſaid vehemently denyed, unleſſe it were ſo ordained and determined by common conſent of Parliament, as had been before enacted in the Parliament of Anno 25 E. 1. by the Act of Confirmationes Chartarum, as before it appeareth.

The ſecond cauſe was, that the King the yeer before had taken a Tallage of all Cities, Boroughs and Towns, without aſſent of Parliament; whereupon grew great murmuring and diſcontentment among the Commons. For pacifying of which diſcord between the King and his Nobles, and for the quieting of the Commons, and for a perpetuall and a conſtant Law for ever after both in this and other like caſes, this Act was made in the four and thirtieth yeer of his Raign.

For this word Tallage, vide 15 E. 3. Avowry 106. F.N.B. 14, 16. 38 H. 6. 10. 32 E. 3. Moſtr. 16 3 E. 3. Quo War. Bre. 2.

¶ Nullum tallagium.] Tallagium, or Tailagium cometh of the French word Tailer, to share or cut out a part, and metaphorically is taken when the King or any other hath a share or part of the value of a mans goods or chattels, or a share or part of the annuall revenue of his lands, or puts any charge or burthen upon another; ſo as Tallagium is a generall word, and doth include

include all Subsidies, Taxes, Tenths, Fifteens, Impositions, or other burthens or charge put or set upon any man, and so is expounded in our Books; here it is restrained to Tallages, set or levyed by the King or his heirs.

Clauſ. 19 H. 3. m. 16. ibid. m. 13. Clauſ. 11 H. 3. m. 17. Regiſt. 142, 143. F. N. B. 150. 13 E. 1. Vill. 38. Rot. Almã. 12 E. 2 part 1. m. 22. Rot. Parliam. 6 E. 3. nu. 4. 1 E. 2. Statute de Militibus, Rot. Parliam. 13 H. 4. nu. 14. 19 H. 6. 32. 38 H. 6 10. Rot. Pat. 1 H. 7. part 3. m. 16. Vide in Waſte Tallage de Villens, &c. Modus tenend. Parli. Vet. Manuſcript.

* *Robertus de Haye impl' Richardum le Waleys cam al' pro captione averiorum in duobus locis, apud Lindeſield vocat' Northſlet & Southuſe, Ipſi dicunt quod Willielmus filius Walteri le Haye tenet de eo quadam ten' apud Lindefand per ſervitium xi. s. & per Tallagium ei facient' ad voluntatem ipſius Richardi, & quia ipſum Willielmum talliavit, Anno Regis nono, una vice ad ii. s. & alia vice Anno decimo, ad xviii. d. quod Tallagium ei aretro fuit pro prædictis ii. s. per annum, ipſum Willielmum diſtrinxit ſuper feodum ſuum pro præd' arreragiis: Robertus dic' quod præd' Willielmus tenuit de eo prædict' ten' per certum ſervitium, & non per Tallagium ad voluntatem ſuam, & dic' quod de illo ſervitio nihil ei aretro fuit, &c. Richardus dicit quod advocat prædictam diſtrictionem ſuper prædict' Willielmum, & non ſuper ipſum Robertum; Et petit Judicium ſi idem Robertus, qui non eſt tenens ſuus, nec diſtrictio ſuper ipſum advocatur, poſſit ſervitium ſuum dedicere: Ideo conſiderat' eſt quod prædictus Richardus inde ſine die. Et prædictus Robertus nihil cap' per breve ſuum, ſed ſit in miſericordia pro falſo clam' ſuo; Et prædictus Richardus habeat returnum averiorum, &c.* * Mich. 11 E. 1. in banco Rot. 49. Suſſex.

¶ Auxilium.] And this word was uſed in the Statute of 25 E. 1. wherof ſomewhat hath been ſaid in the Expoſition thereof.

You may read further in that ancient Record intituled De modo tenendi Parliamentum tempore Regis Edw. filii Etheldredi; debent auxilia peti in pleno Parliamento. So, as hath been ſaid before in the Expoſition upon the 30. Chapter of Magna Charta, and of 25 E. 1. Theſe Acts are but declarations of the ancient Common Laws of this Realm.

¶ Nullum tallagium, vel *auxilium per nos, vel hæredes noſtros in regno noſtro ponatur, ſeu levetur ſine voluntate, et aſſenſu Archiepiſcoporum, Epiſcoporum, Comitum, Baronum, Militum, Burgenſium, et aliorum liberorum com' de regno noſtro.] Theſe words are plain without any ſcruple, abſolute without any ſaving. Abſoluta ſententia expoſitore non indiget.

* Vide fol. 41. Math. Par. 247. Walſ. 40.

Forteſcue, ca. 9. fol. 13. & cap. 12. 18. 34. & 35.

And this is as much as to ſay, that no Subſidy, Taxe, Tenth, Fifteenth, Impoſition, or other aid or charge whatſoever, ſhall by the King or his heirs be put or levied without the common Counſell of the Realm, that is, by the will and aſſent of the Archbiſhops, Biſhops, Earls, Barons, Knights, Burgeſſes, and others of the Counties, that is to ſay, by grant and common aſſent in Parliament.

Within this Act are all new Offices erected with new fees, or old Offices with new fees, for that is a Tallage put upon the Subject, which cannot be done without common aſſent by Act of Parliament. And this doth notably appear by a Petition in Parliament in Anno 13 H. 4. where the Commons complain, that an Office was erected for meaſurage of Clothes and Cardes, with a new fee for the ſame by colour of the Kings Letters Patents, and pray that theſe Letters Patents might be revoked, for that the King could erect no Offices with new fees to be taken of the people, who may not be charged but by Parliament.

Rot. Parliam. 13 H. 4. nu. 43.

The Royall anſwer of the King in Parliament was, that the Statutes thereafore provided ſhall be obſerved, which Statutes were the ſaid Act of 25 E. 1. and

and this of 34 E. 1, &c. and accordingly Judgement was also given in the Kings
13 H. 4. fol. 16, 17 Bench, so as this point was both resolved in Parliament, and adjudged by Law according to these Statutes; and hereby it appeareth that these were Acts of Parliament.

Rot. Parl. 22 E. 3. nu. 31. Rot. Parl. 25 E. 3. King Edw. 3. had granted to Robert Poley a new office of measuring of Worsteads, with a new fee; and it was at the Petition of the Commons resolved in Parliament to be void, and afterward revoked as void by authority of Parliament; and the like Law is in all like cases.

Note that the words of this branch are generall, Nullum tallagium, &c. ponatur, seu levetur sine voluntate, &c. and saith, Per nos, & hæred' nostros, but not Pro nobis, aut ad opus nostrum. But generally so as all Tallages, burthens, or charges put upon the Subject by the King, either to or for the King, or to or for any Subject by the Kings Letters Patents, or other commandement or order, is prohibited by this Act, unlesse it be by common consent of Parliament; And note that the words are in the disjunctive, [Ponatur seu levetur] so as if it be set by the King, although it be not levied by him, but by a Subject, as it was in the cases abovesaid, it is within the purview of this Statute.

CAP. II.

NUllus minister noster, vel hæredum nostrorum capiat blada, correa, aut aliqua alia bona cujuscunque, sine voluntate et assensu illius, cujus fuerint bona.

Of this branch we shall have just occasion to speak when we come to the Statute of 28 E. 1. cap. 2. and therefore do purposely omit to speak of it here.

CAP. III.

NIhil capiatur de cætero nomine, vel occasione maletot de sacco lanæ.

See for Maletot 25 E. 3. cap. 6. & Magna Charta, cap. 30. and albeit it was ousted before, yet Nunquam nimis dicitur, quod nunquam satis dicitur; by this Act it is both prohibited by the generall purview, and also by this particular branch.

CAP. IV.

VOlumus & concedimus pro nobis & hæredibus nostris, quod omnes clerici & laici de regno nostro habeant omnes leges, libertates, & liberas consuetudines suas ita libere & integre, sicut eas aliquo tempore melius & plenius habere consueverunt. Et si contra illas quocunque articulo

in

in præsenti Charta contento statuta fuerint edita per nos & antecessores nostros, vel consuetudines introductæ: Volumus & concedimus, quod hujusmodi consuetudines & statuta vacua & nulla sint in perpetuum.

This containeth a restitution generall to the Subjects of all their Lawes, Liberties, and free Customes, as freely and wholly, as at any time before in the better and fuller manner they used to have the same, and this doth not onely extend to Magna Charta, and Charta de Foresta, but to all other Lawes, Liberties, or Frédomes, and fré-customes whatsoever.

But what if any Act of Parliament have bén made contrary to any Article in this Act contained; this later clause, viz. Et si contra illas, &c. containeth a repeale of all Statutes made by King E. 1. or any of his auncestors against any Article in this Act contained, that is to say, concerning the first Chapter, Nullum tallagium, &c. or the second, Nullus minister noster; or the third, Nihil capiatur; or this fourth, which is most generall, Volumus & concedimus, &c. 42 E. 3. c. 1. simile

Hereby it may be observed how prudent antiquity could containe much matter in few words.

CAP. V.

REmisimus etiam Humfredo le Bohun, Comiti Hereford' & Essex, Constabular' Angliæ, & Roger' Bigot Comiti Norff. & Suff. Marescallo Angliæ, & aliis Comitibus, Baronibus, Militibus, Armigeris, & I. de Ferreres, ac omnibus aliis de eorum societate, confœderatione, & concordia existentibus: necnon & omnibus viginti libratas terræ tenentibus in regno nostro, sive de nobis teneant in capite, sive de alio quocunque ad transfretand' nobiscum in Fland' certo die vocatis, rancorem & malam voluntatem erga nos habitã, ac etiam trangressiones si quas nobis fecerint, usque ad præsentis Chartæ confectionem. Et ad majorem hujusmodi rei securitatem volumus & concedimus, quod omnes Archiepiscopi, & Episcopi in perpetuum habeant in suis Cathedralibus Ecclesiis, habitanti præsenti Charta lecta excommunicare, & publice in singulis parochialibus Ecclesiis suarum Dioc' excommunicatos denunciare bis in anno omnes illos, qui contra tenorem præsentis Chartæ vim & effectum quoquo modo vel articulo scienter fecerint, aut fieri procuraverint. In cujus rei testimonium præsenti Chartæ sigillum nostrum est appensum una cum sigillis Archiepiscoporum, Episcoporum, &c. qui sponte juraverunt, quod tenorem præsentis Chartæ, quantum in eis est, in omnibus causis et singulis articulis servabunt, et ad observationem fidele auxilium præstabunt, &c.

If you compare our English Hiſtories with this Act of Parliament, the old ſaying ſhall bee verified, that Records of Parliament are the trueſt Hiſtories.

Although the King had conceived a déep diſpleaſure againſt the Conſtable, Marſhall, and others of the Nobility, Gentry, and Commons of the Realme, for denying of that which he ſo much deſired, yet for that they ſtood in defence of their Laws, Liberties, and frée Cuſtomes, the King, who (as Sir William Herle Chiefe Juſtice of the Common Pleas, who lived in his time, and ſerved him, ſaid) was the wiſeſt King that ever was, did not onely reſtore the ſame to them as is aforeſaid, but granted a ſpecial pardon to thoſe of whom he had conceived ſo great diſpleaſure; ſuch a one as you ſhall not reade of the like, for hereby he pardoned three things:

5 E. 3. fol. 14.

¶ 1. Rancorem.] Rancor is taken here metaphorically for a feſtring of indignation, or diſpleaſure in the minde of the King, which the King releaſeth and diſchargeth them of the ſame, and incidently reſtoreth them to his favour.

¶ 2. Malam voluntatem.] Ill will or unkindneſſe: of this ſo much may be ſaid as hath béen ſaid of rancor.

¶ 3. Et etiam tranſgreſſiones, ſi quas fecerint.] Here theſe words [Si quas fecerint] are added, leſt by acceptance of a pardon of tranſgreſſions they ſhould impliedly confeſſe that they had tranſgreſſed: ſo carefull were the Lords and Commons in former times to preſerve the ancient Laws, Liberties, and frée Cuſtomes of their Country.

¶ Et quod omnes Archiepiſcopi, &c.] Here power is given to Archbiſhops and Biſhops twice in the yeare, upon the reading of this Act, to excommunicate all the violaters thereof, &c.

25 E. 1. Confirm. Chartar. cap. 4.

¶ In cujus rei teſtimonium præſenti Chartæ ſigillum noſtrum eſt appenſum una cum ſigillis Archiepiſcoporum, Epiſcoporum, Comitum, Baronum, &c.] Nota the ſolemnity of this Act, in that all the Archbiſhops, Biſhops, Earles, Barons, &c. did put their ſeale thereunto: A rare example, which was done for the obliging of them the more firmly to the obſervation of this Act, which concerned the Lawes, Liberties, and frée Cuſtomes of their Country.

Rot. Parl. 7 H. 4. num. 60. ſimile. 28 E. 1. de præcerum, & Comitat. 70. cap. ſigillat. Walſ. pag. 48.

¶ Qui ſponte juraverunt, quod tenorem præſentis Chartæ, quantum in eis eſt, in omnibus cauſis et ſingulis articulis ſervabunt, et ad obſervand' fidele auxilium præſtabunt, &c.] And for their greater obligation for the due obſervation of this Act, they take a voluntary corporall oath.

Here note, that either houſes of Parliaments being Courts may take voluntary oathes, as here it appeareth.

Articuli

Articuli ſuper Chartas,

Edit. Anno 28 Edw. I.

PUr ceo que les points de la graund Chartre, des fraunchiſ. & de la foreſt, les queux le Roy Henry pier noſtre ſeigniour le Roy qui ore eſt, granta a ſon people pour le preue de ſon roialme, ne ont pas eſte tenus, ne gardes avant ces heures, pour ceo que avant ces heures peine ne fuit eſtablie vers les treſpaſſants countre les points des chartres avantdits: Noſtre ſeigniour le Roy les adde novel graunt, renovele & confirme. Et a la requeſtes des Prelates, Counts, & Barons a ſon Parliament a Weſtm', en quareſme lan de ſon reigne xxviii. ad certains points affirme, & peine ordeigne, & eſtablie, encounter touts yceux, que encountre les points des avantdits Chattres, ou nul point de eux, en nul manner viendront, ou miſprendrent, en la forme que lenſuit.

One cauſe of the making of this Act was, that albeit the King had confirmed the ſaid Charters at his Parliament holden in 25 E. I. and ſtiled the Act by the name of Confirmationes Chartarum de libertatibus Angliæ & Foreſtæ, yet becauſe there was a ſaving in that Act, [Saves les auncient aides & priſes dues & accuſtomes] although they were to be underſtood of aids by reaſon of tenure, &c. as in the Expoſition thereof it appeareth, yet it was a colour for the Kings Officers and Miniſters to make an evaſion when the Parliament was; And thereupon the Lords of Parliament did importune the King to confirme the ſaid Charters; which the King promiſed to doe: but when it came to be ſet downe in forme of an Act, the King would have added a ſaving of the right of his Crown, which the Lords did mainly inveigh againſt, and preſſed the King with his promiſe to confirm them as abſolutely as his Noble Father King H. 3. had graunted them; which in the end he yelded unto, as by this Act it appeareth.

And another cauſe of the making of this Act, as by the Preamble is ſuggeſted, was, that there was no certaine puniſhment in many points eſtabliſhed by the ſaid Charters againſt the violaters of the ſame, which alſo by this Act are remedied.

¶ Grant a ſon people.] This word populus here doth include all the Kings Subjects, both the Prelates, and other of the Clergy, and the Nobles and Commons of this Realme, for all bee the Kings people [ſon people.]

¶ Peine ne fuit eſtablie.] Some reade it [peine ne fuit execute] that is true in effect, but the originall is peine ne fuit eſtablie, that is, no paine was ſet down in certain.

℄ A le requeſt les Prelates, Countes, et Barons.] These Articles were preferred by the Lords of Parliament, because they had a promiſe of the King to paſſe the ſaid Articles; There were at this Parliament 93. Earles and Barons of the Realme, beſides the Lords of the Clergy, which then were many.

Rot. Parl. 5 H. 4. nu. 61. 2 E. 3. 27. Piers de Salt. marſh. Caſe. Vide li. 10. fo. 74. Le Caſe de Marſhalſea.

The title is here Articuli ſuper Chartas, ſometime they ſtyled it by the name of Novi Articuli ſuper Chartas, ſometimes, Explanations ſur les Chartres; and juſtly they are called Articuli ſuper Chartas, meaning Magna Charta, and Charta de Foreſta, for that they contain the ſubſtance of all that is contained in theſe Articles.

CAP. I.

CEſtaſcavoir, que de cy en avant la grand Chartre des Franchiſes Dengleterre, grante a tout la commune Dengleterre, et la Chartre de la Foreſt in meſme le maner grante, ſoient tenus, gardes, & maintenus en cheſcun article, & cheſcun point, auxy pleinment come le Roy les ad graunte, renovele, et per ſa Chartre confirme. Et que celles Chartres ſoient bailles a cheſcun Viſcont Dengleterre deſoubes le ſeale le Roy, a lier quatre foits per an devant le people en pleine Countie: ceſtaſcavoir, au prochein Countie apres la ſaint Michael', au prochein Countie apres le Noel, au prochein Countie apres la Paſche, & au prochein Countie apres la ſaint Johan' Baptiſt. Et a ceux deux Chartres en cheſcun point, & en cheſcun article dicele, firmement tener, et garder, ou remedie ne fuit avant per la common Ley, ſoient eſleus en cheſcun Countie per la commune de meſme la Countie trois prodes homes chivalers, ou auters loialx, ſages, et aviſes, que ſoient jures et aſsignes per les Letters le Roy overtes de ſon graund ſeale, de Oier et Terminer, ſans auter briefe que lour common graunt, les pleints que ſe ferront de touts yceux, que contreviendront ou meſprendront en nul des dits points des avantdits Chartres en Counties ou ils ſont aſſignes, auxibien dedeins franchiſes, come dehors, et auxibien des Miniſters le Roy hors de lour places, come des auters, et les pleints oier de jour en jour ſans delay: & les terminent ſans allower les delayes, que ſont allowes per la Common Ley, et que meſme ceux chivalers eyent poyer de punier touts ceux que ſerront attaints de

de treſpas fait, encountre nul point des chartres avantdits, ou remedy ne fuit avant per la common ley, auxy come avant eſt dit, per impriſonment, ou per ranſome, ou per amerciament, ſolonque ceo que le treſpas le demaund. Et pur ceo nentende pas le Roy, ne nul des ſoyens que a ceſt ordeignement fuerent, que les chivalers avantdits, teignent nul plee per le power que done lour ſoit, en cas ou avant ces heures fuit remedie purview ſolonque la common ley per briefe: Ne que prejudice ſoit fait a la common ley, ne a les chartres avantdits, en nul de lour points. Et voit le Roy, que ſi touts trois ne ſoient preſentes, ou ne perront a touts les foits attendre, a faire lour office en la forme avantdit, que deux des trois le facent. Et ordeigne eſt, que les viſcounts, et les bailifes le Roy, ſoient attendants a les commandements des avantdits Juſtices, en quant que appent a lour office. Et ouſtre ces choſes grants ſur les points des chartres avantdits, le Roy de ſa grace eſpeciall, en allegeance des grevances, que ſon people ad eu per les guerres que ont eſte, & en amendement de lour eſtate, & pur tant que ils ſoient plus preſtes a ſon ſervice, et plus voluntiers aidants, quant il en avera a faire, ad grant aſcuns articles, les queux il entend' que tiendront auxibien lieu a ſon people, & auxi grand profit ferront, ou plus que les points avant grantes.

℄ A le commune D'angleterre.] Here Commune is taken for people, ſo as [Tout le commune] is taken here for all the people; and this is proved by the ſenſe of the words, for Magna Charta was not granted to the Commons of the realm, but generally to all the Subjects of the realm, viz. to thoſe of the Clergie, and to thoſe of the Nobility, and to the Commons alſo: And that [Commune] in this place ſignifieth people, it is proved by the Preamble, for there the great Charter, and the Charter of the Foreſt, are rehearſed to be granted by King H. 3. to his people; and here they are ſaid to be granted [A le commune:] and ſee before 25 E. 1. Confirmat. Chart. cap. 1. & cap. 6. for this word commune and comminaltie: ſo as [A le commune] here ſignifieth not to the Commons of the realm, but to the people of the whole realm; and herewith agreeth our Books, that for a common Nuſance, which concerns Le commune, ou le comminaltie, le ſuite ſerr' done au Roy, where [commune] and [comminaltie] include all the Kings Subjects. 2 E. 3. 26, &c.

℄ Auxi pleinement come le Roy, les ad grante, renovele, & per ſon chartre confirme.] Here it is to be underſtood, that this King Edw. 1. the 28 day of March, in this 28 year of his raign had abſolutely confirmed, ſo as now by force of this Act of Parliament in An. 34 E. 1. it hath

onely the force of a Charter, but this is eſtabliſhed by this Act of Parliament.

℄ Et que les chartres ſont bailles a cheſcun Viſc', &c.] And that theſe Charters ſhould be read four times in the yeer in full County; here is order taken for the publiſhing of theſe Charters.

See the Statute de Confirmat. Chart. cap. 1,3,4.

℄ Ou remedie ne fuit avant per le common ley.] That is, where no Action was given by the Kings Writ to be purſued at the Common Law.

℄ Apres le Saint Michael, &c. Soient eſleus en cheſcun countie, per la commune de meſme le countie, trois prodes chivaliers, ou auters loyals, ſages, & aviſes, que ſoient jurees & aſsignes per les letters le Roy overtes de ſon grand ſeale, de Oier & Terminer ſans auter briefe que lour commen grant, les pleints que ſe ferront de touts ceux, que contreviendront, &c.] Here, for the better execution of thoſe glorious two lights, Magna Charta, and Charta de Foreſta, a new Court and new Juſtices were appointed, with limitation that they ſhould meddle onely with thoſe points againſt theſe Charters, for the which before this Act there was no remedy by the Common Law.

Here by the way it is to be obſerved, that three new things which have fair pretences are moſt commonly hurtfull to the Cõmon wealth, viz. 1. New Courts (as here was one,) for commonly they tend to the grievous vexation and oppreſſion of the Subject, and not to that glorious end that at the firſt was pretended; for erect new Courts, and conſtitute great men to be Judges, and make what limitations you will, they will never want authority and juriſdiction. 2. New Offices either in Courts of Juſtice, or out of them, which cannot be done as here it was, but by Parliament; but they under pretence of the common good are exerciſed to the intolerable grievance of the Subject. 3. New Corporations trading into forein parts, and at home, which under the fair pretence of order and government, in concluſion tend to the hinderance of Trade and Traffique, and in the end produce Monopolies. But now to the Text.

℄ Et auxibien des miniſters le Roy hors de lour places, come des auters: & les pleintes Oier de jour en jour ſans delaie: et les terminent ſans allower les delaies, que ſont allowes per la commen ley.] Here was the firſt ground for the raiſing of the Juſtices of Trebaſton, or Trailbaſton, ſo called (in reſpect of their precipitate proceeding from day to day, without ſuch convenient leiſure and time as Common Law allowed) for that their proceedings were as ſpeedy and ready as one might draw a ſtaff.

Their authority was increaſed in Anno 33 E. 1. and if you deſire to read their Commiſſion, you may read the ſame in Rot. Pat. Anno 33 E. 1.

They in the end had ſuch authority as Juſtices in Eyre; but albeit they had their authority by Act of Parliament, yet if they erred in Judgement, a Writ of Errour did lye by the generall rule of the Common Law to reverſe their Judgement in the Kings Bench; which being once reſolved and known, and their Juriſdiction fettered with ſo many limitations, their authority by little and little vaniſhed.

Rot. Par. 33 E. 1. in Dorſæ. m. 1. 2 E. 3. fol. 27. 27 Aſſ. 57. Stat. de Ragman. Vet. Chart. part 2. fol. 28. Matth. Pariſ. 450 Holl. 312, 313. Stare 33 E. 1. Vet. N.B. 52.

Le

℄ Le roy de ſa grace eſpecial, &c. & pur tant que ils ſoient plus preſtes a ſon ſervice, et plus voluntiers aidants, quant il en avera a faire.] Here is to be obſerved, that the Subject ought to retribute to the King for a Bill of Grace two things, firſt: to be the more ready to do him ſervice; and ſecondly, to aid him in time of need.

CAP. II.

EN primes pur ceo que un grande grevance eſt en ceſt realme, et dammage ſans nombre, de ceo que le Roy & ſes miniſters de ſa meignee, auxibien les aliens come les deniſens, font lour priſes per la ou ils paſſent parmy le realme, & pernent les biens des gents, des cleres, & des layes, ſans rien paier, ou bien meins que la value: Ordeine eſt, que de cy en avant, nul ne preign' priſes parmy realme, forſque les parnours le Roy, & ſes purveyours pour loſtell' le roy: Et pur les parnours le roy, et purveyours pour ſon hoſtell', ne preignent riens, forſque pur meſme loſtell': Et des priſes que ils ferront par my le pais, de manger ou de boire, et des auters menus neceſſaries pur loſtell', que ils facent la paie ou gree a ceux, des queux les choſes ſerront priſes. Et que touts ceux parnours le roy, purveyours, ou achatours, eient de cy en avant lour garrante oveſque eux du grand ſeale, ou du petite ſeale le roy, conteinant lour poiar, et les choſes dont ils ferront priſes, au purveyance: le quel garrant ils monſtrent a ceux des queux ils ferront la priſe, avant ceo que ils impreignent rien. Et que ceux parnours, purveyours, ou achatours le roy, ne preignent plus que beſoigne, et meſter ne ſoit, pour le roy et ſon hoſtell', et de ſes enfants. Et que riens ne preignent pur ceux que ſont as gages, ne pur nul auter. Et que ils reſpoignent en loſtell', ou en la gardrobe pleinment de toutes lour priſes, ſans faire lour largeſſes aillours, ou liveries des choſes, que pur le roy ſerront priſes. Et ſi nul parnour del hoſtell' le roy, per garrantie que il eit, face priſes, ou liveres en auter maner, que deſus neſt dit, per plaint fait al ſeneſchall', & au treaſorer del hoſtell' le roy, ſoit la verite inquiſe. Et ſi de ceo ſoit atteint,

This Chapter is confirmed by 18 E. 1. cap. 2.

teint, ſoit gre maintenant fait al pleintif, & ſoit ouſte de ſervice le roy pur touts jours, et demoerge en priſon a la volunte le roy. Et ſi null' face priſes ſans garrante, & les emporte encountre la volunte de celuy a que les biens ſont, ſoit maintenant arreſte per la ville, ou le priſe ſerra fait, et ameſne a la prochein gaole. Et ſi de ceo ſoit atteint, ſoit la fait de luy, come de laron, ſi la quantite des biens le demand'. Et quant as priſes faire en faires, et en bons villes, et en portes pur la grande garderobe le roy, eient les pernours lour commen garrant per le grand ſeale. Et des choſes que ils prendront, eient la teſmoign' du ſeale du gardein de la garderobe. Et des choſes iſsint per eux priſes, de nombre, de quantite, et de value ſoit fait dividende entre les pernours, et les gardeins des faires, maires, ou chief baylies des villes, et portes, per la vieu des Merchants, des queux les biens ſerront iſsint priſes. Et riens ne luy ſoit ſuffert de plus prendre, que il ne mette en dividende. Et cell' dividende ſoit port en garderobe ſoubs le ſeale le gardein, maire, ou chiefe bailife avantdits: et la demoerge tanque ſur laccompte du garderobe le roy. Et ſil ſoit trove que nul eit autrement priſe que faire ne deveroit, ſoit puny ſur laccompte per le gardein de la garderobe le roy, ſolonq; ſa deſerte. Et ſi nul face tielx priſes ſans garrante, et ſur ceo ſoit atteint, ſoit fait de luy come de ceux que font priſes pur loſtell' le roy ſans garrante, come deſus eſt dit. Et nentende mye le roy, ne ſon counſail, que per ceſt eſtatute rien decreſſe au roy de ſon droit des auncient priſes dues et accuſtomes, come des vins, et auters biens: meſque en toutes pointes pleynment luy ſoit ſave.

Seeing by many Acts of Parliaments the Kings purveyance is limited in certain, ſo as the Law there is certain, and without queſtion; it ſhall not bee impertinent nor unneceſſary to learne from Antiquity, how, and in what ſort the Kings houſhold was in thoſe dayes provided of victuals: Certain it is, that aſwell before as after the Conqueſt, the King upon his ancient demeſnes of the Crown of England, had houſes of Husbandry, and ſtocks for the furniſhing of neceſſary proviſions for his houſhold; and the Tenants of thoſe Mannors did by their tenures, manure, till, &c. and reap the Corn upon the Kings

"Inter leges Canut. regis ca. 67. Omnibus hanc porro impartimus allevationé ut quo prius opprimebat' onere populum liberemus: Inprimis præfectis meis omnibus mand', ut ex prædiis meis propriis quæ mihi fuerint ad victum neceſſaria ſuppeditent, neque alius quiſquam victui noſtro alimenta præſtare invitus cogatur. Itaq; ſi eorum aliquis hoc nomine mulctam petierit, is proprii capitis æſtimationem regi dependito.

demeſnes,

demeſnes, mowed his meadowes, &c. repaired the fences, and perfourmed all neceſſary things belonging to husbandry upon the Kings demeanes: In reſpect of which ſervices, and to the end they might apply the ſame the better, they had many liberties and priviledges, as that they ſhould not be ſued out of the Court of that Mannor, nor impannelled of any Jury or Inqueſt, nor appeare at any other Court, but onely at the Court of the ſaid Mannor, nor be contributory to the expences of the Knights of the Shire which ſerve at Parliament, nor pay any toll, &c. which liberties and immunities continue to this day, albeit the originall cauſe thereof is ceaſed; Now all the Mannors that were in the hands of Edward the Confeſſor before the Conqueſt, or in the hands of William the Conqueror, and ſo, appeare in the Booke called Domeſday, are accounted the auncient demeanes of the Crowne of England, and had bene the demeanes of the Crown long before.

In libro rubeo Scacc' cap. A quibus & ad quid fuit argent' examinatio; you ſhall reade that which is very obſervable. In primitivo regni ſtatu poſt conquiſitionem, regibus de fundis ſuis non auri & argenti pondera, ſed ſola victualia ſolvebantur, ex quibus in uſus quotidianos domus Regiæ neceſſaria miniſtrabantur, &c. And ſee the reaſon wherefore theſe proviſions of victualls were changed. Lucubrat. Rot.clauſ.13 H.3 m.10. in dorſ. Rot.finium 3 E.1. 35. Kelwey 114. Brit.75,76. Fleta lib.2.cap.8.& 11.

And this is evident by many Records, but by little and little this courſe of good Husbandry vaniſhed.

When the Kings own proviſions for the moſt part failed, then to ſupply neceſſary proviſions, there was a continuall Market kept at the Court gate, where the King was better ſerved with viands for his houſhold, then by Purveyors, the Subject better uſed, and the King at farre leſſe charge in reſpect of the multitude of Purveyors, and the Officer of this Market was called Clericus mercati hoſpitii Regis, the Clerk of the Market of the Kings houſe, ſo as he retaineth his name ſtill according to the firſt inſtitution, although the good end thereof ceaſeth; when this Market was diſcontinued, then Purveyors ſtarted up, and the number of them dayly increaſed, who by the Lawes and Statutes of this Realme ought to obſerve five things: 1. To take onely for the Kings Houſhold. 2. With the conſent of the owner. 3. For the price as was ſold in the Market. 4. To take no more then was neceſſary for the Kings Houſhold. 5. Where it might beſt be ſpared, and where more plenty was. Rot.Parl.50 E.3. nu.87.& 152. 12 R.2. cap.4. Lib.intr' Co.445 32 H.8. cap.20. The number of Purveyors enacted to be abridged. 34 E.3.ca.3. 36 E.3.ca.2. That they be ſufficient men.

All which was inquirable before the Juſtices in Eyre, before our Statute made in 28 E.1. and at the firſt they were called emptores, buyers; and it was a ſpeciall Article inquired by the Juſtices in Eyre, De priſis fact' per Vicecomites, vel Conſtabular', vel alios balivos contra voluntatem eorum quorum catalla fuerint; and this was before the making of our Statute of 28 E.1. Bract.l.3.fo.117. cap. Itin' ſæpe. Brit.fol.33,36. Fleta Li.ca.20. Lib.2.cap.16. Forteſcue ca.36. fol.43. See the Statutes hereafter mentioned.

And for a concluſion hereof it is declared by authority of Parliament, in theſe words, Nullus miniſter noſter, vel hæredum noſtrorum, capiat blada, corea, vel aliqua alia bona cujuſcunque ſine voluntate & conſenſu illius cujus fuerint bona: And this is confirmed and eſtabliſhed by the Statute of 18 E.3. Stat.de Tallagio. 34 E.1. 4 E.3.c.3 18 E.3.cap.7. Init' brevia 6 H.3. Balivus de Hoyl and Lenne, & Gemem'. 7 H.3. tit.Waſte 141. Pl. Com. in Caſe de Mynes.

So as no queſtion can bee hereof made, and if you reade of any taking or purveyance in auncient time it muſt bee taken with theſe limitations; and the reaſon why theſe words, ſine voluntate & conſenſu, &c. without the will and agreement, were expreſſed, was for that Purveyors would take the goods of ſuch men as had no will to ſell them, but to uſe or ſpend them for their own neceſſary uſe.

¶ En primes pur ceo que un graund grevance, &c.] The miſchiefe before this Statute was, that the inſolency of the Purveyors bearing

bearing themſelves ſo proudly under the great Officers of the Kings Houſhold, grew to that height that they would take what and how much as it pleaſed them, and many times where it might be leaſt forborne or ſpared, and for others then for the Kings Houſhold, and ſomtimes would pay nothing, and many times leſſe then the true value, and many perſons would make purveyance without any warrant at all; of theſe great grievances and loſſes without number, infinite damages, the Subjects complained of at this Parliament, and for reſtraining of the abuſes of the Purveyors and reliefe of the Subjects, this Act of Parliament was made.

Paſch. 30 E. 1. coram Rege Kanc'. The Cinque Ports Caſe. *Rot. Cha. 17 July Anno 6 E. 1. Baronibus 5. Port. conceſſus.

¶ Font lour priſes.] Of the French word priſe, comes the word priſa, uſed in Law for the things taken by Purveyors: Recta priſa, right taking or purveyance is there expounded, viz De uno dol' ante malum et alio poſt malum; *and ſo explained in the Charter of E. 1. This is called Recta priſa, right taking or purveyance, becauſe it diſtinguiſhed it from the taking or purveyance againſt right. Vide ſpeculum Regis M. S. written by Iſlep Archbiſhop of Cant. for King E. 3.

In ligul. de præcept. de Term. Mil. Anno. 16 E. 2. Nota pro Juſtic. de Banco Regis & eorum honore & ſuprema juriſdictione. * Purveyance. 28 E. 1. Art. ſuper Chart. cap. 2.

*Edwardus Dei gratia Rex Angliæ, Dominus Hiberniæ, & Dux Aquitan' dilectis & fidelibus ſuis Henric' le Scrop' & ſocio ſuis Juſtic' noſtris ad placita coram nobis tenend' aſſignat', Salutem. Miramur quod cum vos præfat' locum noſtrum in placitis hujuſmodi teneatis, & noſtram præſentiam per loca per quæ regno noſtro tranſieritis in premiſſis ſupplere debeatis, * de priſis Bladorum, victualium, & aliorum bonorum ſubditorum noſtrorum, contra voluntatem eorundem, conſpiratoribus, tranſgreſſoribus, informatoribus falſarum querelarum, conventiculis & confederationibus illicitis factis non inquiritis, nec ulterius facitis quod deceret: Volentes igitur hujuſmodi mala puniri prout decet, vobis mandamus firmiter injungentes quod de hujuſmodi priſis, conſpirationibus, tranſgreſſionibus, informationibus falſarum querelarum, conventiculis, & confederationibus exnunc per ſingula loca per quæ tranſieritis, tam infra libertates quam extra, cum omn' diligentia & modis quibus poteritis inquiratis, & omnes illos quos legitime convinci contigit, puniatis juxta formam ſtatutorum, & articulorum inde editorum, & ſecundum legem, & conſuetudinem Regni noſtri in hac parte talit' vos habentes, quod querela ad nos inde non perveniat iterata. T. me ipſo apud Newarke, xxx. die Januarii, Anno Regni noſtri 16. Per ipſum Regem.*

28 E. 1. Art. ſuper Chart. cap. 20. Anno 33 E. 1. de conſpirat.

4 E. 3. c. 3. 25 E. 3. ca. 1. 36 E. 3. ca. 2.

¶ Ou bien meynes que la value.] Hereby it appeareth that the very value ought to be paid for the things purveyed according to that which appeared in our auncient Authors.

4 E. 3. c. 3. 25 E. 3. ca. 1. 36 E. 3. c. 2.

¶ Forſque le pernours le Roy, et les purveyors pur le hoſtle le Roy.] Herewith agreeth many later Statutes, and explained to be the Houſhold of the King and Queene, at this Parliament, cap. 5. that the Chancellor and Juſtices of the Kings Bench ſhould follow the Court, and by pretext thereof purveyance was made for them as part of the houſhold, which laſted untill 4 E. 3. cap. 3. at what time (the Chancellor and Judges diſcontinuing to follow the Court) it is provided againſt them, and all other that be not of the Kings houſhold.

Rot. Par. 10 E. 2. pt 2. m. 20. li. 10. fol. 73. In Caſe de Marſhalſea.

¶ Ne pernont riens forſque pur meſme le houſholde, &c.] All this is in affirmance of the auncient common above mentioned, and ratified by the later Acts of Parliament laſt above remembred.

¶ Et

¶ Et des priſes que ilz ferront per my le pays de manger ou de boyer, & des auters menus neceſſaries per le hoſtele, que ilz facent le paie ou gree a ceux des queux le choſes ſerront priſes.] This is to be underſtood, when the King is paſſing in the Country, as in his progreſſe, or in any iourney, as it appeareth by the preamble: there the purbeſor may take meat and drink, which this Act here in reſpect of the Kings paſſage calls ſmall things, but he muſt pay the very value thereforе, and make preſent payment, or agree with the party.

This is made certaine by a latter Statute, that in all caſes where the thing to be taken is under 40. ſhillings, there preſent payment to be made, or elſe the owner may retaine and reſiſt, and for the tryall of the true value, the thing to be taken is to be prayſed or priced according to the very value by the Lord or his Baily, or the Conſtable, and foure good men of the Town where ſuch taking ſhall be, there to be ſworne, in conuenable and eaſie manner without threats or bares and by Indenture the quantity of the thing taken, the price, and of what perſons; but if it be not in the Kings paſſage, but for his ſtanding houſe, then the King cannot take any beere or ale, becauſe it is a manufacture, no more then he can take for his ſtanding houſe any other victuall made by art and labour of mans hand, as bread, or the like; but mault, having the ſubſtance of the barley remaining, and having nothing added to it, is no ſuch manufacture, as it appeareth by a later Act of Parliament. But then the King by his officers muſt conuert it into beere; for he cannot ſell, or otherwiſe imploy the ſame, which hath been the cauſe that never any mault was taken, and it muſt be taken at the very value in the Market.

4.E.3.cap.3. 5 E. 3.cap.2. 36.E.3. cap.2.&c.

36.E.3.cap.2.

¶ Eyent de cy en avant lour de garrantie, ove eux du grand ſeale, ou de petit ſeale le Roy, conteynant lour power, & les choſes dont ils ferront priſes.] By latter Statutes the commiſſion muſt be under the great ſeale onely, and every halfe yeare to be renewed.

36.E.3.cap.2. 2.& 3.Ph.& Mar. cap.6.

¶ Le quel garrant ils juront a eux des queux ils ferront le priſe avant ceo que ils empreigne rien.] This is evident, and confirmed by later Statutes.

¶ Ne preigne plus que beſoigne & meſter ne ſoit, &c.] The Statute of 36.E.3. confirmeth this, and doth adde, that the takings muſt be in ſuch places where greateſt plenty is, and in a conuenable time.

I have reade a booke called Speculum Regis, written in Latin by Simon Iſlip Archbiſhop of Canterbury to King Edward the third, wherein he ſharply enueigheth againſt the intolerable abuſes of purbeſors and purueyance in many particulars, and earneſtly adviſeth, and inſtantly preſſeth the King to prouide remedy for thoſe inſufferable oppreſſions and wrongs offered to his ſubiects, which the King keeping with him, and often peruſing, it wrought ſuch effect, that the King at divers of his Parliaments, but ſpecially at his Parliament holden in the 36. yeare of his reign, of his own will, without motion of the great men or commons, as the Record of Parliament ſpeaketh, cauſed to be made many excellent lawes againſt the oppreſſions, malice, and falſhood of purbeyors.

Speculum Regis.

¶ Et que ils reſpoinent in loſtel ou en la garde robe pleinment de touts lour priſes ſans faire lour largeſſes ailours, ou liveries des choſes, que per le Roy ſerra priſes.] This account is to be made by this Act for victuals, &c. to the Houſhold, that is, to the officers of the Green cloth; and for ſuch things as belong to the Wardrobe, to the Maſter of the Wardrobe.

¶ Et ſi nul face priſes ſans garrant, & les emport encoun. ter le volunt de celuy, &c. Et ſi de ceo ſoit attaint, ſoit fait de luy, come de laron.] By this branch, if any purveyor take any thing without warrant, &c. it is felony. And here it is to be obſerved, that theſe words, Come de laron, ſhall be underſtood of a theeſe that ſtealeth above the value of 12. pence; for he that committeth petit larceny is not un laron within this Act.

Vid. the forme of an inditement in Lambards Juſtice of Peace in fine libri.

¶ Encounter le volunt.] That is, when he takes it as the Kings purveyor, pretending to have a warrant where he hath none, this is in law as againſt his will, for with his will he would not have ſuffered him to take it; if he had knowne he had no warrant; but if the owner knew that he had no warrant, and yet willingly ſold it him, then cannot it be ſaid, that he carried it away againſt his will.

5. E. 3. cap. 2. 25. E. 3. cap. 1.

If the purveyors take any thing without praiſment made by the Conſtables, or other diſcreet men thereto ſworne, or otherwiſe againſt that Statute, it is felony, and divers purveyors in 20. E. 3. were attainted and hanged for offending againſt theſe lawes.

Hol. Cronic' fol. 39. 369. 36. E. 3. cap. 2. 4. 7. R. 2. cap. 4. 32. E. 3. tit. Barre 259. Stamf. Pl. cor. 37. a. Lib. 8. fol. 146. b. le 6. Carpent. caſe.

If any purveyor make any takings or bupings, or take any carriage in any other manner then is conteined in his commiſſion, it is felony; or if the purveyor take more then he deliver, and have not paid for that which is taken, it is felony.

And at the Seſſions at Newgate holden in January, Anno 32. Eliz. Nichols one of the Queenes purveyors was attainted and hanged for offending of this law.

Hill. 23. E. 3. coram Rege apud Ebor' indite. ments de Purveyors. Lib. 2. cap. 6. 7.

¶ Et quant as priſes faits en faires, & en bones villes, & en ports per le grand Gardrobe le Roy, eyent les pernours ſour common garrant per le grand ſeale.] For the Wardrobe ſee Fleta.

And the letter of the law is plaine.

¶ Et ſi nul face tiels priſes ſans garrant, & ſur ceo ſoit attaint, ſoit fait de luy come de ceux que ſont priſes pur le hoſtel le Roy ſans garrant, come de ſuis eſt dit.] That is to ſay, let it be done of him as a theeſe.

¶ Et nentend mye le Roy ne ſon Counſaile, que per ceſt Statute rien decreſſe al Roy de ſon droit des auncient priſes dues, & accuſtomes, come des vines, & auters biens: meſque en touts points pleinment luy ſont ſave.] Vide 25. E. 1. confirm' chartarum, the like ſaving explained, and whereof this ancient prices is to be intended.

Confirm. Chart. cap. 6.

And hereby it may appeare how neceſſary it was, firſt to know what belonged to the King of common right, and at the common law.

But to prevent all ſcruples by colour of this ſaving, the ſaid Act of Parliament de tallag' non conced' Anno 34. E. 1. was made after this Act of 28. E. 1. which is a generall negative law, without any ſaving.

34. E. 1. de tall' non conced' ca. 2

And therefore what ſubſequent Acts of Parliament have given to the King, the ſame ought to be obſerved and kept in ſuch manner and order as thereby is preſcribed.

Cap.

CAP. III.

DEs eſtates des Seneſchals, & des Marſhals, & des plees que eux devoient tener, & coment: Ordeine eſt, que deformes ne teigne plee de franktenement, ne de dette, ne de covenant, ne de contract des gents de people, forſque tantſolement de treſpaſſes del hoſtel, & dauters treſpaſſes fait dedeins la Vierge, & des contracts & covenants, que aſcun del hoſtel le Roy avera fait a auter de meſme le hoſtel, & en meſme le hoſtel, & nemy ailours. Et nul plee de treſpaſſe ne pledront, auter que ne ſoit attache per eux, avant ceo que le Roy iſſera hors de la Vierge, ou la treſpaſſe ſerra fait. Et les pleder haſtivement de jour en jour, iſsint que ils ſoient pledes & termines avant ceo que le Roy iſſera hors des boundes de cel Vierge, ou le treſpaſſe fuit fait. Et ſi par cas dedeins les bounds de cel Vierge ne poient eſtre termines, ceſſent tiels plees devant le Seneſchalle, & ſoient les plees a la common ley. Ne deſormes ne preigne le Seneſchalle conuſances des dets, ne dauter choſe, forſque des gents del hoſtel avantdit, ne nul auter plee en tiend per obligac fait a le diſtreſſe le Seneſchalle, ou le Mareſchalle. Et ſi les Seneſchals, ou le Mareſchals rien facent encounter ceſt ordinance, ſoit lour fait tenus pur nul. Et pur ceo que avant ces heures mults des felonies faits dedeins la Vierge ount eſtre depunies, pur ceo que les Coroners de pays ne ſe ont pas entermis denquirer des tiels maners des felonies dedeins la Vierge, mes le Coroner del hoſtel le Roy, que eſt paſſant, de quoy iſſue nad my eſte fait en due manner, ne les felons mis en exigent, ne utlages, ne rien de ceo preſent en eyre, que ad ée a graund damage du Roy, & a meins bone garde de la peace: Ordeine eſt, que deformes en caſe de mort de home, ou office de Coroner appent as viewes, & enqueſts de ceo faire, ſoit maund al Coroner del pays, que enſemblement ové le Coroner del hoſtel le Roy face loffice que appent, & le metter enrolle. Et ceo que ne purra mie devant le Seneſchal eſtre termine, pur ceo que les felons ne purront eſtre attaches, ou pur auter encheſon, demurge a la common ley, iſsint que les exigents, utlagaries, & preſentments en eyre ſoient de ceo faits per le Coroner du pays, auxy come des auters felonies faits hors de la Vierge. Mes pur ceo ne ſoit

leſſe, que les attachments ne ſoyent faits freſhment ſur les felonies faits.

¶ Des eſtates, des Seneſchals, & des Marſhals, & des plees, que eux devoient tener & coment.] Here in this ſhort and effectuall preamble three things are to be obſerved:

1. Des eſtates, that is the extent of the iuriſdiction or ſtate of the Steward and Marſhall, whereupon they may iuſtly and ſafely ſtand.

2. What pleas they ought to hold, where this word (devoient) is obſerveable; for this Act doth reſtore and confine this Court of the Marſhalſea to his right and iuſt iuriſdiction, and to hold thoſe pleas which the Steward and Marſhall ought, that is, of right ought to hold.

3. How and in what order and manner thoſe pleas ought to be holden expreſſe in this word coment.

Hereby it appeareth, that this Act is in affirmance of the common law, and purpoſely made for reliſving the ſubiect againſt the uſurpations and incroachments of the Steward and Marſhall.

¶ Des Seneſchals & Marſhals, &c.] Theſe words are generall but they are to be underſtood of the Steward of the Court of the Marſhalſea of the houſhold, who is ever a profeſſor of the common Law, and not of the Stewards of the Kings houſhold: and the Marſhall is here to be underſtood the Marſhall of the houſhold, and the Marſhalſea is to be underſtood of the houſhold, and not of the Kings Marſhalſea; for that belongeth to the Kings Bench.

Lib. 10. fol. 68. in caſe of the Marſhalſea.

¶ Ordeine eſt, que ne reigne plee de franktenement.] This is negative, abſolute, and in affirmance of the common law.

¶ Ne de dette, ne de covenant, ne de contract des gents de people, forſq; tant ſolement des treſpaſſes del hoſtel, & dauters treſpaſſes faits deins la Vierge, & des contracts & covenants, que aſcun del hoſtel le Roy avera fait al auter de meſme le hoſtel, & nemy ailours.] Here by this Act it is declared, that the ſaid Steward and Marſhall cannot hold plea but of three actions, viz. of Debt, covenant, and treſpaſſes: In debt and covenant both the parties muſt be of the Kings houſhold; in treſpaſſes it ſufficeth that one of the parties be of the Kings houſhold.

38. E. 3. 17. Regiſt. 185. & 114. 6. R. 2. action ſur leſtatute pl. ult. 3. H. 6. eſtopp. 18. actiõ ſur leſtat. 13 9. H. 6. 30. 10. H. 6. 13. 14. H. 6. 6. Lib. 5. E. 4. 129. 19. E. 4. 8. b. 20. E. 4. 16. 22 E. 4. 11, 16, 31. F. N. B. 241, 242. Hil. 5. Jac. coram Rege rot. 876.

And though this Act ſpeaketh generally of treſpaſſes, yet is it onely intendable of treſpaſſes vi & armis, as of battery, or taking away of goods, and not of treſpaſſes quare clauſum fregit, nor of treſpaſſes and ejectment, nor of treſpaſſes ſur le caſe, nor of detinue, nor of any other perſonall action, nor of any reall or mixt action, notwithſtanding the generall words of the Statute of 33. H. 8. as you may reade at large in the caſe of the * Marſhalſea; for particular iuriſdictions derogating from the iuriſdiction of the generall Courts of the common Law are ever taken ſtrictly.

33. H. 8. cap. 12. * Lib. 10. fol. 60. en caſe de Marſhalſea. 32. H. 8. cap. 20. F. N. B. 241.

¶ Et nul plee de treſpaſſes pledront, auter que ne ſoit attache.] This is explained in the caſe of the Marſhalſea, ubi ſupra.

¶ Avant que le Roy iſſera.] Albeit the King himſelfe do goe out of the bounds of the Vierge for his recreation, as to hunt, with no purpoſe to reſt, tarry, abide, or make his repaſe there, and his Councell and Houſhold continue where they were, this is no removing within this Statute: But when the King goeth in progreſſe, there his Houſhold goeth with him, there the King removeth within this Act.

The caſe of the Marſhalſea, ubi ſupra.

¶ Hors des bounds de ceſt Vierge.] The bounds of the Vierge.

Fleta

Plea and the Writ, that the bounds of the Verge was 12. miles round about the Kings houſe, ſo as it ſeemeth, that 13.R.2. was but in affirmance of the common Law. Vide 33.H.8. the bounds of the Kings houſe, or palace. 13.R.2.cap.3. 33.H.8.cap.12.

¶ Ne nul autre plee teigne per obligation.] This is alſo notably explained in the ſaid caſe of the Marſhalſea, ubi ſupra.

¶ Et pur ceo que avant ceux heures toutes des felonies faits deins la Verge, ount eſtre diſpunies.] Here are to be obſerved, that as the actions aboveſaid determinable before the Steward and Marſhall, are confined to the Verge; ſo felonies alſo determinable before the Steward and Marſhall, are alſo confined to the Verge: and as they are limited of all the cauſes of actions riſing within the Verge onely to three, and they not generally extending to all, but ſpecially confined to certaine particular perſons; ſo of felonies done within the Verge, the juriſdiction of the Steward and Marſhall extend not to all, but to certaine, and thoſe againe limited to certaine perſons: For of ancient time they had generall authority, as Juſtices in Eyre, and as Vicegerents of the chiefe Juſtice of England within the Verge, at what time they held plea of all felonies within the Verge, which power is now baniſhed; but as Steward and Marſhall of the Court of Marſhalſea of the Kings houſhold, the title of their Court in criminall cauſes was, placita coronæ Aulæ hoſpitii Domini Regis coram Seneſchallo & Mariſchallo, and alwayes confined to felonies done within the circuit of the Kings houſhold, the bounds whereof are made certaine by the ſaid Act of 33.H.8. And by that Act it is provided, that all treaſons, miſpriſions of treaſons, murthers, manſlaughters, bloudſheds, and other malicious ſtrikings, by reaſon whereof bloud is or ſhall be ſhed, which ſhall be done in any of the Kings palaces or houſes, &c. ſhall be enquired, tried, heard, and determined before the Lord Steward for the time being of the Kings houſhold, or in his abſence before the Treaſurer, and Controller, and Steward of the Marſhalſea, or any two of them, whereof the Steward to be one: ſo as theſe great Officers and Counſellors of State, the Lord Steward, Treaſurer, and Controller have no juriſdiction in theſe criminall cauſes, but onely within the circuit of the Kings palace or houſe: And it is to be obſerved, that this Court of the Marſhalſea of the Kings houſe was, as Bookes ſpeak, of ancient time inſtituted for thoſe of the Kings houſe, but they have incroached beyond their true juriſdiction: And Stanford ſaith, that the Steward and Marſhall before the ſaid Act of 33.H.8. might have heard and determined all felonies, &c. perpetrate within the Kings palace or houſe. 2.H.4.cap.23. 9.R.2.cap.5. 18.E.3.cap.7. Vid. le caſe de Marſhalſea, ubi ſupra. Stanf. pl.cor. fol.57. L.5.E.4.13. of this incroachment complaint hath been made in Parliament. 8.H.4.nu.42. Stanf. ubi ſupra.

A robbery was committed in a Towne within the Verge, and this appearing to the Court, yet the ſame was enquired of, heard, and determined in the Kings Bench, and ſo it may be before Juſtices of Oire and Terminer, and Juſtices of Peace, becauſe their juriſdiction is generall through the whole County; but of an offence within the Kings palace it ſhall be heard and determined according to the ſaid Act of 33.H.8. upon which Act this is obſervable, that if a man ſtrike in the Kings palace, where his royall perſon is reſiant, unleſſe bloud be ſhed he loſeth not his hand; but in Weſtminſter Hall, when the Kings Courts ſit, or before the Juſtices of Aſſiſe ſitting in their place, if any man ſtrike another, though he draw no bloud, yet ſhall he loſe his right hand, ſo great honour and reverence doe Laimes give to the Kings Courts: for in iudgement of law the King himſelfe is alwayes preſent to miniſter juſtice by his Judges in thoſe Courts of juſtice, according to his Kingly office to all his ſubiects, ſecundum legem & conſuetudinem Angliæ. Paſch' 12.E.2. rot.280. coram Rege, the caſe of William Sweton, lib.4.fol.47. Kath. Wroths caſe. 41.E.3.coron. 280.22.E.3.13. 19.E.3.judgem. Dyer.3.El.188.

¶ Les Coroners de pays ne ſoient pas intermis denquirer des felonies deins la Verge.] This is underſtood of felonies of the death of man; for the enquiry of that felony belongs to the office of the Coroner of the Verge.

Vierge, and ſo it is hereafter in this Act explained, Office del Coroner appent a views & enqueſts de ceo faire.

Brit. fol. 1. Lib. 4. fol. 46; 47. ubi ſupra.

Hereby it appeareth, that by the common Law the Coroner of the County could not intermeddle within the Vierge, but the Coroner of the Vierge, and that if he took an inditement of the death of man, it was not allowable in law; and ſo it is if the Coroner of the Kings houſe take an inditement of the death of man out of the Vierge, it is void, and coram non ſudice. And if an inditement of the death of a man being ſlaine out of the Vierge, be taken before the Coroner of the Kings houſe, and the Coroner of the County, and ſo entred of Record, it is inſufficient, becauſe the Coroner of the Kings houſe joyned with him, who had no authority.

¶ Ne les felonies miſe in exigent, &c.] And yet the felony was not diſpunishable; for at this time it might after the remove of the King be inquired of in the Kings Bench, if the Bench ſate in that County, or before Juſtices of Oire and Terminer, &c. or if the Coroner of the Vierge had taken an inditement, though the King went out of the Vierge, yet the inditement ought to be removed into the Kings Bench; for that is the center whereunto all Records of that nature doe fall, and there the offence might be heard and determined.

Lib. 9. fol. 118, 119. Seignior Zanchers caſe.

But this Act was made for more ſpeedy proceeding, for being removed into the Kings Bench, there ought to be 15. dayes, &c.

And if a murder had been committed within the Vierge, and the King had removed before any inditement taken by the Coroner of the Vierge, the Coroner of the County might have inquired of the ſame at the common Law, Ne maleficia remanerent impunita.

Magna Charta cap. 17.

See the Statute of Magna Charta, Nullus Vicecomes, Conſtabular', Coronator, vel alii Balivi noſtri teneant placita coronæ noſtræ. See the expoſition of that Statute concerning this branch for awarding of exigents, &c.

Albeit the treaty of theſe matters concerning the Marſhalſea doe properly belong to the juriſdiction of Courts, yet it is pertinent to this place to ſay ſo much as ſerved for the expoſition of this Chapter.

See the ſaid caſe of the Marſhalſea thoroughout, which indeed doth open the windowes of the greateſt part of this Act.

CAP. IIII.

OUſter ceo nul common plee ne ſoit deſormes tenus a Leſchequer, encounter la forme de la graund Charter.

Here is intended the 11. Chapter of Magna Charta, whereof this Chapter (according to the title of Articuli ſuper chartas) is an expoſition; for where that Chapter is, Communia placita non ſequantur Curiam noſtram, ſed teneantur in loco certo, this Chapter expoundeth the ſame, that from henceforth no common plea ſhall be holden in the Exchequer againſt the forme of the great Charter: for Curia noſtra in magna Charta are taken collective, and include as well the Exchequer as the Kings Bench.

2. This Act maketh it without queſtion; for admit that the Court of the Kings Bench had been named in that Chapter of magna Charta, and this Act prohibiteth that no common plea ſhould be holden in the Exchequer againſt the forme of magna Charta, that is, againſt the forme that magna Charta prohibiteth for the Kings Bench: And this is alſo confirmed by a Statute made in the reigne of E. 1. and tranſcribed to the Exchequer under the great ſeale, in Anno 10. E. 1.

10.E.1. called the Statute of Roteland, in these words: Sed quia quædam placita, &c.

Now that this was a Statute, the title or Stile of the Act is, Statutum novum de Scaccario, aliter dictum, Statutum de Roteland. In libro rubeo it is called Statutum de Roteland, and there is a writ in the Register under the title of brevia de Statut', Rex Thesaurario, & Baronibus salutem: Cum secundum legem & consuetudinem regni nostri communia placita coram vobis ad Scaccarium prædictum placitari non debent, nisi placita illa nos vel aliquem ministrorum nostrorum ejusdem Scaccarii specialiter tangunt, &c. which writ reciteth the words of the Statute of Rutland, and in the margent of the writ is quoted Statutum de Roteland, so as without question this Act was made by authority of Parliament, so as without question whatsoever pleas were holden in the Exchequer, in the reigne of H.2. when Glanvile wrote, yet now by two Acts of Parliament their jurisdiction is limited and settled: and therefore reiect a late opinion contrary to such authority, and never read nor heard of before.

Regist.fol.187. 8.Eliz. Dyer fol.250.

Pl.com.208,209

Per Saunders.

The Exchequer is an ancient Court of record for the Kings affaires, touching his rights and revenues of his Crowne, and for debts and duties, and other things due to the King in the right of his Crowne. Britton treating of the iurisdiction of the Exchequer, saith, A Oier & Determiner tours les causes que touchent nous dettes, & auxi a nous fees, & les incidents choses, &c.

Mirr.cap.4.de jurisdict. Flet.lib.2. cap.25,26. 38.ass p.20. 40.ass.p.35. 14.E.3.scire fac' 122. 2.E 3.24, 25. Pl.com.208. 320.Brit.fol.2. 29,38.

a Yet in three cases the Court of Exchequer hath iurisdiction of common pleas between common persons in personall actions onely.

1. Where an officer or minister is one of the parties in any personall action, because that his absence in other Courts may hinder the affaires of the King in his Court of Exchequer.

a Regist.187.b. Stat.de Roteland, ubi supra. 2.E. 3.25.lib.rubeus 36.

2. Any man that is a prisoner of this Court, or an accountant that is entred into his account, or any other that ought to have the like privilege of this Court of Exchequer, shall not bee sued in any personall action, but in this Court; and the reason is, because neither of these Acts of Parliament take away the privilege of any Court: for then, if the party privileged were sued in any other Court, he should not in respect of his privilege of the Exchequer answer there; and therefore lest the party should be without remedy, he may commence his action personall against him in the Exchequer, for Statutes must be so expounded, as there be no latter of Justice.

9.E.4.33. See the exposition of Magna Charta, cap.11.

3. He that is a Farmer, or indebted to the King, for the Kings more speedy satisfaction of his debt or duty, shall sue his debtor by a quo minus in the Exchequer, and this appeareth by Britton, who treating of the iurisdiction of the Exchequer saith, Et que il eyt power a conuster de dett, que lun doit a nous detters per ou nous puissons pluis toft approcher a nostre.

2.E.3.25. 20.E. 3.ley 52. 44.E. 3.44.2.H.4.7.11. 8.H.5.6. 8.H.6. 34. 32.H.8.24. 7.E.4.30. 11.H. 7.29. 27.H.8.23 Brit.fol.2. Flet. ubi supra. Dyer 2 El.174. 3.El. 201. 16.El.328. Pl.com. 208.a.b.

Now concerning the old Court and the new Court of Exchequer, mentioned in 2.E.3. and other matter concerning this Court of Exchequer, for that the same doe properly belong to the treaty concerning the iurisdiction of Courts, we shall no further speake of it here, for that sufficient hath been said already for the understanding of this Chapter.

CAP. V.

ET dauter part le Roy voit que le Chauncellor & les Justices de son bank luy suivent, isint que il eyt touts jours pres de luy ascun Sages de la ley, que sachent les besoignes, que veignent a la Court duement deliverer a touts les foits que mestier serra.

The true causes wherefore the Chancellour followed the Kings Court were, first,

First, that the great Seale is clavis Regni, and in the custody of the Chancellour, and meet it was, that the King should have the key of his Kingdome about him.

2. That Curia Cancellariæ, was Officina Justiciæ; for in those dayes not only originall writs in Regist' Cancellariæ, but all commandements upon any occasion for the safety of the Realme, or the good government thereof, were by writs, and passed under the great Seale: and therefore necessary in those dayes, that the Chancellour, having the custody of the great Seale, should be about the King at all times; and this is the cause that the Court of Chancery cannot be adiourned.

3. The stile of the Court of Chancery is coram Domino Rege in Cancellaria. But where some hath supposed, that at the making of this Statute the Chancellour held a Court of equity, and that the Judges in this Act named attended on the King to decide matter of law, and the Chancellour attended on him to decide matter of equity, it is mainly opposed, that at this time the Chancellour had no Court of equity, but onely a Court of record of ordinary iurisdiction, according to the course of the common law. Master Lambert that was a Master of the Chancery, and had the keeping of the Records of the Tower, and had abridged many of the principall of them (which I have seen and was well learned, and besides a great searcher of antiquities, in his treatise of the iurisdiction of Courts saith, that he could not find that the Chancellour held any Court of equity, nor that any causes were drawne before the Chancellour for help in equitie before the time of Hen. 4. in whose dayes, by reason of the intestine troubles, feoffments to uses did first begin, as some think, or else did first grow common and familiar, as all men must agree: So he. And he that advisedly read our ancient Authors, which speak of the Court of Chancery, they all speak of the ordinary iurisdiction of the Chancellour, but none of them of any Court of equity.

Glanvile, Bract. Brit fol. 12. Flet. lib. 2. cap. 12, 13. Mirr. cap. 2. § 13. & cap. 4 de ordinance, de judgement & jurisdiction.

Also the Booke called the Diversitie of Courts, written in the reigne of Ed. 3. treateth of the iurisdiction of the Chancellour according to his ordinary power, but nothing of that which he holdeth in causes of equitie. Neither shall you find in any Booke case, or Reports of the law, any mention made of any Court of equity before or in the reigne of H. 5. and yet all of them speake of the ordinary power or iurisdiction of the Chancellour. But in the reigne of H. 6. and E. 4. cases have been reported where the Chancellour hath heard some few causes in equity by English bill, and most of them concerning uses of lands. It is true, that the Chancellour said in 2. E. 3. in the Court of Chancery at Westminster, in Theobald de Verons case, in a case that concerned Livery, which belonges to his ordinary power, that the Court of Chancery is a Court of equity, where we grant a writ to every man that comes to demand his heritage, according to that which is found by office, &c. So he. And in that extent of equity, all the Courts at Westminster are Courts of equity, viz. to administer iustice according to the common law; and thereupon it is said in 10. E. 3. that the Chancery and the Kings Bench is one place or court: But here it is to be noted, that at this time, and before, the Court of Chancery was a settled Court in a certaine place, to the great benefit and ease of the subiect.

2. E. 3. 20. 10. E. 3. 59, 60. 13. E. 3 prohibit. 1. 24. E. 3. 65. 26. E. 3. 61 42. ass. 5. 43. ass. 35. * 31. H. 6. sub pœna, 19. & 23. 35. H. 6. ibid. 22. 37. H. 6. 35. 5. E. 4. 7. 7. E. 4. 24, 29. 16. E. 4. 4. 22. E. 4. 6. 7. H. 7. 2. 14. H. 8. 7, 9. 24. b.

Sir Robert Parning, that was Lord Chancellour in 14. E. 3. and had been chiefe Justice of the common Pleas, would in the Terme time come and sit in the court of common Pleas to heare matters in law debated and resolved, when he was Lord Chancellour, and speak to them himselfe, as it appeareth, Hillar. 17. E. 3. fol. 14. b. & Trin. 17. E. 3. 37. b. and in both these Termes Sir John de Stonore knight was chiefe Justice of the court of common Pleas.

Vide Rot. Parliament, 45. E. 3. nu. 8.

And Sir Robert de Thorpe knight, being chiefe Justice of the common Pleas, was made Chancellour 26. Martii, 45. E. 3. and yet in Michaelmas Terme following he sate in the court of common Pleas, and spake to matters in law, Mich. 45. E. 3. fol. 12. b. Trin. 45. E. 3. 19, 22, 23. b. 24, 25, 26, 27, 28. William de Finchden then being chiefe Justice of the court of common Pleas.

So Sir Kniver knight, being chiefe Justice of the Kings Bench, was made Chancellour of England, 5. Julii, 46. E. 3. and in 47. E. 3. fol. 13. b. Finch-

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den chiefe Iuſtice of the common Pleas in a matter of law depending in that court ſaid, that he would conferre with the Chancellour and the Iuſtices of the Kings Bench, and in the end iudgement was giuen by the aduice of the Chancellour (viz. Knivet) and all the Iudges of the Realme. In 49.E.3.4.b. Knivet Chancellour argueth a matter in law, and giueth iudgement.

Alſo peruſe all the Acts of Parliament printed and not printed, and you ſhall find none that giueth him power to hold any court of equity, where ſome haue thought, that the Statute of 36.E.3.cap.9. doth giue the Chancellour power to draw men before him for reliefe in equity, but that Statute without queſtion referreth to his ordinary power; for thereby it is prouided, that if any man, that finds himſelfe grieued contrary to the Articles aboue written, or others contained in diuers Statutes, will come into the Chancery, or any for him, and thereof make his complaint, he ſhall preſently there haue remedy by force of the ſaid Articles and Statutes, without purſuing elſewhere to haue remedy; that is, the party grieued ſhall haue an originall writ in the Chancery grounded upon theſe Statutes for his reliefe, although no certaine remedy be expreſſed in the Statutes without purſuit in Parliament, which Act is but a declaration of the common Law, as oftentimes hath been obſerued before, and giueth no ſhadow to the Chancellour of any abſolute power.

If you look into the Parliament Rolls: The firſt decree in Chancery that I find made by the Chancellour was in 17.R.2. John de Wyndeſor complaineth in Parliament againſt Sir Rifle Scrope, and requireth to be reſtored to the Mannors of Rampton, Cotenham, & Weſtwike in Cambridgeſhire, the which were adiudged & ordered to him by the Kings award, then being in the poſſeſſion of Sir John Liſley, and now withholden by Sir Richard le Scrope, who by champerty bought the ſame: Briefly, the caſe, as in the Parliament Roll it appeareth, was this: Vpon the petition of John de Wyndeſor againſt Sir John Liſley for the ſaid Mannors, they compromitted the matter to the Kings order and award; the King committed the ſame to the Councell, they hearing the ſame, doe order and adiudge the matter in controuerſie for Sir John de Wyndeſor vnder the priuie ſeale, and ſent a warrant to Arundell Archbiſhop of Canterbury, then Chancellour of England, to confirme the Kings award made by aduice of his Councell, who forthwith without more adoe confirmed it by his decree, and granted an iniunction vnder the great ſeale againſt Sir John Liſley. After Sir John Liſley by petition to the King requireth that his title to the ſaid Mannors might be tried and determined as it ought by the common Law, notwithſtanding any former matter; the King by priuie ſeale giueth warrant to the Chancellour to make a Superſedeas, which the Chancellour without any ſticking at it did by priuie ſeale: after which Sir Richard le Scrope purchaſed the ſaid Mannors: Vpon the deliberate hearing of the whole matter by the Lords of Parliament, it was reſolued, that the purchaſe of the ſaid Mannors was no champerty, and it was adiudged, that Sir John de Wyndeſor ſhould take nothing by his ſute, but ſtand to the common Law, and that Sir Richard le Scrope ſhould goe without day. Rot. Parliament. 17.R.2.nu.10.

It is thought, that this court of equity began vnder Henry Beauford, ſonne of John of Gaunt, that great Biſhop of Wincheſter, afterwards Cardinall, in the reigne of Hen.5. and in the beginning of H.6. and increaſed while John Kemp, Biſhop of Yorke and Cardinall was Lord Chancellour in the 28. yeare of H.6. But it increaſed moſt of all, when Cardinall Wolſey was Lord Chancellour of England, anno 8.H.8. & continued vntill the 21. year of the ſame King: Of whom the old ſaying was verified, That great men in iudiciall places will neuer want authority. But the iuriſdiction of this court belongeth to another treatiſe; and therefore thus much, which was pertinent to the vnderſtanding of this branch of this Act, vpon this laſt occaſion ſhall ſuffice: Only thus much for the honour and antiquity of that court, you reade, that in the time of king Alfred (who began to reigne Anno Domini, 872. and reigned 29. yeares and ſix moneths) he gaue a Mirr.cap.5.S.1.

purſuit to Wolſton, and that it was inrolled in the court of Chancery, which Record Wolſton vouched.

¶ Et les Juſtices de ſon bank.] The cauſes of their attendance on the King are afterwards in this Chapter ſet downe; therefore we purpoſely omit to ſpeak of this high and honourable Court, but referre the ſame to the treatiſe of the Juriſdiction of courts, onely this may be obſerved, that albeit this court and the Chancery became to have certaine and ſetled places about one time, yet the returne of writs coram Rege are ſtill coram nobis ubicunque fuerimus in Anglia.

Flet.lib.2.cap.2.

¶ Iſsint que il eyt touts jours pres de luy aſcun Sages de la ley, que ſachent les beſoignes, &c.] This clauſe referreth to the Judges of the Kings Bench, who are termed Sages de la ley, and which could decide the buſineſſe which came to the court, and duly deliver juſtice to all when need ſhould be. This proveth alſo, that at this time the Chancellour held no court of equity; for the Sages of the law (the Judges of the Kings Bench) were duly to deliver juſtice to all: and hereunto may be applyed the ſaid booke in 10.E.3. that the court of Chancery and of the Kings Bench was but one place (that is) to be guided by one and the ſame law.

See more before in this Chapter concerning the Chancery.

10.E.3.59,60.

At the making of this Act John Langton Biſhop of Chicheſter was Lord Chancellour of England: and at this time Sir Roger Brabazon knight, a man excellently learned in the lawes of the Realme, was chiefe Juſtice of the Kings Bench, and three other learned Judges, here called Sages de la ley, were his companions: theſe in Fleta and ancient Records are called, Locum tenentes Regis.

Flet.ubi ſupra. 17.E.1.coram rege.

CAP. VI.

DEſouth le petit Seale, ne iſſera deſc .es nul briefe que touche le common ley.

The point that ſaith [De touts les privie ſeales] is not according to the Record.

For the better underſtanding of this Act, it is to be underſtoo[illegible] at the making of this Statute, the King had three ſeales: firſt, magnum ſigillum, the great ſeale; 2. parvum ſigillum, the little or petit ſeale; 3. ſignetum, the ſignet.

The great ſeale is in the cuſtody of the Lord Chancellour or Lord Keeper of the great ſeale; and there is a ſpeciall officer in the court of Chancery, called Sigillator, who hath the ſealing of writs, and other things that paſſe the great ſeale.

2.E.3.cap.8. rot. Parliam. 50.E.3. nu.10. 11.R.2. cap.11. 12.R.2. cap.2 cap.11. Flet.lib.2. ca.12.

Parvum ſigillum, the little or petit ſeale, after this time called the privie ſeale: This ſeale is in the cuſtody of the Clerke of the privie ſeale, ſometime called keeper of the privie ſeale, after called Lord privis ſeale, of whom Fleta ſaith thus. Cuſtodi ſigilli privati aſſocientur Clerici honeſti, & circumſpecti Domino Regi jurati, qui in legibus & conſuetudinibus Anglicanis noticiam habeant pleniorem, quorum officium ſit ſupplicationes & querelas conquerentium audire & examinare, & eis ſuper qualitatibus injuriarum oſtenſarum debitum remedium exhibere per brevia Regis. By this ancient Charter three things are to be obſerved:

1. That the Clerkes, aſſociates to the keeper of the privie ſeale, are thoſe that we now call the Maſters of Requeſts, Magiſtri à libellis ſupplicum, whoſe office is here lively portraped out, viz. quorum officium ſit ſupplicationes & querelas conquerentium audire & examinare.

2. If

2. Of what quality ought theſe Maſters of the Requeſts to be? They muſt have three qualities: 1. they muſt be honeſti & circumſpecti: 2. Domino Regi jurati: 3. qui in legibus & conſuetudinibus Anglicanis notitiam habeant pleniorem.

3. To what end did they heare and examine the matters contained in theſe petitions? Ut eis (id eſt) conquerentibus ſuper qualitatibus injuriarum oſtenſarum debitum remedium exhibere per breve Regis. So as their office was, that being learned in the Law, they ſhould direct ſuch as petitioned to the King, to take their remedy by the Kings writ, that is, by original writ in the Chancery. And hereby it appeareth, that this Act is but in affirmance of the common law; for no writ before this Act could have been ſealed by the priviе ſeale.

Sigillum regis generally ſpoken is the great ſeale; and ſo is Bracton to be underſtood, where he ſaith, Si aliquis accuſatus fuerit vel convictus, quod ſigillum Domini Regis falſaverit, conſignando inde chartas, vel brevia, &c. pro voluntate Regis judicium ſuſtinebit. Bract. lib. 3. fol. 119. Brit. fo. 10. b. acc.

And the Mirror yet more plainly, Inter les exceptions al power del Judge; ſi le commiſſion (i. le briefe) ne ſoit ſeale del ſeale le Roy de ſa Chancery, car al privie ſeale le Roy, &c. ne auter forſque ſolement al ſeale, que eſt aſſigne dée conue de la cominaltie del people, & noſmement en juriſdictions & breves originals, neſtoit a nul obeyer, &c. And in another place he ſaith, Et iſſint ordeineront nous Auncients un ſeale, & un Chancellour pur le garder, & pur doner brieſes remediels a touts ſauns danger, &c. per cel ſeale ſolement eſt juriſdiction aſſignable a touts pleintifes ſans difficultie, &c. Mirr. cap. 3. cap. except al poier de le Judge. Cap. 4. Ordinance de judgement.

There are foure Clerkes of the priviе ſeale, who give their attendance on the Lord priviе ſeale: The principall office and charge of the Lord priviе ſeale and of his Clerkes is about ſuch things as paſſe by bill ſigned, and are to goe to the great ſeale: Of this you may reade in the Statute of 27. H. 8. cap. 11. & lib. 8. fol. 18. in caſu Principis.

¶ Deſouth le petit ſeale.] This Act ſaith not, that all writs which concerne the common Law ſhall paſſe under the great ſeale; but no writ ſhall paſſe under the priviе ſeale which touch the common Law: For it is to be knowne, that the courts of the Kings Bench and the common Pleas had at the making of this Statute ſeverall ſeales, whereby they ſealed judiciall writs: As the ſeale belonging to the court of Kings Bench is in the cuſtody of the chiefe Juſtice; and ſo likewiſe the ſeale belonging to the court of common Pleas is in the cuſtody of the chiefe Juſtice of that court; and the ſeale belonging to the court of Exchequer is in the cuſtody of the Chancellour of that court. Ad Cancellarium Scaccarii pertinet cuſtodia ſigilli Regis. Officium Cancellarii eſt ſigillum Regis cuſtodire, ſimul cum controrotulis ſuis pro proficuo regni. And theſe ſeales are incidents inſeparable to the ſaid courts for the ſealing of all judiciall writs, &c. which, for adminiſtration of juſtice diſtributive to all men, are reſpectively under the ſaid ſeales, and without which the courts cannot adminiſter juſtice: And therefore the profits coming of theſe ſeales have been letten and demiſed of ancient and later times, but the ſeales themſelves were never demiſed, or letten, nor could be, nor any other keeper appointed to be keeper of them, then hath been time out of mind. Lib. 2. fol. 17. Lanes caſe. Ockam. cap. de officio Cancellarii. Flet. lib. 2. ca. 25. Rot. pat. an. 24. E. 3. part 2. m. 12. ibid. 30. E. 3. part 3. m 12.

No Eſſoine de ſervitio Regis can be warranted by the King under his priviе ſeale, nor protection granted under the priviе ſeale, but both of them under the great ſeale, becauſe they tend to the great delay of juſtice, if they be not duly obtained: and therefore the Law doth require the great ſeale in theſe caſes. But a warrant of the King under the priviе ſeale to iſſue out mony out of his coffers is ſufficient; becauſe it concerneth but a chattell in poſſeſſion. And in matters of ſmall moment, and which can worke no delay to the ſubiect, the priviе ſeale is ſufficient; as to grant a Superſedeas of a proceſſe in the Kings owne caſe, or to grant a Niſi prius where the King is party, or to allow a plea againſt the King, to cancell a recognizance made to the King, to diſcharge a debt, or the like. 34. H. 6 1. 35. H. 6. 2. Lib. 11. fo. 92. in le Countee de Devons caſe. 4. E. 4. 16. 32, 40. 46. E. 3. petit 19. 48. E. 3. 30 F. N. B 85. Pl. com. fol 20. Dyer 5. Mar. 161. b. 7. El. 232. b.

At the making of this Statute the King had another ſeale, and that is called

Signetrum, his Signet. This seale is ever in the custody of the principall Secretary. And there be foure Clerkes of the Signet, called Clerici Signeti attending on him. The reason wherefore it is in the Secretaries custodie, is, for that the Kings priuate letters are signed therewith. Also the duty of the Clerk of the Signet is to write out such grants or letters patents as passe by bill signed (that is, a bill superscribed with the signature, or figne manuall, or royall hand of the King) to the priuie seale, which bill being transcribed and sealed with the signet is a warrant to the priuie seale, and the priuie seale is a warrant to the great seale. Such was the foldome of prudent antiquity, that whatsoeuer should passe the great seale should come through so many hands, to the end that nothing should passe that great seale, that is so highly esteemed and accounted of in law, that were against law, or inconuenient; or that any thing should passe from the King any wayes, which he intended not, by vndue or surreptitious meanes.

F.N.B. fol. 85. a. And of the Signet the law in some cases taketh notice; for a Ne exeat regnum may be by the Kings writ vnder the great seale, or by commandement vnder the priuie seale, or vnder the signet; for in this case the subiect ought to take notice as well of the priuie seale and signet, as of the great seale: for this is but a signification of the Kings commandement, and nothing passeth from him. But a warrant vnder the priuie signet to issue any treasure is not sufficient, but there is ought to be either vnder the great or priuie seale. The mischiefe before this Act was not concerning writs vnder the Signet: for that was not attempted, but vnder the petit or priuie seale, which this Act outlawes as a thing done against Magna charta, cap. 29. where it is said, Nec super eum ibimus, nec super eum mittemus, nisi per legale judicium parium suorum, vel per legem terræ. And to grant writs vnder the priuie or petit seale were contra legem terræ.

Hill. 1. E. 4. rot. 14. indors. in Scaccario, Petilians case.

Lib. 11. fo. 92. in le Countee de Devons case.

Vid. 42. E. 3. ca. 3.

CAP. VII.

LE Constable du Chastle de Dover ne plede desormes a la port de Chastle nul plee forreine du Countie, que ne touche la gard du Chastle. Et le dit Constable ne disturbe les gents du Cinque Ports, a pleader ailours ne en autre manner que ils devoient, solonque la forme des charters quils ount des Royes, de lour franchises auncients affirmés per le grand Charter.

F.N.B. 240. b. ¶ Constable du Chastle de Dover.] It is to be knowne, that he that is the Constable, or Lieftenant, or keeper of the Castle of Dover, is alſo the Warden of the Cinque Ports. And the Kings writs directed vnto him, as directed, Rex, &c. B. Constabulario Castri sui de Dover, & custodi Quinque Portuum suorum. But he is commonly called Lord Warden of the Cinque Ports. The Cinque Ports be, Hastings, Dover, Hithe, Rumney, and Sandwich, whereunto Winchelsey and Rye (as most of note) and other Townes be adioyned.

Regist. fol. 132. F.N.B. 240.

The Constable of Dover and Lord Wardenhath two iurisdictions, viz. the authority of an Admirall; and the speciall charge is committed to one that is not onely of great prowesse and valour, and experience in military knowledge, and specially in sea-seruice; but also of approued trust and loyalty, because in regard of their situation, they require the vigilant eare of their particular Admirall, and his residence thereupon, in respect of the danger of the inuasion of enemies, by reason

reason of the narrownesse of the sea there, and that this Realme was never conquered by any enemy, but landing at one of these five Ports; as by the Romans at by the Saxon at and by the Norman at Hastings. But with this iurisdiction our Statute dealeth not withall.

2. This Constable of the Castle of Dover mentioned in our Act hath a iurisdiction to hold plea by bill concerning the guard of the Castle, &c. according to the course of the common Law, and of this iurisdiction only our Statute speaks. Bract. lib. 5. fol. 411. b. Flet. lib. 6. cap. 36. 49. E. 3. 24. 12. E. 4. 17, 18.

And it is to be knowne, that of fiue things, wherein the Constable of Dover and Lord Warden hath iurisdiction, he is the immediate officer to the court, and, as it hath been said, writs shall be directed to him, as in all reall actions &c. for lands within the cinque Ports. And that it is, that they of the cinque Ports haue great liberties and priviledges, in respect of their necessary attendance in the Ports for the defence and safety of the Realme: but yet the cinque Ports are not exempted out of the County, for diuers causes: 1. H. 6. 5. 1. E. 4. 10. 21. E. 3. 49. F. N. B. 132. 33. E. 3. Iurisd. 60. 11. R. 2. brev. 636

1. The Constable of Dover hath no generall iurisdiction within the cinque Ports, but it is limited; For example; If a man be murdered in any of the cinque Ports, the wife shall haue an appeale against the murderer directed to the Sheriffe of the County, and he shall execute the writ within the cinque Ports, for the Constable hath no iurisdiction to hold plea thereof, as it was resolued, Trin. 42. Eliz. in an appeale brought by Dorothy Waes against Baynes, for the murder of her husband at Feuersham in the County of Kent. And so it is, if he be in custodia Marescalli, the appeale may be brought by bill against him for murder in any of the cinque Ports. Also if the Constable of Dover hold plea of a forraine plea, contrary to the purport of this Statute an action vpon the Statute doth lye against him, and the writ may be directed to the Sheriffe of the County, and he may serue it within the cinque Ports. Trin. 42. Eliz. coram Rege in appeale. 19. H. 6. 1, 2.

2. If a Stranger doth trespasse, &c. in the cinque Ports, &c. the suit shall be by writ, lest the trespasse should be dispunishable. Vide a notable Record, Pasch' 30. E. 1. coram Rege, Banc'.

3. If a Præcipe be brought against one for land within the cinque Ports, and he appeare and plead to it, and iudgement be giuen against him in the court of common Pleas, this iudgement shall bind him for euer; for the land is not exempted out of the County, and the tenant may haue the benefit of his priuiledge. 50. E. 3. 5.

4. The priuiledge extendeth not but to certaine particular Townes, whereof the Kings courts cannot iudicially take notice.

But otherwise it is of a iudgement giuen in the common Pleas in a Præcipe of lands that lye in any of the County Palatines of Chester, Lancaster, and Durham; for they are exempted from the iurisdiction of the Kings courts, and within them are iura regalia, and plenary iurisdiction, and so inuidious to the Kings courts: for they take notice of all the Counties of England, because they be immediate to them for direction of writs: And therefore although the tenant doth admit the iurisdiction of the court in those cases, the iudgement against him for many of such lands is void. And thus are the doubts in some books in this and other like cases fully resolued. 9. H. 7. 12. 35. H. 6. 33. 39. H. 6. 21 12. E. 4. 16.

It is further to be vnderstood, that the Maior and Iurats of the seuerall cinque Ports haue power to hold plea, &c. and vpon their iudgement no writ of errour out of the Chancery doth lye returnable in the Kings Bench, nor writ of false iudgement returnable into the court of common Pleas: but by the franchise and custome of the cinque Ports such an erroneous iudgement shall be by bill, in the nature of a writ of errour, examined coram domino custode seu gardiano quinque Portuum, apud Curiam suam de Shipwey. And if the iudgement be erroneous, it shall be reuersed by the Warden of the cinque Ports, and the Maior and Iurats shall be fined, and the Maior remoued from his place, and yet the court is a court of Record. 45. E. 3. iurisd. 53. 40. E. 3. 24. 49. E. 3. 24. 50. E. 3. 5. 14. H. 4. 20. Bract. lib. 5 fol. 411. Flet. lib. 6. cap. 36. Dyer 23. El. 376. 30. H. 6. 6. 49. E. 3. 24. 33. E. 3. iurisd. 60 diuersity des Courts, cap. 5. Ports. Brook, Cinque Ports 25. 30. H. 6. 6. Pl. com. 37. b.

And this kind of iurisdiction could not begin by Letters Patents, but by Parliament. And I find in the Booke of Domesday of the liberties and franchises granted

granted to the cinque Ports, as granted in the reigne of King Edward the Confessour.

See the Termes of the Law, verb. Cinque Ports.

And this manner of reversing of a iudgement, and the iudgement thereupon, is the onely phenix of the law for three respects:

First, that a iudgement in a court of Record shall be reversed or affirmed without the Kings writ purchased out of the Chancery.

Secondly, that they being Iudges of record shall be fined, where in a writ of falls iudgement the suiters shall be but amerced.

And thirdly, that the Maior that gave the iudgement shall be removed from his place. But our Act extends only to courts holden before the Constable in our Act mentioned, and not to the court holden before the Maior and Iurats. Rot. cart. 1. Johan. part. 2. m. 12. 2. Johan. m. 51. Rot. claus. 8. H. 3. & 10. H. 3. in dors. m. 18. Pasch. 9. E. 1. coram Rege Banc' Rot. 35. Rot. Parliam. 18. E. 1. fol. 6. Hill. 21. E. 1. rot. 4. Pasch. 21. E. 1. fol. 4. Rot. Vasc. an. 22. E. 1. m. 2, 3, 7, 13. Rot. claus. 23. E. 1. Rot. pat. 34. E. 1. m. 25. Rot. Parliam. 13. E. 3. nu. 11. Pat. 33. E. 3. m. 6. Rot. brevium, 1. E. 3. part. 1. Rot. claus. 10. R. 2. bis. Rot. claus. 8. H. 6. m. 15.

He that desires to reade more of the liberties and priviledges of the cinque Ports, he may reade the Records (amongst many others) next before cited.

¶ Et le dit Constable ne distreinera, &c.] This branch is evident; and therefore without further exposition, with one record of Parliament I will conclude this Chapter.

Rot. Parliament. nu. 135. The Commons of the County of Kent complained against the officers of the Castle of Dover, for arresting them by their Catchpoles to answer before them, whereunto they were not bound. The answer hereunto was, that the officers should have no iurisdiction out of the fee of the Honour and Castle of Dover, nor should make no processe by Capias out of the liberties of the cinque Ports.

CAP. VIII.

LE Roy ad grant a son people, que ils eyent election de lour Viscount en chescun Countie, ou Viscount nest my de fee, sils voilont.

Vid. inter leges Sancti Edwardi, Lamb. fol. 136. Hovenden annal. cap. 35. F.N.B. 163. k. Of ancient time before the making of this Act such officers or ministers as were instituted either for preservation of the peace of the County, or for execution of iustice, because it concerned all the subiects of that County, and they had a great interest in iust and due exercises of their severall places, were by force of the Kings writ in every severall County chosen in full or open County by the freeholders of that County: as before the institution of Iustices of Peace there were Conservatores pacis in every County, whose office (according to their names) was to conserve the Kings peace, and to protect the obedient and innocent subiects from force and violence. These Conservators by the ancient common Law were by force of the Kings writ chosen in full and open County de probioribus & potentioribus comitatus, &c. by the freeholders of the County; after which election so made and returned, then in that case the King directed a writ to the party so elected. Edwardus Dei gratia Rex Angliæ, Dominus Hiberniæ, & Dux Aquitaniæ, dilecto & fideli Johanni de Bretun salutem. Cum Vicecomes noster Norff. & Cõitas ejusdem comitatus elegerunt vos in custodem pacis nostræ ibidem, vobis mandamus quod ad hoc diligenter intendatis, prout idem Vicecomes vobis scribi faciet ex parte nostra, donec aliud inde præceperimus. In cujus rei, &c. datum, &c. apud Cestr'. 2. die Sept. anno regni nostri 5.

Rot. pat. an. 5. E. 1

This Bretun was Lord of the Manor of Wichingham in Norff.

ſtri 5. And ſo it was then, and yet is of Cozoners to be choſen in full and open County by the freeholders of the County by force of the Kings writ: And though the words of this writ be de aſſenſu comitatus, and of the other, per communitatem ejuſdem comitatus, and by this Act, by the people, yet ought the election to be by the freeholders of the County: And ſo it was then, and yet is of the Knights of the Shires for the Parliament, and of the Verderors of a Foreſt. Regiſt. 177. F.N.B. 163. k. 4 E. 4. 44. F.N.B. 164. c. Regiſt.

And likewiſe it was of ancient time of the Sherife of the County, and reſtored by this Act to the freeholders of the County; but this is altred by divers Acts of Parliament, viz. the Act of 9. E. 2. Lincoln de Vicecomitibus, 14. E. 3. 12. R. 2. and 23. H. 6. The Knights and Burgeſſes of Parliament were then, and yet are eligible as daily experience teacheth. Now becauſe that theſe and others were eligible, the Statute of W. 1. provideth, that elections ſhould be freely and duly made without any diſturbance, as by that Act appeareth. See hereafter Cap. 13. 9 E. 2. Linc de Vicecom. 14. E. 3 cap. 7. 23. H 6. ca. 8. 12. R. 2. ca 3 Forteſcue, ca. 24. & 26. W. 1. cap. 5.

But I could not let paſſe a reſolution of all the Judges of England in 34. H. 6. which grew upon this occaſion Upon a reference by the Kings priuie Councell to Sir John Forteſcue, and Sir John Priſot chiefe Juſtices, and to the reſt of the Juſtices concerning a Sherife conſtituted by the King himſelfe, it is thus in the Councell Books recorded, 3. Martii anno 34. Hen. 6. as followeth in theſe words:

Upon a demaund that my Lord Chancelor made to the chiefe Juges, and to the remnant of the Juges, howe that the Kings lawes, neyther Juſtice might not be executed in Lincolnſhire, bycauſe ther was no Sherriefe there, and that the King by his Letters patents under his great ſeale had deputed certaine men for to have be Sherrieſes there: what them ſemed ſhould be doon in this behalfe. So that the Kings Lawes and Juſtice might ben executed in that ſhire, as it is executed in other ſhires of England. Sherife.

The iij chiefe Juſtices the ſame day came unto my Lords of the Kings Counſell in the Starred Chamber, and upon the abouneſaid demaund ſayde, that them ſemed, and ſo it ſemed unto the remnant of the Juges, that the King did an errour, when that he made another perſon Sherriefe of Lincolnſhire then was choſen and preſented unto his highnes after theffect of theſtatut in ſuch behalfe made.

And though that he that ſo was made Sherriefe wolde not take it upon him, ought not to be ſo puniſhed, and to make alſo great a fine for his diſobeiſſance, as that yif he had be one of the iij. perſons that were choſen to be Sherrieſs after the teneur of the ſtatute.

And furthermore them ſemed, that the King ſhould have recours to the thoſe perſons that were choſen after the teneur of theſtatut, and make one of hem Sherriefe by Letters patents beringe date ether at the day of theelection of hem, or els at Michelmas.

And though that ſithence the ſaid election any of hem have gete him an exemption, that he ſhould not be made Sherrieſe, yet them ſemeth that he ſhould be charged to take the ſaid office upon him.

And furthermore them ſemeth, that yif none of the ſaid iij. perſons choſen be made, that then ſome other thrifty man dwelling in a forreine ſhire be entreted to occupie the ſaid office for this yeare. And the next yeare, that in eſchuing of ſuch inconveniences, that the order of theſtatut in ſuch behalfe made be obſerved and kept.

To the King our ſoverreigne Lord, and to the Lords ſpirituell and temporell of his moſt noble Counſail.

Beſeechith mekely your humble liegeman John Tempeſt knight, to graunt your Letters under your priuie ſeale to be made in forme following, And he ſhall pray to God for your moſt noble eſtate.

Henry, &c. To the Treſorer and Barons of our Eſchequer. Foraſmuch as our truſty and welbeloved John Tempeſt knight, by us ordeyned and deputed to be Sheriefe of Lincolnſhire for this yere, hath for certaine cauſes for him alledged bitterly

vtterly refuſed to take vpon him the charge of the ſaid office, without that it like vs ſo to purvet for him, that he take no loſſe in the ſaid office, like as we haue done vnto late peres for othir that haue ben Sheriefs of the ſaid ſhire. We conſidering the hurts and manifold inconveniences that ſhould enſue not only to vs, but alſo to our ſubgiftes, namely, in letting of their ſuites at commune lawe, if the ſaid ſhire ſhould long ſtand deſtitute of a Sheriefe; Will and by thadvice of our Counſaill haue graunted to the ſaid John, that he ſhall occupie the ſaid office by appoyntment, and ſo accompte for this yere. And therefore we charge you, that in his accompt that he ſhalbe to yelde vnto vs bycauſe of his ſaid office, ye charge him not with the hoole extent of the ſaid ſhire, that is to ſay, of thees two fermes called de reman' firmæ Com' poſt terras dat' and firma Com' numero. And alſo of thees particular profuffites called de firmis Ballivorum, auxilium Vic' Franciplegi Certi fines, ſiues, profuffites, nor none othir things by him to be reſed by vertue of the ſommons of the Pipe, or of the Grenewer in the ſaid ſhire, ſaue onely of ſuch parcelles as he with his true diligence ſhall arrere and gader. And that of all the remenant that ſhall come and growe vnto vs of the ſaid ſhire, ye vtterly and clerely diſcharge and acquite the ſaid John Tempeſt knight Sheriefe aforſaid by his othe, or by th'othe of his deputy ſufficiant accompting for him, without any ſiſne, trpall, or anerrement beſiely vs, and him to be had therein. Yeuen, &c.

T.Cant'. R.Salisbury.
W.Ebor. R.York. R.Sancti Johannis.
T.London. Stourton,
J.Lincoln. W.Faucomberge.

Indorſiament. XIX. die Novembris, an. 34. apud Weſtm' in camera ſtellata Rex de aviſamento conſilii voluit, & mandavit, quod Cuſtos privati Sigilli ſui literas ſub eodem ſigillo fieri faceret ſecundum tenorem infraſcriptum dominis ſe ſubſcribentibus, ut patet attent' ut Henricus Ratford qui fuit Vicecomes anno preterito ejuſdem com', & nonnulli alii Vicecomites retroactis temporibus eodem modo habuerunt, & occupaverunt.

T.Kent.

Which abodeſaid vnanimous opinion, being the adviſed reſolution of two ſuch famous chiefe Juſtices, and of all the Judges of England, and finding it in the Councell book, I thought it fit to be publiſhed in ſuch wordes, as it is there ſet downe, as a ſure and iuſt expoſition of the Statutes concerning the making of Sheriffes.

CAP. IX.

LE Roy voet & commaund, que nul Viſcount, ne Bailife, ne mitte en Enqueſts, ne in Juries plus des gents, ne auters ne en auter manner que il neſt ordeine per eſtature, & que ils mittent en tiels Enqueſts & Juries le plus procheines, le plus ſuffiſants, & meynes ſuſpicious. Et que auterment le ferra, & de ceo ſoit attaint, rend' al Plaintife ſes damages au double, & ſoit en la greve mercie le Roy.

1. part Inſtitut. ſect. 234. Of the antiquity and right inſtitution of the trpall by 12. and of the number of 12. &c. See the firſt part of the Inſtitutes.

¶ Ordeine

¶ Ordeine per leſtatute.] That is, by the Statute of W.2.cap.38. See the Statute of 21.E.1.Vet.magna Charta 87. and ſee before in the expoſition of the Statute of W.2.cap.38.

¶ Enqueſts.] This Act doth extend to all enqueſts ex officio, or for tryall of an iſſue between the King and the ſubiect, or between party and party, alſo to all ſuits or proceedings either criminall or civill, reall, perſonall, or mixt, publike or private, grand or petit, Aſſiſes or Enqueſts.

¶ Le pluis procheine, &c.] If the purview of this Act were well executed, then were the right inſtitution of tryall by Iuries obſerved; for then every Iury muſt have two moſts, and one leaſt, viz. moſt neere, moſt ſufficient, and leaſt ſuſpicious. See the Regiſter, and F.N.B. how the party grieved may have remedy upon this Statute, and that in writs of aſſiſe, attaints, and other actions, where there be Iuries at the firſt day, or when a Venire fac' is awarded to the Sheriſe to returne a Iury, the Demandant or Plaintife, the Tenant or Defendant may have a writ to the Sheriſe to returne Iurors according to this Act, and if he doth not accordingly, an attachment lyeth againſt him. And where the party plead to iſſue, and ſuffer the Iury to be ſworne, or challengeth them, and tried indifferent, and paſſe againſt him; it is ſaid, that he hath no remedy, but firſt to reverſe the iudgement by writ of attaint, and then to take his remedy upon this Statute. But ſee the Statutes of 20.E.3.cap.6. and 34.E.3.cap.4. 42.E.3.cap.11. & 4.E.3.cap.11. & 5.E.3.cap.10.

Vid.7.E.3.26. bis.8.E.3.30. Regiſt.178,179, 180. Forteſcue, cap.27. F.N.B. 165.a. & 166.d. lib.8.fol.118. Bonhams caſe. See the firſt part of the Inſtitutes, ſect.234.W.2. cap.38. Magna Charta,cap.29. Regiſt.186. & 187.

¶ Ses damages au double.] That is double the value of the land, debt, damages, or other thing that he loſt, or was barred of by reaſon of that verdict.

CAP. X.

EN droit des conſpirators, faux enformers, & malveyes procurers des douſeins, enqueſts, aſsiſes, & juries, le Roy ad ordeine remedie as Plaintiffes per briefes de Chancelarie. Et jademeins voet le Roy, que les Juſtices de lune bank & de lauter, & Juſtices daſsiſes prend' aſsignes, quant ils veignent en pais a faire lour office, de ceo facent lour enqueſts a cheſcun pleint ſans briefe, & ſans delay facent droit as Pleintifes.

¶ Conſpiratours.] Theſe are deſcribed by the Statute of 33.E.1.

Definitio de conſpirat. 33.E.2. Vet. Mag. Chart. 90.b.

¶ Faux enformers.] Theſe are to be underſtood of imbracers, and under-hand inſtructers, and leaders of Iurors returned, and albeit the matter which he enformeth be true, yet is he a falſe informer, becauſe he doth it in an undue and unjuſt manner.

¶ Malveis procurors.] That is underſtood of ſuch as uſe to packe Iuries by nomination, or other practice, or procurement.

¶ Douſeins, duodenæ in Letis, &c.] Note here this law beginneth with the inferiour, as Douſeins in Leets, and therefore the makers of the Act doe particularize the reſt, viz. Inquiſitions, Aſſiſes, and Iuries. F.N.B.116.a.

¶ Le Roy ad ordeine remedie per briefe de Chancelarie.] The ordinance here mentioned, whereby a writ is given against conspirators (which writ was framed per Gilbertum de Rowberie Clericum de Concilio Domini Regis, and allowed by authority of Parliament) was enacted at the Parliament holden an. 21. E. 1. Rot. 2. which ordinance you may reade in Vet. Magna Charta. But there it is set downe to be made in 33. E. 1. where in truth it was made in 21. E. 1. which errour there, and the mistaking of Richard Torrell the Printer, in quoting 33. E. 1. to this branch (as if the makers of this Act had been indued with a prophetical spirit) would in the next impression be amended.

This Gilbert de Rowberie was one of the Kings Justices of his Bench, as hereafter shall appeare. Vet. Mag. Chart. 111.

Regist. F.N.B. 114, 115. &c. Stamf. pl. cor. 172. &c.

This ordinance was but in affirmance of the common law; for the writ of conspiracy was maintainable both in cases criminall concerning life, and civill, as it appeareth in the Register and F.N.B. and plentifully in our Bookes: Also in cases concerning life, if the conspirators be indicted and convicted at the Kings suit, iudgement villainous shall be given against him, but not at the suit of the party, which iudgement is by the common law; for it is given by no Statute.

27. ass. p. 59. 24. E. 3. 34.

¶ Et jademaines voit le Roy que les Justices de lun bank & lauter, &c.] See the Statutes of 5. E. 3. 34. E. 3. 38. E. 3. &c. by the which this Statute is inlarged as to the Justices. And a notable case in 41. E. 3. in expounding of these Statutes, and upon like reason this Act concerning the proceeding by bill, according to the words of this branch, sans briefe, & sans delay.

43. E. 3. consp. 11. 4. H. 5. judgem. 220. Stamf. pl. cor. 175. 198. lib. 9. fol. 56. Poulters case. 5. E. 3. cap. 10. 34. E. 3. cap. 8. 38. E. 3. cap. 12. 41. E. 3. 15. Coram rege apud Linc. Hil. 29. E. 1. rot. 19. Secundum ordinationem regis, i. 21. E. 1. ubi supra.

In the next yeare after the making of this Act, which was in the 29. yeare of E. 1. William de Welbye brought an action by originall writ of conspiracy, returnable in the Kings Bench against William of Hemswell, Parson of the Church of Newton, and John of Malden, Parson of the Church of Askerbye, secundum ordinationem Regis; for that they per conspirationem & confederationem inter eos malitiose fact' apud Groham, &c. anno regni Domini Regis nunc 29. procuraverunt & fecerunt præfatum Willum de Welbye citari coram Nicholao de Whitechurch Archidiacono Episc' Lincoln' ad respondendum præfat' Will' &c. for a trespasse, whereof he had been acquitted in the Kings Court. Hemswel pleaded not guilty. Malden the other Parson pleaded that he was communis advocatus, & pro suo dando, &c. and iustified as an Attorney, and denied that he conspired, &c. Whereupon issues being ioyned, it was found before Gilbert de Rowberie, that Malden the Parson of Askerbye was communis advocatus, and was not guilty of the conspiracy, &c. and the other was found guilty, and iudgement was given against him; for in this and the like a conspiracy will lye against one: otherwise it is in case of felony. By this Record it appeareth, that a writ of conspiracy doth lye upon the said Act of 21. E. 1. (for the conspiracy was alledged before our Statute) for a conspiracy between two for the one of them to sue the Plaintiffe in the Spirituall Court; and note the Record saith, Contra ordinationem Domini Regis. And note, it did lye for conspiracy in a suit in the Ecclesiasticall Court.

Gilbert de Rowbery. F.N.B. fol. 116. k 3. E. 3. 19. 8. E. 3. 19. 11. H. 4. 2. 22. R. 2. bre' 88. 18. E. 4. 1. 24 E. 3. 34. Vid. 22. E. 3. 1.

CAP. XI.

DE rechiefe pur ceo que le Roy avoit avant ordeine per lestatute, que nul de ſes miniſters ne priſt nul plee a champertie, & per cel eſtatute auters miniſters neſtaient pas avant ces heures a ceo lies: Voit le Roy, que nul miniſter, ne nul auter, pur part avoier des choſes que ſont en plee, enpreigne les beſoignes que ſont en plee. Ne nul ſur tiel covenant ſon droit ne leſſe

leſſe a auter. Et ſi ul le face, & de ceo ſoit attaint, ſoit forfait, & encurr' devers le Roy des biens, & des terres le parnour, a la value de tant come ſa part de ſon purchaſe per tiel empriſe amounter'. Et a ceo attend', ſoit reſcue celuy que ſuer voudr' pur le Roy devant les Juſtices, devant queux le plee avera eſte, & per eux ſoit lagard' fait. Mes en ceo caſe neſt mye a entender, que home ne poit aver counſaile des Countours, & des Sages gents pur ſon donant, ne de ſes procheine amies.

The cauſe of the making of this Statute was, that where the Statutes of W.1. 11.E.1. and W.2. of champerty were particular, and extended only to the Kings miniſters, the Chancellour, the Treaſurer, Juſtices, the Kings Counſellers, Clerkes of the Chancery, of the Exchequer, and of Juſtices, and to thoſe of the Kings houſhold, Clerke or Lay. Now this Act is generall and doth extend to all perſons; for the words are generall, Nul miniſter, ne nul auter. W.1.cap.25. W.2.cap.29. Stat.de Champertie,an.11.E.1. Vet.Mag.Chart. fol.80.b.

¶ Pur part aver des choſes que ſont in plea.] If A. bargaine with B. owner of the Mannor of D. B.is impleaded, B.enfeoffed A. hanging the ſuit according to the bargaine, though this be within the letter of the Law, yet is it not within the meaning. On the other ſide, it is adiudged champerty, if he maintaine any party hanging the plea to have part, though he purchaſe not, nor take any ſtate. And this Act extendeth to all actions, as well perſonall, reall and mixt. If the Tenant hanging the plea grant a rent out of the land, this is champerty, and yet it is no part of the thing in demand, but it is within the ſame miſchiefe. In an aſſiſe brought againſt the diſſeiſor, and the tenant maintaine the plea upon covenant or promiſe after recovery to have part; although the diſſeiſor hath nothing in the land, yet ſhall he have an action of champerty, becauſe he may be charged with damages, and the tenant ſhall have his action alſo. 19.R.2.champert.15.Pl.com. 465. 30.aſſ.p.15. 8.E.4.13. 47.E.3.9. F.N.B.172.k. 47.E.3.9. F.N.B.172.

If the husband and wife be impleaded, and one doth maintaine for champertie, the husband onely may have the action, or the husband and wife may joyne. 47.E.3.9.

And this action may be brought hanging the principall plea before iudgement; and if the Demandant be non-ſuit, yet may he have an action of champerty. 47.E.3.9. 33.E.3.maintен.26.

If two be impleaded in a reall action, and one doth maintaine the Demandant to have part, the Tenants bring a writ of champerty, the non-ſuit of one is not the non-ſuit of the other, becauſe the action of champerty being but acceſſary, doth follow the nature of the principall action. 47.E.3.6. Lib.6.fol.25.

If the Tenant make a feoffment in fee hanging the writ, if one doth maintaine the Demandant to have part, the feoffor ſhall have the action of champerty; for he remaines Tenant to the Demandant.

¶ A la value de tant, &c.] That is to ſay, the value of the land. 8.E.4.13.

See the Statute of 32.H.8.cap.9.

¶ Devant les Juſtices devant queux.] See the Statute of 4.E.3. cap.11.

Note, the party grieved may upon this Statute either have a writ directed to the Sheriffe, or a writ directed to the Juſtices before whom the principall action dependeth. Regiſt.183. 22.H.6.7.

¶ Ne nul ſur tiel covenant.] Here it is taken for a promiſe or contract by parol, as well as by deed. F.N.B.172.l.

See the Statutes of 1.E.3. 1.R.2. and 32.H.8. 1.E.3.cap.14. 1.R.2.cap.4. 32.H.8.cap.9.

¶ Mes en ceo caſe neſt my a entender, que home ne poet aver councell de ſes Countours, ne des Sages gents.] Councell, conſilium, is taken for advice and direction in law, and that is to be had of three

perſons, viz. 1. of Serjeants at law, ſervientes ad legem, expreſſed here under the name of Countors: 2. of Apprentices of law. Apprenticii legis, in pleading called homines conſiliarii, & in lege periti, expreſſed here under this word Sages. And theſe have officium ingenii: 3. Attornies of law, that have officium laboris, in following the advice of the learned, and diſpatching of matters of courſe and experience, and they are under theſe words, Sages gents. Conſilium is alſo taken for aſſiſtance, maintenance, and comfort in their ſuits. And ſo it is taken here.

¶ De ſes prochein amyes.] That is, of their next of blood, who are or ought to be their ſureſt aſſiſtants, aiders, and comforters; for naturæ vis maxima, and as ſome ſay, Natura bis maxima.

And according to this diverſity of ſignification, if the Serjeant at law, Apprentice, or Attorney doe take a feoffment hanging the plea, or the like to maintaine the Tenant, though it be pro ſuo dando, in lieu of his fee, yet is this champerty within the purview of this Statute; for their counſell, that is, their advice and direction in their profeſſion of law is excepted: but to take any eſtate in the land, hanging the writ, for maintenance, is to become a party, and in no ſort allowed to them by this Act.

6.E.3.fol.33. 20.H.6.12. Pl. com.303. F.N. B.172.h. Lib.7.fol.13.14. Calvins caſe, 21.H.6.16.b. 29.H.6.maintenance 12. 19.E. 4.3.b. 34.H.6. 26. 39.H.6.5. 6.E.4.5. 9.E.4. 32. 14.H.7.2. &c.

But if a father be impleaded, he may infeoffe his ſon for his aſſiſtance, maintenance, and comfort; for that is natures profeſſion for the ſon aſſiſtere, manutenere, & conſolari, & econverſo, & ſic de ſimilibus: & ſic alia eſt profeſſio legis, & alia naturæ.

So it is, that the ſon may of his owne mony, and in his owne name give fees to his fathers Councell, or Attorney, without any expectation of repayment, and ſo may the father to his ſons Councell; for he is procheine amye, but ſo cannot the Serjeant nor Apprentice, for that their counſell, advice, and direction in law is only ſaved to them. But the Attorney may in his Maſters name lay out his owne mony to his Councell, to be repaid to him by his Maſter againe.

In like manner, and by the like reaſon, if the father be Demandant in a Præcipe, he may promiſe and contract with the ſon to aſſure him the land after the recovery, and is not any champerty within this Act, and ſo of any other Anceſtor and his heire apparant: but ſo it is not of the Serjeant, Apprentice, or Attorney; for they cannot contract to have any part of the thing in demand after the recovery, & ſic de ſimilibus. And therefore Penros caſe maketh not againſt this, nor any thing that hath been ſaid: For there the caſe (as Hanckford imperfectly citeth it) was, that in a writ of champerty brought againſt Penros, for that he had parcell of the land recovered againſt him at another mans ſuit, Penros ſaid that he was of councell with the party which recovered, and had that land for his wages: But let us take the ſtory as we find it (though Fitzherb. in abridging this caſe, not knowing what to make of it, omitted it) the taking of the eſtate for his wages after the recovery could be no champerty, unleſſe there had been a covenant or promiſe hanging the plea on the demandants part, to make the ſame after the recovery, which was not alledged but only the taking of the eſtate: neither doth it appeare what became of Penros plea: And we are of opinion, that it ſhall remaine for ever a blemiſh to his reputation, as often as it is cited; for, quamvis aliquid ex ſe non ſit malum, tamen ſi ſit mali exempli, non eſt faciendum.

13.H.4.19.

F.tit.mainten.23

¶ De ſes prochein amyes, &c.] Of prochein amyes you have heard before, this is to be added, that there be not onely prochein amyes in blood, but in eſtate alſo: And therefore as the next of blood is prochein amy, in reſpect of the expectancie of a diſcent (and yet it may be it ſhall never deſcend to him: for ſolus Deus facit hæredes, non homo, ſo they that have reverſions, or remainders expectant upon eſtates in tayle, life or lives, are prochein amyes in eſtate, and are excepted out of this law, and yet it may be the land ſhall never come in poſſeſſion to them: and therefore if a Præcipe be brought againſt a Tenant for life, and he ſurrender to him in the reverſion or remainder, hanging the writ, for maintenance, this is no champerty within this Act, no more then it is when the Tenant

17.E.3.champerty 14. per les Juſtices. 19.E.4. 3 b. F.N.B.

infeoffeth

inteoffeth his heire apparant: And ſo it is if Tenant in taile, hanging the writ, conveyeth the land to him in reverſion or remainder, this is no champerty for the cauſe aforeſaid within this Act.

For the word Prochein amy, proximus amicus, or amicus propinquus, ſee Littl.W.1. and W.2.&c. Littl.ſect.123. W.1.ca.48. W.2 cap.15.

CAP. XII.

DE rechiefe voet le Roy que diſtreſſes, que ſont a faire pur ſa dett, ne ſoyent faits per beſtes des charues, tanque come home poet auter trover, ſolonque ceo que eſt ordeine ailours per eſtatute, ove la paine, &c. Et ne voet que trope greve diſtreſſe ſoit priſe pur ſa dett, ne trope loigne meſne. Et ſi le dettour poet trover ſuffiſant, & covenable ſuretie, jeſq; a un jour deins le jour al Viſcount, dedeins le quel home puiſſe purchaſer remedie a faire gree de la demaund, ſoit la diſtres releſſe endementiers, & que auterment le fra ſoit grevement punie.

¶ Per ſtatute.] This is intended of the Statute intituled, Statutum de diſtrictionibus Scaccarii, editi an. 51.H 3. which by miſtaking is in the abridgement of Statutes, tit. Diſtreſſes 10. ſuppoſed to be in anno 21.E.1. which ſhould be made 51.Hen.3. the words of that Act (amongſt other things) are, Que nul home de religion, ne auter ſoit diſtrein per les beſtes, queux gaingnont ſa terre, ne per les barbites pur la det le Roy, ne pur le dett dauter home, ne pur auter encheſon per les baillies le Roy, ne per auters homes, tanque come un trove auter diſtres, ou auters chateux ſuffiſantes, dont ils poient lever le det, ou que ſuffiſt la demande, &c. But hereof ſufficient hath been ſaid in the expoſition of the Statute of Marlebrige. 51 H.3. Ver.N. B.fol.89.b. Regiſt.97.b. Raſt. pl.118,393,450. F.N.B.174. Regiſt.97.185. Marlbridge,c.15.

¶ Et ne voet que trope greve diſtres ſoit priſe, ne trope loigne meſne.] This is alſo provided for by the ſaid Act of 51.H.3. and ſufficient alſo hath hereof been ſaid in the expoſition of the ſaid Statute of Marlebridge, cap.15. and theſe Acts were made to take away the abuſe of the Sheriffes, Bailiffes, and other Miniſters. F.N.B.174. Regiſt.97.

¶ Et ſi le dettor poet trover ſuffiſant & covenable ſuertie, &c.] This is an Act of grace, and upon this Act there lyeth a writ directed to the Sheriffe, commanding him to receive ſurety according to this Act, which if he refuſe, an Attachment lyeth againſt him, or the party offering ſuretie according to this Act, if it be refuſed, may have an action againſt the Sheriffe, &c. Act of grace. Vid. Mag.Chart. cap 8.&c. Regiſt. 185,186. F.N.B.174.b. 36.E.3.cap.9.

Cap.

CAP. XIII.

ET pur ceo que le Roy ad grant le election des Viſcounts a ceux des Counties, voit le Roy que ils eſlient tiels Viſcounts, que ne les charge my: & ne mittent nul miniſter en bailie pur lower, ne pur don. Et que tiels ne ſe herbergent trope ſovent en un lieu, ne ſur les povers, ne ſur les religious.

¶ Ad grant.] This grant was made before at this Parliament, cap. 8.

By this Act five things are to be obſerved by the Sheriffe: Firſt, that he be not chargeable to the County: 2. that he ſhall put no miniſter in office under him for hire, gift, or bribe: 3. that they ſhall not too often lodge or harbour in one place: 4. that they ſhall not lodge or harbour at all with theefs that are poore: 5. nor with religious men.

And albeit the manner of making of Sheriffes be altered, as before in the expoſition of the eighth Chapter doth appeare, yet the ſaid Articles are to be obſerved by him: for they follow the office of the Sheriffe without reſpect of the manner of his making: And therefore if any Sheriffe take any hire, gift, or bribe of any Underſheriffe, Bayliffe, Keeper of the Gaole, or other miniſter for his office or place, he may be indited, and fined, and impriſoned.

12.R.2.cap.2. 11 H.4.Rot.parl. nu.28. 5.E.6. cap.16.

See other Statutes againſt ſale of offices, &c. 12.R.2. 11.H.4. 5.E.6. And in like manner touching the reſt of the Articles prohibited by this Chapter, ſee the next Chapter.

CAP. XIIII.

DE rechiefe voit le Roy, que les Bailifes & les Hund' du Roy, ne les auters grand Seigniors de la terre ne ſoient leſſes a trope grand ſumme a ferme, per quoy le people ſoit greve, ne charge per contribution faire a tiels fermes.

This Act was made for avoiding of extortion and oppreſſion: for they that buy deare, muſt ſell deare. For addition to this law it was enacted, that Sheriffes ſhould not let their Hundreds and Wapentakes but for the old rent, and not above.

4.E.3.cap.15.

After by another Act neither Sheriffe, nor Bailifes, or Hundredors in fee ſhould let any Hundreds, &c. but for the ancient ferme, without any thing increaſing.

14.E.3.cap.9.

And by another Statute it was prohibited, that he ſhould not let his Bailiwicke at all to any man, and that it ſhould be parcell of his oath. Upon which Act ſome doubt was conceived, whether if he let not his whole Bailiwicke, it was within that law: and beſides, there was no penalty inflicted by that Act: Therefore by another law it is enacted, that no Sheriffe ſhall let to ferme in any manner his County, nor any of his Bailiwickes, Hundreds, or Wapentakes, upon paine of forfeiture of xl.li.

4.H.4.cap.5.

23.H.6.cap.10. 20.H.7.12.& 21.H.7.36 Pl. com.87.& 124. Vid.Mag.Chart. cap.8.&c.

And this Act, as to the King, is a Bill of grace.

Cap.

CAP. XV.

EN Summons & Attachments en plea de terre, deſormes conteigne la Summons ou lattachment le terme de xv. jours a tout la meyns, ſolonque la common ley, ſil ne ſoit en attachment des aſsiſes prender en preſenee le Roy, ou devant les Juſtices del common bank, ou des plees devant Juſtices en Eire, durant le Eire.

See Marlbridge, cap. 12. & 26.

The printed Bookes leave out (ou devant les Juſtices del common bank) which ought to be added.

F.N.B. 177. d. e. 11 aſſ. p. 30. 22. aſſ. p. 79. 30. aſſ. 26. & 44.

This Statute was made in affirmance of the common law, as by the expreſſe words of the Statute it appeareth, contrary to a ſudden and miſconceived opinion in our * Bookes: For Glanvile ſaith, Summonebitur per intervallum quindecim dierum ad minus: and therewith agreeth Bracton and Britton, Et ſi aſcun ſoit reſonablement ſummon, il doit aver ſpace de xv. jours au meyns, de ſoy garner de ſon reſpons. And Fleta ſaith, Nec etiam ſufficit quod ſummonitio fiat ad ſtatim reſpondendum, ſed decet quod quilibet habet tempus xv. dierum ante diem litis, & ſi ſummonitio minus ſpacium, pro illegitima debet reputari, niſi in cauſis ſpecialibus; ut ſunt cauſæ mercatorum, & crucesignatorum, & hujuſmodi quæ inſtantiam deſiderant & celeritatem, &c. And all theſe Authors wrote before the making of our Act: and the Author of the Mirror that wrote of the ancient lawes of this Realme, ſpeaking of the time of Summons, ſaith, Et reaſonable reſpit al meyns de xv. jours de purveire reſpons, & de parer en judgement. And the cauſe wherefore the common law ſet before the certaine time of 15. dayes was, for that a dayes journey is accounted in law 20. miles, rationabilis dieta conſtat ex viginti miliaribus: for dieta both in the common and ciuill law ſignifieth a dayes journey, continet legalis dieta viginti miliaria. And therefore 15. dayes was accounted by the common law a reaſonable time of ſummons or attachment, within which time whereſoever the Court of Juſtice ſate in England, the party ſummoned or attached, whereſoever he dwelt in England, afore the Kings writ did come, might per prædictas dietas computatas, by the ſaid account of dayes journies appeare in Court, &c.

* 12. E. 4. 11. Glanv. li. 1. ca. 7. Bract. lib. 4. fol. 255. & 182. Brit. fol. 179. b. Flet. lib. 6. cap. 6.

Mirr. cap. 2. §. 19.

Bract. lib. 4. fol. 235. b. 19. H. 7. cap. 1. the like account is made. Lib. intr. tit. journies accounts, fol. 382. lib. 6. fol. 10. & 11. Spencers caſe. 18. E. 3. 42. 32. E. 3. journies acc' 16. Cuſtumere, ca. 61 fol. 76, 77. 12. E. 4. 11.

¶ En ſommons.] In a writ of Pone, to remove a replevin at the ſuit of the Defendant, the writ ſaith, Et die præfato querenti, quod ſit coram Juſticiariis noſtris apud Weſtm' tali die, there ought to be a warning by 15. dayes, for that this (dic querenti) is in nature of a ſummons, and ſo the writ of venire fac' for returning of a Jury is in nature of a ſummons: but this Statute extends not to a writ of errour, nor to dayes of preſcription, as upon a forreine voucher in London, and the like.

This Act ſpeaketh of a ſummons, and ſo it is in a re-ſommons.

1. E. 5. 2. b. Bract. lib. 4. fol. 255. 1. E. 5. 2. b.

¶ Et Attachments.] And ſo it is in a re-attachment.

¶ En plea de terre.] Upon an originall writ in any reall action the Tenant muſt be ſummoned by 15. dayes, as is aforeſaid; but if the originall writ be returned tarde, the ſummoneas ſicut alias muſt have nine returnes between the teſte and the returne: for albeit the ſummoneas ſicut alias be in lieu of the ſummons in the originall, yet being a iudiciall proceſſe in a reall action, there muſt be nine returnes, &c. and the ſummons thereupon ought to be made by 15. dayes, or more, before the returne.

Dyer 8. El. 254. 9. E. 4. 18.

¶ Le

24.E.3.35,46. 22.E.3.7.31.H.6.13. 27.H.6.2.

¶ Le terme de 15. jours a tout le meynes.] These 15. dayes or more must be before the day of the returne of the writ, and the day of the returne must be accounted none of them.

¶ Si ne ſoit en aſsiſes prender en preſence del Roy, &c.] En preſence del Roy, that is, in the Kings Bench, for there all pleas be coram Rege. It was accorded in 7.E.2. by Sir Guilliam Inge chiefe Iuſtice of the Kings Bench, and the Iuſtices, that in writs of attaints upon an aſsiſe of novel diſſeiſin taken in the Kings Bench, there ſhall be a certaine day given as in the aſsiſe; for example, the monday, or the morrow, or in the utas or quinden' of Eaſter: but it behoveth that the Tenant hath garniſhment by 15. dayes in the attaint, for this Statute of Articuli ſuper chartas doth not give any leſſe terme, but only in an aſsiſe of novel diſſeiſin in the Kings Bench, common Pleas, or in Eire.

Regiſt. 204.a. 7.E.2. per les Iuſtices. F.N.B.109.a.

This branch, as to the Kings Bench, ſeemeth to be in affirmance of the common law; for in criminall cauſes, which concerne the life of man, if a man be indited of treaſon or felony in the County where the Kings Bench doth ſit, the venire fac' for the returning of the Jury need not have 15. dayes between the Teſte and the returne, nay the entry may be ideo immediate venit inde jurata, &c. But if the inditement be taken in any other County, and removed into the Kings Bench, there ought to be 15. dayes between the Teſte of the venire fac' and the returne.

Lib.9.fol.118.b. Seignior Zanchars caſe. * Hill.2.H.4. rot.4. Thomas Marks Eveſq' de Carlile, treaſon. Lunæ poſt feſtum Mich.an.1.H.8. Sir Richard Empſon, treaſon. 10.Decem.3.E.6 Thomas Bonham, before Portman chiefe Iuſtice, and other Iuſtices, treaſon. 2.Decem.3.E.6. before Lyſter, Mountague, Cholmeley, &c. Robert Bell, treaſon.

* Commiſſioners of Oire and Terminer may in caſe of treaſon, felony, miſpriſion, treſpaſſe, &c. trie the priſoner the ſame day they award the venire fac', as by divers preſidents ancient and late doe appeare; but the Commiſſioners muſt make a precept in parchment under their ſeales for the returning of a Jury immediately the ſame day, if they will, or any day after, and likewiſe Iuſtices of Gaole delivery, or Iuſtices of Peace may trie the priſoner the ſame day, or any day after, but need not make any particular precept: for the Iuſtices of Gaole delivery, and Iuſtices of the Peace make a generall precept in parchment under their ſeales for the ſommons of the Seſſions, and for returne of Juries, &c. and therefore any particular precept is not requiſite.

There was a generall ſommons made 40. dayes before the ſitting of the Iuſtices in Eire.

4.Auguſt. 10.El. John Felton, &c. London, treaſon. Hill.36.El.Doct. Lopes in London, &c treaſon.

* We have the rather ſpoken ſomewhat hereof, becauſe there is a report of the reſolution of the Judges, that Commiſſioners of Oire and Terminer, or Iuſtices of Peace cannot trie a priſoner that pleads not guilty the ſame day that he pleads, &c. But herein at this day not onely juriſperiti, but uſuperiti alſo doe agree.

* 4.H.5.tit.enqueſt 55. Paſch' 9.H.8. Kelwey. Holl.Chronic. 8.H.8.fol.843. 22.E.4.tit.coron.44.

CAP. XVI.

SOit fait de ceux que font faux retornes des briefes al maundement le Roy, per quoy droiture eſt delay, auxy come ordeine eſt en le ſecond eſtatute de Weſtminſter ove la peine.

This is an Act of confirmation, whereby the Statute of W.2.cap.39. touching falſe returnes, is confirmed.

Cap.

CAP. XVII.

ET pur ceo que mults misfeaſors ſont en la terre pluis que ne ſolent, & robberies, arſions, e homicides faits ſans number, & la peace meynes bien garde, pur ceo que leſtatute, que le Roy fiſt faire nadgaires paſſes a Wincheſter, nad pas eſte tenus: Voit le Roy que cel eſtatute ſoit de novel envoy en cheſcun Countie, & ſoit lie & publie 4. foits per an, auxybien come les deux graund charters, & firmement gardes en cheſcun point, ſur les paines que la cyens ſont aſſeſſes. Et a cel eſtatute garder & mainteiner, ſoient charges les trois chivaliers, que ſont aſsignes per mye les Counties pur redreſſer les choſes faits encounter les grand charters, & de ceo eyent garrantie.

The effect of the ſtatute of Wincheſter made at a Parliament holden in 13.E.1. is this, That from thenceforth every Country ſhould be ſo well kept, that immediately upon ſuch robberies and felonies committed, freſh ſuit ſhould be made, &c. Vid. Flet. lib. 1. cap. 24. this ſtatute of Wincheſter recited.

The letter of this ſtatute is generall; and firſt, concerning the place: If a man be robbed in his houſe, it is not within the meaning of this ſtatute. Secondly, the time: If a man travell in the night, and be robbed, he ſhall not take the benefit of this Act, as you may reade at large, lib. 7. ubi ſupra. Vid. li. 7. fol. 6, 7. caſes ſur ceſt ſtatute. 3.E.3.coron.293

See the ſtatutes of 28.E.3. and 27.Eliz. which have in ſome points altered, in ſome explained, and added divers Articles to this ſtatute of Wincheſter. 28.E.3.cap.11. 27.Eliz.cap.13.

Britton maketh mention of the ſtatute of Wincheſter in theſe words, Solonque noſtre ordinance de nous Statutes de Wincheſter, and of the Statute of W.2.an.13.E.1. So as he wrote not his book in 5.E.1. as Priſot ſuppoſed: neither died he in 3.E.1. anno Dom.1272. as Bale, fol.111. hath miſtaken; but certainly he wrote his booke after 13.E.1. Dyer 23.El.370. Brit.fol.20.32.b. & 263.160. Elegit.

And it appeareth by Fleta, ubi ſupra, that the time given to the Country by the ſtatute of Wincheſter is not within 40. dayes, as the booke of ſtatutes lately printed miſtakes it, but infra dimid' anni, and ſo is the printed booke of ſtatutes by Berthelet; and therefore it would be reformed accordingly. True it is, that the ſtatute of 28.E.3. doth expreſſly ſet downe 40. dayes; but yet the words of the ſtatute of Wincheſter muſt remaine as they were. 28.E.3.cap.11.

For actions brought upon the ſtatute of Wincheſter, See Hil.4.H.8.rot.525. Paſch.4.H.8.rot.310. Mich.6.H.8.rot.1. Paſch.12.& 13.Hen.8.rot. 4.Eliz.rot. 508.&c. which were before the ſtatute of 27.Eliz. Lib.intr' Raſt. 580. Lib 7.fol.6.ubi ſupra.

See Trin.28.Eliz.rot.75. Aſhpoles caſe, and Trin.29.El.rot.1027. Milborns caſe. Lib.intr' Co.fol. 348.

Which precedents I have added, becauſe they ſerve both for expoſition of the ſaid ſtatutes, and for direction to the party grieved to attaine to the benefit of the ſame. Lib.7.fol.6.ubi ſupra.

If any deſire to ſee ſome precedent nerrer the making of the ſtatute of Wincheſter, let them ſee the record of that notable caſe of Ellice Caller in 2.E.3. and they ſhall perceive, that actions grounded upon this ſtatute were not ſubiect to ſuch captious and curious exceptions, as now they be. There the caſe was, that Ellice Caller was robbed in the Hundred of H. in the confines of two Counties, &c. and brought his action upon this ſtatute, and had iudgement, and ſued execution to the Sheriffe of Stafford, who returned, that he had levied x. Marks of the men of Hill.2.E.3.fol 6. & 7.

the Biſhop of Coventry and Lichfield of the Hundred of H. the Biſhop came and ſaid, that the Hundred of H. was of the right of his Church of Saint Cadde of Lichfield, and ſhewed forth to the Court the charter of King Richard the firſt, by the which he granted to E. then Biſhop of Coventry and Lichfield, and to his men, that they ſhould be quit of murder and larceny, that is, to be quit and diſcharged of every thing that hath in charge of his men, by reaſon of murder or felony; as of amerciaments and of preſentments of murder and felony. But the authority of the booke is, that the Biſhops men ought not to be diſcharged, and Shard that giveth the rule, giveth alſo two reaſons thereof.

Firſt, that the charter of Rich. 1. could not diſcharge this action, for that at the time of that charter an action againſt the inhabitants, by reaſon of robbery, &c. was not granted, but it was granted long after, that is to ſay, in anno 13. E. 1. and we doe not entend, that by reaſon of the charter, being more ancient then the ſtatute of Winchester, you may barre or diſcharge the execution.

Secondly, albeit the King by his charter may grant, that a man may be acquited againſt him and his ſucceſſors, yet thereby the action or right of the party cannot be taken away.

11. H. 6. fol. 47. a. 8. H. 6. cap. 27. The Burgeſſes of the Towne of Tewkſbury in the County of Gloceſter brought an action of debt upon the ſtatute of 8. H. 6. which hath reference to this ſtatute of Winchester, if ſatisfaction be not made for the robbery therein mentioned, within 15. dayes after proclamation, and the action is given againſt the communalties of the Forreſt of Deane, which are adiacent to the river of Severn, and of the Hundreds of Bledlow and Weſtbury, and the writ was, Præcipe communitati Foreſtæ de Deane, & Hundredis de B. & W. and exception was taken to the writ, for that the writ ought to have been, Præcipe communitati Foreſtæ de Deane, & Hundredorum de B. & W. according to the words of the ſtatute of 8. H. 6. as one entire communalty; and yet the writ was awarded good, for that it was the ſame in effect, though it had been the better, if it had accorded with the words of the ſtatute.

It is ſaid, that one that took upon him the profeſſion of the Law, made a motion, that all the ſuperfluous caſes of the Law reported in our Bookes might be reiected, and left out of the next impreſſion, and principally thoſe that Fitzherbert had not vouchſafed to abridge. But indeed the motion was ſuperfluous and unmeete, and therefore banished; for there is no caſe reported in our Bookes, but is worthy of obſervation; for thereof great uſe may be made at one time or other, if it be well underſtood and remembred, and we ſhould have been right ſorry, if theſe two excellent caſes, amongſt many others, had been reiected.

¶ Et ſoit lye & publie 4. foits per ann'.] This is evident.

¶ Auxybien come les deux grand charters.] Here it is to be obſerved, that Magna Charta, and Charta de Foreſta are called, Les deux grand Charters.

By the firſt Chapter of the Acts of this Parliament it is provided, that theſe two Charters ſhalbe read foure times every yeare before the people in full Comitie, that is to ſay, in the next County after the feaſt of Saint Michael, and after the feaſt of the nativity of our Saviour, after Eaſter, and after the nativity of Saint John Baptiſt, and ſo oft, and at thoſe times, ought the ſtatute of Winchester to be read and publiſhed.

¶ Soit charge les trois Chivaliers.] Theſe three Knights are authoriſed before, Cap. 1.

Cap.

CAP. XVIII.

EN droit des waſtes & deſtructions faits en gards per Eſcheators & Subeſcheators de meaſons, bois, parkes, viuers, & de touts auters choſes, que eſchient en les maynes le Roy: Voit le Roy, que celuy que aver' le dam' reſcere, eit briefe de waſt en la Chancery vers Leſcheator de ſon fait, ou Subeſcheator de ſon fait, ſil eyt de quoy reſponder, & ſil nad de quoy, ci reſpond' ſon Soveraigne per autiel peine, quant as damages, come darreine ordeine eſt per eſtatute ſur ceux que font waſt en gardes.

Where ſome haue thought that the Eſcheator and Undereſcheator are not within the ſtatute of Magna Charta; and therefore in this point the title of confirmatio Chartarum is not apt as to this Chapter, let them reade the ſtatute of 36.E.3. and they will be ſatisfied. 36.E.3.cap.13. & Magna Char. cap.5.

¶ Per Eſcheators & Subeſcheators.] Of their *names, and whence they are deriued, of their antiquity and office, of their number in ancient time, and what alteration hath been by Acts of Parliament of later times, you may reade in the firſt part of the Inſtitutes. *Regiſt.301.cap. Eſcheatrie. Mirr.cap.1.§.5. Statut.de Scacc' 51.H.3. Brit.fol.33.34. Flet.lib.1.cap.6. Rot.Parl.18.E.1. fol.7.& 21.E.1. rot.1. 28.E.1. cap.18. 29.E.1. de eſcheat. 14.E. 3.cap.8. 1.H.8. ca.8.F.N.B.100. Stamf.pr.81. 1.Part of the Inſtitutes, ſect.4.

¶ Parkes, viuers.] Here viuers, viuaria, are taken for fiſh-ponds and warrens, as heretofore we haue obſerued.

¶ Et de touts auters choſes, que eſchient en le maynes le Roy.] a That is, of all other things which caſually fall, or eſcheat, or come into the Kings hands. a See the firſt part of the Inſtitutes, ubi ſupra.

¶ Eyt briefe de waſte.] b For the action of waſt againſt the Eſcheator, ſee the Regiſter, F.N.B. &c. b Regiſt.72. F.N.B.59.b. Vet.N.B.fol.36. Stamf.prer.81. 14.E.3.cap.13. 36.E.3.cap.13.

¶ Reſpond' ſon Soveraigne.] Reſpondeat ſuperior, that is, the Eſcheator ſhall anſwer for the deputy Eſcheator, or Undereſcheator.

¶ Per eſtatute.] That is, by the ſtatute of Gloceſter, anno 6.E.1.cap.5. and W.2. anno 13.E.1. cap.21.

And it is to be obſerued (that we may note it once for all that in this and other ancient Acts of Parliament that haue relation or reference to any former, there is not any mention made of the yeare or Chapter of the former ſtatute, but the generall reference was then thought the ſureſt, and the more Parliamentary way.

CAP. XIX.

Vid. W. 1. cap. 24.

DE rechiefe la ou Leſcheator, ou le Viſcount ſeiſient en la mayne le Roy auters terres, la ou il nad reaſon de ſeiſier: & puis quant trove eſt la non reaſon, les iſſues du meſne temps ont eſtre ceo en arere retenus, & nemy rendus, quant le Roy ad la mayne ouſte: Voit le Roy que deſormes, la ou terres ſont iſſint ſeiſies, & puis la mayne ouſte pur ceo que il nad reaſon de ſeiſier, ne ceo tener, ſoient les iſſues pleinment rendus a celuy a que la terre demurt, & avera le damage reſceive.

See the ſtatute of 29. E. 1. de Eſchaetoribus, commonly called the ſtatute of Lincoln, made the yeare after this late; and upon theſe two ſtatutes ten points are to be obſerved:

1. That by the common law, although the ſeiſure were not lawfull, yet for the meſne profits upon the liuery, or ouſter le mayne, the party grieued was not reſtored to the meſne profits, which miſchiefe is remedied by theſe two ſtatutes.

24. E. 3. 28, 29, 59. 5. E. 3. 6. 2. Iſſues are intended rents and things leviable by the Eſcheator, which may be reſtored, though the Eſcheator hath accounted for them, and not paid; but the mony, being once in the Kings coffers, ſhall not be reſtored.

3. That though both theſe ſtatutes ſpeake onely of an ouſter le mayne, yet being both beneficiall lawes for reſtitution to be made to the party grieued, by equity they extend to liueries.

4. Where the words ſeem to extend onely to ſeiſures before office, and after by the office that is found the King is not intitled, yet by conſtruction the ſame extend onely to ſeiſures after office found. Since hereafter verbo, Seiſent.

24. E. 3. 33. 9. E. 4. 52. Kelway, 2. H. 8. 156. 5. Theſe ſtatutes extend by equity to ouſter le mayne, and amoveas manus upon petitions, and monſtrans de droits, not only in caſes concerning inheritance, but freehold and inheritance.

6. Theſe ſtatutes extend alſo by like equity to ouſter le maynes upon traverſes, although traverſes were not in uſe at the time of the making of theſe ſtatutes.

28. H. 6. fol. 9. b. 5. H. 5. 2. 30. aſſ. 28. F. N. B. 260. 4 H. 7. 5. Dyer 8. El. 248, 249. 21. E. 3. 1. 21. aſſ. 25. 12. R. 2. liuery 28. 40. aſſ. * 21. E. 3. 1. 21. aſſ. 15. 40. aſſ. 36. 9. E. 4. 51, 52. * 18. E. 3. liuer. 3. 24. E. 3. 65. Darcies caſe. 44. E. 3. 12. Stamf. pr. fol. 11. & 80, 81. Brok. reſeiſ. 13. 24. E. 3. 33. 7. By the ſaid ſtatute of 29. E. 1. if any former office or record be found after liuery, or ouſter le mayne, that maintaineth the title, by reaſon whereof the King is ſeiſed, the King upon that record ſhall not reſeiſe maintenant, but thereupon ſue out a Scire facias, &c.

8. But if an * office be found, which doth entitle the King to the land by a title growne to him ſince the liuery, or ouſter le mayne, neither of theſe ſtatutes reſtraine the King, but that he may reſeiſe without a Scire facias.

9. * There is a diuerſity, when the party hath a liuery or ouſter le mayne upon an inſufficient office, or by erroneous proceſſe, there though the party hath right, yet the King ſhall reſeiſe without Scire fac': for a liuery miſ-ſued is as if it had been never ſued, and the ſtatute of 29. E. 1. is to be underſtood of a liuery or ouſter le mayne, duely and lawfully ſued for that which is inſufficient is nothing in law: But when the party ſueth out his liuery or ouſter le mayne duely and according to law, where in truth he hath no right, but the King, if he had been appriſed of his title appearing of record, no liuery or ouſter le mayne ought to have been granted, yet there upon that record the King cannot reſeiſe without a Scire facias.

10. Seeing

10. Some have holden, that at the common Law he that was in poſſeſſion of the land, &c. by iudgement, as in caſe of an ouſter le mayne, Rivery, or amoveas manum, that no reſeiſure could be made for the King without a Scire facias, and therein to avoid the former record by matter of as high nature: for the generall rules of Law be, Nihil tam conveniens eſt naturali æquitati, unumquodque diſſolvi eo ligamine, quo ligatum eſt: Et judicia ſunt tanquam juris dicta, & pro veritate accipiuntur.

¶ Seiſient en la mayne le Roy.] This ſeiſure is intended after office: for before office lands or tenements cannot be ſeiſed into the Kings hands, and ſo is the common experience at this day. 5. E. 6. tit. Office Br. 55. Lib. 8. fol. 169. Paris Stoughtons caſe.

See the Statute of W. 1. cap. 24.

That we paſſe over nothing that the Statute of 29. E. 1. giveth us occaſion to remember which is worthy of obſervation; It is there ſaid, that the Statute was commanded to be obſerved de concilio venerabilis patris Walteri de Langton, Coventr' & Lichfield Epiſc', tunc ejuſdem Regis Theſaurarii, & Johannis de Langton Cancellarii, who then had the dealing with Wards, &c. we will ſpeak ſomewhat of both theſe great officers.

This Walter de Langton, a Gentleman of an ancient and faire deſcended family, was made Lord Treaſurer of England in the 23. yeare of King Edward the firſt; he was a grave and a wiſe man, and was much favoured by the King, and in great authority under him, the rather, for that he with great diſcretion and moderation did wiſely diſſwade Prince Edward (who after was King by the name of Edward the ſecond) from ſuch diſhonourable and diſſolute courſes as he took, and was the principall motive that Pierce Gaveſton, the wicked corrupter of the Princes youth, was banished the Realme. The Prince in requitall hereof, on a time amongſt other iniuries, gave the Treaſurer foule and diſgraceſull words, whereof the noble King underſtanding, deemed the offence done unto himſelfe; for ſo I find it of record in the ſame Kings time, which record ſpeaketh in theſe termes: Et hoc expreſſè nuper apparuit, cum idem Rex filium ſuum primogenitum, & chariſſimum Principem Walliæ, pro eo quod quædam verba groſſa & acerba cuidam miniſtro ſuo dixerat, ab hoſpitio ſuo fere per dimid' an' amovit, nec ipſum filium ſuum in conſpectu ſuo venire permiſit, quouſque dicto miniſtro de præd' tranſgreſſione ſatisfeceret: quia, ſicut honor & reverentia qui miniſtris Domini Regis ratione officii fiunt, ipſo Regi attribuuntur; ſic dedecus & contemptus miniſtris ipſius Domini Regis fact' eidem Domino Regi inferuntur. Coram Rege Mich. 33. E. 1. Rot. 75. But we are ſorry to remember, that the favour of a King, and the height of proſperity, which eighty yeares are the bleſſings of God, ſhould make him preſume to defile his hands with corrupt and ſordid bribery, and to beguile himſelfe to thinke that no man ſhould dare to bring him in queſtion. True it is, that he was indicially convicted in the firſt yeare of King Edward the ſecond, but it was before foure of the principall Judges of the Realme, and in effect upon his owne confeſſion.

All theſe briberies you may reade in a bundle of the records remaining in the Treaſury, intitled Placita apud Winſor coram Roberto de Brabazon, Will' de Bereford, Rogero de Heigham, & Will' Inge Juſticiariis, &c. aſſignatis in cro' Sancti Andreæ Apoſtoli, anno regni Regis E. filii Regis E. primo, rot. 3. 8. 14. &c. Servile eſt expilationis crimen, ſola innocentia libera. Hiſtories may ſafely be beleeved, when there is a record to warrant them.

Nota

John Langton named alſo in the Act of 29. E. 1. was then Biſhop of Chicheſter, and Lord Chancellour of England, he was of a great ſpirit, and feared not the face of great men in that dangerous time to doe that which he ought: For whereas Thomas the noble Earle of Lancaſter had lawfully married Alice onely daughter and heire of Henry Lacie Earle of Lincoln, ſon and heire of William de Longa Spatha Earle of Saliſbury; and John Earle Warren and of Surrey had to wife the Kings Niece, that is, Joan daughter of Henry Earle of Barre, and of Elinor his wife daughter of King Edward the firſt, yet the ſaid Earle

Warren

Warren by great force and strong hand (ut dicebatur assensu regio) caused the said Alice Countesse of Lancaster to be fetched from the Earle of Lancasters house in Canford in Dorsetshire, and in great pomp and bravery (in despight of the Earle of Lancaster) to be brought to him to his Castle of Reygate in Surrey, where they lived in open advoutry. This worthy Bishop looking neither above him nor about him, but according to his office and duty called the said Earle Warren in question for the said shamefull and open adultery, and by Ecclesiasticall censures excommunicated him for the same, as he well deserved: In revenge whereof the Earle, adding a new offence to the old, came with many of his followers weaponed for the purpose towards the Bishop, to lay violent hands on him: But the Bishop himselfe being a man of great courage, and being well attended with Gentlemen and others his houshold servants, understanding thereof, they addressed themselves, and having put themselves in good order, issued out, and encountred with the Earle and his men, and not onely manfully defended themselves against that barbarous attempt, but valiantly overcame the Earle and his followers, and took them into their possession, and laid the Earle and his Gallants fast in prison by the Bishops commandement.

Vid. Pasch' 8. E. 2. rot. 111. coram Rege.

An. Dom. 1317. & 10. E. 2.

Armaque in armatos sumere jura sinunt.

But, fearing that one of Virgils Verses should be applyed to us,

Virg. 5. Æneid.

Sed jam age, carpe viam, susceptum perfice munus,

We will returne to our Statute.

CAP. XX.

ORdeigne est que nul Orfeure Dangleterre ne ailors de la Seigniorie le Roy, ne ouere, ne face de ci en avant nul manner de vessel, ne joialx, ne auter chose dore ne dargent, que ne soit de bone & veray allay, cestassavoir, ore de certaine touche, & argent del allay del esterling, ou de melior allay, solonque le volunt de celuy, a que les ouerers sont. Et que nul ouer pejor argent que money. Et que nul maner de vessel dargent ne depart hors des maines des ouerours, tanque el soit assay per les gardeins de la mister', & auxy que el soit sign' dun teste dun Leopard. Et que nul ne ouere pejor ore que de touche de Paris. Et que les gardeins du misterie allent de shope en shope enter les orfeours, assaiants que lore soit tiel come la touche avantdit. Et sils trovont ul pejor que la touche, que lour soit forfeit al Roy. Et que nul ne face auneux, croix, ne firmaux. Et nul ne mettr' pire en ore, si il ne soit naturel. Et que taillours des aimans & des seales, rendant a chescun son poyz dargent & dore auxy avant come ils le purront scaver sur lour foialtie. Et les joyaux dore, que ils ont entermaines de veil ouere, que ils seu deliveront a plus toft que ils purront. Et sils

ſils achatent deſor en avaunt de meſme cell' oueraige, que ils lachatent pur defere, & nemy pur revender. Et touts les bones villes Dengleterre, la ou ily ad orfeures, que ils facent per meſme leſtatute, come ceux de Londres font. Et que un veigne de cheſcun ville pur touts, a Londres, de quer' lour certaine touche. Et ſi ull' Orfeure ſoit attaint que autrement le face que deſuis neſt ordeine, ſoit punie per priſon, & per ranſome a la volunt le Roy. Et en touts les choſes deſuis dits, & cheſcun de els voit le Roy, & tend' il & ſon Councel, & touts ceux que a ceſt ordeinment fuerent, que le droit & la ſeigniorie de la Corone ſaves luy ſoient per touts, &c.

¶ Ore de certeine touche.] The pound of gold and ſilver containeth 12. ounces: 12. graines of fine gold make a carct, 24 carcts of fine gold make an ounce, 12. ounces make a pound of fine gold of the touch of Paris; but by the ſtatute of 18. Eliz. 22 carcts fine make an ounce. See hereafter in this Chapter. 18. Eliz. cap. 15.

¶ Et argent del allay de eſterling.] In our Law it is called Sterlingum. For the name of Eſterling or Sterling money there be divers opinions. 37. E. 3. cap. 7.

Our Hiſtorians thinke it is ſo called, ab effigie Sturni, aviculæ, quæ in altera parte nummi impreſſa fuit, nam Sturnus anglicè Sterling dicitur, &c. vel quod numulus in altera parte haberet notam ſtellæ, quam Angli Ster vocant. Polid. Virg. fol. 304. &c.

And with the concett of the Sterling agreeth * Linwood the Civilian in his gloſſe upon the Provinciall conſtitutions. * Tit. de teſtamentis cap. Item quia verbo centum ſolid.

The Scots thinke it ſhould take his name of a Towne in Scotland, called Striveling, alias Sterling. Maſter Skene.

But the Eſterling or Sterling peny tooke the name of the workmen, being Eſterlings, that both coined it, and gave it the allay as the Florence of gold is called of the Florentines, and the Portagues of the Portugals, &c. The name. Hovend. parte poſter. annalium. fol. 377 b.

And the Eſterling peny was firſt coined by the Eſterlings in the reigne of Henry the ſecond; and now money of that allay is counted the lawfull money of England. 20. E. 1. Vet. mag. Chart. 167. The time.

20. pence of ſilver made an ounce, and twelve ounces made a pound of fine ſilver, and eleven ounces of fine ſilver, and one ounce of allay maketh a pound weight of Sterling ſilver intended by this Act. Dyer 7. El. fol. 82 The value.

By the ſtatute of 18. Eliz. plate of ſilver ought to be of the fines of xi. ounces two peny weight.

Allay is the mixture of a baſer metall then ſilver or gold, called in our Bookes faile metall. 9 H. 5. Stat. 2. cap. 4. & 6.

And if more allay be put into the money then is limited to them by the Indenture betweene the King and them; or make it of leſſe weight, it is treaſon, and herewith agreeth Britton, treating of treaſon, where he ſaith, Auxy le feſons de noſtre money counterfeir, ou plus de allay mys en noſtre money que miſter ne ſerra ſolonque le forme & uſage de noſtre Realme, and hereunto accordeth Fleta. 3. H. 7. 10. a. b. 3. H. 7. ubi ſupra. Brit. fol. 10. b. Flet. lib. 1. ca. 22.

The ancient currant ſilver was the penny: for ſo I find in the Regiſter in an action of account againſt a receiver, the Plaintife ſuppoſed the Defendant to be receptor denariorum: And where a man bringeth his take in an action of debt, the entry is, quod non debet præfato querenti 4. libras, nec aliquem denarium inde. And at the making of this ſtatute in 28. E. 1. the peny was the currant money of England: It is called in Latine Denarius, and very aptly to be derived à numero denario, as it is taken by us; quilibet enim denarius argenti valebat What kind of coine. Regiſt. 135. F. N. B. 92. Stat. de 31. E. 1. de ord. menſur. lib. intrat. Denarius unde.

10. denarios

10. denarios æris: Denarii dicti, quia denos ære valebant; quilibet denarius puri auri valebat 10. denarios puri argenti.

Penny in English cometh of the Saxon word pennyg.

Rot. clauſan. 13. H. 3. In 13. H. 3. there was found by a Plowman in tilling the earth money in veſſels ſo ancient, as it was not knowne; the Record ſaith, De veteri moneta ignota in doliis arando reperta, &c.

Rot. clauſ. an. 3. H. 8. The richeſt King of England of treaſure, that I have read of, was King Henry the ſeventh, who left at his death in ready mony Fifty and three hundred thouſand pounds, moſt of it in forraine coine.

¶ Et que nul oure, pejor argent que monie.] The ſenſe hereof is, that none ſhall gild worſe ſilver then of the fines of ſterling; for ſuch ought the mony to be, and all ſilver veſſell ought to be of the allay of good ſterling: for the plate of England is both for the honour, and riches of the Realme.

37. E. 3. cap. 7. 2. H. 5. ca. 4. Sta. 2. 2. H. 6. cap. 14.

¶ Tanque il ſoit aſſaie per les gardens del miſterie.] This is evident of it ſelfe.

¶ Auxy que ſoit ſigne dun teſte de Leopard.] This is referred to this day: the ſtatute of 37. E. 3. added, that every Goldſmith ſhould have his private marke, &c. to the end it may be knowne who made it; beſides the Surveyors muſt ſet their marke; and then an alphabeticall letter muſt be alſo ſet unto it, ſo as it muſt have foure markes.

37. E. 3. cap. 7.

For theſe matters ſee the Statutes of 2. H. 6. ca. 14. 17. E. 4. ca. 1. 4. H. 7. ca. 2. 18. Eliz. cap. 14.

¶ Et que nul ne oure pejor ore que de touche de Paris.] Of this ſufficient hath been ſaid before.

¶ Et que nul ne fac' auneux, croix, ne firmeaux.] This branch is repealed by 21. Jacobi regis, cap. 28. verſus finem.

¶ Et nul mett' pier en ore, ſi il ne ſoit naturel.] Counterfeit ſtones ſhould not be ſet in gold, to the end that the ſubject ſhould not be deceived thereby.

¶ Que le droit & le Seigniorie de la Corone ſaves luy ſoient per touts.] Here is offred ſuch occaſion to ſpeake what prerogative the King hath in ſilver and gold, and firſt and principally in making of money current within the Realme.

Plo. com. 316. It is ſaid by thoſe that were of councell with the King in the caſe of the Mines, that it doth pertaine to the King onely to put a value to the coine, and to make the price of the quantity, and to put a print to it; which being done, the coine is currant for ſo much as the King hath limited. Before we ſpeak to this, let us ſee what our ancient Authors and Acts of Parliament have holden and enacted concerning the monies of England in genere, and then ſhall we the better conceive of this opinion.

Mirr. cap. 1. §. 3. The Mirror treating, Des Articles per veiels Roys ordeins, ſaith thus, Ordein fuit que nul Roy de ceſt Realme ne poet changer ſa money, ne impairer, ne amender, ne auter money faire, que de ore ou dargent ſans aſſent de touts les Counties, that is, without aſſent of Parliament.

Eucilides, lib. 1. cap. 1. Geo. agricol. lib. 10. cap. 1. For the better underſtanding hereof, and of that which ſhall be ſaid hereafter, it is to be underſtood, Quod metallorum ſunt ſeptem ſpecies, viz. Aurum, Argentum, Æs, ſive Cuprum (ſic dictum, quia primo inventum fuit in Cypro) Stannum, Ferrum, Plumbum, & Aurichalchum. Now as to the making of coine thoſe metals

tals by the law of England are subdivided in metallum legale, sive verum, & metallum illegitimum sive falsum. And this subdivision appeareth both by Act of Parliament, and by our Bookes.

Quicunque in emptionibus & venditionibus obulum seu quadrantem legalis metalli, & debitam habentem formam recusare præsumpserit, tanquam regiæ majestatis contemptor capiatur, & in carcerem detrudatur. By this Act it appeareth, that no subiect can be enforced to take in buying or selling, or other payment, any money made, but onely of lawfull metall, that is, of silver or gold, as the Mirror hath told you, and by this it is proved, that having respect to money, there is an unlawfull metall, and these be the other five. Statutum de dimissione denariorum, an. 20. E. 1. Vet. Mag. Chart. fol. 167.

The mony of England is the treasure of England, and nothing is said to be treasure trove but gold and silver. See the third part of the Institutes, cap. Treasure trove. And this is the reason that the Law doth give to the King mines of gold and silver, thereof to make money, and not any other metall which a subiect may have, because thereof money cannot be made. And hereof there is great reason, for the value of money being the measure of all contracts, &c. is in effect the value of every man. And herewith agreeth the booke in 3. H. 7. Quod ille qui facit monetam contra ordinationem, &c. allaiatam, viz. alcamino, vel alio falso metallo, proditio est, where all the said five base metals (as to be put in coine) are deemed false metals. Bracton calleth money made of them monetam reprobam, & monetam falsam. Pl. com. 316. the point adjudged. In nummis tria requiruntur, metallum legale, pondus, & forma. 3 H. 7. ubi supra. 9. E. 3. cap. 2. Glanv. lib. 14. cap. 7. Bract. lib. 3. fol. 118.

To omit many things that might be said to the same intent, and to confirme this point with an Act of Parliament made in the 25. yeare of the reigne of that wise and victorious King Edward the third, in these words: "Item, it is accorded, that the mony of gold and silver which now is current, shall not be impaired "in weight, or allay, but as soon as good way may be found, that the same be put in "the ancient state, as in the Sterling. Flet. lib. 1. ca. 22. 25. E. 3. cap. 13. 9 H. 5. stat. 2 ca. 6 See the third part of the Institutes, cap. Felony, by bringing in of certaine coin, &c.

By this Act three things are to be observed: 1. That the money of England must either be of gold or silver: 2. That the currant money of England cannot be impaired either in weight or in allay: 3. That the allay of the sterling was the ancient currant mony of England. And herewith agreeth the statute of 9. H. 5.

By an Act made, not in print, it is enacted, that silver shall be coined according to the old esterling in poize, and allay, to be currant amongst the subiects, and not to be carried over, on paine of death. And if the Flemings shall coine their silver accordingly, that the same be currant amongst Merchants. And that the sterling mony was the ancient currant money of England. Rot. Parl. 17. E. 3 nu. 15.

That in the raign of E. 1. there were divers white monies called Pollards, Crocards, Staldings, Eagles, Leonines, and Steepings artificially made of silver, copper, and sulphur, and yet currant within the Realme; and for that two pieces of those monies were but of the value of one sterling, King E. 1. by his Proclamation utterly forbad the same. Rot. Fin. an. 28. E. 1. Holl. pag. 309. a. Walf. an. 28. E. 1.

And yet to looke somewhat higher, Matth. Paris 33. H. 3. pag. Denarius Angliæ qui nominatur sterlingus rotundus sine tonsura ponderabit 12 grana frumenti in medio spicæ, & 20. denarii faciunt unciam, & 12. unciæ faciunt libram, &c. See Matth. Paris. 31. H. 2.

And yet to ascend to former times, Hæc sunt jura quæ Rex Angliæ solus & super omnes habet in terra sua, &c. viz. murdrum, falsaria monetæ suæ, incendium, hamsockna, forstall', Firdinga, flemen firmæ, præmeditat' assultus, roberia, &c. Inter leges H. 1. cap. 11. de jure regis.

But I will desire the studious Reader to cast his eyes upon the lawes before the Conquest.

Si quis nummum corripuerit, ei manus scelere violata præciditor, eamque prece vel pretio redimi nefas esto, &c. Inter leges Ethelstani regis, cap. 14. & Edgari, cap. 8. & Canuti regis, cap. 8. 7. E. 2. ca. 12.

In dimensione & pondere nihil esto iniquum, ab iniquitate deinceps quisque temperat, &c.

And melting of the good monies of the Realme, and altering the same into base coine was deemed in Parliament amongst the rest of the calamities that then fell upon this Realme. And that the law is this, it is best for the King; for by the impairing

impairing of the coine of England either in weight or in allay, the King hath the greatest losse both in his owne revenues, forfeitures, and subsidies, and also in the disvaluation of his subiects: for the King can never be rich, or his Kingdomes safe, when his subiects be poore, and the finenesse and goodnesse of his coine is inter magnalia & regalia coronæ.

25.E.3.cap.20. At the aforesaid Parliament of 25.Ed.3. another excellent law was made in these words: "Item, it is accorded and assented, that the moniers, and other ministers of the money shall receive plate of gold and silver by the "weight, and not by number, and in the same maner shall deliver the money, when "it shall be made, by weight, and not by number, without delay.

Queen Elizabeth (Angliæ amor) finding in the beginning of her raigne some Copper money, and all too much, and against law allayed, amongst many others, reformed the same, as upon her Tombe in Westminster it appeareth, Religio reformata, pax fundata, moneta ad suum valorem reducta, classis instructissima apparata, gloria navalis restituta, rebellio extincta, Anglia totos 40.annos prudentissimè administrata, ditata, & munita, Scoria à Gallis liberata, Gallia sublevata, Belgia sustentata, Hispania coercita, Hibernia pacata, orbisque terrarum semel atque iterum circumvagatus.

Pl.com. in the case of the mines, fol.314.&c. Bract.lib.2.fol. 122.b.Flet.lib.4. cap.19. Glanvil. lib.14.cap.2. Mich.33.E.1.rot. 126.coram Rege, Derby. Rot.Parl. 3.R.2.nu.43.Regist.165. 21.E.3. fol.60. 27.ass.19 43.E.3.35.&c. * Mich.18.E.1. in banco rot.139 Cumberl. Minera argent.de Aldenestion. Libertates mineræ.

Now for the Kings Prerogative in the mines or veines of gold and silver (for he hath no prerogative in any other metall) you may reade at large in the case of the mines. If you desire to reade other authorities not cited there de Aurifodinis, Argenti fodinis, & aliis mineris, you may reade Bracton, Fleta the Register, and other ancient Authors, Records, and Book-Cases. And to this you may adde a Record which we lately found out.

**Patrius del Gile & xxvi. alii Minetarii apud Aldenestion implacitantur per Henr' de Whiteby, & Joannam uxorem ejus pro eo quod succiderunt arbores suas apud Aldenestion vi & armis, & eas asportaverunt ad valentiam lx.li. &c. Ipsi dicunt quod tenent mineram de Aldenestion ad firmam de Dom' Rege, & dicunt quod talis est libertas mineræ prædictæ, quòd minetarii ejusdem mineræ possunt capere boscum, cujuscunque fuerit, propinquiorem & utiliorem venæ argenteæ prædictæ mineræ, quam invenire contigerit. Et quod iidem minetarii possint capere pro voluntate sua boscum illum ad mineram illam ardendam & fundendam. Et licitum est eis capere boscum illum ad ædificandum, & ardendum, & claudendum. Et quod licitum est eis boscum illum dare ministris mineræ prædictæ pro stipendiis suis. Et etiam licitum est divitibus ejusdem mineræ dare pauperibus de bosco illo ad sustentationem suam quantum voluerint. Et dicunt, quòd, quia prædictus boscus fuit propinquior & utilior cuidam venæ quam ipsi invenerunt, ipsi succiderunt boscum prædictum ad comburendam, & fundendam mineram prædictam, & ad ædificandum, claudendum, & ad dandum pauperibus & ministris ejusdem mineræ pro stipendiis suis, sicut prædictum est. Dicunt etiam, quod non est licitum aliquibus dominis boscorum postquam operi minetarii inceperint succidere in boscis illis ad mineram prædictam, sicut prædictum est, aliquid de boscis illis vendere, nec dare, nisi tantum inde capere rationabilia estoveria sua. Et dicunt quòd ipsi & Anteces. sui, nomine Domini Regis in boscis vicinis quorumcunque fuerint ad mineram tali libertate usi sunt à tempore quo non extat memoria, unde bene advocant quod ipsi succiderunt prædictum boscum ratione ejusdem libertatis, & non contra pacem, &c. Et Henr' & Joan' bene cognoscunt quod licitum est minetariis prædictis capere de propinquioribus & utilioribus boscis ad mineram Regis ardendam & fundendam, set dicunt, quod, ultra necessaria sufficientia ad mineram illam ardendam & fundendam, vi & armis boscum suum ad valentiam xl.li. succiderunt, vendiderunt, & asportaverunt, de quo nihil proficui ad mineram Regis devenit, nec ad ejusdem mineræ promotionem. Et quod ita sit, petunt quod inquiratur*

ratur; unde si boscus ille & alii de partibus illis destruantur, & ad aliqua alia inde facienda, quam ad mineram prædictam comburend' & fundend', hoc erit ad dampnum Domini Regis; pet' judic' si minetarii prædicti ad præmissa quæ allegant, cum in manifestum dampnum Domini Regis redundant, admitti debeant, &c. cum destructis boscis illis cessabit minera illius proficuum, &c. dies dat' est in tres Pasch' &c.

Modo reddit Oxenford lx.li. ad numerum de 20.in ora, (i.) ad numerum de xx.[d]. in uncia, sic interpretatur in lib. Abbatiæ de Burton in [a] com' Staff.

Domesday Oxenfordstr. ora Oxenford. & ibi sæpe. Mich. 37. H. 3. rot. 4.

[a] Duæ horæ quæ valent 32.[d].

* Moneta appellata est, quia nos monet ne qua fraus in metallo vel pondere fiat: [b] Pecunia à pecudibus est appellata, sicut à juvando jumenta dicta sunt, quia in pecudibus universa antiquorum substantia constabat: Antiquissimi non dum auro & argento invento, [c] ære utebantur, nam prius ærea pecunia in usu fuit, postea [d] argentea, deinde [e] aurea subsequuta. Sed ab ea quæ incepit nomen retinuit, unde ærarium dicitur, quòd prius æs fuit in usu. Hæc Isidorus.

* Monetа unde. Isidor. lib. 16. Ethic. cap. 17.

[b] Pecunia unde.

[c] Unde æs, vide Cesars Commen.

[d] Argentea pecunia quando.

[e] Aurea quando.

[f] Νόμισμα ἀπὸ τῦ νόμου, hoc est, à lege o in υ commutato, quia cum antea permutatione mercium homines uti solerent lege, lege usus nummi introductus est. **Some deriveth it**, à Numa Romanorum Rege, quia ipse primus imaginibus notavit, & titulo nominis sui præscripsit. **Others imagine**, quòd dicitur nummus, eò quòd nominibus effigieque signatur.

[f] Nummus unde. Ferlingus unde, Stat. de 51. H. 3. Assisa panis, &c.

Panis Wastelli de Ferlingo, (i.) quadrantis, derivatur à verbo Saxonico peopling, per contractionem Ferling.

Where you reade de auri fodinis **and** argenti fodinis, **it is affirmed by Merchants that have travelled for gold, that there are silver mines, that is, there is oare or stone of silver digged out of the earth, and out of that by art is silver tried, but there is no oare or stone of gold, but it is gold originally in smaller pieces as it were dust, which being washed downe to the shoare, it is found by the pellucidnesse of the water. And this is confirmed by** Job; **for he saith,** Habet argentum venarum suarum principia, & auro locus est in quo conflatur: **Surely, there is a veine for the silver, and a place for gold where they find it. And soon after,** Locus Sapphiri lapides ejus, & glebæ illius aurum; **The stones of it are a place of Saphires, and the dust of it is gold. And yet for distinction sake it is called** aurifodina.

Jobi, c. 28. ver. 1. & ver. 6.

For Stannum, **Tinne, England hath of ancient time furnished other countries, both farre and neare, as you may reade in** Diodorus Siculus, **who lived in** Augustus **time. But** Polibius, **who wrote about two hundred yeares before him, affirmed this Iland to be abundantly stored with tinne; And we have taken the greater liberty herein (to delight, if we could, the Reader) for that herewith we conclude this last Chapter of this excellent Parliament.**

Diodorus Siculus, lib. 5. cap. 8. fol. 142. b Polibius, lib. 3.

Statutum de Asportatis Religiosorum, *editum Anno* 35. Edw. 1. apud Carliolen.

NUper ad notitiam Domini Regis ex gravi querela Magnatum, Procerum, & aliorum Nobilium regni *sui* pervenit; quod cum Monasteria, Prioratus, & Domus religiosæ ad laudem & honorem Dei, & ad exaltationem sanctæ Ecclesiæ per Regem & progenitores suos, & per dictos Magnates, Nobiles, & eorum antecessores fundata fuissent, & terræ & tenementa quæ plurima essent data per ipsos dictis Monasteriis, Prioratibus, & Domibus, ac viris religiosis in eisdem Deo servientibus, ut in hujusmodi Monasteriis, Prioratibus, & Domibus religiosis, tam Clerici quam Laici admitterentur, secundùm suarum sufficientiam facultatum; & infirmi ac debiles sustentarentur, hospitalitates, eleemosynarum largitiones, & alia pietatis opera exercerentur; & pro animabus fundatorum prædictorum, & hæredum suorum fierent in eisdem: Abbates, Priores, & Custodes eorumdem domorum, & quidam eorum superiores alienigenæ, utpote Abbates, & Priores Clunacen', & Præmontraten', & sanctorum Augustini & Benedicti ordinum, & cæteri qui plures alterius religionis & ordinis noviter per singula Monasteria, & domos eis subjecta in Anglia, Hibernia, Scotia, & Wallia diversa tallagia, census, & impositiones insolitas graves, & importabiles, Domino Regi & Magnatibus suis inconsultis, fieri statuerunt, & pro suo libito ordinaverunt, contra leges & consuetudines dicti regni. Ex quo fit, ut numerus religiosorum & aliorum servitorum in hujusmodi domibus et locis religiosis per tallagia hujusmodi, census, et impositiones oppressis, minuitur cultus divinus, et eleemosynæ pauperibus, infirmis, et debilibus subtrahuntur, et salutes vivorum, et animæ mortuorum miserabiliter defraudantur: hospitalitates, eleemosynarum largitiones, ac cætera cessant opera pietatis, sicque quod olim in usus pios, et ad divini cultus augmentum charitativè fuerat erogatum, jam in censum reprobum est conversum. Unde præterea, quæ prætermittentur

termittentur, ſcandalum non modicum creſcit in populo, & damna innumera, et exhæredationem fundatorum prædictorum, & hæredum ſuorum, procul dubio perveniſſe noſcuntur: & adhuc veriſimiliter præſumuntur pervenire, niſi tantis & tam gravibus detrimentis celeri & ſalubri remedio obvietur. Conſiderans igitur Præfatus Dominus Rex ſibi & populo ſuo valde fore damnoſum, ſi tam grandes jacturas & inſolentias ſuſtineret diutius ſub diſſimulatione tranſire.

¶ Volenſque idcirco Monaſteria, Prioratus, & alias Domos religioſas, & loca in regno & terris dominio ſuo ſubjectis conſtituta ſecundùm voluntatem & pia vota fundatorum ipſorum manutenere & defendere, & contra hujuſmodi oppreſsiones de congruo remedio providere de cætero, ut tenetur de conſilio Comitum, Baronum, Magnatum, Procerum, et aliorum Nobilium, & regni ſui Comitatum in Parliamento ſuo apud Weſtmonaſt' die Dominica proxim' poſt feſtum Sancti Matthiæ Apoſtoli anno regni ſui 33. habito ordinavit & ſtatuit, ne quis Abbas, Prior, Magiſter, Cuſtos, ſeu quivis alius religioſus, cujuſcunque conditionis, aut ſtatus ſeu religionis exſtat ſub poteſtate et juriſdictione ſua conſtitutus, cenſum aliquem per ſuperiores ſuos Abbates, Priores, Magiſtros, Cuſtodes religioſarum Domorum, vel locorum impoſitum, vel inter ſe ipſos aliqualiter ordinatum extra regnum et dominium ſuum ſub nomine redditus, tallagii, apporti ſeu impoſitionis cujuſcunque, vel alias nomine excambii, venditionis mutui, vel alterius contractus quocunque nomine cenſeatur, per ſe vel Mercatores, aut alios clam vel palam, arte vel ingenio defer' vel tranſmittat, ſeu deferri faciat quoquo modo, nec etiam ad partes exteras ſe divertat cauſa viſitationis, aut alio colore quæſito, ut ſic bona Monaſteriorum et Domorum ſuarum extra regnum et dominium prædictum abducat. Et ſi quis contra præſens ſtatutum venire præſumpſerit, conſiderata qualitate delicti, et regiæ prohibitionis penſato contemptu, graviter puniatur.

¶ Præterea inhibet præfatus Dominus Rex omnibus et ſingulis Abbatibus, Prioribus, Magiſtris, et Cuſtodibus religioſarum domorum et locorum, alienigenis quorum poteſtati, ſubjectioni, et obedientiæ domus eorumdem ordinum in regno et dominio ſuo exiſtentes, ſubdunt', ne de cætero tallagia, cenſus, impoſitiones, apporta, ſeu alia quæcunque onera aliquibus Monaſteriis,

Monasteriis, Prioratibus, seu aliis domibus religiosis eis (ut prædicitur) sic subjectis imponant, seu faciant aliqualiter assidere, & hoc sub foris factura omnium, quæ in potestate sua obtinent, et foris facere poterunt in futurum.

¶ Et insuper ordinavit Dominus Rex & statuit, quod Abbates Cisterc', et Præm' ordinum aliorum religiosorum, quorum sigillum in custod' Abbatis, & non conventus, prius residere tantummodo consuevit, de cætero habeant sigillum commune, et illud in custod' Prioris Monasterii seu domus et quatuor de dignioribus, et discretioribus ejusdem loci conventus, sub privato sigillo Abbatis ipsius loci custod' deponend'. Ita quod Abbas, seu Prior domus cui præest, per se contra aliquem seu oblig' nullatenus possit firmar', sicut hactenus fieri consuevit. Et si forsan aliqua scripta oblig' donationum, emptionum, venditionum, alienationum, seu aliorum quorumcunque contract' alio sigillo, quam tali sigillo communi, sicut præmittitur custodito, inveniantur à modo sigillata, pro nullis penitus habeantur, omnique careant firmitate. Cæterum intentionis Domini Regis non existit Abbates, Priores, & alios religiosos alienigenas per ordinationes & statuta expressa superius ab officio visitationis in regno & in dominio suo exercendo excludere, quin per se ipsos vel alios, Monasteria & alia loca eis in regno & in dominio suis prædictis subjecta, juxta officii sui debitum in his duntaxat quæ ad observantiam regularem, & ordinis sui disciplinam pertinent, libere valeant visitare. Proviso quod illi qui officium hujusmodi visitationis exercuerint, nihil de bonis aut rebus hujusmodi Monasteriorum, Prioratuum, & domorum extra præfatum regnum & dominium, præter rationabiles et moderatas eorum exemplas, deferant, vel deferri procurant.

¶ Et licet ordinationum et statutorum præscriptorum pronunciatio et publicatio à Parliamento proximo præterito usq; ad præsens Parliamentum apud Carliolum in octabis sancti Hillarii, anno regni ejusdem Regis Edwardi 35. certis ex causis, et ut cum majore deliberatione et maturitate procederent, remanserit in suspenso, Dominus Rex post deliberationem plenariam et tractatum cum Comitibus, Baronibus, Proceribus, et aliis Nobilibus et Comitibus regni sui habitum in præmissis, de consensu eorum unanimi et concordi ordinavit et statuit, ut ordinationes et statuta prædicta sub forma modis et conditionibus

tionibus ſupra contentis à primo die Maii prox' futur' in antea inviolabiliter obſerventur perpetuis temporibus valitura: quodque tranſgreſſores ipſorum pœnis extunc ſubjaceant annotatis.

The reaſon wherefore this Parliament was holden at Carliſle, appeareth by the writ of Parliament directed to the Lords, viz. Quia ſuper ordinationem & ſtabilimentum terræ noſtræ Scotiæ, necnon & aliis negotiis nos, & ſtatum regni noſtri ſpecialiter tangentibus, apud Carliolum in octab' ſancti Hillarii proxim' futur' Parliamentum tenere, &c.

There were two miſchiefes before the making of this Act, but both of them tended to one end, viz. the grievous oppreſſion of Churches and Monaſteries; the one from the Pope, the other mentioned in the Preamble.

For the firſt, In hoc Parliamento per majores graves depoſitæ fuerunt querimoniæ de oppreſſionibus Eccleſiarum, & Monaſteriorum multiplicibus, & extortionibus pecuniarum per Clericum Domini Papæ, magiſtrum Wil' Teſta noviter in regno inductum: præceptum eſt eidem Clerico de aſſenſu Comitum & Baronum, ne de cætero talia exequatur: For the King and the Lords adiudged it unjuſt, that the Pope ſhould take any profit of the houſes of their foundation: and therefore this Act dealeth not herewith, but the Lords prohibited his collector, and left the party grieved to his remedy by Prohibition, or other remedy by law, as had been before, and after was uſed, as by the Records and authorities quoted in the margent (amongſt many others) which are worthy your reading, more at large appeareth; and ſo much for that firſt miſchiefe. The other miſchiefe appeareth at large in the Preamble, wherein the Pope, having ſo great power over the Abbots and Priors aliens, had a hand for his owne benefit.

Rot. clauſ. 17. H. 3. m. 37. Rot. Franc' 16. H. 3. Rex, &c. Juſtic' ſuis de banco. 29 H. 3. tit. 3. à tergo. 39. E. 3. tit. 22. à tergo. 48. E. 3. tit 33. Bract. lib. 4. fol. 250. b.

* The Commons complaine againſt proviſions coming from Rome, whereby ſtrangers were enabled within this Realme to enioy Eccleſiaſticall dignities, &c. by meanes whereof daily almes was decayed, the treaſure of the Realm tranſported, the ſecrets of the Realme diſcovered, and the Clerkes within the Realm impoveriſhed; And that the Pope had in moſt covert wiſe granted to two new Cardinals ſundry Eccleſiaſticall livings within the Realm, and namely, to Cardinall Paragots above 10000. Marks yearly tare: they therefore require of the King and Lords ſome remedy, for that they neither could, nor would any longer beare thoſe ſtrange oppreſſions, or elſe to help them to expell out of this Realm the Popes power by force. The anſwer of the King was, that he underſtood well theſe miſchiefes, and willeth, that between the Lords & Commons ſome remedy might be found, whereunto he might aſſent: hereupon the Lords and Commons ſent for this Act of 35. E. 1. upon the like complaint, thereby forbidding, that any thing ſhould be attempted, or brought into the Realme, which ſhould tend to the blemiſhment of the Kings Prerogative, or in prejudice of his Lords or Commons, and ſo at that time, upon conſideration had of this Act of 35. E. 1. and for further remedy, an Act of proviſion was made.

Rot. Parl. 50. E. 3 nu. 64 &c. to the 117. 51. E. 3. nu. 78. Rot. Parl. 13. R. 2. nu. 43. 2. H. 2. fol. 10. &c. 4. H. 4. rot. clauſ. m. 11. * Rot. parl. 17. E. 3. nu. 59.

Alſo the Statute of 25. E. 3. made againſt proviſions, reſervations, &c. reciteth this Statute of 35. E. 1. and grounded that Act upon the ſame. So as this Act (as you may perceive) hath been of very great and high account. And now let us peruſe the words thereof.

25. E. 3 ſtat. unic. * 25. E. 3. de proviſor' per laſſent des Counts, Barons, & auters Nobles. 9. E. 3. cap. 2. 27. E. 3. ſtat. ſtap. per les Prelates, Counts, Barons, & auters Grandees des Counties, &c. Vid. 9. E. 2. ſtat. of Shriefes. 7. E. 1. de Religioſis. W. 2. in the Preamble.

¶ Ex gravi querela Magnatum, Procerum, et aliorum Nobilium regni.] It is recited by the ſaid Act of 25. E. 3. that this Act of 35. E. 1. was made at the petition of the Commonalty of the Realme, and here it is ſaid, ex gravi querela Magnatum, &c. and yet both ſtand well together; for Knights of the Shire, and other Gentlemen of the houſe of Commons are included under theſe words, aliorum * Nobilium: for Nobilitas eſt duplex, ſuperior & inferior; ſuperior belongeth to the Lords of Parliament, and inferior to Knights and Gentlemen of name and blood, who are in this Act termed Nobiles.

¶ Quod

¶ Quod cum Monasteria, Prioratus, & domus religiosæ, &c.] Here is rehearsed the end of the erection of religious houses, viz. ad laudem & honorem Dei, & exaltationem sanctæ Ecclesiæ per Regem, & progenitores suos, & per dictos Magnates, & Nobiles, & eorum antecessores fundata fuissent, &c.

4 R.2.nu.13. ¶ Quidam eorum superiores alienigenæ.] It appeareth in a Parliament Roll, that the Clergy (whereof Priors aliens were part) had a third part of the possessions of the Realme. These Abbots, Priors, and Prioresses aliens were iustly complained of, as by this Act appeareth, and many times upon like complaints faire promises were made for reformation, but no amendment could be had, till they were taken away, and their possessions given to the King by Act of Parliament. See the Parliament Rolls of 4.H.4. and 1.H.5.

Rot.parl.1.R.2. nu. & 13.R.2. nu.19. rot.parl.2m. 4.H.4.nu.23.& 48.1.H.5.cap.7. & Rot.parl.1.H. 5.nu.38. 22.E. 4.44.38.H.6.34 21.H.7.fol.1.&c. 13.E.3.264. 14.E.3.21.20.E. 3.annuity 24. 40.E.3.10. 27.ass.48. 14.H. 4.37. 22.E.4.44 21.H.7.7.7.R.2 cap.12.13.R.2. cap. 1.H.5.ca.7. Note, these Priors, and Prioresses aliens were Normans, and French men, and in time of warre with France, the King by the common Law might and did seise the possessions of the Priors aliens within this Realm into his hands, without any office, &c. See the statutes of 7.R.2. 13.R.2. 1.H.5. against Frenchmen and aliens, to receive or have any Benefice in England.

¶ In Anglia, Hibernia, Scotia, & Wallia.] For Scotland, see divers records and authorities in Law. Rot.Parl.Paich' 21.E.1.rot.1. & rot.2. magnum placitum inter Regem de Norwey, & Regem Scotiæ. Rot.Vasc' 22.E. 1.m.23. Trin' 25.E.1. coram Rege, rot.6. Norff. Robertus de Tony, &c. Mich. 33.E.1. coram Rege, rot.127. Scotia. 28.E.1. the letters of all the Nobility of England in the name of themselves, and of the whole Comminalty in Parliament assembled to the Pope, a Duplicat whereof under the seales remaine in the Exchequer, which we have seen, and a copy whereof we have. In the same yeare reade also the Kings letters to the Pope, which Walsingham rehearseth, pag.49. and the Lords letters, pag.54. Reade also Walsing. pag.17.&c. where many more Authors be cited, & pag.31, 32, 121, 138. & Matth. Westm' pag.420, 428, 443, 452. &c. Holl.fol.116, 117. Policron. lib.7.cap.39. Stow, 303. Fox, 269, 341. Rot.Parl.14.E.3.nu.13. Stat.2. & 42.E.3.nu.7. See in the Parliament Rolls, in every Parliament petitiones Scotiæ, Rot.pat. 10.E.3.2.part comes Arundel, &c. Brit.fol.25.a.b. 6.E.3.18. 1.E.3.17. per Cant' 8.R.2. cont' claim 13. 7.H.4. corody 7. 13.Hen.4. 4.& 5. 8.Hen.5.4. 7.E.4.27. Fortescue, fol.17. Pl.com. 126. Dyer 13.El. in manuscript.

¶ Diversa tallagia, census, & impositiones insolitas, graves & importabiles, &c.] See the exposition upon the Statute of Magna Charta, cap.30. when the King began to use the word of imposition: but here is the first statute that we remember, wherein this word Imposition was used: and observe well from whom it came; and therefore here these impositions be called insolitæ, and this word Noviter, &c. expresseth so much; and because they were unaccustomed and newly imposed, they were graves and importabiles, and against the lawes and customes of the Realme.

¶ Contra leges & consuetudines dicti regni.] Here it appeareth, that tallages, assessements, or impositions, set by any superiour, forreiner or other, Ecclesiasticall or Temporall, upon his inferiour, or any other, though they have never so faire pretexts, as to recover the holy Land, &c. are against the law and custome of the Kingdome of England.

12.H.7.cap.6. accord. And here it is to be observed, how this Act hath since the 17. yeare of E.3. been dealt withall; for at that yeare a branch of this Statute was recited, that forbad that any thing should be attempted or brought into the Realme, which should tend to the blemishment of the Kings Prerogative, or in prejudice of his Lords and Commons, which now is wholly omitted.

Rot.parl.17.E.3. ubi supra. nu.59.

Accipe nunc horum insidias, & crimine ab uno
Disce omnes—— Virgil—

¶ Minuitur

¶ Minuitur cultus divinus, &c.] That Acts of Parliament have been made at the petition sometime of the Nobles, many times of the Commons, and of the Lords and Commons in causes Ecclesiasticall for the honour of God, for advancement of divine worship, for the instruction of Gods people, and maintenance of workes of piety, and the like, appeareth in this Act, and in many other Acts of Parliament: for Reges qui serviunt Christo, faciunt leges pro Christo. To omit the ancient Statutes made in Parliament before the Conquest of Master Lamberts edition, we will recite some few which shall suffice in a matter so frequent and evident, W.2. 13.E.1. cap.43. 21.E.3.fol.60. the Bishop of Norwich his case, 25.E.3.cap.22. 25.E.3. Stat. de provisoribus, 27.E.3.cap.1. 36.E.3. cap.8. 38.E.3. Stat.2.cap.1. & cap.4. 45.E.3.cap.3. Rot. Parl. 51.E.3.nu.13. 3.R.2.ca.3. 7.R.2.cap.12. 12.R.2.ca.15. 13.R.2. Stat.2. cap.2.& 3. 16.R.2.cap.5. 2.H.4.cap.3. & 4. 4.H.4.cap.12.& 13. 6.H.4.cap.1. 7.H.4.cap.6.& 8. 9.H.4.cap.8. 1.H.5.cap.5. 3.H.5.cap.4. 2.H.5.cap.3. 2.H. 5.Stat.2.ca.2. 4.H.5.ca.6. 3.H.7.cap.6. 11.H.7.cap.8. and generally, all Statutes that take away priviledge and benefit of Clergy and Sanctuary.

¶ Sic quod olim in usus pios, & ad divini cultus augmentum charitativè fuerat erogatum, nunc in censum reprobum est conversum.] If it be observed of whom they are spoken, these words are sharp and bitter: for, as a reprobate is abjectus & creatus diabolo, so a reprobate sense is an abiect and damned sense, and the like is frequent in Parliaments, when any thing is attempted or done against the honour of God, the prerogative and dignity of the King, the lawes of the Realme or the Common-wealth. Lib 11. fol 73 b. Magd: Coll. case.

* The Pope, for divers usurpations, is called the common enemy to the King and the Realme. Rot. Parl. * 18.E.3. Stat.1. nu.38. Vid.17.E. 3.nu.59.

a By brocage and unlawfull meanes the Pope receiveth so much of Ecclesiasticall dignities in this Realme, as is more then the Kings warres, who then was, and of long time had been in an open and chargeable warre with France. a 25.E.3.nu.13. b 38.E.3.cap.1, 2,3,4.

b Note, in the Roll of Parliament of the Statute of Provisors, there are more sharp and biting words against the Pope, then in the print, a mysterie often in use, but not to be knowne of all men. c Rot parl.50.E. 3.nu.96. Rot.parl.18.E.3. nu.32.Stat.2.

c That the bycars of the sinfull City of Rome for money promote many Caitifes, being altogether unlearned, and unworthy, to a thousand Markes livings yearly, where the learned and worthy can hardly obtaine twenty Markes, whereby learning decayeth. Rot.parl.51.E.3. nu.13. 3.R.2. ca.3. & Rot.parl. nu.37. 6.H.4. cap.1. of the horrible mischiefes and damnable customes introduct of new into the Court of Rome, &c. 3.H.5.nu.11.

¶ De concilio Comitum, Baronum, Magnatum, Procerum, & aliorum Nobilium, & regni sui Comitatuum in Parliamento suo, &c.] Here the Prelates are omitted, and this Statute was made by the King, the Nobles, and the Comminalty: and it is obiected, that therefore this is no Act of Parliament, and for authority the Roll of Parliament in 21.R.2. is cited, where it is said, that divers iudgements were heretofore undone, for that the Clergy were not present. To this some have answered, that a Parliament may be holden by the King, the Nobles, and Commons, and never call the Prelates to it: But we hold the contrary to both these, and shall make it manifest by Records of Parliament, wherein for the better understanding hereof, we will observe this order: first, that the Bishops ought to be called to Parliament: secondly, where Acts of Parliament are good without them: and lastly, that this Act of 35.E.1. is an Act of Parliament.

To the first, every Bishop hath a Barony, in respect whereof, secundum legem & consuetudinem Parliamenti, he ought to be summoned to the Parliament as well as any of the Nobles of the Realme: And likewise 26. Abbots, and two Priors had Baronies, and thereby were also Lords of Parliament; and when

the Monasteries were dissolved, the Lords House lost so many members that had voices in Parliament. But seeing it was done by authority of Parliament, it was no impeachment to the proceedings in Parliament.

To the second, if they voluntarily absent themselves, then may the King, the Nobles and Commons make an Act of Parliament without them, as where any offender is to be attainted of high treason, or felony, and the Bishops absent themselves, and the Act proceed, the Act is good and perfect.

Likewise if they be present, and refuse to give any voices, and the Act proceed, the Act of Parliament is good without them.

Also where the voices in Parliament ought to be absolute, either in the affirmative or negative, and they give their voices with limitation or condition, and the Act proceeds, the Act is good; for their conditionall voices are no voices.

Of every of these we will produce examples out of the Records and Rolls of Parliament.

Dors. claus. an. 15. E. 2. m. 25.

At a Parliament holden à die Nativitatis Sancti Johannis Baptistæ, in 3. septimanas anno 15. E. 2. the Prelates, Countes, Barons, and Commons of the Realme charge Sir Hugh Spencer the father Earle of Winchester, and Hugh

See Vet. Magn. Chart. 2. part fol. 56.

his sonne Earle of Glocester with many high and heinous offences, as the Act called exilium Hugonis Lespencer patris & filii; the Earles and Barons, Peeres of the Realme, in the presence of the King pronounce iudgement against them: as by the Act appeareth: And after at a Parliament holden at York, à die Pasch' in 3. septimanas, the said iudgement and attainder against them (by the Kings exorbitant favour towards them, whose favourites they were) was annulled; and

Dors. claus. 15. E. 2. m. 13. in schedula.

one of the causes was, for that the said iudgement was given without the Prelates, whereas the same being an Act of Parliament, and entered into the Parliament Roll, as other Acts at that Parliament were, and the consent of the Bishops doth manifestly appear, for that they were parties to the charge, and after it was adiudged by authority of Parliament, that the said iudgement against them was good, and confirmed the same; so as they that beheld but on the outside of the adnullation, and looked not into all parts of the former Act, and knew not the Act of 1. E. 3. might say, as the Commons said, as is aforesaid, in 21. R. 2.

1. E. 3. cap. 1.

3 R. 2. stat. 2. ca. 3 Reade the Statute at large.

At the Parliament holden in the third yeare of King Richard the second, a Bill was exhibited against the Clergy with many bitter words, for the ill disposing of the Dignities, Offices, Parsonages, Canonries, Prebends, and other Benefices, whereof they were Patrons, and were in their gift, whereof many inconveniences followed; the Bishops and other Prelates taking great offence at this Bill, absented themselves, whereupon the King, upon the complaint of his Commons, by the advice and common assent of all the Lords Temporall passed the Bill.

Rot. parl. 3. R. 2. nu. 38. & 40. See 7. R. 2. ca. 12.

In the same Parliament great complaint was made of the extortions committed by the Bishops and their Officers; and thereupon a Bill was framed, that Justices of Peace might enquire thereof, and a forme of a Commission desired to be enacted; the Prelates and Clergy made their protestation expressly against the said Bill, to heare extortions, &c. tending to the blemishing of the liberty of the Church, &c. whereunto it was replyed for the King, that neither for their said protestation, nor other words in their behalfe, the King would not stay to grant to his Justices in that case, and all other cases, as was used to be done in times past, and was bound to doe by vertue of his oath done at his Coronation, whereupon the act and forme of a Commission passed as was desired.

Rot. parl. 11. R. 2. nu. 9, 10.

At the Parliament holden in the 11. yeare of Richard the second, in the beginning of the Parliament holden in that yeare, the Archbishop of Canterbury made openly in the Parliament a solemne protestation for himselfe, and the whole Clergy of his Province, which he desired might be entred, and so it was: the effect whereof was, that albeit they might lawfully be present in all Parliaments, yet for that in this Parliament matters of treason were to be entreated of, where-

at

at by the Canonicall law they ought not to be present; they therefore absented themselves, saving their liberties therein otherwise: The like protestation did the Bishop of Duresme and Carlile make. At which Parliaments divers statutes were made, nothing concerning life or member, as the 7. Chapter concerning Merchants, the 8. Chapter touching Annuities, the 9. Chapter against new Impositions, the 11. concerning keeping of Assises, &c. all which were good and perfect statutes, and yet the Prelates assented not to them.

At the Parliament holden in the 13. yeare of Richard the second, when the two Bills were read, the one intitled a Confirmation of the statute of provisors, and the forfeiture of him that accepteth a Benefice against that statute; the other intitled the penalty of him that bringeth in a sommons or sentence of excommunication of the Pope against any person upon the statute of Provisors, and of a Prelate executing it, both which Bills tended to restraine the Popes authority, which he claimed in disposing of Ecclesiasticall promotions within this Realme. The Archbishops of Canterbury and Yorke for the whole Clergy of their provinces made their solemn protestations in open Parliament, that they in no wise meant or would assent to any statute or law in restraint of the Popes authority, but utterly withstood the same, the which their protestations at their requests were inrolled, and yet both Bills passed by the King, Lords, and Commons, which are in print. 13.R.2.cap.2. 13.R.2.cap.3. Vid. 1.H.5.cc.7. Rot.Parl.13.R.2. nu.24.

See the statute of 16.R.2. and many others. 16.R.2.cap.5.

It is enacted by the King, Lords Temporall, and Commons, that no man should contract or marry himselfe to any Queen of England, without the speciall licence and assent of the King, on paine to lose all his goods and lands. Rot.Parliament. 6.H.6.nu.27.

The Bishops and Clergy being present, assented to this Bill, so farre forth as the same served not from the Law of God, and of the Church, and so as the same imported no deadly sinne, this was holden no assent; and therefore it was enacted by the King, Lords Temporall, and Commons, and so specially entred, omitting the Prelates.

And thus much as concerning the second Article shall suffice.

As to the third point, when an Act is specially entred, that it was enacted by the King, the Lords Temporall and Commons, it must be intended, that the Bishops absented themselves, &c. if they were present, protested against it, or gave such voices as were contra legem & consuetudinem Parliamenti. And for this Act of 35.E.1. in Letters patents made within 8. yeares after this statute, it is affirmed to be an Act of Parliament; by foure Acts of Parliament in the 4. and 5. and 25. yeare of E.3. the same is holden for an Act of Parliament, and so it is in 13.R.2. cap.2. stat.2. Rot.Pate[illegible] 7.E.2.[illegible] m.6. 4.E.3.ca.6. 5 E.3.cap.3. 25.E.3.stat.unic. and by the Record of Parliament in 17.E.3. ubi supra. 20.E.3. Abb.14. 27.H.6.annuitie,41.

¶ Censum aliquem [illegible] superiores, &c.] This branch is plaine, and needeth no exposition.

¶ Considerata qualitate delicti, & regiæ prohibitionis pensato contemptu, gravius puniatur.] That is, by fine and imprisonment, according to the quality of the offence.

¶ Ne de cætero tallagia, &c.] Hereby are all such tallages forbidden.

¶ Et hoc sub forisfactura omnium, quæ in potestate sua obtinent, & ~~forisfacere poterunt in futuro.~~] ~~This is the like forfeiture~~ as is given by other statutes in case of Præmunire, viz. the forfeiture of his lands, which he may forfeit, and of his goods, and to be imprisoned at the will of the King. Vid.stat.de moneta mag cap.3. Vet.mag.Chart. fol.38. 20.E.3. cap.1.

¶ Quod Abbates Cisterc' & Præmonstr' ordinum, &c.] This branch (as it hath been resolved) is impossible, and inconvenient to be observed:

27.H.6.annuitie 41. Lib.8.fol 118. Doct.Bonhams case.

observed simpliciter, because it is hereby enacted, that the common Seale &c. shall be in the custody of the Prior, and of some of the worthiest and discreetest of the Convent, sealed up with the private seale of the Abbot, &c. and if any writing &c. should be sealed with any other seale then with the said common seale so (as is aforesaid) kept in custody, it should be void, &c. for if it be kept in custody under the seale of the Abbot, then no writing can be sealed by the Abbot, and if the Abbot taketh it out, and seale, &c. then is it not kept in custody under his private seale; and therefore it was resolved by the whole Court of the common Pleas, that this branch, being impossible to be observed, is void: the Court also resolved, that it was inconvenient: for they said, that if the Statute should be observed, every deed that passed under the common seale might be undone by a simple surmise, &c.

Bract.lib.1.cap. Bracton saith, that Lex est sanctio justa, jubens honesta, & prohibens contraria; so as every law must have three qualities: 1. it must be justa: 2. jubens honesta: 3. prohibens contraria. And if it be justa, it must have five properties: 1. it must be possibilis, 2. necessaria, 3. conveniens, 4. manifesta, 5. nullo privato commodo, sed communi utilitati edita. And this is grounded upon holy writ, Prov.cap.8. ver.15. Esa.cap.10.ver.1. Legum conditores justa decernunt. Væ qui condunt leges iniquas, & scribentes injustitiam scripserunt.

¶ Cæterum intentio Domini Regis non existit, &c.] By this branch the power of visitation is restrained with three restrictions or limitations: 1. Juxta officii sui debitum, 2. in his duntaxat, quæ ad observantiam regularem, & ordinis sui disciplinam pertinent: 3. proviso quod, &c. nihil, &c. extra præfatum regnum, &c. deferant.

¶ Et licet ordinationum & statutorum, &c. à Parliamento proxim' præterito.] That is, at a Parliament holden at Westminster, die Dominica prox' post festum sancti Mathiæ Apostoli, in the 33. year of E.1.

¶ Cum majore deliberatione et maturitate procederent.] According to the ancient rule, Deliberandum est diu, quod statuendum est semel.

Scantum

Statutum de frangentibus Priſonam *editum Anno* 1. Edw. 2.

DE priſonariis priſonam frangentibus, Dominus Rex vult et præcipit, quod nullus de cætero, qui priſonam fregerit, ſubeat judicium vitæ vel membrorum pro fractione priſonæ tantum, niſi cauſa, pro qua captus et impriſonatus fuerit, tale judicium requirat, ſi de illa ſecundum legem et conſuetudinem terræ fuiſſet convictus, licet temporibus prætaritis aliter fieri conſuevit.

At a Parliament holden at Weſtminſter in Cro' Aſſumptionis beatæ Mariæ, anno regni E. 1. 23. the like Act of Parliament was made with the ſame title as this is, totidem verbis; and therefore it may be, that it was recited and affirmed at the Parliament holden in 1. Ed. 2. which only is mentioned in our printed Bookes. Inter placita & mem. coram Domino Rege anno 23. E. 1.

It appeareth by our ancient Authors of the Law, that if a priſoner, whatſoever the cauſe was for which he was committed, had broken the Kings priſon, and eſcaped out, it was felony; becauſe, intereſt reipublicæ carceres ſint in tuto: but yet it muſt have been an actuall breaking of the priſon; for if the doore had been open, and he had gone out, or if others without his priority had broken open the priſon doore, &c. and he goeth out, and eſcapeth, or if the Gaoler himſelfe had let him out; in theſe caſes it had been no felony, becauſe the priſoners did not actually breake the priſon. And ſo it is of a felon that is under cuſtody of the Kings officer (which is an impriſonment in Law) and divers men doe reſcue or take him by force out of the cuſtody of the Kings officer, this is felony in them all by the common law. And ſo doth Huſſey chiefe Juſtice report the caſe, that in the raigne of Ed. 4. when he was Attorney, it was reſolved by Billing chiefe Juſtice, Choke, and the Judges, that the reſcous of a felon, to take him out of cuſtody and priſon, was alwaies felony by the common law, but of the priſoner himſelfe it was not, &c. which muſt of neceſſity be intended, when other men did reſcue him, or breake open the priſon without his priority, and theſe words in the report (tanque leſtatute fuit fait de frangentibus priſonam) ought to be omitted. Bract. lib. 2. fol. Brit. fol. 17. Fleta lib. 1. ca. 26. Sunſ. pl. 20. 30. b 1. H. 7. fol. 6. 2.

Foraſmuch as every man deſireth to be at naturall liberty, the Mirror complaines of the common law in this point, and ſaith, Abuſion eſt a tener eſcape de priſoner, ou debruſerie del Gaole pur peche mortell, car cel uſage neſt garrant per nul ley, ne in nul part eſt uſe forſque in ceſt Realme, & en France, eins eſt leu garrantie de ceo faire per la ley de nature. Hoc ille. Mir. cap. 5. §. 1.

¶ Nullus de cætero qui priſonam fregerit.] Nota, [a] he that is in the Stockes, or under lawfull arreſt, is ſaid to be in priſon, although he be not infra parietes carceris: and therefore this branch extendeth as well to a priſon in law, as to a priſon in deed. [b] Albeit divers Lords of liberties have cuſtody of the priſons, and ſome in fee, yet the priſon it ſelfe is the Kings pro bono publico; and therefore it is to be repaired at the common charge: for no ſubject can have the priſon it ſelfe, but the King only: And therefore Britton, ubi ſupra, ſpeaking of the Kings priſon, doth include all priſons. * For that which was called the Biſhops [a] 1. aſſ. p. 6. 1. E. 3. 17. 3. E. 3. coron. 312. 22. E. 3. ibid. 251. [b] 11. E. 2. det. 172. 13. E. 3. barr. 153. 27. aſſ. 27. 8. H. 4 18. 20. E. 4. 5. Brit. 72. 5. H. 4. cap. 10. * 22. E. 3. coron. 250. 8. E. 2. ibid. 419. 23. H. 8. c. 11 1. E. 6. cap. 12.

ſhops priſon: for the ſtatutes of 23.H.8. and 1.E.6. This (fregerit) is intended an actuall breaking of priſon, as hath been ſaid.

1.aſſ.p.6. 3.E.3. coron.333. Fitz. Juſtice of Peace, fol.23. 15.H.7.1,2. Pl.com.fol.13.

If the Sheriffe have a Capias upon an inditement of felony againſt A. and coming to arreſt him, is ſo diſturbed, that he cannot arreſt him, this is no breach; for A. was never in priſon: and therefore priſon in that caſe could not be broken.

In ſome caſes it is lawfull for the priſoner to breake priſon both at the common law, and notwithſtanding this Statute: As if the priſon be ſet on fire, either by lightning or otherwiſe, unleſſe it be by the priſoners procurement, he may breake priſon for ſafeguard of his life. Et ſic in ſimilibus. For, Quodcunque aliquis ob tutelam corporis ſui fecerit, jure id feciſſe videtur. But it muſt be inevitabilis neceſſitas.

1.H.6.5. 9.E.4. 26. See W.2. cap.34. Rot.parl. an.2.H.6.nu.60. Vid.14.El.cap.2.

¶ Subeat judicium vitæ vel membrorum.] Theſe words at the making of this Act extended as well to treaſon as to felony. In 2.H.6. it was enacted to continue till the next Parliament, that if any be indited, appealed, or taken for ſuſpicion of high treaſon, and breake the ſame priſon, it ſhould be high treaſon. And the reaſon of that Act was, becauſe that by the ſtatute of 25.Ed.3. de proditionibus, no other offence then is therein mentioned can be adiudged high treaſon, untill it be declared by Act of Parliament: And therefore that Act of Parliament being in the negative, if a man be indited or appealed for high treaſon, and breake the priſon, this breaking of priſon is not high treaſon, till it be ſo declared by Parliament, becauſe ſuch offence is not mentioned in the Act of 25.E.3. and therefore according to the Act of 25.E.3. it is ſo declared by the Act of 2.H.6. And yet the reſolution of the Iudges in 1.H.6. is good law: for there the caſe is, that a man outlawed of felony was in priſon in the Kings Bench, in which priſon he knew that certaine perſons were there committed for high treaſon, and breake priſon, and carried and led out the priſoners that were there in Gaole for treaſon; and ſeeing there be no acceſſaries in high treaſon, this was an abetting and aiding of them for their eſcape, he knowing them to be impriſoned for high treaſon; and thereof he was indited, and arraigned, and pleaded not guilty, and was found guilty. And it was adiudged by all the Iuſtices, that hee was a Traitor, and was drawne and hanged, which are the words of the booke. And the principall end of this caſe was to prove, that a man attainted of felony might be indited, arraigned, tried, and adiudged for high treaſon, for the benefit of the King, and the odiouſneſſe of the offence, and the ſcope and end of the caſe is ever to be obſerved; for in that caſe it muſt be alſo intended, that the treaſon was committed before the felony. And it is to be remembred, that the ſtatute of 1.Mar. doth not onely repeale all treaſons, but all declarations of treaſon made by any Act of Parliament, ſince the ſaid Act of 25.E.3. A man impriſoned for petit larceny, or for killing of a man, ſe defendendo, or by miſfortune, and breake priſon, it is no felony, becauſe he ſhall not for the firſt offence ſubire judicium vitæ vel membri. Et ſic de ſimilibus.

Rot.parl.2.H.6. nu.18. Sir John Mortimers caſe declared in Parliament to be treaſon. 2.H.6.cap.ult. in print. Stanf.pl.coron. 32.f.

Vid. Stanf.pl.coron.107.b.

1.Mar. the firſt Statute.

¶ Niſi cauſa, &c.] This Act ſpeaking of a cauſe, is to be intended of a lawfull cauſe; and therefore falſe impriſonment is not within this Act.

Impriſonment is a reſtraint of a mans liberty under the cuſtody of another, by lawfull warrant in deed or in law. Lawfull warrant is, when the offence appeareth by matter of record, or when it doth not appeare by matter of record. By matter of record, as when the party is taken upon an inditement at the ſuit of the King, or upon an appeale at the ſuit of the party. When it doth not appeare by matter of record, as when a felony is done, and the offender by a lawfull Mittimus is committed to the Gaole for the ſame. But between theſe two caſes there is a great diverſity: for in the firſt caſe, whether any felony were committed, or no, if the offender be taken by force of a Capias, the warrant is lawfull: and if hee breake priſon it is felony, albeit no felony were committed. But in the other caſe, if no felony be done at all, and yet he is committed to priſon for a ſuppoſed felony, and breake priſon, this is no felony, for there is no cauſe; and the words of this Act

See Magna Charta, cap.29.

Ad are. Niſi cauſa, pro qua captus fuerit, tale judicium requirit. So as the cauſe muſt be ſuit, and not feigned; for things feigned require no iudgement.

If A. give B. a mortall wound, for which A. is committed to priſon, and breaketh priſon, B. dyeth of the wound within the yeare, this death hath relation to the ſtroke; but becauſe relations are but fictions in law, and fictions are not here intended, this eſcape is no felony, 11.H.4.11.Plowd.com.401. Coles caſe.

Seeing the weight of this buſineſſe touching this point, to make the eſcape either in the party, or in the Gaoler felony, dependeth upon the lawfulneſſe of the Mittimus, it ſhall be neceſſary to ſay ſomewhat hereof: 1. firſt, it muſt be in writing in the name, and under the ſeale of him that maketh the ſame, expreſſing his office, place, and authority, by force whereof he maketh the Mittimus, and is to be directed to the Gaoler, or Keeper of the gaole or priſon. 2. It muſt containe the cauſe (as it expreſſly appeareth by this Act, niſi cauſa pro qua captus, &c.) but not ſo certainly, as an inditement ought, and yet with ſuch convenient certainty, as it may appeare iudicially, that the offence tale judicium requirit as pro alta proditione, viz. in perſonam Domini Regis, or pro contrafactura magni ſigilli Domini Regis, &c. or pro contrafactura monetæ Domini Regis; or pro parva proditione, viz. pro morte (talis) magiſtri ſui, or pro felonia, viz. pro morte talis, &c. or pro burglaria, or robberia, &c. or pro felonia, viz. for ſtealing of a horſe, &c. or the like, ſo as it may in ſuch a generality appeare iudicially, that the offence tale judicium requirit. And this is proved both by reaſon and authority. By reaſon, firſt, for that it is in caſe of felony, quæ inducit ultimum ſupplicium; and therefore ought to have convenient certainty, as is aforeſaid. 2. Alſo it muſt have convenient certainty, for that a voluntary eſcape is felony in the Gaoler. 3. If the Mittimus ſhould be good generally pro felonia, then as the old rule is, Ignorantia Judicis foret calamitas innocentis; for the truth of the caſe may be, that he did ſteale Charters of land, or wood growing, or the like, which in law are no felonies; and therefore in reaſon in a caſe of ſo high nature concerning the life of man, the convenient certainty ought to be ſhewed.

25.E.3.42.b. coron.134. 32.E.3.coron. 248. 9.E.4.32.

By Authority. The conſtant forme of the inditement in that caſe for eſcape either by the party, or voluntarily ſuffered by the Gaoler is, that he was arreſted pro ſuſpicione cujuſdam feloniæ, viz. pro morte cujuſdam M.N. felonice interfecti, or the like; for the inditement muſt rehearſe the effect of the Mittimus, which directly proveth, that the cauſe in ſuch a generall certainty ought to be ſhewed. Vid.25.E.3.fol.42.

Alſo if a man be indited of treaſon, or indited or appealed for felony, the Capias thereupon, whereby the party is to be arreſted, comprehendeth the cauſe. A fortiori the Mittimus, whereby the party is to be arreſted, having no ſuch ground of record as the Capias hath, muſt, purſuing the effect of the Capias, comprehend the cauſe in convenient certainty. 25.E.3.fol.42.pl.32. there ought to be a certaine cauſe: and in the ſame leafe, pl.35. in caſe of breaking of priſon, the cauſe of the impriſonment ought to be ſhewed.

25.E.3.fol 42.

If a man be indited, quod felonice fregit priſonam, &c. generally, it is not good; for the inditement ought to rehearſe the ſpecialty of the matter according to the ſtatute, that he being impriſoned for felony, &c. fregit priſonam. We have quoted many other bookes, which though they be not ſo certainly reported, as might have been wiſhed, yet the indicious Reader will gather fruit of them. But ſee before the expoſition of Magna Charta, cap.29. verbo, Aut per legem terræ, and obſerve well the words of the writ of Habeas corpus, for a direct proofe that the cauſe ought to be ſhewed.

9 E.4.26. 41.aſſ. 5.22.E.3.coron. 242,243,248. 43.E.3.ibid.424. 3.E.3.ibid.312, 328,333,345, 346. 2 E.3.fo.1. 26.aſſ.51. 22 E. 3.13. 27.aſſ 42. 27.aſſ.p.116.

Laſtly, ſee hereafter in the expoſition of the ſtatute of Articuli cleri, the reſolution of all the Judges of England, the anſwer to the 21. and 22. obiections, which we will in no ſort abridge for the excellency thereof, but refer you to the fountaines themſelves.

15 E.2. coron.38. 9.H.4.1. 10.H. 4 7. 11.H.4.11. 8.E.2. coron.422, 430,431. 27.H. 6.7. 39 H.6.33. 1 R.3.c.3. 2.H. 5.cap.7. 21.H 7. 17.

Hereupon it appeareth, that the common Warrant or Mittimus to anſwer to ſuch things as ſhall be obiected againſt him is utterly againſt law.

Now as the Mittimus muſt containe the cauſe, ſo the concluſion muſt be according

ding to law, viz. the priſoner ſafely to keep, untill he be delivered by due order of law, and not untill he that made it ſhall give other order, or the like.

4.E.3.17. 1.H.7.6. And if the Warrant be not lawfull, if the Gaoler ſuffer ſuch a priſoner to eſcape voluntarily, it is no felony in him. But admit the Warrant be lawfull and in particular for felony, and the Gaoler ſuffer him willingly to eſcape, untill the priſoner be attainted, the Gaoler ſhall not anſwer to the eſcape, though the priſoner be indited; for the felony of the priſoner ſhall not be tryed between the King and the Gaoler, becauſe the priſoner is a ſtranger thereunto. But if the Warrant be lawfull, and there is a felony done, and one is lawfully committed for the ſame, if he breake priſon, he may be indited for that eſcape before he be attainted of the offence, becauſe he is party. And albeit the Gaoler be de facto, & non de jure, yet ſhall he be charged for the eſcape.

39.H.6.33.

And certainly this law of Niſi cauſa, &c. agreeth with that judiciall ſaying of Felix in the holy hiſtory, Sine ratione mihi videtur mittere vinctum, & cauſas ejus non ſignificare. And whatſoever Felix was, yet according to that old rule, Veritas à quocunque dicitur, à Deo eſt.

Act.Apoſt.ca.25. ver.27.

¶ Tale judicium requirit.] If a man be committed by lawfull Warrant for ſuſpicion of felony done, if he breake priſon, he may be indited for that eſcape, albeit the commitment be for ſuſpicion of felony, and yet no iudgement can be given againſt him for ſuſpicion, but for the felony it ſelfe, whereof he is ſuſpected; and ſo be many preſidents.

43.E.3.cor.454. 44.aſſ.12. Rot.Parl. 2.H.6. nu.18.Sir John Mortimers caſe. 1.H.6.5. 1.Mar.Dyer 99.

And albeit the words be in the preſent time, yet if a felony be made after by Parliament, it is within the prohibition of this Statute.

For other matters concerning eſcapes, you may reade the learned Treatiſe of Juſtice Stanford, pl.coron.fol.30,31.&c. which need not here to be inſerted.

Statutum

Statutum de militibus editum
Anno primo Edw. 2.

This writ King Edward the second granted in the time of the Parliament, and caused it to be entred of record; and therefore is here titled by the name of a Statute or Ordinance, and the very frame of the writ doth prove it to be no Act of Parliament: but let us take the sord as we find it, and peruse the words thereof.

Dominus Rex concessit, quod omnes illi qui milites esse debent, & non sunt, & districti fuerint ad arma militaria susscipienda infra festum natalis Domini, habeant responsum ad prædicta arma militaria susscipienda usque in octab' sancti Hilarii sine actione: & extunc distringantur, nisi interveniant. Cap. 1.

¶ Item concessit quod si aliquis questus fuerit in Cancellaria, quod districtus fuerit, &c. & non habeat xx.li. terræ in feodo, vel ad terminum vitæ suæ, & hoc velit verificare per patriam, tunc discretis & legalibus militibus de Comit' ad prædictam inquisitionem capiendam scribatur. Et si per illam inquisitionem ita fuisse constiterit, fiat ei remedium, & cesset districtio. 2.

¶ Item si aliquis implacitatus fuerit de tota terra sua, vel etiam de parte ejusdem, ita quod residuum non sufficiat ad valentiam xx.li. & hoc possit verificare, tunc cesset districtio, donec placitum illud terminetur. 3.

¶ Item si quis eorum teneatur in certis debitis atterminatis ad Scaccarium, ad certam summam inde percipiendam per annum, & residuum terrarum suarum ultra prædictam summam valorem xx.li. annuarum non attingat, cesset districtio donec prædictum debitum fuerit solutum. 4.

¶ Et nullus distringatur ad arma militaria susscipienda antequam venerit ad ætatem 21. annorum. 5.

¶ Item nullus ratione terræ suæ, quam tenet in maneriis, quæ nunc sunt de antiquo dominico coron', & tanquam sokemannus, & quæ terra dabit tallagium, quando dominica Regis talliantur, distringatur ad arma militaria susscipienda. 6.

¶ Item de illis qui terras suas tenent in socagio de aliis maneriis 7.

neriis quam de maneriis coronæ, & nullum faciunt ſervitium forinſecum, ſcrutentur rotuli de Cancellaria de tempore Prædeceſſorum Domini Regis, & fiat ſecundum quod fieri conſuevit.

8. ¶ Eodem modo fiat de Clericis infra ſacros exiſtentibus laicum feodum tenentibus, qui milites eſſe deberent, ſi laici fuiſſent.

9. ¶ Item nullus diſtringatur pro Burgagiis ſuis, licet valorem xx.li. attingant, aut plus.

10. ¶ Item qui milites eſſe debent et non ſunt, qui per modicum tempus terras ſuas tenuerunt, & ſimiliter qui nimiam ſenectutem, vel defectum membrorum habent, ſeu morbum incurabilem, vel onus liberorum, vel placitorum allegant, vel alias cauſas neceſſarias prætendunt: adeant ad Robertum Typtoſt, & Anto' de Berk, & coram eis fines faciant: quibus eſt injunctum, quod ſecundum diſcretionem eorum, rationabiles fines admittant de viris prædictis.

¶ Dominus Rex conceſsit, quod omnes illi qui milites eſſe debent, & non ſunt.] That is, the King doth grant, that all they which ought to be Knights, and be not, &c. In theſe words conſiſt the locke and the key of this writ, viz. who by the common lawes of this Realme ought (that is, de jure) to be compelled to be a Knight. For the underſtanding whereof, and of all the parts of this writ, ſeven things fall into conſideration. (There being foure kinds of Knights, viz. Knights of the Garter, Knights Banaret, Knights of the Bath, and Knights Bachelor of the Spurre, 3.E.4.cap.5.)

1. Firſt, of what degree Knighthood is. This writ being underſtood of a Knight Bachelor.

11.E.3.brev.259 26.E.3.brev.250 42.E.3.9. 22.R.2.brev.925. 4.H.4.2. 7.H.4.7. 11.H.4.19. 14.H.4.21. 7.H.6.15. 14.H.6.15 22.H.6. 32.H.6.29. 35.H.6.55 5.E.4.19. 15.E.4.14. 18.E.4.20 21.E.4.71.

It is reſolved in our Bookes without any contradiction, that the name of this knight is a name of dignity, and of the inferiour degree of Nobility: and therefore is parcell of his name. And in writs and inditements he ought to be named knight by the common law; but ſo it is not of the ſtate of an Eſquire or Gentleman. * Britton ſtileth a knight honorable, and in the record of 9.E.1. Sir John Acton knight hath the addition of Nobilis; and certaine it is, that, ſeeing it is a name of dignity, it followeth, that he ought to have ſufficient revenue to maintaine that dignity. See W.1.cap.10.verbo Chivalers, that in ancient times Corroners ought to have been knights, and the reaſon was, for that being knights, the law did intend, that they had ſufficient to anſwer both the King and the Subiect, if cauſe ſhould require. But hereof more ſhall bee ſaid hereafter.

* Brit.cap.25.fo. 49.b. Mich.9.E.1.in banco rot.63. Somerſet.

In the meane time this is to be obſerved, that the greater dignity doth never drowne the leſſer dignity, but both ſtand together in one perſon: And therefore if a knight be created a Baron, yet he remaineth a knight ſtill; and if the Baron be created an Earle, yet the dignity of a Baron remaineth, & ſic de cæteris. But if an Eſquire (which is no name of dignity) be made a knight, the degree of the Eſquire is changed, and gone, and cannot ſo be named in any iudiciall proceeding.

7.E.4.7.adjudge. 32.H.6 29.

2. Secondly, of what quality he that is to be a knight ought to be, debet, &c. We have not found that a Baron, being a Lord of Parliament, or higher degree, hath been

been distrained ad arma militis suscipienda. But he that is distrained, &c. ought to be a Gentleman of name and blood, claro loco natus, or else non debet, hee ought not to be compelled by this writ to take the dignitie of Knighthood upon him.

Vid. 7 E. 3. ca. 19 Un Gentilehome de estate. Pat. 38. E. 3. part 1. m. 10. Rex licentiam dedit Johanni Beverly armigero suo, &c. Rot. claus. 19 R. 2 in dors. proclam. ne quis Miles, Armiger, &c. 11. H. rot. claus. m. 2. Omnes qui tenent per servitium militare in capite, milites fiant.

Of ancient time those that held by Knights service were regularly Gentile, and those which held by Socage, or in Burgage, were Yeomen or Burgesses: and this appeareth by the ancient rule of law, * Lex Angliæ nullum scutagium aut servitium militare de Sockmannis aut Burgensibus expetit. It appeareth also by many ancient Records, and particularly by this writ, that Sockmannus, &c. & qui terras tenent in socagio, &c. et nullum faciunt forinsecum servitium, that is, those which hold in Socage, of what value soever, and doe no knights service, ought not to be knights, non debent, &c. And our writ saith, Nullus distringatur pro Burgagiis suis, &c. no man ought to be distrained to be a knight for the land which he holds in Burgage, &c. of what value soever. But though it were of ancient time a badge of Gentry to hold by knights service, yet now tempora mutantur, and many a Yeoman, Burgesse, or Tradesman purchase lands holden by knights service, and yet (non debet) ought not for want of Gentry be a knight. At this day the surest rule is, Nobiles sunt qui arma gentilicia antecessorum suorum proferre possunt; therefore they are called Scutiferi, Armigeri, &c. When a knight is degraded one of his punishments is, Quod Clypeus suus gentilicius reversus erit, and here his armes be reversed that beareth none.

* See here cap. 6. & 7. Glanv. lib. 7 cap. 9. Burgensis.

Lands and tenements anciently holden by knights service, belonging to the Nobility and Gentry of the Realme, are not of the custome of Gavelkind, which belonged to the Yeomanry, and were holden in Socage for the service of the Plow: and this appeareth by the judgement of the whole Parliament in [a] 31. H. 8. cap. 3. and by the booke of 9. H. 3. tit. Prescription 63. and 26. H. 8. fol. 4. and the reason thereof was, because the lands and tenements holden by knights service should not be carried by descent into many hands of issues males, whereby the service for defence of the Realme in a few descents should be lost or diminished, and the owners (the lands being divided into so many hands) should not be able to maintaine the countenance of their order and degree. Inter Statuta seu Institutiones H. 1. cap. 11. Militibus qui per loricas terras suas deserviunt, terras dominicarum carucarum suarum quietas ab omnibus gildis, & ab omni opere ipso dono meo concedo; ut sicut benignitas mea propensior est in eis, ita mihi fideles sint: & sicut tam magno gravamine alleviati sunt, ita equis & armis se bene instruant, ut apti & parati sint ad servitium meum, & ad defensionem regni mei. And where it is enacted by the statute of Prerogat' regis, cap. 16. quod fœminæ non participabunt cum masculis, it is to be understood of such as be in equall degree; as the sister shall not inherit with the brother, because they be in equall degree; but the daughter of the sonne shall have a part with her uncle, for they be not in equall degree.

Mich. 9. E. 2. fol. 61. in libro meo. Dower de socage terre, & nemy de terre tenus per service de Chivaler, Litt. de la pluis beale.

[a] 31 H. 8 cap. 3. 9. H. 3. prescript. 63. 26. H. 8 4. b. Bract. fol. 77. Glanvil. fol. 46. In Bundello eschaet. an. 1. E. 3. acc'.

Prerogat Regis, cap. 16. Vid. Pasch' 4. E. 1 in com' banco rot. 22 Kanc' for the custome of Gavelkind. Hill. 10. E. 1. in banco Kanc' per de Benbrokes case, & m. 18. E. 1. in banco rot. 68. Suff. Laurence le Fryes case.

A Knight is by creation, and not by descent; a Gentleman is by descent, and yet I read of the creation of a [b] Gentleman; & thus it was: A Knight of France came into England, and challenged John Kingston (a good and a strong man at armes, but no Gentleman) as the Record saith, Ad certa armorum puncta, &c. perficienda. Rex, ut prædictus Johannes honorabilius in præmissis accipiatur, ipsum Johannem ad ordinem Generosorum adoptavit, & Armigerum constituit, & certa honoris insignia ei concessit, &c. Note, the King made him no Knight, as his adversary was, because he was no Gentleman.

[b] Rot. Patent. an. 13. R. 2. part 1. 7. H. 4. fol 7. 1. H. 5. cap. 1.

But for any thing that I have reade and doe remember in the raigne of H. 4. or ever before, Gentlemen of name and blood had very rarely the addition of Generosus or Armiger, as of a state or degree: but were distinguished from Yeomen, who serve by the Plow, by their service, viz. knights service, forinsecum servitium, but in the raigne of H. 5. and ever since, they have had the addition of Gentlemen or Esquires, and the reason thereof is this: It is enacted by the statute of 1. H. 5. that in every writ originall of actions personals, appeales, and inditements,

1. H. 5. cap. 5.

ments, in which proceſſe of outlary doe lye, that to the name of the Defendants addition be made of the eſtate or degree, or myſterie: And hereupon in thoſe writs addition was made as the caſe required, of Generoſus or Armiger: for if a Gentleman were named in ſuch a writ Husbandman, or Yeoman, he may abate the writ, by pleading that he is a Gentleman. And after this the like additions were made in Commiſſions, and after that in Grants and Conveyances, &c.

14.H.6.15. 22.H.6.3. 28.H.6.8. 38.H.6.10. 23.H.6.cap.15.

And great diſcord and diſcontentment would ariſe within the Realme, if Yeomen and Tradeſmen ſhould be called to the dignity of knighthood, to take the place and precedency of the ancient and noble Gentry of the Realme. And the eldeſt ſonne of a Knight is an Eſquire, as his father ought to be, before he was called to the dignity of knighthood.

3. Thirdly, of what livelihood or revenue a knight ought to be, debet, &c. And it is certaine, that he ought to have a knights fee: i. feodum unius militis. Herein three things are to be obſerved: Firſt, whether the Law doth determine of what yearly value a knights fee (viz. the lands and revenue of a knight) ought to be. Secondly, if the Law define not the certainty of the value, what is eſteemed in law a knights fee. Thirdly, what eſtate he ought to have in it.

Lib.9 fol.124. Lowes caſe. 1.part Inſtitutes, ſect.112. Sir Tho.Smith, lib.1.cap.18. 11.H.3.ubi ſup.

To the firſt, the Law doth reſpect rather the value then the content, viz. to be of ſufficient value to maintain the degree of a knight, but doth not determine of any certaine yearly value: for nothing is more uncertaine then the values of lands in ſucceſſion. And therefore in a writ in the raigne of H.3. no value was expreſſed, but a writ iſſued out of the Chancery generally to diſtraine omnes qui tenent per ſervitium militare.

9.H.3.Magn. Chart.cap.2. Glanv.lib.9 ca.4 lib.7.fol.33.b. Rot.parl.20.E.1. rot.4. * Trin.1.E.2. coram rege, rot. 4.Linc'. a Rot.clauſ. 19 E.2. m.16.in dorſ. b Brev.Regis, part 1.& 2. 2 R.2. c Rot.Parl. * Hill.40.H.3. pag.254.a.30. ibid.a.60. d Vid.Camden. Brit.pag.126.

At the making of Magna Charta a knights fee was accounted the value of 20.li. and the fourth part thereof was a knights relefe. In anno 20.E.1 the value of the knights fee in the writ was 40.li. by our writ in 1.E.2. 2c. i. * Trin. 1.E 2.48.caruear' terræ faciunt unum feodum militis. This was in the ſame yeare that this writ was granted. a 19.E.2. feodum unius militis annui valoris 40.li. b 2.R.2.10.li.per annum. 7.H.6.fol.15. 10.li.per annum. c 18.Hen.6. nu.43. 40.li. per an.&c. So as (as hath been ſaid) nothing is more uncertaine then the values of lands; but he muſt have feodum unius militis. And in ſeverall ages a knights fee, as before it appeareth, was valued at ſeverall values. * The King cauſed a Proclamation to be ſet forth, that all ſuch as might diſpend 15.li in lands, ſhould receive the order of knighthood, and thoſe that would not, or could not, ſhould pay their fines.

There was 5. Parkes ſet on every Shrieves head, becauſe they had not diſtrained every perſon that might diſpend 15.li. lands, to receive the order of knighthood, as was to the ſame Shrieves commanded.

d As to the ſecond, it appeareth before, that he ought to have a knights fee: Then the onely queſtion is, what quantity of land a knights fee is. And without doubt this ſhall not be accounted by the acres, for ſome acre is of far greater value then another: and therefore that ſhould be as uncertaine as the values be; but this is reſolved by prudent Sages of the Law of ancient time, who have reduced a knights fee to a certaine number of Carues, or Plow lands, which though they be uncertaine (for if the land be fertile and heavie, there goeth to a Plow land the leſſe: and if it be lighter, a greater quantity) yet it is as neere to certainty as can be, and this computation time cannot alter: and therefore a knights fee containeth e 13. Plow lands. And by this writ it appeareth, that a knights fee is here valued at 20.li. per an. And if he be impleaded for it, or any part thereof, &c. that he ſhall not be compelled to be a knight, untill the action be determined. And ſo likewiſe, if he be indebted to the King, and his debt ſtalled, he ſhall not be compelled to be a knight, untill his debt be paid: and the reaſon hereof is, that poverty ſhould not be apparelled with honour and dignity.

Note, a Baron & others of higher degrees are preſumed to have greater livings, as appeareth by their reliefe, Mag. Chart.cap.2.li.2. fol.124 ubi ſupr. Glanv.lib.2.ca.3. acc'. Paſch' 3 E.1 coram Rogero de Seton & ſociis ſuis, rot.10. Ralph Normanvils caſe. 19.E 2. ubi ſupr. e See here, cap.3.

As to the third, he ought to have an eſtate in fee-ſimple or fee-taile, as it appeareth in 20.Ed.1. ubi ſupra, in feodo & hæreditate. Or as Tenant by the curteſie

antecessor (which in this writ is intended by the name of tenant for life) whose heire by possibility may inherit

Fourthly, to what end he ought to be called to this dignity of Knighthood. And our writ doth truly answer, ad arma militaria suscipienda, to take upon him the military armes, or the armes of a knight for the honour, and service, and defence of the Realme: this is pro bono publico. 4. The end.

The writs of Parliament are to returne two Knights for every County gladiis cinctos, not that they should come to the Parliament girt with swords, but that they should be able to doe knights service, & arma militaria exercere, the sword being named, for that it is the Warden of all weapons: And therefore this end ought not to be pretended, and a private intended. Dicuntur arma, quia armos tegunt, & ab humeris dependent, & continent scutum, gladium, tela, & ea quibus præliantur. No insufficient men are to be called ad arma militaria suscipienda, ne dignitas hujus ordinis vilesceret.

Fifthly, of what age he ought to be, &c. when he is called, debet, &c. By this writ it appeareth, that he ought to be above 21. and this agreeth with Littleton, and other authorities and records; but this is so to be understood, that he cannot be compelled to be a knight before 21. but if he be made a knight before that age, it is good enough. 5.

* And above the age of 60. (which in this writ is called nimia senectus) no man ought to bee compelled ad arma militaria suscipienda, or to serve as a souldier. If the Plaintife in an appeale of death, &c. be of the age of 60. or maimed, or of any great infirmity, so as hee is not able to fight, hee shall not bee compelled to wage battell. And by this writ it appeareth, that if hee hath detectum membrorum, seu morbum incurabilem, vel alias causas rationabiles, that hee shall not be compelled ad arma militaria suscipienda, because hee is not able to performe the service and duty of Knighthood.

* See here, ca. 10. Rot. claus. an. 7. E. 3. part 1. mem. 25. & m. 22, 23. Rot. parl. 5. H. 4. nu. 24, 25. 33. H. 8. cap. 22. E. 4. 19. 15. E. 2. coron 185. Brit. fol. 40. Fitz. N. B. 163. n. simile. See here, cap. 10.

Sixthly, by what meanes hee ought to bee called, debet, &c. hee ought to bee called by writ. It hereby appeareth, that this writ issueth out of the Chancery to the Shirife, commanding him, quod proclamari faciat, quod omnes illi qui habent * terras, arma militaria suscipiant citra (tale festum) & quod summoneri fac' eos, &c. and this writ is returnable into the Chancery at a certaine returne. At which day of the returne it is necessary for them that are summoned to appeare; for if they make default, it is finable (which it may be, is the marke that is aimed at) but if they appeare, and take the dignity upon them, or refuse for the causes aforesaid, or any of them, they ought not to be fined. 6. 7. H. 6. 15. See here, cap. 2. * The yearly value of the land.

This writ and the returne thereof is by writ of Mittimus transmitted into the Court of Exchequer, who cannot make a commission to others concerning this matter, but ought to proceed legally themselves, because they have but delegatam potestatem, quæ non potest delegari, and they are learned and sworne Judges, and able to allow the parties their iust exceptions.

For writs of Summons or Distringas for the dignity of Bachelor Knighthood, see Rot. claus. 29. H. 3. m. 9. 44. H. 3. parte prima. ibid. 6. E. 1. dors. 8. ibid. 6. E. 2. dors. 29. &c.

Seventhly, if he ought to be a Knight, and refuse, or make default, how often he may be fined. 7.

He can by the Law be fined but once, no more then an apprentice at Law, that is called by writ ad statum & gradum servientis ad legem, if hee refuse, and be fined, he cannot be fined againe; for so he might be fined infinitely, & infinitum in jure reprobatur. Rot. Parl. 18. H. 6. nu. 43. 14. H. 6. 2, 3. Fitz. N. B. 231. b. Le Roy navera que un pension.

The Commons petitioned (to have a declarator Law) that no person once making fine for not being Knight, be never after called thereunto againe. But this was but to avoid charge and vexation. Vid. Dyer 35. H. 8, 55. Brook briefe 150. fine pur contempts 19.

We doe not remember that we haue read any thing touching this matter in Bracton, Britton, Fleta, Mirror, the Regiſter, or F.N.B.

See here, cap. 7. No Clerke within holy Orders, be hee regular or ſecular, though hee hath a knights fee, can be made a knight, as by this writ it appeareth.

See here, cap. 10. See Matth. Paris, an. 29. H. 3. pag. 882. Rex die natali Johannem de Gateſden Clericum, & multis ditatum beneficiis, ſed omnibus ante expectatum reſignatis, quia ſic oportuit, baltheo cinxit militari. This laſt clauſe, Item qui milites eſſe debent, & non ſunt, and yet haue iuſt cauſe of excuſe (as for inſtance, that they are impleaded for their land, which before by this writ is allowed for a good excuſe, &c. or haue any other of the iuſt cauſes of excuſe here expreſſed, and yet will not ſtand to a legall and chargeable pleading and proceeding) they may, if they will, redeem their veration and charge, and ſubmit themſelues to a reaſonable fine: And therefore by this writ Robert Tiptoft, and Anthony de Berke are appointed to aſſeſſe reaſonable fines; but this muſt be vnderſtood by conſent, for this was no legall proceeding. I find in the Parliament Roll de anno 18. E. 1. rot. 6. that Robert Tiptoft was Juſticiarius Domini Regis. And ſo, it is like, Anthony Berk was; but certainly what he was, we haue not yet found.

For Knights of the Bath. Writs to diuers ad ordinem militiæ de Balneo ſuſcipiendum juxta antiquam conſuetudinem in creatione uſitatam, Rot. clauſ. in dorſo, 10. H. 7. 20. Septembris.

For Knights Bannerets. See Rot. Vaſch' 13. E. 3. m. 13. William de la Pole created. Rot. eodem m. 1. Rich. de Cobham created. Rot. Pat. 15. E. 3. part 2. m. 22. John Coupland created. See Matth. Paris, pag. 1354, 1355. &c. Camden Brit. 124.

Articuli

Articuli Cleri edit' Anno nono Edw. 2.

LOng before the making of this Statute, that is, Anno 42. H. 3. Anno Domini 1258. Boniface younger sonne of Thomas Earle of Savoy, Archbishop of Canterbury, Uncle of Elianor Queen of England, who was daughter of Reymond Earle of Provence by Beatrix daughter of Thomas Earle of Savoy, and sister to the said Boniface, made divers and many Canons and Constitutions Provinciall directly against the lawes of the Realme, which Canons begun thus: Universis Christi fidelibus ad quos præsens pagina pervenerit, Bonifacius miseratione divina Cantuariensis Archiepiscopus, totius Angliæ Primas, & sui suffraganei in verbo salutari Salutem. And ending thus: Actum apud Westm', sexto Iduum Junii Anno Domini 1258. In quorum omnium robur & testimonium, &c. which being exceeding long, we could not here insert. But the effect of them is, so to usurp and incroach upon many matters, which apparently belonged to the common law, as, amongst many others, the tryall of limits and bounds of parishes, and right of patronage, against tryall of right of tithes (by Indicavit) against writs to the Bishop upon a recovery in a Quare impedit, &c. in the Kings Courts. That none of their possessions or liberties, which any of the Clergy had in the right of their Church, should be tryed before any secular Judge; (so as they would not have conusance of things spirituall, but of temporall also) and concerning distresses and attachements within their fees, and in effect, that no quo warranto should be brought against them, when they had been long in possession, with an invective against the perverse interpretation by the Judges of the Realme (so they termed it) of Charters, &c. granted to them, and in substance against the ancient and iust writs of prohibition in cases, where by the lawes of the Realme they are maintainable: and commandement given to admonish the King, and interdict his lands and revenues, and thundred out excommunications against the Judges and others if they violated or obeyed not the said Canons and Constitutions. And this was the principall ground of the controversies between the Judges of the Realme and the Bishops: for this caused Ecclesiasticall Judges to usurp and incroach upon the common law. But notwithstanding the greatnesse of the Archbishop Boniface, and that divers of the Judges of the Realm were of the Clergy, & all the great Officers of the Realm, as Chancellor, Treasurer, Privie seale, &c. were Prelates; yet the Judges proceeded according to the lawes of the Realm, & still kept, though with great difficulty, the Ecclesiasticall Courts within their iust and proper limits. The Courts by pretext of these Canons being at variance, at length at a Parliament holden in the 51. yeare of Henry the third, Boniface, and the rest of the Clergy complained (which was ultimum refugium, and yet the right way) and exhibited many Articles as grievances, called Articuli Cleri. The Articles exhibited by the Clergie either by accident or industry are not to be found; some of the Answers are extant, viz. ad 16. Articulum de usuris respondetur, quod licet Episcopus, &c. Ad 17. Articulum de defamatione, &c. respondetur, si aliquis defamatus, &c. si autem certæ personæ nominatæ fuerint, per quas rei veritas melius sciri poterit, nominantur, ad proband' matrimonium vel testamentum: & similiter in accusationibus tales personæ impediendæ non sunt, quia testimonium perhibent veritati, sed propter hoc non est congregatio Laicorum faciend', quia per congregationem hujusmodi servitia Dominus possit deperire.

Ex fragmento Rot. Parl. anno 51. H. 3.

Ad 18. Artic' Dominus posuit remedium.

Ad

Ad 19. Artic' reſpondetur, quod Archiepiſcopus de Epiſcopatu vacante non ſe intromittat quantum ad temporalia, ſed tantum ſe de ſpiritualibus intromittat, &c.

Ad 20. Artic' reſpondetur, quod de Clericis occiſis, & de hiis qui forſan occidi contigerit, in futurum fiat juſtitia, ſecundum legem & conſuetudinem terræ, &c.

Ad 21. Artic' reſpondetur, quod excommunicatus per Ordinarium, aut alium Judicem competentem, & denunciatus taliter, debebit ab aliis evitari, niſi forſan excommunicatus conqueratur ſe eſſe injuſte excommunicatum pro aliqua re temporali, de qua non debeat coram Ordinario reſpondere, ad cujus probationem debet admitti, ſed in cæteris quæ proponit, ut actor, eſt interim evitandus.

Ad 22. Artic' mandabitur Juſticiariis, quod non fiant aliquæ priſæ per totam terram, de bonis aliquorum, niſi debitæ priſæ & conſuetæ.

Ad 23. Artic' reſpondetur, quod cum aliqui teneant aliquod de Rege in capite unde cuſtodia debeatur, cuſtodiæ omnium terrarum de quibuſcunque tenentes illi tenementa illa teneant cum acciderint (ſi inde cuſtodia habere debeatur) hactenus ex conſuetudine approbata ſpectarunt ad Regem, ſed Epiſcopi ſi expedire videant, inhibeant tenentibus ſuis, ne aliqua tenementa ſibi perquirant de feodis Regis.

Theſe anſwers are yet extant of record, and are worthy to be read at large as they yet remaine; whereunto we referre the Reader. This is to be obſerved. That none of Boniface's **Canons againſt the Lawes of the Realme, and the Crowne and Dignity of the King, and the Birth-right of the Subiect, are here confirmed.**

What the reſidue of the Articles and the Anſwers were, may be collected by that Act of Parliament entitled prohibitio formata de Statuto Articuli Cleri, **which was made in the time of** Edward **the firſt, about the beginning of his raign, which beginneth thus:** Edwardus, &c. Prælatis, &c. **wherein divers points are to be obſerved againſt the Canons of** Boniface: 1. Quod cognitiones Placitorum ſuper feodalibus & libertatibus feodalium, diſtrictionibus, officiis miniſtrorum, executionibus contra pacem noſtram factis, felonum negotiationibus, conſuetudinibus ſecularibus, attachiamentis, vi laica malefactoribus rectatis, robberiis, arreſtationibus, maneriis, advocationibus Eccleſiarum, ſufficientibus aſſiſis juratis, recognitionibus laicum feodum contingentibus, & rebus aliis, & cauſis pecuniarum, & de aliis catallis & debitis quæ non ſunt de teſtament' vel matrimon' ad Coronam & dignitatem Regiam pertineant, & de regno de conſuetud' ejuſdem regni approbata, & hactenus obſervata.

Prohibitio formata de Statut' Artic' Cleri. Vet. Magn. Chart.

2. Et Proceres, & Magnates, aut alii de eodem regno temporibus noſtrorum Prædeceſſorum regum Angliæ, ſeu noſtra authoritate alicujus non conſueverunt contra conſuetudinem illam ſuper hujuſmodi rebus in cauſa trahi vel compelli ad comparendum coram quocunque Judice Eccleſiaſtico.

3. Et quod Vicecomites non permittant, quod aliqui laici in baliva ſua conveniunt ad aliquas recognitiones per ſacramenta ſua faciend', niſi in cauſis matrimonialibus & teſtamentariis. **Of the ſubſtance of this prohibition,** Britton **ſpeaketh in theſe words,** Et queux ount ſuffert pleader en Court Chriſtian autres pleas, que de teſtament ou matrimonie, & de pure ſpirituelte ſans deniers prender de lay home. Ou ſuffert lay home iorrer devant Lordinary.

Vid. Brit. fo. 35. b Regiſtr. 36. b. 29. E. 3. 29. F. N. B. 41. a. Vid. Vet. Magn. Chart. fol. 91. Bertelets impreſſion.

After this the Clergy, at a Parliament holden in the raigne of the ſame King E. 1. **preferred Articles intitled** Articuli contra prohibitionem Regis, **fearing leſt by reaſon of ſome generall words therein they might be prohibited in cauſes, which of right belonged to the Eccleſiaſticall juriſdiction, in theſe words,** Sub hac forma impetrant laici prohibitionem in genere ſuper decimis, oblationibus, obventionibus, mortuariis, redemptionibus penitentiarum, violenta manuum injectione in clericum vel eōmiſſarium, & in cauſa defamationis, in quibus caſibus agitur ad pœnam canonicam imponendam. **And a full and legall anſwer was made thereunto, as thereby appeareth. But it is to be obſerved, that they claimed nothing which was againſt the true meaning of the ſaid Act, called** Prohibitio

bitio formata de ſtatuto Artic' Cleri, not any of Boniface's Canons to bee confirmed: and ſo theſe matters reſted, untill the Parliament holden at Lincoln in the ninth yeare of Edw. 2. where Walter Reynolds Biſhop of Canterbury (whom the King favoured, ſaith one, ſingularly for the opinion he had of his fidelity and great wiſdome, and Walterus Archiepiſcopus Cantuarienſis Regi gratioſiſſimus fuit, hæc Regis æquiſſima reſponſa ad Prælatorum petita obtinuit) in the name of himſelfe and of the Clergy, preferred theſe 16. Articles, and by authority of Parliament had the anſwers here following ſeriatim to every one of them. And now it may ſeem high time that we ſhould deſcend to the peruſall of the Preamble, and the Articles and Anſwers. But before wee come to it, it ſhall conduce much to the right underſtanding of divers parts of this Act of Parliament, to report unto you what Articles Richard Bancroft Archbiſhop of Canterbury exhibited in the name of the whole Clergy in Michaelmas Terme Anno 3. Jacob. Regis to the Lords of the Privie Councell againſt the Judges of the Realm, intitled, Certain Articles of abuſes, which are deſired to be reformed, in granting of prohibitions, & the anſwers thereunto, upon mature deliberation and conſideration, in Eaſter Terme following, by all the Judges of England, and the Barons of the Exchequer, with one unanimous conſent under their hands (reſolutions of higheſt authorities in law) which were delivered to the Lords of the Councell. And we for diſtinction ſake (becauſe we ſhall have occaſion often to cite them) call them Articuli Cleri 3. Jacobi. Mat. Parker, fol. 229.

His Majeſty hath power to reforme abuſes in prohibitions. 1.

The Clergy well hoped, that they had taken a good courſe in ſeeking ſome redreſſe at his Majeſties hands concerning ſundry abuſes offered to his Eccleſiaſticall juriſdiction, by the over frequent and undue granting of prohibitions; for both they and we ſuppoſed (all juriſdiction, both Eccleſiaſticall and Temporall being annexed to the Imperiall Crowne of this Realme) that his Highneſſe had been held to have had ſufficient authority in himſelfe, with the aſſiſtance of his Councell, to iudge what is amiſſe in either of his ſaid juriſdictions, and to have reformed the ſame accordingly; otherwiſe a wrong courſe is taken by us, if nothing may bee reformed that is now complained of, but what the Temporall Judges ſhall of themſelves willingly yeeld unto. This is therefore the firſt point, which upon occaſion lately offered before your Lordſhips by ſome of the Judges, we deſire may be cleared, becauſe we are ſtrongly perſwaded as touching the validity of his Majeſties ſaid authority, and doe hope we ſhall be able to juſtifie the ſame, notwithſtanding any thing that the Judges, or any other can alledge to the contrary. Objection.

No man maketh any queſtion, but that both the juriſdictions are lawfully and juſtly in his Majeſty, and that if any abuſes be, they ought to bee reformed; but what the Law doth warrant in caſes of prohibitions to keep every juriſdiction in his true limits, is not to be ſaid an abuſe, nor can be altered but by Parliament. Anſwer of the Judges.

The formes of Prohibitions prejudiciall to his Majeſties authority in cauſes Eccleſiaſticall. 2.

Concerning the forme of Prohibitions, forasmuch as both the Eccleſiaſticall and Temporall juriſdictions be now united in his Majeſtie, which were heretofore de facto, though not de jure derived from ſeverall heads, we deſire to be ſatisfied by the Judges, whether, as the caſe now ſtandeth, the former manner of Prohibitions heretofore uſed importing an Eccleſiaſticall Court to be aliud forum à foro regio, and the Eccleſiaſticall Law not to be Legem terræ, and the proceedings in thoſe Courts to bee contra Coronam & Dignitatem Regiam, may now without offence and derogation to the Kings Eccleſiaſticall prerogative be continued, as though either the ſaid juriſdictions remained now ſo diſtin- Objection.

guished and severed as they were before, or that the lawes Ecclesiasticall, which were put in execution, were not the Kings and the Realmes Ecclesiasticall lawes, as well as the Temporall lawes.

Answer. It is true, that both the Iurisdictions were ever de jure in the Crowne, though the one sometimes usurped by the See of Rome; but neither in the one time, nor in the other hath ever the forme of Prohibitions been altered, nor can bee but by Parliament. And it is contra Coronam & Dignitatem Regiam for any to usurp to deale in that, which they have not lawfull warrant from the Crowne to deale in, or to take from the Temporall Iurisdiction that which belongeth to it. The Prohibitions doe not import, that the Ecclesiasticall Courts are alius then the Kings, or not the Kings Courts, but doe import, that the cause is drawne into aliud examen then it ought to be: And therefore it is alwaies said in the Prohibitions (be the Court Temporall or Ecclesiasticall, to which it is awarded) if they deale in any case which they have not power to hold plea of, that the cause is drawn ad aliud examen then it ought to be; and therefore contra Coronam & Dignitatem Regiam.

3. A fit time to be assigned for the Defendant, if he will seek a Prohibition.

Objection. As touching the time when Prohibitions are granted, it seemeth strange to us, that they are not onely granted at the suit of the Defendant in the Ecclesiasticall Court after his answer (whereby hee affirmeth the Iurisdiction of the said Court, and submitteth himselfe unto the same;) but also after all allegations and proofes made on both sides, when the cause is fully instructed and furnished for sentence: yea, after sentence, yea after two or three sentences given, and after execution of the said sentence or sentences, and when the party for his long continued disobedience is laid in prison upon the writ of excommunicato capiendo, which courses, forasmuch as they are against the rules of the Common Law in like cases (as we take it) and doe tend so greatly to the delay of Iustice, vexation, and charge of the Subject, and the disgrace and discredit of the Spirituall Iurisdiction Ecclesiasticall, the Iudges (as we suppose) notwithstanding their great learning in the Lawes, will be hardly able in defence of them to satisfie your Lordships.

Answer. Prohibitions by Law are to be granted at any time to restraine a Court to intermeddle with, or execute any thing, which by Law they ought not to hold plea of, and they are much mistaken that maintains the contrary. And it is the folly of such as will proceed in the Ecclesiasticall Court for that, whereof that Court hath not Iurisdiction; or in that, whereof the Kings Temporall Courts should have the Iurisdiction. And so themselves (by their extraordinary dealing) are the cause of such extraordinary charges, and not the Law; for their proceedings in such case are coram non Judice. And the Kings Courts that may award Prohibitions, being informed either by the parties themselves, or by any stranger, that any Court Temporall or Ecclesiasticall doth hold plea of that (whereof they have not Iurisdiction) may lawfully prohibit the same, as well after Iudgement and execution, as before.

4. Prohibitions unduly awarded heretofore in all causes almost of Ecclesiasticall cognizance.

Objection. Whereas it will be confessed, that causes concerning Testaments, Matrimony, Benefices, Churches, Divine Service, with many offences against the 1, 2, 3, 4, 5, 7, 9, and 10. Commandements, are by the Lawes of this Realm of Ecclesiasticall cognizance, yet there are few of them, wherein hardly Prohibitions have not been granted, and that more ordinarily of latter times, then ever heretofore, not because we that are Ecclesiasticall Iudges doe give greater cause of such granting

granting of them, then before have been given, but for that the humour of the time is growne to be too eager against all Ecclesiasticall iurisdiction. For whereas (for examples sake) during the raigne of the late Queen of worthy memory, there have been 488. prohibitions, and since his Maiesties time 82. sent into the Court of the Arches; We humbly desire your Lordships, that the Iudges may be urged to bring forth one prohibition of ten, nay the twentieth prohibition of all the said 488. and but 2. of the said 82. which upon due considerations with the Libels in the Ecclesiasticall Court, they shall be able to iustifie to have been rightly awarded: we suppose they cannot; our Predecessors, and we our selves have ever been so carefull not to exceed the compasse and limits of the Ecclesiasticall iurisdiction: which if they shall refuse to attempt, or shall not be able to performe, then we referre our selves to your Lordships wisedomes, whether we have not iust cause to complaine, and crave restraint of this over lavish granting of prohibitions in every cause without respect. That which we have said of the prohibitions in the Court of the Arches, we verily perswade our selves may be truly affirmed of all the Ecclesiasticall Courts in England, which doth so much the more aggravate this abuse.

It had been fit they should have set downe some particular cases, in which they find the Ecclesiasticall Courts injured by the Temporall (as their Lordships did order) unto which we would have given a particular answer; but upon these generalities nothing but clamour can bee concluded. And where they speake of multitudes of prohibitions: for all granted to, or in respect of any Ecclesiasticall Court, we have heretofore caused diligent search to be made in the Kings Bench and Common Pleas, from the beginning of his Maiesties raigne, unto the end of Hilary Term, in the third yeare of his raigne; in which time we find, that there were granted unto all the Ecclesiasticall Courts in England out of the Kings Bench but 251. whereof 149. were de modo decimandi, upon unity of possession, for trees of 20. yeares growth and upwards, and for barren and heath ground, and all out of the Common Pleas, but 62. whereof 31. were such as before, and the rest grounded upon the bounds of Parishes, or such other causes as they ought to be granted for; but for that which was done in the late Queenes time, it would be too long a search for us to make, to deliver any certainty thereof. And for his Maiesties time, they requiring to have but two to be lawfully warranted upon the libell in the Ecclesiasticall Court, we have six to shew to be lawfully warranted upon the libell there, and so are all the rest of like kind, by which it will appeare, that this suggestion is not onely untrue, but also, that the extraordinary charges growing unto poore men, are of necessity by means of the undue practices of Ecclesiasticall Courts. Answer.

5. The multiplying of Prohibitions in one and the same cause, the libell being not altered.

Although it hath been anciently ordained by a Statute, that when a consultation is once duly granted upon a prohibition made to the Iudge of holy Church, the same Iudge may proceed in the cause, by vertue of that consultation, notwithstanding any other prohibition to him delivered, provided that the matter in the libell of the same cause be not engrossed, enlarged, or otherwise changed; yet notwithstanding prohibitions and consultations in one and the same cause, the libell being no waies altered according to the said Statute, are lately so multiplyed, as that in some one cause, as aforesaid, two, in some three, in some other six prohibitions, and so many consultations have been awarded, yea divers are so granted out of one Court: As for example, when after long suit a consultation is obtained, it is thought a sufficient cause to send out another prohibition in revocation of the said consultation, upon suggestion therein contained, that the said consultation minus commode emanavit. By which pretty device the Iudges of those Courts which grant prohibitions, may, notwithstanding the said Statute, upon one libell not altered, grant as many prohibitions Objection.

as they list, commanding the Ecclesiasticall Judges in his Majesties name, not to proceed in any cause that is so divers times by them prohibited, whereby the poore Plaintifes doe not know when their consultations (procured with great charge) will hold, and so finding such and so many difficulties, are driven to goe home in great griefe, and to leave the causes in Westminster Hall, the Ecclesiasticall Judges not daring to hold any plea of them. Now may it please your Lordships, the premisses being true, we humbly desire to heare what the Judges are able to produce for the justifying of these their proceedings.

Answer. If there sit they should set downe particular causes, whereupon this grievance is grounded, and then we doubt not but to answer it sufficiently, without using any petty devise, such as is set downe in this Article.

6. The multiplying of Prohibitions in divers causes, but of the same nature, after consultations formerly awarded.

Objection. We suppose, that as well his Majesties Ecclesiasticall Jurisdiction, as also very many of his poore, but dutifull subjects, are greatly prejudiced by the granting of divers severall prohibitions, and consultations in causes of one and the same nature and condition, and upon the selfe same suggestions: For example, in case of beating a Clerke, the prohibition being granted upon this suggestion, that all pleas de vi & armis belong to the Crowne, &c. notwithstanding a consultation doth thereupon ensue, yet the very next day after, if the like suggestion be made upon the beating of another Clerke, even in the same Court another prohibition is awarded. As also, where 570. prohibitions have been granted since the late Queenes time into the Court of Arches (as before is mentioned) and but 113. consultations afterwards upon so many of them obtained: Yet it is evident by the said consultations, that (in effect) all the rest of the said prohibitions ought not to have been awarded, as being grounded upon the same suggestions, whereupon consultations have been formerly granted: And so it followeth, that the causes why consultations were awarded upon the rest of the said prohibitions, were for that either the Plaintifes in the Court Ecclesiasticall were driven for lacke of further charge, to compound to their losse, with their adversaries, or were not able to sue for them; or being able, yet through strength of opposition against them, were constrained to desist; which is an argument to us, that the Temporall Judges doe wittingly and willingly grant prohibitions, whereupon they know before hand, that consultations are due: And if we mistake any thing in the premisses, we desire your Lordships, that the Judges, for the justification of their courses, may better enforme us.

Answer. It shall be good, the Ecclesiasticall Judges doe better enforme themselves, and that they put some one or two particular cases to prove their suggestions, and thereupon they will find their owne errour; for the case may be so, that two severall Ministers living in the Ecclesiasticall Court for beating of them in one and the selfe same forme, that the one may and ought to have a consultation, and the other not. And so it is in cases of prohibitions, de modo decimandi; and hereof groweth the oversight in making this objection. And we affirm our selves, that they shall not find 570. prohibitions granted into the Arches since her late Majesties death; for we find (if our Clerkes affirme truly upon their search) that out of the Kings Bench have been granted to all the Ecclesiasticall Courts in England but 251. prohibitions (as before is mentioned) from the beginning of his Majesties raigne, unto the end of Hilary Terme last; and out of the Common Pleas not 63. And therefore it cannot be true, that so many have passed to the Arches in that time, as is set downe in the Article; and this Article in that point doth exceed that which is set downe in the fourth Article by almost 500. and therefore whosoever set this downe, was much forgetfull of that which was before set downe in the fourth Article, and might well have forborne to lay so great a scandall

a ſcandall upon the Judges, as to affirme it to be a wittting and willing errour in them, as is ſet downe in this Article.

New formes of Conſultations, not expreſſing the cauſe of the granting of them. 7.

Objection. Whereas upon the granting of Conſultations, the Judges in times paſt did therein expreſſe and acknowledge the cauſes ſo remitted to be of Eccleſiaſticall cognizance, which were preſidents and indgements for the better aſſurance of Eccleſiaſticall Judges, that they might afterwards hold plea in ſuch cauſes, and the like; and were alſo ſome barre as well to the Temporall Judges themſelues, as alſo to many troubleſome and contentious perſons from either granting or ſeeking prohibitions in ſuch caſes, when ſo it did appeare unto them upon record, that Conſultations had been formerly granted in them; they the ſaid Temporall Judges have now altered that courſe, and doe onely tell us, that they grant their Conſultations certis de cauſis ipſos apud Weſtm' moventibus, not expreſſing the ſame particularly, according to their ancient preſidents. By meanes whereof the Temporall Judges leave themſelues at liberty without preiudice, though they deny a Conſultation; at another time upon the ſame matter contentious perſons are animated, finding no cauſe expreſſed, why they may not at another time ſeeke for a prohibition in the ſame cauſe; and the Eccleſiaſticall Judges are left at large to thinke what they liſt, being no way inſtructed of the nature of the cauſe which procured the Conſultation: The reaſon of which alteration in ſuch Conſultations, we humbly intreat your Lordſhips, that the Judges, for our better inſtruction, may be required to expreſſe.

Anſwer. If we find the declaration upon the ſurmiſe, upon which the prohibition is granted, not to warrant the ſurmiſe, then we forthwith grant a Conſultation in that forme which is mentioned, and that matter being mentioned in the Conſultation would be very long and cumberſome, and give the Eccleſiaſticall Court little information, to direct them in any thing thereafter; and therefore in ſuch caſes, for brevity ſake, it is uſuall: but when the matter is to receive end by demurrer in law, or tryall, the Conſultation is in another forme. And it is their ignorance in the Arches, that will not underſtand this, and we may not ſupply their defects with changing our formes of proceedings, wherein if they would take the advice of any learned in the Lawes, they might ſoone receive ſatisfaction.

That Conſultations may be obtained with leſſe charge and difficulty. 8.

Objection. The great expences and manifold difficulties in obtaining of Conſultations are become very burthenſome to thoſe that ſeeke for them; for now a dayes, through the malice of the Plaintifes in the Temporall Courts, and the covetous humours of the Clerkes, prohibitions are ſo extended and enlarged, without any neceſſity of the matter (ſome one prohibition containing more words and lines then forty prohibitions in ancient times) as by meanes thereof the party in the Eccleſiaſticall Court, againſt whom the prohibition is granted, becomes either unwilling, or unable to ſue for a Conſultation, it being now uſuall and ordinary, that in the Conſultations muſt be recited in eadem verba the whole tenour of the prohibition, be it never ſo long; for the which (to omit diuers other fees, which are very great) he muſt pay for a draught of it in paper viii.d. the ſheet, and for the entry of it xii.d. the ſheet. Furthermore, the prohibition is quicke and ſpeedy; for it is ordinarily granted out of Court by any one of the Judges in his Chamber, whereas the Conſultation is very ſlowly and hardly obtained, not without (oftentimes) coſtly motions in open Court, pleadings, demurrers, and ſundry iudiciall hearings of both parties, and long attendance for the ſpace of two or three, nay ſometimes of eight or nine yeares before

it be obtained. The inconvenience of which proceedings is so intolerable, as we trust, such as are to grant consultations will by your Lordships meanes not onely doe it expeditely, and moderate the said fees: but also reforme the length of the said consultations, according to the formes of consultations in the Register.

Answer. It were fit the particular cause were set downe, whereupon the generall grievance, that is mentioned in this Article, is grounded; and that done, it may have a full answer: for a prohibition is grounded upon the libell, and the consultation must agree therewith also; and therefore we doubt not, but the ground of this grievance, when it is well looked into, will grow from themselves in intermixing of much nugatory and unnecessary matter in their libells: And for the fees taken; wee assure our selves, none are taken, but such as are anciently due and accustomed; and it will appeare, that we have abridged the fees, and length of pleadings, and use no delayes, but such as are of necessity; and we wish they would doe the like, and upon examination it will appeare of which side it growes, that the fees or delayes are so intolerable. And where in ancient time such as sued for tithes, would not sue but for things questionable, and never sought at their Parishioners hands their tithes in other kinds then anciently they had been used to have been paid; now many turbulent Ministers do infinitely vexe their Parishioners for such kinds of tithes as they never had, whereby many Parishes have been much impoverished: And for example, we shall shew one Record, wherein the Minister did demand seaventeen severall kinds of tithes, whereupon the parties bring a prohibition had eight or nine of them advudged against the Minister upon demurrer in law, and other pleaded against him by tryall, and this must of necessity grow to a matter of great charge; but where is the fault, but in the Minister that gave occasion? And we will shew one other Record, wherein the party confessed to some of us, that hee was to sue his Parishioner but for a Calfe and a Goose; and that his proctor nevertheless put in the libell or demand of tithes, of seven or eight things more then he had cause to sue for: this enlarged the prohibition, and gave occasion of more expence then needed; and where is the fault of this, but in the Ecclesiasticall Courts? And as in these, so can wee approve in many others; and therefore wee must retort the cause and ground of this grievance upon themselves, as more particularly may appeare by the severall presidents to be shewed in this behalfe.

9. Prohibitions not to be granted upon frivolous suggestions.

Objection. It is a prejudice and derision to both his Majesties Ecclesiasticall and Temporall iurisdictions, that many prohibitions are granted upon trifling and frivolous suggestions, altogether unworthy to proceed from the one, or to give any hinderance or interruption to the other: as upon a suit of tithes brought by a Minister against his Parishioner, a prohibition flyeth out upon suggestion, that in regard of a speciall receipt, called a Cup of buttered Beare made by the great skill of the said Parishioner to cure a grievous disease called a Cold, which lately troubled the said Minister, all his tithes were discharged. And likewise a woman being convented for adultery committed with one that suspitiously resorted to her house in the night time, the suggestion of a prohibition in this case was, that omnia placita de nocturnis ambulationibus belong to the King, &c. Also where a Legatary sued for his legacy given in a will, the prohibition was, Quia omnia placita de donis & concessionibus spectant ad forum Regium, & non ad forum Ecclesiasticum, dummodo non sint de testamento & matrimonio; as if a legacy were not donatio de or in testamento, with many other of like sort. The reformation of all which fribolous proceedings, so chargable notwithstanding to many poore men, and the great hinderance of iustice, we humbly referre to your Lordships consideration.

Answer. We grant none upon fribolous suggestions, but for the case put, it is ridiculous

has in the Spiritter to make such a contract (if any such were) but that maketh not the contract void, but discovereth the unworthinesse of the party that made the same, and yet no fault in granting the prohibition; but when it shall appeare unto us, that such a matter is suggested by fraud of any Clerke or Counceller at law, we will not remit such offences, but will exclude such Attorney from the Court, and such Counsellers from their practice at the Barre. And if they will suggest adultery to one, against whom they prove but night-walking, and doe adiudge him for it, we are in such a case to prohibite their proceedings: for that is a matter meerly pertinent to the Temporall Court; so, if it appeare hee hath entred the house as a thiefe, or a burglarer, and so in many other cases also. And if any surmise a legacy from the dead, where it was but a promise of payment in his life time, in that case such a suit is to be prohibited: but if in these cases the parties bee named, then we might see the Record, and thereupon be directed to shew upon what consideration these prohibitions were granted, otherwise wee shall thinke that these are cases newly invented.

No Prohibition to be granted at his suit, who is Plaintife in the Spirituall Court. 10.

Objection. We suppose it to be no warrantable nor reasonable course, that prohibitions are granted at the suit of the Plaintife in the Ecclesiasticall Court, who having made choice thereof, and brought his adversary there into tryall, doth by all intendment of law and reason, and by the usage of all other judiciall places conclude himselfe in that behalfe; and although he cannot be presumed to hope for helpe in any other Court by way of prohibition, yet it is very usuall for every such person so proceeding onely of meere malice for vexation of the party, and to the great delay and hinderance of Iustice, to find favour for the obtaining of prohibitions, sometimes after two or three sentences, thereby taking advantage (as he must plead) of his owne wrong, and receiving aide from that Court, which, by his owne confession, he before did contemne; touching the equity whereof, we will expect the answer of the Iudges.

Answer. None may pursue in the Ecclesiasticall Court for that which the Kings Courts ought to hold plea of, but upon information thereof given to the Kings Courts, either by the Plaintife, or by any meere stranger, they are to be prohibited, because they deale in that which appertaineth not to their iurisdiction, where if they would be carefull not to hold plea of that which appertaineth not to them, this needed not: and if they will proceed in the Kings Courts against such as pursue in the Ecclesiasticall Courts for matter Temporall, that is to be inflicted upon them, which the quality of their offence requireth; and how many sentences howsoever are given, yet prohibitions thereupon are not of favour, but of iustice to be granted.

No Prohibition to be granted, but upon due consideration of the libell. 11.

Objection. It is (we are perswaded) a great abuse, and one of the chiefe grounds of the most of the former abuses, and many other, that prohibitions are granted without sight of the libell in the Ecclesiasticall Court; yea, sometimes before the libell be there exhibited, whereas by the Lawes and Statutes of this Realme (as we thinke) the libell (being a briefe declaration of the matter in debate betweene the Plaintife and Defendant) is appointed as the onely rule and direction for the due granting of a prohibition, the reason whereof is evident, viz. upon diligent consideration of the libell it will easily appeare, whether the cause belong to the Temporall or Ecclesiasticall cognizance, as on the other side without sight of the libell, the prohibition must needs range and rove with strange and forraigne suggestions at the will and pleasure of the Deviser, nothing pertinent to the

the matter in demand: whereupon it cometh to paſſe, that when the Iudge Eccleſiaſticall is handling a matter of Simony, a prohibition is graunted upon a ſuggeſtion, that the Court tryeth placita de advocationibus Eccleſiarum, & de jure patronatus. And when the libell containeth nothing but the demand of tithe Wooll, and Lamb, the prohibition ſurmiſeth a cuſtome of paying of tithe Pigeons. So that if it may be made a matter of conſcience to grant prohibitions only, where they doe rightly lye, or to preſerve the iuriſdiction Eccleſiaſticall united to his Maieſties Crowne, it cannot (we hope) but ſeem neceſſary to your Lordſhips, that due conſideration be firſt had of the libell in the Eccleſiaſticall Court, before any prohibition be granted.

Anſwer. He hath an advowſon granted to him for money, being ſued for Simony, ſhall have a prohibition; and it is manifeſt, that though in the libell there appear no matter to grant a prohibition, yet upon a collaterall ſurmiſe the prohibition is to be granted: As where one is ſued in a Spirituall Court for tithes of ſilva cædua, the party may ſuggeſt, that they were groſſe or great trees, and have a prohibition, yet no ſuch matter appeareth in the libell. So if one bee ſued there for violent hands laid on a Miniſter by an Officer, as a Conſtable, hee being ſued there may ſuggeſt, that the Plaintife made an aſſray upon another, and he to preſerve the peace laid hands on him, and ſo have a prohibition. And ſo in very many other like caſes, and yet upon the libell no matter appeareth why a prohibition ſhould be granted: And they will never ſhew, that a cuſtome to pay Pigeons was allowed to diſcharge the payment of Wooll, Lamb, or ſuch like.

12. No Prohibition to be granted under pretence, that one witneſſe cannot be received in the Eccleſiaſticall Court, to ground a judgement upon.

Objection. There is a new deviſed ſuggeſtion in the Temporall Courts commonly received and allowed, whereby they may at their will and pleaſure draw any cauſe whatſoever from the Eccleſiaſticall Court: For example, Many prohibitions have lately come forth upon this ſuggeſtion, that the Lawes Eccleſiaſticall doe require two witneſſes, where the Common Law accepteth of one; and therefore it is contra legem terræ, for the Eccleſiaſticall Iudge to inſiſt upon two witneſſes to prove his cauſe: upon which ſuggeſtion, although many conſultations have been granted (the ſame being no way as yet able to warrant and maintaine a prohibition) yet becauſe we are not ſure, but that either by reaſon of the uſe of it, or of ſome future conſtruction, it may have given to it more ſtrength then is convenient, the ſame tending to the utter overthrow of all Eccleſiaſticall iuriſdiction, we moſt humbly deſire, that by your Lordſhips good meanes, the ſame may be ordered to be no more uſed.

Anſwer. If the queſtion be upon payment, or ſetting out of tithes, or upon the proofe of a legacy, or marriage, or ſuch like incidence, we are to leave it to the tryall of their law, though the party have but one witneſſe; but where the matter is not determinable in the Eccleſiaſticall Court, there lyeth a prohibition either upon, or without ſuch a ſurmiſe.

13. No good ſuggeſtion for a Prohibition, that the cauſe is neither teſtamentary, nor matrimoniall.

Objection. As the former device laſt mentioned endeavoureth to ſtrike away at one blow the whole Eccleſiaſticall iuriſdiction; ſo there is another as uſuall, or rather more frequent then the former, which is content to ſpare us two kind of cauſes to deale in, viz. Teſtamentary, and Matrimoniall: and this device inſiſteth mightily in many prohibitions, commanding the Eccleſiaſticall Iudge, that be the cauſe never ſo apparently of Eccleſiaſticall cognizance, yet hee ſhall forceare; for

for that is neither a cauſe Teſtamentary, nor Matrimoniall: which ſuggeſtion, as it grew at the firſt upon miſtaking, and omitting the words, de bonis & catallis, &c. as may appeare by divers ancient prohibitions in the Regiſter; ſo it will not be denied, but that, beſides thoſe two, divers & ſundry other cauſes are notoriouſly knowne to be of Eccleſiaſticall cognizance, and that conſultations are as uſually awarded (if ſuit in that behalfe be proſecuted) notwithſtanding the ſaid ſuggeſtion, as their prohibitions are eaſily granted; which, as an iniury, marching with the reſt to wound poore men, protract ſuits, and preiudice the Courts Eccleſiaſticall, we deſire that the Iudges will be pleaſed to redreſſe.

If they obſerve well the anſwer to the former obiections, they may be thereby ſatisfied, that we prohibit not ſo generally as they pretend, nor doe in any wiſe deale further then we ought to doe, to the preiudice of that which appertaineth to that iuriſdiction; but when they will deale with matters of Temporall contracts, coloured with pretended Eccleſiaſticall matter, wee ought to prohibit them with that forme of prohibitions, mentioning, that it concerneth not matter of Marriage, nor Teſtamentary: And they ſhall not find that we have granted any, but by form warranted, both by the Regiſter, and by Law: And when ſuggeſtions, carrying matter ſufficient, appeare to us iudicially to be untrue and inſufficient, we are as ready to grant conſultations as prohibitions: and we may not alter the forme of our prohibitions upon the conceits of Eccleſiaſticall Iudges, and prohibitions granted in the forme ſet downe in the Article, are of that forme which by Law they ought to be, and cannot be altered but by Parliament. Anſwer.

No Prohibition upon ſurmiſe onely to be granted, either out of the Kings Bench, or Common Pleas, but out of the Chancery onely. 14.

Amongſt the cauſes whereby the Eccleſiaſticall iuriſdiction is oppreſſed with multitude of prohibitions upon ſurmiſes onely, this hath a chiefe place, in that through incroachment (as wee ſuppoſe) there are ſo many ſeverall Courts, and Iudges in them, that take upon them to grant the ſame, as in the Kings Bench five, and in the Common Pleas as many, the one Court oftentimes crolling the proceedings of the other, whereas wee are perſwaded, that all ſuch kinds of prohibitions, being originall writs, ought onely to iſſue out of the Chancery, and neither out of the Kings Bench, nor Common Pleas. And that this hath been the ancient practice in that behalfe, appeareth by ſome ſtatutes of the Realme, and ſundry iudgements at the Common Law; the renewing of which practiſe carrieth with it an apparant ſhew of great benefit and conveniency, both to the Church, and to the Subiect: for if prohibitions were to iſſue onely out of one Court, and from one man of ſuch integrity, iudgement, ſincerity, and wiſedome, as we are to imagine the Lord Chancellour of England to be endued with, it is not likely, that he would ever be induced to preiudice and peſter the Eccleſiaſticall Courts with ſo many needleſſe prohibitions; or, after a conſultation, to ſend out in one cauſe, and upon one and the ſame libell not altered, prohibition upon prohibition, his owne act remaining upon record before him to the contrary. The further conſideration whereof, when, upon the Iudges anſwer thereunto, it ſhall be more throughly debated, wee muſt referre to your Lordſhips honourable direction and wiſedome. Obiection.

A ſtrange preſumption in the Eccleſiaſticall Iudges, to require that the Kings Courts ſhould not doe that which by law they ought to doe, and alwayes have done, and which by oath they are bound to doe! And if this ſhall be holden inconvenient, and they can in diſcharge of us obtaine ſome Act of Parliament to take it from all other Courts then the Chancery, they ſhall doe unto us a great eaſe: but the law of the Realme cannot be changed, but by Parliament; and what releife or eaſe ſuch an Act may worke to the Subiect, wiſe men will ſoone find out Anſwer.

and discerne: but by these Articles thus dispersed abroad, there is a generall unbeseeming aspersion of that upon the Judges, which ought to have been forborn.

15. No Prohibition to be awarded under a false pretence, that the Ecclesiasticall Judges would hold no plea for customes for tithes.

Objection. Amongst many devices, whereby the cognizance of causes of tithes is drawn from Ecclesiasticall Judges, this is one of the chiefest, viz. concerning the tryall of customes in payment of tithes, that it must be made in a Temporall Court; for upon a quirke and false suggestion in Edward the fourth his time, made by some Sergeants, a conceit hath risen (which hath lately taken greater strength then before) that Ecclesiasticall Judges will allow no plea of customs or prescription, either in non decimando, or in modo decimandi; and thereupon, when contentious persons are sued in the Ecclesiasticall Court for tithes, and doe perceive, that upon good proofe iudgement will be given against them, even in their owne pleas, sometimes for customes, doe presently (knowing their own strength with Jurors in the Country) flie unto Westminster Hall, and there suggesting that they pleaded customs for themselves in the Ecclesiasticall Courts, but could not be heard, doe procure thence very readily a prohibition; and albeit the said suggestion be notoriously false, yet the party prohibited may not bee permitted to traverse the same in the Temporall Court (directly contrary to a Statute made in that behalfe): neither may the Judge prohibited proceed without danger of an attachment, though himselfe doe certainly know, either that no such customs was ever alledged before him, or being alledged, that he did receive the same, and all manner of proofes offered thereupon: which course seemeth the more strange unto us, because the ground thereof laid in Edward the fourth his time, as aforesaid, was altogether untrue, and cannot with any sound reason be maintained: Divers Statutes and Judgements at the Common Law doe allow the Ecclesiasticall Courts to hold plea of such customes; all our bookes and generall learning doe therewith concurre, and the Ecclesiasticall Courts, both then and ever since, even untill this day, have, and still doe admit the same, as both by our ancient and recent Records it doth and may to any most manifestly appeare. And besides, there are some consultations to bee shewed in this very point, wherein the said surmise and suggestion, that the Ecclesiasticall Judges will heare no plea of customes, is affirmed to be insufficient in law to maintaine any such prohibition: and therefore we hope, that if we shall be able, notwithstanding any thing the Judges shall answer thereunto, to justifie the premisses, your Lordships will be a meanes, that the abuses herein complained of, having so false a ground, may be amended.

Answer. The Temporall Courts have alwayes granted prohibitions as well in cases de modo decimandi, as in cases upon reall compositions, either in discharge of tithes, or the manner of tithing; for that modus decimandi had his originall ground upon some composition in that kind made, and all prescriptions and compositions in these cases are to be tryed at the Common Law, and the Ecclesiasticall Courts ought to be prohibited, if in these cases they had plea of tithes in kind: but if they will sue in the Ecclesiasticall Court de modo decimandi, or according to composition, then we prohibit them not: and the cause why the Ecclesiasticall Judges find fault herewith, is, because many Ministers have growne of late more troublesome to their Parishioners, then in times past; and thereby worke unto these Courts more commodity, whereas in former ages they were well contented to accept that which was used to be paid, and not to contend against any prescription or composition; but now they grow so troublesome to their neighbours, as, were it not for the prohibition (as may appeare by the precedents before remembred) they would soone overthrow all prescriptions and compositions that are for tithes, which doth and would breed such a generall gar-

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bolle amongſt the people, as were to be pitied, and not to be permitted. And where they ſay, there bee many ſtatutes that take away theſe proceedings from the Temporall Courts, they are much deceived; and if they looke well unto it, they ſhall find even the ſame ſtatutes (they pretend) to give way unto it. And it is ſtrange they will affirme ſo great an untruth, as to ſay, they are not permitted to traverſe the ſuggeſtion in the Temporall Court; for both the law and daily practice doth allow it.

The cuſtomes for tithes are onely to be tried in the Eccleſiaſticall Courts, and ought not to be drawne thence by Prohibitions. 16.

Although ſome indiſcreet Eccleſiaſticall Judges, either in the time of King Edward the fourth, or Edward the ſixth, might, againſt Law, have refuſed in ſome one cauſe to admit a plea of cuſtome of tithes, to the prejudice of ſome perſon whom he favoured, and might thereby peradventure have given occaſion of ſome one prohibition (but whether they did ſo or no, the ſuggeſtion of a Lawyer for his fee is no good proofe) yet foraſmuch as by three ſtatutes made ſince that time, wherein it is ordained, viz. both that tithes ſhould be truly paid, according to the cuſtome, & the tryall of ſuch payments, according to cuſtome upon any default or oppoſition, ſhould be tryed in the Kings Eccleſiaſticall Courts, and by the Kings Eccleſiaſticall Lawes, and not otherwiſe, or before any other Judges then Eccleſiaſticall. We moſt humbly deſire your Lordſhips, that if according to the ſaid lawes we be moſt ready to heare any plea of cuſtomes, your Lordſhips would be pleaſed, that the Judges may not be permitted hereafter to grant any prohibitions upon ſuch falſe ſurmiſes; or if they ſhall anſwer, that wee miſtake the ſaid ſtatutes, that then the ſaid three ſtatutes may bee thoroughly debated before your Lordſhips, leſt under pretence of a right, which they challenge, to expound theſe kind of ſtatutes, the truth may be over-borne, and poore Miniſters ſtill left unto Country tryalls, there to juſtifie the right of their tithes before unconſcionable Jurors in theſe caſes. Objection.

The anſwer to the former Article may ſerve for this; and where the objection ſeemeth to impeach the tryall at the common Law by Jurors, we hold, and ſhall be able to approve it to be a farre better courſe for matter of fact upon the teſtimonie of witneſſes, ſworne viva voce, then upon the conſcience of any one particular man, being guided by paper proofes; and we never heard it excepted unto heretofore, that any ſtatute ſhould be expounded by any other then the Judges of the land; neither was there ever any ſo much over-ſeen, as to oppoſe himſelfe againſt the practice of all ages to make that queſtion, or to lay any ſuch unjuſt imputation upon the Judges of the Realme. Anſwer.

No Prohibition to be granted, becauſe the treble value of tithes is ſued for in the Eccleſiaſticall Court. 17.

Whereas it appeareth plainly by the tenour of the ſtatute of Edw. 6. cap. 13. that Judges Eccleſiaſticall, and none other, are to heare and determine all ſuits of tithes, and other duties for the ſame, which are given by the ſaid Act; and that nothing elſe is added to former lawes by that ſtatute, but onely certaine penalties, for example, one of treble value: Foraſmuch as the ſaid penalty, being only deviſed as a meanes to worke the better payment of tithes, and for that there are no words uſed in the ſaid ſtatute to give juriſdiction to any Temporall Court. We hold it moſt apparant, that the ſaid penalty of treble value, being a duty given in the ſaid ſtatute for non-payment of tithes, cannot bee demanded in the Temporall Court, but onely before the Eccleſiaſticall Judges, according to the expreſſe words of the ſaid ſtatute: And the rather, wee are ſo perſwaded, becauſe it is moſt agreeable to all lawes and reaſon, that where the principall cauſe is to bee decided, there all things incident and acceſſary are to bee determined. Beſides, it was the practice of all Eccleſiaſticall Objection.

Courts in this Realme, immediatly after the making of the said Statute, and hath continued so ever since to award treble damages (when there hath been cause) without any opposition, until about ten yeares past, when, or about which time, notwithstanding the premisses, the Temporall Judges began to hold plea of treble value, and doe now accompt it so proper and peculiar to their Jurisdictions, as by colour thereof they absolut suits originally for the said penalty, and doe make thereby (very absurdly) the penalty of treble value to be principall, which is indeed but the accessary: and the cognizance of tithes to bee but the accessary, which in all due construction is most evident to be the principall, thereby wholly perverting the true meaning and drift of that Statute, whereupon if in the Spirituall Court the treble value be now demanded by the libell as a duty, according to that Statute, or that sentence be awarded directly and sincerely upon the said libell, presently, as contentious persons are disposed, a prohibition is granted, and some sharp words are further used, as if the Ecclesiasticall Judges were in some further danger for holding of these kind of pleas: and therefore we most humbly desire, that if the Judges shall insist in their answers upon such their straining of the said Statute, your Lordships will be pleased to heare the same further debated by us with them.

Answer. If they observe well the Statute, they shall find, that the Ecclesiasticall Court is by that Statute to hold plea of no more, then that which is specially thereby limited for them to hold plea of; and the Temporall Court not restrained thereby, to hold plea of that which is not limited unto the Ecclesiasticall Court by that Act, and of that they had Jurisdiction of before: and the forfeiture of double value is expressly limited to be recovered before the Ecclesiasticall Judges; but where a forfeiture is given by an Act generally not limiting where to be recovered, it is to be recovered in the Kings temporall courts, & the cause why it is so devised, seemeth to be for that, where by that Act, Temporall men were to sue for their tithes in the Ecclesiasticall court, where it was then presumed they were to have no great favour: Therefore the party grieved might (if he would) pursue for the forfeiture of the treble value in the Temporall court, where hee was to recover no tithes; but if he would sue where he might also recover the tithes, then hee would pursue for the double value: for that is specially appointed to be recovered in the Ecclesiasticall Court, but not the treble value. And although they alledge, that they sometimes used to maintaine suit for the treble value, yet as soon as that was complained of to the Kings Courts, they gave remedy unto it as appertained.

18. No Prohibition to be awarded, where the person is stopped from carrying away of his tithes by him that setteth them forth.

Objection. As the said Statute of Edward the sixth last mentioned assigneth a penalty of treble value, if a man upon pretence of customs, which cannot be justified, shall take away his corne before he hath set out his tithes; so also in the said Statute it is provided, that if any man having set out his tithes, shall not afterwards suffer the Parson to carry them away, &c. he shall pay the double value thereof so carried away, the same to be recovered in the Ecclesiasticall Court. Howbeit the clearnesse of the Statute in this point, notwithstanding meanes are found to draw this cause also from the Ecclesiasticall Court; for such as of hatred towards their Ministers are disposed to vexe them with suits at the common Law (where they find more favour to maintaine their wrangling, then they can hope for in the Ecclesiasticall Court) will not faile to set out their tithes before witnesses, but not with any meaning or intent that the Parson shall ever carry them away; for presently thereupon they will cause their owne servants to lead them away to their owne barnes, & leave the Parson as he can to seek his remedy; which if he do attempt in the ecclesiasticall court, out cometh a prohibition, suggesting, that upon deliverance and setting forth of the tenth part from the nine, the same tenths were presently by law

law in the Parsons possession, and being thereupon become a lay chattell, must be recovered by an action of trespasse at the common law, whereas the whole pretence is grounded upon a meere perverting of the statute, which doth doth ordain, that all tithes shall be set forth truly and iustly without fraud and guile; and that also the Parson shall not be stopped or hindered from carrying them away, neither of which conditions are observed when the Farmer doth set them forth, meaning to carry them away himselfe (for that is the fraudulent setting of them out;) and also, when accordingly hee taketh them away to his owne use; for thereby hee stoppeth the Parson to carry them away: and consequently, the penalty of this offence is to bee recovered in the said Ecclesiasticall Courts, according to the words of the said statute, and not in any Court Temporall: wherefore we most humbly desire your Lordships, that either the Judges may make it apparant to your Lordships, that we mislike this statute in this point, or that our Ecclesiasticall Courts may ever hereafter be freed from such kinds of prohibitions.

For the matter of this Article it is answered before, where the truth of the case is, that he that ought to pay prediall tithes, doth not divide out his tithes, or doth in any wise interrupt the Parson, or his deputy, to see the dividing or setting of them out that appearing unto us iudicially, we maintain no prohibition upon any suit there for the double value, but if after the tithes severed, the Parson will sell the tithes to the party that divided them, upon the surmise thereof, we doe, and ought to grant a prohibition; but if that surmise doe prove untrue, we do as readily grant a consultation, and the party seeking the same, is, according to the statute, to have his double costs and damages. Answer.

No Prohibition to be granted upon any incident plea in an Ecclesiasticall cause. 19.

We conceive it to be great injury to his Maiesties Ecclesiasticall iurisdiction, that prohibitions are awarded to his Ecclesiasticall Courts upon every by, and every incident plea or matter alledged there in barre, or by way of exception, the principall cause being undoubtedly of Ecclesiasticall cognizance: For example, In suit for tithes in kind, if the limits of the Parish, agreements, compositions, and arbitraments, as also whether the Minister that sueth as Parson, be indeed Parson or Vicar, doe come in debate by way of barre, although the same particulars were of Temporall cognizance (as some of them wee may boldly say are not) yet they were in this case examinable in the Ecclesiasticall Court, because they are matters incident, which come not in that case finally to be sentenced and determined, but are used as a meane and furtherance for the decision of the maine matter in question. And so the case standeth in other such incident pleas by way of barre; for otherwise either party in every cause might at his pleasure, by pleading some matter Temporall by way of exception, make any cause Ecclesiasticall whatsoever subiect to a prohibition, which is contrary to the reason of the common Law, and sundry iudgements thereupon given, as wee hope the Iudges themselves will acknowledge, and thereupon pesis to have such prohibitions hereafter restrained. Objection.

Matters incident that fall out to be meere Temporall, are to be dealt withall in the Temporall, and not in the Ecclesiasticall Court, as is before particularly set downe in the eleventh Article. Answer.

That no Temporall Judges, under colour of authority to interpret Statutes, ought, in favour of their Prohibitions, to make causes Ecclesiasticall to be of Temporall cognizance. 20.

Although of late dayes it hath been strongly held by some, that the interpretation of all statutes whatsoever doe belong to the Iudges Temporall, yet we suppose, by certaine evill effects, that this opinion is to bee bounded within certaine Objection.

taine limits; for the ſtrong conceit of it hath already brought forth this fruit, that even thoſe very ſtatutes which doe concerne matters meerly Eccleſiaſticall, and were made of purpoſe with great caution, to preſerve, enlarge, and ſtrengthen the iuriſdiction Eccleſiaſticall, have been by colour thereof turned to the reſtraining, weakning, and utter overthrow of the ſame, contrary to the true intent and meaning of the ſaid ſtatutes: As for example (beſides the ſtrange interpretation of the ſtatutes before mentioned, for the payment of tithes) When parties have been ſued in the Eccleſiaſticall Courts, in caſe of an inceſtuous marriage, a prohibition hath been awarded, ſuggeſting, under pretence of a ſtatute in the time of King Hen. 8. that it appertaineth to the Temporall Courts, & not to the Eccleſiaſticall, to determine what marriages are lawfull, and what are inceſtuous by the Word of God. As alſo a Miniſter, being upon point of deprivation for his inſufficiency in the Eccleſiaſticall Court, a prohibition was granted, upon ſuggeſtion that all pleas of the fitneſſe, learning, and ſufficiency of Miniſters belong only to the Kings Temporall Courts, relying, as wee ſuppoſe, upon the ſtatute of 13. Eliz. by which kind of interpretation of ſtatutes, if the naming, diſpoſing, or ordering of cauſes Eccleſiaſticall in a ſtatute ſhall make the ſame to be of Temporall cognizance, and ſo abolish the iuriſdiction of the Eccleſiaſticall Court, without any further circumſtances, or expreſſe words to warrant the ſame, It followeth, that forasmuch as the common Book and Articles of Religion are eſtabliſhed and confirmed by ſeverall Acts of Parliament, the Temporall Iudges may challenge to themſelves an authority to end and determine of all cauſes of Faith and Religion, and to ſend out their prohibitions, if any Eccleſiaſticall Iudge ſhall deale or proceed in any of them: which conceit, how abſurd it is, needeth no proofe, and teacheth vs, that when matters meerly Eccleſiaſticall are compriſed in any ſtatute, it doth not therefore follow, that the interpretation of the ſaid matters doth belong to the Temporall Iudges, who by their profeſſion, and as they are Iudges, are not acquainted with that kind of learning: Hereunto, when we ſhall receive the anſwer of the Iudges, we ſhall be ready to iuſtifie every part of this Article.

Anſwer. If any ſuch have ſlipt, as is ſet downe in this Article, without other circumſtances to maintaine it, we make no doubt, but when that appeared to the Kings Temporall Court, it hath been preſently remitted; and yet there be caſes, that we may deale both with marriages and matters of deprivation, As where they will call the marriage in queſtion after the death of any of the parties, the marriage may not then be called in queſtion, becauſe it is to baſtard and diſinherit the iſſues, who cannot ſo well defend the marriage, as the parties both living themſelves might have done; and ſo is it, if they will deprive a Miniſter not for matter appertaining to the Eccleſiaſticall cognizance, but for that which both meerly belong to the cognizance of the Kings Temporall Courts. And for the Iudges expounding of ſtatutes that concerne the Eccleſiaſticall government or proceedings, it belongeth unto the Temporall Iudges; and wee thinke they have been expounded as much to their advantage, as either the letter or intention of lawes would or could allow of. And when they have been expounded to their liking, then they could approve of it; but if the expoſition be not for their purpoſe, then will they ſay, as now they doe, that it appertaineth not unto us to determine of them.

21. That perſons impriſoned upon the writ of *de excommunicato capiendo* are unduly delivered, and Prohibitions unduly awarded for their greater ſecurity.

Objection. Forasmuch as impriſonment upon the writ of excommunicato capiendo is the cheefeſt Temporall ſtrength of Eccleſiaſticall iuriſdiction, and that by the Lawes of the Realm none ſo committed for their contempt in matters of Eccleſiaſticall cognizance, ought to be delivered untill the Eccleſiaſticall Courts were ſatisfied, or caution given in that behalfe, wee would gladly be reſolved by what authority

authority the Temporall Judges do cause the Sheriffes to bring the said parties into their Courts, and by their owne discretions set them at liberty, without notice thereof first given to the Ecclesiasticall Judges, or any satisfaction made either to the parties at whose suit he was imprisoned, or the Ecclesiasticall Court, where certaine lawfull fees are due: And after all this, why doe they likewise send out their prohibitions to the said Court, commanding, that all censures against the said parties shall be remitted, and that they be no more proceeded with for the same causes in those Courts. Of this our desire, we hope your Lordships do see sufficient cause, and will therefore procure us from the Judges some reasonable answer.

We affirme, if the party excommunicate be imprisoned, wee ought upon complaint to send the Kings writ for the body and the cause, and if in the returne no cause, or no sufficient cause appeare, then we doe (as we ought) set him at liberty; otherwise, if upon removing the body, the matter appeare to be of Ecclesiasticall cognizance, then we remit him againe: and this we ought to doe in both cases; for the Temporall Courts must alwaies have an eye, that the Ecclesiasticall iurisdiction usurp not upon the Temporall. Answer.

The Kings authority in Ecclesiasticall causes is greatly impugned by Prohibitions. 22.

We are not a little perplexed touching the authority of his Majestie in causes Ecclesiasticall, in that we find the same to be so impeached by prohibitions, that it is in effect thereby almost extinguished; for it seemeth, that the innovating humour is growne so rank, and that some of the Temporall Judges are come to be of opinion, that the Commissioners appointed by his Majesty for his causes Ecclesiasticall having committed unto them the execution of all Ecclesiasticall iurisdiction annexed to his Majesties Imperiall Crowne, by vertue of an Act of Parliament made in that behalfe, and according to the tenour and effect of his Majesties Letters Patents, wherein they are authorized to imprison, and impose fines, as they shall see cause) cannot otherwise proceed, the said Act and Letters Patents notwithstanding, then by Ecclesiasticall censures onely: And thereupon of latter dayes, whereas certaine lewd persons (two for example sake) one for notorious adultery and other intolerable contempts, and another for abusing of a Bishop of this Kingdome with threatning speeches, and sundry railing termes (no way to be endured) were thereupon fined and imprisoned by the said Commissioners, till they should enter into bonds to performe further orders of the said Court; the one was delivered by an Habeas corpus out of the Kings Bench, and the other by a like writ out of the common Pleas: and sundry other prohibitions have been likewise awarded to his Majesties said Commissioners upon these suggestions, viz. That they had no authority either to fine or imprison any man; which innovating conceit being added to this that followeth, That the writ of de excommunicato capiendo cannot lawfully be awarded upon any certificate or significavit made by the said Commissioners, wee find his Majesties said Supreme authority in causes Ecclesiasticall (so largely amplified in sundry Statutes) to be altogether destitute in effect of any meanes to uphold it, if the said proceedings by Temporall Judges shall be by them maintained and iustified; and therefore wee most humbly desire your Lordships, that they may declare themselves herein, and be restrained hereafter (if there be cause found) from using the Kings name in their prohibitions, to so great prejudice of his Majesties said authority, as in debating the same before your Lordships will hereafter more fully appeare. Objection.

We doe not, neither will we in any wise impugne the Ecclesiasticall authority in any thing that appertaineth unto it; but if any by the Ecclesiasticall authority commit any man to prison, upon complaint unto us that he is imprisoned without iust cause, we are to send to have the body, & to be certified of the cause; and if they will Answer.

will not certifie unto us the particular cauſe, but generally, without expreſſing any particular cauſe, whereby it may appeare unto us to be a matter of the Eccleſiaſticall cognizance, and his impriſonment be iuſt; then we doe and ought to deliver him: and this is their fault, and not ours. And although ſome of us haue dealt with them to make ſome ſuch particular certificate to us, whereby wee may bee able to iudge upon it, as by law they ought to doe; yet they will by no meanes doe it; and therefore their errour is the cauſe of this, and no fault in us: for if we ſee not a iuſt cauſe of the parties impriſonment by them, then we ought, and are bound by oath to deliver him.

23. No Prohibition to be granted, under pretence to reforme the manner of proceedings by the Eccleſiaſticall Lawes, in cauſes confeſſed to be of Eccleſiaſticall cognizance.

Objection. Notwithſtanding that the Eccleſiaſticall iuriſdiction hath been much impeached heretofore through the multitude of prohibitions, yet the ſuggeſtions in them had ſome colour of iuſtice, as pretending, that the Iudges Eccleſiaſticall dealt with Temporall cauſes: but now, as it ſeemeth, they are ſubiect to the ſame controlments, whether the cauſe they deale in be either Eccleſiaſticall or Temporall, in that prohibitions of late are wreſted out of their owne proper courſe, in the nature of a writ of errour, or of an appeale: For, whereas the true and onely uſe of a prohibition is to reſtraine the Iudges Eccleſiaſticall from dealing in a matter of Temporall cognizance, now prohibitions are awarded upon theſe formules, viz. That the Libell, the Articles, the Sentence, and the Eccleſiaſticall Court, according to the Eccleſiaſticall lawes, are grievous and inſufficient, though the matter there dealt withall be meerly Eccleſiaſticall: and by colour of ſuch prohibitions, the Temporall Iudges to alter and change the decrees and ſentences of the Iudges Eccleſiaſticall, and to moderate the expences taxed in the Eccleſiaſticall Courts, and to award conſultations upon conditions: As for example, That the Plaintife in the Eccleſiaſticall Court ſhall accept of the one halfe of the coſts awarded, and that the Regiſter ſhall loſe his fees; and that the ſaid Plaintife ſhall be contented with the payment of his legacy, which was the principall ſued for, and adiudged due unto him at ſuch day, as they the ſaid Temporall Iudges ſhall appoint, or elſe the prohibition muſt ſtand. And alſo where his Maieſties Commiſſioners, for cauſes Eccleſiaſticall, haue not been accuſtomed to give a copy of the Articles to any party, before he hath anſwered them; and that the Statute of Hen. 5. touching the delivering of the libell, was not onely publikely adiudged in the Kings Bench, not to extend to the deliverance of Articles, where the party is proceeded with ex officio, but likewiſe imparted to his Maieſtie, and afterwards divulged in the Starre-chamber, as a full reſolution of the Iudges, yet within 4. or 5. moneths after, a prohibition was awarded to the ſaid Commiſſioners out of the Kings Bench, upon ſuggeſtion, that the party ought to haue a copy of the Articles, being called in queſtion ex officio, before he ſhould anſwer them; and notwithſtanding that a motion was made in full Court ſhortly after for a conſultation, yet an order was entred, that the prohibition ſhould ſtand until the ſaid partie had a copy of the ſaid Articles given him; which novell and extraordinary courſes doe ſeem very ſtrange unto us, and are contrary not onely to the whole courſe of his Maieſties lawes Eccleſiaſticall, but alſo to the very maximes and iudgement of the Common Law, and ſundry Statutes of this Realme, as wee ſhall be ready to iuſtifie before your Lordſhips, if the Iudges ſhall endeavour to maintaine theſe their proceedings.

Anſwer. To this we ſay, that though where parties are proceeded withall ex officio, there needeth no libell, yet ought they to haue the cauſe made knowne unto them for which they are called ex officio, before they be examined, to the end it may appeare unto them before their examination, whether the cauſe be of Eccleſiaſticall cognizance, otherwiſe they ought not to examine them upon oath. And touching the reſt of this Article, they doe utterly miſtake it.

That

That Temporall Judges are ſworne to defend the Eccleſiaſticall Juriſdiction. 24.

We may not omit to ſignifie unto your Lordſhips, that (as wee take it) the Temporall Judges are not onely bound by their ancient oath, that they ſhall doe nothing to the diſherſion of the Crown, but alſo by a latter oath unto the Kings Supremacy, wherein they doe ſweare, that, to their power, they will aſsiſt and defend all iuriſdictions, priviledges, preheminences, and authorities united and annexed to the Imperiall Croſwne of this Realme; in which words the Eccleſiaſticall iuriſdiction is ſpecially aimed at: ſo that whereas they doe oftentimes inſiſt upon for their oath, for doing of iuſtice in Temporall cauſes, and do ſeldome make mention of the ſecond oath taken by them for the defence of the Eccleſiaſticall iuriſdiction, with the rights and immunities belonging to the Church; we think, that they ought to weigh their ſaid oaths better together, and not ſo farre to extend the one, as that it ſhould in any ſort preiudice the other: The due conſideration whereof (which we moſt inſtantly deſire) would put them in mind (any ſuggeſtion to the contrary notwithſtanding) to be as carefull not to doe any thing that may preiudice the lawfull proceedings of the Eccleſiaſticall Judges in Eccleſiaſticall cauſes, as they are circumſpect not to ſuffer any impeachment, or blemiſh of their owne iuriſdictions and proceedings in cauſes Temporall. Objection.

We are aſſured, that none can iuſtly charge any of us with violating our oaths, and it is a ſtrange part to take Judges in this manner, and to lay ſo great an imputation upon us; and what ſcandall it will be to the iuſtice of the Realme to haue ſo great levity, and ſo foule an imputation laid upon the Judges, as is done in this, is too manifeſt. And we are aſſured it cannot be ſhewed, that the like hath been done in any former age: and for leſſe ſcandals then this of the iuſtice of the Realme, divers haue been ſeverely puniſhed. Anſwer.

That Excommunication is as lawfull, as Prohibition, for the mutuall preſervation of both his Majeſties ſupreme juriſdiction. 25.

To conclude, whereas for the better preſerving of his Maieſties two ſupreme iuriſdictions before mentioned, viz. the Eccleſiaſticall and the Temporall, that the one might not uſurp upon the other; two meanes heretofore haue of ancient time been ordained, that is to ſay, the cenſure of excommunication, and the writ of prohibition; the one to reſtraine the incroachment of the Temporall iuriſdiction upon the Eccleſiaſticall, the other of the Eccleſiaſticall upon the Temporall, We moſt humbly deſire your Lordſhips, that by your meanes the Judges may be induced to reſolue us, why excommunications may not as freely be put in ure for the preſervation of the iuriſdiction Eccleſiaſticall, as prohibitions are, under pretence to defend the Temporall, eſpecially againſt ſuch contentious perſons, as doe wittingly and willingly, upon falſe and friuolous ſuggeſtions, to the delay of iuſtice, vexation of the ſubiects, and great ſcandall of Eccleſiaſticall iuriſdictions, daily procure, without feare either of God or men, ſuch undue prohibitions, as we haue heretofore mentioned. Objection.

The excommunication cannot be gain-ſaid, neither may the prohibition be denied upon the ſurmiſe made, that the matter purſued in the Eccleſiaſticall Court is of Temporall cognizance: but as ſoon as that ſhall appeare unto us iudicially to be falſe, we grant the conſultation. Anſwer.

For the better ſatisfaction of his Maieſty, and your Lordſhips, touching the obiections deliuered againſt prohibitions, we haue thought good to ſet downe (as may be perceiued by that which hath been ſaid) the ordinary proceeding in his Maieſties Courts therein; whereby it may appeare both what the Iudges doe,

and ought to doe in thoſe cauſes; and the Eccleſiaſticall Judges may doe well to conſider, what iſſue the courſe they herein hold can have in the end: and they ſhall find it can be no other, but to caſt a ſcandall upon the Juſtice of the Realme; for the Judges doing but what they ought, and by their oaths are bound to doe, it is not to be called in queſtion: and if it fall out, that they erre in iudgement, it cannot otherwiſe be reformed, but iudicially in a ſuperiour Court, or by Parliament.

Subſcribed by all the Judges of England, and the Barons of the Exchequer, *Paſch.* 4. *Jacobi*, and delivered to the Lord Chancellour of England.

Which anſwers and reſolutions, although they were not enacted by authority of Parliament, as our Statute of Articuli Cleri in 9. E. 2. was; yet, being reſolved unanimouſly by all the Judges of England, and Barons of the Exchequer, are for matters in law of higheſt authority next unto the Court of Parliament.

Magna eſt veritas, & prævalet.

Artic' Cleri 3. Jac. ad artic. 20

But now we will peruſe the Preamble, and after every Chapter in order, and proceed to the expoſition of the ſame; which office the Clergy claimed, viz. to interpret all Statute Lawes concerning the Clergy: but it was reſolved by all the Judges of England, that the interpretation of all Statutes concerning the Clergy, being parcell of the Lawes of the Realme, doe belong to the Judges of the Common Law.

EDwardus Dei gratia Rex Angliæ, &c. Omnibus ad quos præſentes literæ pervenerint, ſalutem. Sciatis quod cum dudum, temporibus progenitorum noſtrorum quondam Regum Angliæ, in diverſis Parliamentis ſuis, & ſimiliter poſtquam regni noſtri gubernacula ſuſcepimus, in Parliamentis noſtris, per Prælatos, & Clerum regni noſtri plures Articuli continentes gravamina aliqua Eccleſiæ Anglicanæ, & ipſis Prælatis & Clero illata (ut in eiſdem aſſerebatur) porrecti fuiſſent, & cum inſtantia ſupplicatum, ut inde apponeretur remedium opportunum: ac nuper in Parliamento noſtro apud Lincoln', anno regni noſtri ix. articulos ſubſcriptos, & quaſdam reſponſiones ad aliquos eorum prius factas, coram Concilio noſtro recitari, ac quaſdam reſponſiones corrigi, & cæteris articulis ſubſcriptis per nos, & dictum concilium noſtrum fecerimus reſponderi: quorum quidem articulorum & reſponſionum tenores ſubſequuntur in hunc modum.

¶ Cum dudum temporibus progenitorum noſtrorum, &c. in diverſis Parliamentis.] That is, in the ſaid Parliament holden anno 51. H. 3. Articuli Cleri, and of the ſaid Acts in the raigne of E. 1. called Prohibitio formata ſuper Artic' Cleri, and Articuli contra prohibitionem regiam, which have been cited before.

Rot. parl. 5. E. 2. m. 3. & 8. E. 2.

¶ In Parliamentis noſtris.] Viz. 5. E. 2. & 8. E. 2.

¶ Ac nuper in Parliamento noſtro apud Lincoln' anno regni noſtri nono.] There were two Parliaments holden in this ninth yeare, viz.

viz. the one at Lincolne, 15. Hill. mentioned in this Preamble; and the other, 15. Pasch' anno nono at Westminster: and as one saith, Merito in Parliamento conquesti sunt, quia Lex Angliæ sine Parliamento mutari non potest.

Vid. artic' Cler' anno 3. Jacobi regis ad artic' 1. & 13.

And note well what is said there, viz. what the Law doth warrant in cases of prohibition, to keep every Iurisdiction in his true limits, cannot be altered but by Parliament.

¶ Per Prælatos & Clerum, &c.] In these Parliaments complaint was made by the Clergy onely; but the Kings Courts, that may award prohibitions, being informed by the parties themselves, or by any stranger, that any Court Temporall or Ecclesiasticall doe hold plea of that whereof they have not Iurisdiction, may lawfully prohibit the same, as well after Iudgement and execution, as before: and so resolved by all the Iudges of England, and Barons of the Exchequer, agreeable to make authorities in law.

Vid. ubi supra ad artic' 3. Vid. ad artic' 10, 21.

CAP. I.

INprimis Laici impetrant prohibitiones in genere super decimis, obventionibus, oblationibus, mortuariis, redemptionibus penitentiarum, violenta manuum injectione in Clericum vel conversum, & in causa diffamationis: in quibus casibus agitur ad pœnam Canonicam imponendum: Rex ad istum articulum respondit, quod in decimis, oblationibus, obventionibus, mortuariis, quando sub istis nominibus proponuntur, prohibitioni regiæ non est locus; etiamsi, propter detentionem istorum diuturnam, ad æstimationem eorundem pecuniariam veniatur. Sed si clericus, vel religiosus decimas suas in horreo suo congregatas, vel alibi existentes vendiderit alicui pro pecunia: si petatur pecunia coram Judice Ecclesiastico, locum habet regia prohibitio, quia per venditionem res spirituales fiunt temporales, & transeunt decimæ in catalla.

Of these sufficient hath been said in the exposition upon the statute of Circumspecte agatis; whereunto we referre the Reader; only this wee adde (which wee have reserved to this place) the resolution of all the Iudges of England to the 5, 8, 15, 16, 18. Articles in Artic' Cleri 3. Jacobi Regis, in many cases concerning tithes, &c.

CAP. II.

ITem si sit contentio de jure decimarum, originem habens de jure patronatus, & earundem decimarum quantitas ascendat ad quartam partem bonorum Ecclesiæ, locum habeat regia prohibitio, si hæc causa coram Judice Ecclesiastico ventilet'. Item, si Prælatus imponat pœnam pecuniariam alicui pro peccato, & repetat illam, regia prohibitio locum habet. Ve-

runtamen, si Prælati imponant pœnitentias corporales, & sic puniti velint hujusmodi pœnitentias per pecuniam redimere sponte, non habet locum regia prohibitio, si coram Prælatis pecunia ab eis exigatur.

This is intended of the Kings writ of Indicavit, whereof, and of the tryall of the right of tithes at the common Law, we have spoken sufficiently for the understanding of this branch of this Act, in the exposition of the statute of W. 2. cap. 5. versus finem, and the statute of circumspecte agatis, &c.
Vid. Registr. 48. &c.

¶ Item, si Prælatus imponat pœnam pecuniariam alicui pro peccato, &c.] For the understanding hereof, wee referre the Reader to the exposition upon the statute of Circumspecte agatis, where sufficient hath been said of this matter.

CAP. III.

INsuper, si aliquis violentas manus injecerit in Clericum, pro violentia facta debet emendari coram Rege: Pro excommunicatione vero, coram Prælato, ubi imponatur pœnitentia corporalis; quod si reus velit sponte per pecuniam redimere, dand' Prælato vel læso, potest repeti coram Prælato: nec in talibus regia prohibitio locum habet.

For this matter, we referre the Reader to the statute of Circumspecte agatis: to that we adde the resolution of all the Judges of England touching this matter, ad Artic' 6. & 11. in Articulis Cleri 3. Jacob. which you may reade before, since we began with this Statute.
And here it is to be noted, that where the Article of the Clergy, Cap. 1. de violenta manuum injectione in Clericum vel Conversum, answer is made to the Clerke, but no answer is made at all to the Convert.

CAP. IIII.

IN diffamationibus etiam corrigant Prælati supradicto modo, regia prohibitione non obstante, primo injungendo pœnam corporalem: quam si reus velit redimere libere, percipiat Prælatus pecuniam, licet regia prohibitio porrigatur.

Hereof also sufficient hath been said in the exposition upon the Statute of Circumspecte agatis.

Cap.

CAP. V.

ITem, si aliquis in fundo suo molendinum erexit de novo, & postea à rectore loci exigatur decima de eodem, exhibetur regia prohibitio sub hac forma, Quia de tali molendino hactenus decimæ non fuerunt solutæ, prohibemus, &c. et sententiam excommunicationis, si quam hac occasione promulgaveritis, revocetis omnino. Responsio: In tali casu nunquam exivit regia prohibitio de principis voluntate, qui & decernit talem perpetuo non exire.

See hereafter the exposition of the statute of 2.E.6. cap.17. verb by the lawes of the Realme. Vid. inter leges Edwardi regis, cap 8. fol 128.

The forme of this prohibition is fully condemned, for that the substance of it was a non decimando, because the Mill was newly erected; but yet hereby, and by our Bookes it appeareth, that some tithe or other is due for a Mill, be it new, or old.

But this is (as some doe hold) a personall [a] tithe, coming from the gaine of the Miller, by his industry and labour: as of a Fisherman of the tithe of his gain by fishing, called Decimæ de piscationibus, or the like.

The words are generall, Molendinum erexit, and doe extend to all kind of Mills, as private Mills, and to publike, as to Fulling Mills, Paper Mills, &c. whereof there is no tithe to bee paid, but personall, if any be; which is a good proofe (say they) that so it ought to be of corne Mills; and if the Parson should have the tenth toll-dish, then should he have not onely tithe corne, but also tithe of the same corne ground at the Mill, and so a double tithe, which he shall not have of a Fulling Mill, Paper Mill, &c. No tithe shall be demanded of the rayney or after-pasture, or of stubble, because the Parson shall not have a double tithe of one and the same thing in one yeare. If the Parson hath tithe of fruit that groweth on fruit-trees, and in the same yeare the owner fell downe the fruit-trees, and make billets or fagots of them, he shall have no tithe of them, as it was holden Hill.8.Jacob.Rot.1109. in communi banco, inter Baxter & Hopes.

See 2.E.6.ca.13. every person shall justly, &c. set out, yeeld, and pay all prediall tithes in their proper kind, as they rise, and happen, &c. which (say they) cannot be applyed to the taking of the toll-dish. Registr.48.b. F.N.B.51.h.

[a] Rot.claus.7.E.2 Decimæ de molendino Ewell. Mich.8.& 9.H.3. coram rege, rot.6 See Linwood, tit. de Decimis, fol. 141, 142. Mich.9 & 10.H.3. coram Rege, rot 15. Jo. Fitzroberts case.

[b] Every person exercising Merchandizes, bargaining and selling, clothing, handicraft, or other art or faculty, being such kind of persons, and in such places, as heretofore, within 40. yeares, before the Statute of 2.E.6. have accustomably used to pay such personall tithes, or of right ought to pay, other then such as be common day-labourers, shall yearly, before the Feast of Easter, pay for his personall tithes the tenth part of his cleare gaines, his charges and expences, according to his estate, condition, or degree, to be therein abated, allowed, or deducted, &c. And the Ordinary hath power to call the parties before him, and to examine them by all lawfull and reasonable meanes, otherwise then upon oath, concerning the true payment of personall tithes.

[b] 2.E.6.cap.13.

Nota, in this description of personall tithes, the words bee, clothing, handicraft, or other art and faculty; within which generall words, the Millers of Fulling Mills, Rape Mills, Corne Mills, and other Mills be included; for a Miller is of an art and faculty.

* Mich.25.& 26. El.rot.2617. in communi banco. Mich.29.& 30. El 2.rot.254. Nicholas Mussels case, ibid. Vid lib 11. fol. 48,49.& 81.

¶ Exigatur decima.] Some do hold, that the Parson shall have the tenth toll-dish, as a prediall tithe.

* He that desireth to reade more concerning this matter, let him search for two records of Prohibitions in the Court of Common Pleas, in the raigne of the late Queen Elizabeth.

Note,

Note, that in many cases the Common Law and the Canon Law differ concerning the payment of tithes; the Common Law adiudging many things not tithable, which by the Canon Law ought to pay tithes: and this case of tithes of Mills was never (that I know) iudicially determined.

See the exposition of the Statute of Circumspecte agatis, verbo Conquer'.

¶ De Principis (i. *Regis*) voluntate.] i. curiæ Regis, in qua Rex sive Princeps repræsentatur.

CAP. VI.

ITem, si aliqua causa, vel negotium, cujus cognitio spectat ad forum Ecclesiasticum, & coram Ecclesiastico Judice fuerit sententialiter terminatum, & transierit in rem judicatam, nec per appellationem fuerit suspensum, & postmodum coram Judice seculari, super eadem re inter easdem personas quæstio moveatur, & probetur per testes vel instrumenta, talis exceptio in foro seculari non admittatur. Responsio: Quando eadem causa diversis rationibus coram Judicibus Ecclesiasticis & Secularibus ventilatur, ut supra patet de injectione violentarum manuum in Clericum, dicunt quod (non obstante Ecclesiastico judicio) curia Regis ipsum tractat negotium, ut sibi expedire videtur.

Art' Cleri 3. Jac. ad artic' 21.

¶ Fuerit sententialiter terminatum, & transierit in rem judicatam, &c.] The like Article was preferred 3. Jac. and answered and resolved by all the Iudges of England, which you may reade there, and need not here to be rehearsed.

¶ Diversis rationibus.] For the spirituall Iudges proceedings are for the correction of the spirituall inner man, and, pro salute animæ, to inioyne him penance; and the Iudges of the common Law proceed to give damages and recompence for the wrong and injury done: As if one lay violent hands of a Clerke, the spirituall Iudge, pro salute animæ, shall inioyne him penance, and the Clerke may have his action of battery, and recover damages for the injury done to him; and so in the case of usury, and the like: So as this Act saith well, that eadem causa diversis rationibus coram Judicibus Ecclesiasticis & Secularibus ventilatur; and therefore this Article of the Clergy was deservedly reiected.

CAP. VII.

ITem, litera regia Ordinariis dirigitur, qui aliquos suos subditos excommunicationis vinculo innodarunt, quod eos absolvant infra certum diem; alioquin quod compareant respondr' quare eos excommunicaverunt. Responsio: Rex decernit,

decernit, quod talis litera nunquam in posterum exire permittatur, nisi in casu quo possit inveniri, lædi per excommunicationem regiam libertatem.

Here was a mistaking in the Article of the Clergy; for never was any writ of the King here called litera Regis, granted in case of excommunication, but in certaine cases, as, When a man is unjustly excommunicated, and taken by force of the Kings writ de excommunicato cap. if the Bishop, upon the Kings writ de cautione admittenda, &c. doe not deliver him, then shall a writ out of the Chancery goe to the Sherife, upon the refusall of the Bishop to deliver him; or if the excommunication be unjust, that is, if the party be excommunicated for a matter which belongs not to Ecclesiasticall consance, and taken by force of the Kings writ, then the party grieved shall have a writ out of the Chancery to the Sherife, to deliver him out of prison. And this appeareth by our ancient Books written before this Act, and by ancient Records and Book-cases in all succession of ages ever since; and in both the cases abovesaid, Regia libertas læsa fuit, and thereupon the subject had relefe by the Kings writ, and therefore the answer to this Article was very pertinent, Nisi in casu quo possit inveniri, lædi per excommunicationem regiam libertatem. And the contempt of the Bishop in those cases is the greater, for that breve Regis de excommunicato cap. de gratia Regis procedit. And so it is if a man be excommunicated, and offer to obey and performe the sentence, and the Bishop refuseth to accept it, and to assoile him, he shall have a writ to the Bishop, requiring him, upon performance of the sentence, to assoile him. &c. and the reason thereof is, for that by the excommunication, the party is disabled to sue any action, or to have any remedy for any wrong done unto him, so long as he shall remaine excommunicate. And also the party grieved may have his action upon his case against the Bishop, in like manner as he may when the Bishop doth excommunicate him for a matter which belongeth not to Ecclesiasticall consance. Also the Bishop in those cases may be indited at the suit of the King, as by many notable Records may appeare: Mich. 7. E. 1. coram Rege, Rot. 33. Robertus Sprot, Hill. 7. E. 1. coram Rege, Rot. 8. Magister R. de Petchford, Pasch' 32. E. 1. coram Rege, Rot. 33. Walterus de Wilton, Hill. 35. Ed. 1. coram Rege, Rot. 52. Gloc' Prior de Glocesters case, Mich. 19. E. 2. coram Rege, Rot. 53. Linc' Philip Whites case, Trin. 20. E. 3. coram Rege, Rot. 46, 289. Fresiles case.

Regist. 65, 66, 67, 70. Bract. lib. 5. fol. 408, 409, 427, 443. Flet. lib. 6. ca. 43. 5. E. 3. 8. 8. E. 3. 9 14. H. 4. 14, 15. 3. H. 4. 4. Doctor & Stud. lib. 2. cap. 32. Vet. N. B. 33, 35. F. N. B. 62. &c. Dorset. clause. 21. R. 2. m. 10. Hill. 22. E. 1. apud Sandw. coram Rege, rot. 2. William de Valences case.

And it is to be observed, that at the common Law a certificate of the Bishop, whereupon a significavit, that is, a writ de excommunicato capiendo was to be granted, ought to expresse the cause, and the sute against him specially in the Certificate.

28. E. 3. 97. 14. H. 4. 14. 3. H. 4. 4. 22. E. 4. 20. b 9. H. 7. 22. Fitz. N. B. 6. f.

See more the Statute of 5. El. cap. 23. concerning the awarding and returning the writ de excommunicato capiendo.

5. El. cap. 23.

See the first part of the Institutes, sect. 201. concerning this matter.

CAP. VIII.

ITem, Barones de Scaccario Domini Regis, vendicantes sibi ex privilegio, quod non debent extra illum locum conquerenti cuicunque respondere, extendunt illud privilegium ad Clericos commorantes ibidem, vocatos ad ordines, seu ad residentiam; & Diocesanis inhibeant, ne aliquo modo aliquave

aliquave ex causa, dum sint in Scaccario, & in servitio Domini Regis, trahant ad judicium quovismodo. Responsio: Placet Domino Regi, ut Clerici suis obsequiis intendentes, si delinquant per Ordinarios (ut cæteri) corrigantur: sed tempore quo occupantur circa Scaccarium, ad residentiam in suis faciendam Ecclesiis non teneantur. Hic additur de novo, per Concilium Domini Regis: Rex & Antecessores sui, à tempore cujus contrarii memoria non existit, usi sunt, quod Clerici suis immorantes obsequiis, dum obsequiis illis intenderint, ad residentiam in suis Beneficiis faciendam minime compellantur; nec debet dici tendere in præjudicium Ecclesiasticæ libertatis, quod pro Rege & Republica necessarium invenitur.

¶ De Privilegio, &c.] The Court of the Exchequer may grant a prohibition to the Ordinary, for any that ought to have the privilege of the Exchequer, where the Court may give the party remedy, or where a suit dependeth in the Court of Exchequer for the same cause, or where the Kings service, which is the cause of the privilege, is hindered by the suit before the Ordinary: as for non-residence, &c. during that time that hee gave his necessary attendance in the Exchequer for the Kings service.

¶ Si delinquant.] This extendeth onely ad delicta, i. crimina, whereof the Ecclesiasticall Court hath conusance, as heresie, adultery, and the like, which the Ordinary may correct; and not unto civill actions.

Regist. 58.b. F.N.B.44.g.

¶ Ad residentiam.] There is an ancient writ, called de non residentia Clerici Regis, the words of which writ be, Cum Clerici nostri ad faciend' in Beneficiis suis residentiam personalem, dum in nostris immorantur obsequiis compelli, aut alias super hoc molestari, seu inquietari non debeant: Nosque ac Progenitores nostri quondam Reges Angliæ, hujusmodi libertate & privilegio pro Clericis nostris à tempore quo non extat memoria semper hactenus usi sumus: Vobis mandamus, quod dilectum Clericum nostrum A. Parsonam Ecclesiæ de P. vestræ Diœces. qui in Cancellaria nostra, nostris jugiter intendit obsequiis, ad personalem residentiam in Beneficio suo prædict' faciendam, dum in eisdem obsequiis nostris immoretur, nullatenus compellatis. Et sequestrum si quod in fructibus, aut aliis bonis Ecclesiæ suæ prædictæ ea occasione per vos, aut vestros fuerit appositum, sine dilatione relaxari faciatis. Teste, &c.

¶ Per Concilium Domini Regis.] Here Concilium Domini Regis is taken for commune concilium regni, as it is termed in originall writs, and in other legall records, and so it is taken in other Acts of Parliament, and in the Preamble of this Act also, where it is said, Ac nuper in Parliamento nostro apud Lincoln', &c. coram Concilio nostro, &c.

This branch is generall (and not limited, as the former is, to the privilege of the Exchequer) but extendeth to any other service of the King for the Common-wealth: as if hee be imployed as an Embassadour into any forraine Nation, or the like service of the King, which is pro Republica, for the Common-wealth, as hereafter it is said, which ever must be preferred before the private.

¶ Nec debet dici tendere in præjudicium Ecclesiasticæ libertatis,

tatis, quod pro Rege & Republica neceſſarium invenitur.] The Clergy in this Parliament inveighing vehemently againſt this anſwer, and that it tended to the breach of the Eccleſiaſticall liberty, which was granted to them by Magna Charta, and often confirmed by other Acts of Parliament, Quod Eccleſia Anglicana libera ſit, &c. To which it was anſwered, that the words ſubſequent explained thoſe words, Et habeat omnia jura ſua & libertates ſuas illæſas; ſo as the Clergy cannot claime any right, but jus ſuum, nor any liberty, but libertates ſuas: and the point here in queſtion, viz. to proceed againſt a Clerke for non-reſidence, whiles hee was in the Kings ſervice for the Common-wealth, was neither jus ſuum, nor libertas ſua, but libertas Regis: and therefore the Parliament thought it fit to declare, that the King and his Anceſtors had uſed this liberty or prerogative time out of mind. And where it was ſaid, that this tended in præjudicium Eccleſiaſticæ libertatis, the Parliament thereunto anſwered (which is worthy to be written in letters of gold) Nec debet dici in præjudicium Eccleſiaſticæ libertatis, quod pro Rege & Republica neceſſarium invenitur. Regiſtr. 58.b.

Regularly, perſonall reſidence is required of Eccleſiaſticall perſons upon their Cures; and to that end, by the common Law, if hee that hath a Benefice with Cure, be choſen to an office, as to an office of Bailiffe, or Bedle, or the like ſecular office, he may have the Kings writ, Quod non eligatur in officium, &c. Quia non eſt conſonum, quod is, qui pro ſalubri ſtatu animarum eleemoſynis, & aliis piis operibus, infra, &c. manutenendis & ſuſtentandis continue deſervit, extra &c. in ſecularibus negotiis compellatur, Vobis præcipimus, quod diſtrictioni & compulſioni, ſi quas &c. eidem &c. ad officium Balivi, Bedelli, &c. in manerio, &c. aſſumend' feceritis, omnino ſuperſedeatis, & eas ſine dilatione relaxetis, & denarios, ſi quos per amerciamenta, vel alio modo ex cauſa præd' ab eo levaveritis, eidem &c. reſtitui faciatis immediate, ſub periculo quod incumbit. Teſte, &c.

And this writ of ancient time was granted at the petition of the Clergy, and grounded upon holy writ, Nemo militans Deo implicat ſe negotiis ſecularibus, ut ei placeat cui ſe probavit. 2 Tim. 2. ver. 4. And the opinion of Sir John Priſot, chiefe Juſtice of the common Pleas, is notable; To thoſe lawes which holy Church hath out of the Scripture, we ought to yeeld credit; for that (ſaith he) is the Common Law, upon which all lawes are founded: And the intendment of the Common Law is, that a Parſon, &c. is reſident upon his Cure; for in an action of debt brought againſt J. S. Rectorem de D. the Defendant pleaded, that hee was demurrant, and converſant at B. in another County: And the rule of the Books is, that ſeeing the Defendant denied not that hee was Rector of the Church of D. he ſhall be deemed by law to be demurrant and converſant there for the cure of ſoules; and therefore the plea was over-ruled. 34. H. 6. 40. a. 10. H. 6. fol. 8. a.

We could not over-paſſe an ancient and an excellent Record concerning non-reſidence, in the 48. yeare of King Henry the third, for it is worthy of rehearſall for many purpoſes: At that time one Peter Egneblanke a ſtranger, borne in Savoy, was Biſhop of Hereford: this Biſhop then was, and long before had been a non-reſident, an unfaithfull Steward, and altogether careleſſe of his Paſtorall charge: The King travelling (for the defence and ſafety of the Marches) came to the citie of Hereford, where, finding the Biſhop abſent, the people neither informed nor reformed per verbum ſalutis, & virgam correctionis, divine ſervice neglected, and all things out of order, as by the writ following appeareth, which we hold worthy to be rehearſed de verbo in verbum, as it is of record.

Rex Epiſcopo Hereford' ſalutem. Paſtores gregibus præponuntur, ut, diei noctiſque vigilias exercendo, oves famelicas in fertilitatis paſcua introducant: Errantes vero per verbum ſalutis, & virgam correctionis in unius ovilis conſervare ſtudeant indiſſolubilem unitatem: Sed ſunt nonnulli qui

hanc doctrinam damnabiliter contempnentes, & ſua ab aliis pecora diſtinguere neſcientes, lac & lanam tollunt, qualiter dominicus grex alatur non curantes, temporalia rapiunt, & quis in Parochia fame pereat, aut periclitetur in moribus, non attendunt; qui non paſtores, ſed mercenarii potius dici promerentur: Hoc ſiquidem, dum hiis diebus ad diſponendum de regni noſtri præſidiis in partes Marchiæ nos transferremus, in Eccleſia veſtra Hereff. (dolenter referimus) nos inveniſſe quam adeo invenimus paſtoris ſolatio deſtitutam, ut ne dum Epiſcopum, ſed nec Officialem haberet, Vicarium, aut Decanum, qui quicquam ſpiritualitatis exercere poſſit in eadem. Sed Eccleſia ipſa, quæ olim deliciis affluere conſuevit, & canonicis qui ibidem nocturnis & diurnis officiis vacare, & opera charitatis exercere deberent, eam deſerentibus & longe degentibus in remotis, ſtola jocunditatis exuta cecidit in terram, viduitatis ſuæ detrimenta deplorans, nec eſt qui conſoletur eam ex omnibus caris ejus: Sane, dum hæc vidimus & conſideramus diligenter, pietatis aculeus viſcera noſtra commovit, & compaſſionis gladius intima cordis noſtri acrius vulneravit, ut tantam Eccleſiæ matris noſtræ injuriam ulterius diſſimulare non poſſimus, nec pertranſire incorrectam. Quapropter vobis mandamus firmiter injungentes, quatenus ad Eccleſiam veſtram prædictam, occaſionibus quibuſcunque poſtpoſitis, cum ea qua poteritis celeritate vos transferre curetis, commiſſum vobis in eadem cura paſtorali officium perſonaliter exercitur' &c. Alioqui ſcire vos volumus pro conſtanti, quod ſi iſtuc facere non curaveritis, bona temporalia, & omnia quæ ad baroniam ipſius Eccleſiæ pertinent, quæ donatione conſtat eidem fuiſſe collata, & quæ hactenus colligi, & ſalvo cuſtodiri præcepimus in commodum & utilitatem ipſius Eccleſiæ convertenda, ceſſante jam cauſa in manu noſtra totaliter capiemus, nec ulterius ſuſtinebimus, quod temporalia metat, qui ſpiritualia ad quæ ex officii ſui debito tenetur, irreverenter ſubtrahere non formidat, aut quod emolumenta percipita, qui incumbentia ejuſdem onera ſubire recuſat. Teſt' R. apud Hereff. primo die Junii anno regni ſui xlviii.

By this writ the King telleth the Biſhop what his Paſtorall office and duty was, rehearſeth the damnable and damned events of non-reſidency, commandeth him to be perſonally reſident, and repreſenteth to him the danger, if hee doth it not. And this writ, commanding reſidence, ought to have been put into the Regiſter of writs, rather then the writ de non reſidentia Clerici Regis: Hoc non omittendum, illud faciendum.

The Engliſhman hath ever been deſirous to be taught and directed in the way of his ſalvation; and therefore hath often complained in * Parliament againſt non reſidents, unlearned Paſtors, and pluralities, which you may reade in the fountaines themſelves.

After that Thomas Woolſey in the ſeventh yeare of Henry the eight was made Cardinall, and grew into the height of his authority and favour with the King, he hated both Parliaments, and the common Lawes (the principall meanes to keep greatneſſe in order, and his ſubjection) as it is contained in his indictement, which he confeſſed of record, that hee intended (that I may uſe the very words of the Record) Antiquiſſimas Angliæ leges penitus ſubvertere, & enervare, univerſumq; hoc regnum Angliæ, & ejuſdem regni populum legibus imperialibus, vulgo dictis legibus civilibus, & earundem legum Canonibus imperpetuum ſubjugare & ſubducere, &c. And for execution of his intended plot, hee was the meane that but one Parliament was holden in fourteen yeares, viz. from the ſeventh yeare, till the one and twentieth yeare of Henry the eight, and that one was principally holden for the attainder by Parliament of Edward the good Duke

* Rot. parl. 35. E. 1. Ieſtatute de Carlile. 18. E. 3. nu. 32. Rot. parl. 3. R. 2. nu. 38. 3. R 2. ſtat 2. cap. 2. 7. R. 2. nu. 35. 17. R. 2. nu. 43. 1. H. 4. nu. 50. 2 H. 4. nu. 26. 6. H. 4. nu. 48. 7. H. 4. nu. 114. 11. H. 4. nu. 70. 3. H. 6. nu 38. 4 H. 6. nu. 31. &c. Mich. 21. H. 8. coram Rege.

Duke of Buckingham, whom he hated, and the confiscation of all that he had. Now the Cardinall, being a great protector of non-residents, was no sooner attainted by that law (which hee sought to alter) but at the Parliament holden in 21. H. 8. a law was made against non-residence, which was excellent for that time, but now had need of some alterations and additions. 21. H. 8. cap. 13. Vid. 33. H. 8. cap. 28.

CAP. IX.

ITem, ministri Domini Regis, ut Vicecomites, & alii, ingrediuntur feoda Ecclesiæ ad faciendum districtiones, & aliquando capiunt animalia Rectorũ in via regia, quando non habent nisi terram pertinentem ad Ecclesiam. Responsio: Placet Domino Regi quod de cætero districtiones fiant hujusmodi, nec in via regia, nec in feodis, quibus olim Ecclesiæ sunt dotatæ; vult tamen districtiones fieri in possessionibus de novo à personis Ecclesiasticis acquisitis.

¶ Ingrediuntur feoda Ecclesiæ.] See the exposition upon the Statute of Marlebridge: This is to be added, that the Statute of Marlbridge was construed to extend onely to lay men, and this Statute to men of the Church: and this appeareth by the Register; for if a lay man bring an action upon the Statute for distraining in the Kings high-way, hee reciteth the Statute of Marlebridge: and if a Parson bring an action for distraining in the high-way, he groundeth it upon this Statute. Marlbridge, cap. 15. Regist. 187, 188. F.N.B. 173. e. f.

¶ Rectorum.] Here Parsons be named but for example: for this law extended to Abbots, Priors, and the like; for afterwards the words be Personæ Ecclesiasticæ: but this law bindeth not the King, when he is party, for any debt, or duty due unto him, because the distresse or other processe for the King is not expressly named in the Act, but districtiones generally: and this appeareth by a booke case: A Prior brought a Bill of trespasse against J. for entring into his Sanctuary, that is, within the circuit of the scite of his Priorie, and tooke away his beasts: J. said that he was Sheriffe, and that the Prior lost issues in the Court of Common Pleas, and a writ issued to him to levie the issues, and that hee entred into the Sanctuary, &c. because he could not find a distresse without; whereupon the Plaintife demurred, and iudgement was given against the Plaintife, which proveth, that the Sheriffe in that case could not have returned upon the processe to him directed, Clericus beneficiatus nullum habens laicum feodum. 27. ass. p. 66.

¶ Nec in feodis quibus olim Ecclesiæ sunt dotatæ.] Here dotatæ is taken in a large sense; for here the fees that they have ratione fundationis, or ratione dotationis are included; and here is also to be noted, that the possessions of the Church are the indowment of the Church, and they accounted as tenants in dower, as in another place hath been observed.

¶ Olim.] This word is well expounded afterwards in this Act, to be those that are not de novo acquisita.

Concerning taskes, tenths, and fifteenes granted by Parliament to the King, the possessions of Ecclesiasticall persons, which they acquired since 20. E. 1. either by 17. E. 3. 44. b. 27. E. 3. 28. b. 11. H. 4. 35.

by purchaſe or act in law, as by others, &c. were chargeable therewith, & not thoſe which they had at that time were not charged therewith; & the reaſon hereof was this. The Pope (after the example of the high Prieſt amongſt the Jewes, who had of the Levites decimam partem decimæ) claimed by pretext thereof a yearly tenth part of the value of all Eccleſiaſticall livings: This portion or tribute was by ordinance yeelded to the Pope in 20.E.1. and a valuation then made of the Eccleſiaſticall livings within this Realme, to the end the Pope might know, and be anſwered of that yearly revenue, ſo as the Eccleſiaſticall livings chargeable with that tenth (which was called ſpirituall) to the Pope, were not chargeable with the Temporall tenths or fifteenes granted to the King in Parliament, leſt they ſhould be doubly charged, but their poſſeſſions acquired after that taxation were liable to the Temporall tenths or fifteenes, becauſe they were not charged to the other; and ſo it was declared by Act of Parliament in 1 8.E.3. which never was printed; ſo as the tenths of Eccleſiaſticall livings were not paied to the Pope de jure, after the example of the high Prieſt amongſt the Jewes; for then hee ſhould have had the tenths of all Eccleſiaſticall livings whenſoever they were acquired; but he contented himſelfe with what he had got, and never claimed more: and that he might the better keep and enioy that which he had got, the Popes did often after grant the ſame for certaine termes to divers of the Kings of England, as by our Hiſtories appeare. And albeit their yearly tenths are perpetually annexed to the Crown of England by Act of Parliament, yet hereby the Student ſhall better underſtand the Bookes of Law that treat hereof.

Numeri, cap. 18. ver. 26.

Rot. parl. 18.E.3. nu. 44. never printed.

26.H.8.cap.3. 1.Eliz.cap.1.

CAP. X.

ITem, quandocunque aliqui confugientes ad Eccleſiam abjurant terram, ſecundum regni conſuetudinem, & proſequuntur laici eos, vel inimici eorum, & à publica ſtrata abſtrahuntur, & ſuſpenduntur, vel ſtatim decapitantur, & dum ſint in Eccleſia cuſtodiuntur per armatos infra cœmeterium, quandoque infra Eccleſiam ita arcte, quod non poſſint exire locum ſacrum cauſa ſuperflui ponderis deponendi, nec permittitur eis neceſſaria ad victus miniſtrari. Reſponſio: Qui terram abjuraverint, dum ſint in ſtrata publica, ſint in pace Domini Regis, nec debent ab aliquo moleſtari: & dum ſint in Eccleſia, cuſtodes eorum non debent morari infra cœmeterium, niſi neceſsitas, vel evaſionis periculum hoc requirat: nec arctentur confugere, dum ſint in Eccleſia, quin poſsint habere vitæ neceſſaria: & exire libere pro obſceno pondere deponendo. Placet etiam Domino Regi, ut latrones vel appellatores, quandocunque voluerint, poſsint Sacerdotibus ſua facinora confiteri: ſed caveant confeſſores, ne erronice hujuſmodi appellatores informent.

¶ Abjurant regnum.] Concerning abjuration you may plentifully read in

in our ancient Authors and other Bookes of the Lawes, and specially in Stamford pl. coron. fol. 116. &c. wherein we are the more briefe, because it is enacted by the Statute of 21 Jac. Regis, that no Sanctuary, or priviledge of Sanctuary, after that Statute be admitted or allowed in any case; and if the offender be barred of the priviledge of Sanctuary to be allowed to him, then can hee not flee to any Church, as to a Sanctuary, for the tuition of his life, and consequently, abiuration is taken away.

Bract. lib. 2. fol. 135. &c. Brit. fol. 24. &c. Flet. lib. 1 cap. 29. Stamf. pl. coro. fo. 116. f. &c. 21. Jacobi Regis, cap.

¶ Decapitantur.] This was mistaken in the petition: for no man can be beheaded but for treason; and no man could abjure for treason, because the Coroner had no power to take any confession for treason, albeit the Coroners had a speciall commission from the King to doe it.

See 1. Jacobi Regis, cap. 25.

¶ Quin possint habere vitæ necessaria.] This is thus to be understood, that he shall have necessaria vitæ so long as he behaves himselfe according to the Law, and the priviledge of the place; but if hee hath continued 40. dayes, and would not abiure, then vitæ necessaria shall be denied unto him, and they should be punished that ministred the same unto him.

Bract. lib. 2. fol. 135. &c. Brit. fol. 24, 25. Flet. lib. 1. cap. 29. 3. E. 3. coron. 313 Stamf. ubi supra.

Placet etiam Domino Regi, ut latrones, vel appellatores, quandocunque voluerint, possint Sacerdotibus sua facinora confiteri, sed caveant confessores, ne erronice hujusmodi appellatores informent.

¶ Latrones vel appellatores.] This branch extendeth only to theeves and approvers indited of felony, but extended not to high treasons: for if high treason be discovered to the Confessor, he ought to discover it, for the danger that thereupon dependeth to the King and the whole Realme; therefore this branch declareth the common law, that the priviledge of confession extendeth onely to felonies: And albeit, if a man indited of felony becometh an approver, he is sworne to discover all felonies and treasons, yet is hee not in degree of an approver in law, but onely of the offence whereof he is indited; and for the rest, it is for the benefit of the King, to move him to mercy: So as this branch beginneth with theeves, extendeth onely to approvers of theevery or felony, and not to appeales of treason; for by the common law, a man indited of high treason could not have the benefit of Clergy (as it was holden in the Kings time, when this Act was made) nor any Clergy-man priviledge of confession to conceale high treason: and so was it resolved in * 7. Hen. 5. whereupon Frier John Randolph the Queene Dowagers Confessor, accused her of treason, for compassing of the death of the King: And so was it resolved in the case of Henry Garnet, superiour of the Jesuites in England, who would have shadowed his treason under the priviledge of confession, although in deed he was not onely consenting, but abetting the principall conspirators of the Powder-Treason, as by the record of his attainder appeareth; and albeit this Act extendeth to felonies onely, as hath been said, yet the caveat given to the Confessors is observable, ne erronice informent.

12. E. 4. fo. b. 14. E. 2. cor. 397. 6. H. 6 coron. 232. 19. H. 6. 47. See W. 2. cap. 42. §. Si Abbates, &c. lib. 2. fol. 46. Leveſque de Cant' caſe, &c. 20. E. 2. coron. pl. 283. 19 H. 6. 47. * Rot. Parl. anno 7. H. 5. nu. 13. Hill. 3. Jac.

CAP. XI.

ITem petitur, quod Dominus Rex, & regni Magnates non onerent domos religiosas, vel Ecclesiasticas personas pro corodiis

corodiis, penſionibus, vel perhendinationibus faciendis in domibus religioſis, & aliis locis Eccleſiaſticis, carectis & equis ſibi mittendis, cum per hoc prædictæ domus depauperentur cultuſque divinus in hac parte diminuatur, & propter hujuſmodi onera compelluntur ſæpiſsime Presbyteri, & alii Miniſtri Eccleſiaſtici divinis officiis deputati à locis recedere ſupradict'. Reſponſio: Placet Domino Regi, quod ſuper contentis in petitione, de cætero indebite non onerentur. Et ſi per Magnates, aut alios contra fiat, habeant inde remedium juxta formam Statutorum tempore Dom' E. Regis Patris Domini Regis nunc editorum: & fiat conſimile remedium de corodiis, & penſionibus per coertionem exactis, de quibus non fit mentio in Statutis.

¶ Pro corodiis, & penſionibus.] See hereafter in the end of this Chapter, to whom, and in what caſes corodies and penſions be due.

¶ Perhendinationibus.] See hereof W. 1. cap. 1.

Raſt. pl. fol. 373.

¶ Juxta formam Statutorum.] That is to ſay, of W. 1. anno 3. E. 1. cap. 1.

Regiſt fol. 8. N.B. 230. b. 14. H. 6. 11. 2. E. 2. cui in vita 18. 6. E. 2. ibid. 25. Bract. lib. 3. fol. 221. 14. E. 3. corody 5. 15. E. 3. ibid. 4. 11. aſſ. 22. 24. E. 3. fol. 33. 38. aſſ. 22. 44. E. 3. 24. 50. aſſ. 6. 10. H. 4. 33. 14. H. 6. 11. 39. H. 6 28. 1. E. 4. 10. 8. H 7. 12. F. N. B. 231. Vid. rot. clauſ. in dorſ. 8. H. 4. m. 13. & 9. H. 4. m. 33, 34. penc' coram rege, Mich. 32. E. 1. Northampton.

¶ Conſimile remedium de corodiis & penſionibus.] Albeit Corodium is derived à con & rodere, i. ſimul comedere; yet to a corody belong not onely victus, but veſtitus, & alia vitæ neceſſaria, which is called ſuſtentatio congrua, as much as a Monke of the ſame houſe hath; and a penſion is a yearly annuity to be granted to one of the Kings Chapleines. The King ſhall have a corody for his Vadelet, and a penſion for his Chaplein, out of all the religious and eccleſiaſticall houſes of his foundation (unleſſe the tenure be in frankalmoigne but by reaſon of dotation, if he be not founder, he ſhall have none, unleſſe it be by ſpeciall grant. A common perſon ſhall have no corody, nor penſion, &c. though he be founder, unleſſe it be by ſpeciall grant. The Abbot, &c. ſhall not be charged with a new penſion, though the Chaplein dye, during the life of the King: but if the Abbot, &c. dye, his ſucceſſor ſhall be charged, ratione creationis, with a penſion. If the Vadelet dye, another ſhall have the corody during the Kings life; but if the Abbot, &c. dye, no new corody during the life of the former Vadelet.

CAP. XII.

ITem, ſi aliqui de tenura Domini Regis vocantur coram Ordinariis, extra Parochiam in qua degunt, ſi propter ſuam contumaciam manifeſtam excommunicentur, ac poſt quadraginta dies pro eorum captione ſcribatur, prætendunt ſe privilegiatos, quod extra Villam ſeu Parochiam ſuam non debent vocari, & ſic denegatur breve regium pro captione eorundem.

rundem. Reſponſio: Nunquam fuit negatum, nec negabitur in futurum.

The writ de excommunicato capiendo, commonly called a Significavit, was never denied; for this cauſe, that hee that held of the King had ſuch a priviledge, that they ſhould not be called out of the Towne or Parish where they lived; and therefore the anſwer (which muſt ever be conforme to the petition) ought of neceſſitie to be taken, that for that cauſe the Kings writ was never, nor ſhould be denied.

But for the better underſtanding hereof, at the Parliament holden at Clarendon, in the eleventh yeare of Henry the ſecond, Facta eſt recognitio, ſeu recordatio cujuſdam partis conſuetudinum Anteceſſorum Regis, viz. Henrici (primi) avi ſui, quæ obſervari debebant in regno, & ab omnibus teneri propter diſſenſiones & diſcordias ſæpe emergentes inter Clerum & Juſticiarios Domini Regis, & Magnatum regni. Amongſt the reſt, this was agnized and declared in theſe words: Nullus qui de Rege tenet in capite, nec aliquis dominicorum miniſtrorum ejus excommunicetur, nec alicujus eorum terræ ſub interdicto ponantur, niſi prius Dominus Rex, ſi in regno fuerit, conveniatur, vel Juſticiarius ejus, ſi fuer' extra regnum, ut rectum de eo faciat, ut quod pertinebat ad Regis Curiam, ibi terminetur, & de eo quod ſpectat ad Curiam Eccleſiaſticam ad eandem mittatur, & ibidem terminetur. And the reaſon of this law was, for that the tenures by grand Serjeantie, and Knights ſervice in capite were for the honour and defence of the Realme; and concerning thoſe that ſerved the King in his houſhold, their continuall ſervice and attendance upon the Royall perſon of the King was neceſſary.

8. Kal. Febr. anno 11. H. 2. apud Clarendon, commonly called Aſſiſa de Clarendon, Bract. lib. 3. fol. 136. See cap. 15.

Of this law the Clergy here complained not, and other then this concerning tenure, &c. in the petition mentioned, we remember not any; ſo as we may conclude this point, that this writ de excommunicato capiendo (as hath been ſaid) procedit de gratia Regis.

Vid. cap. 7. before Rot. clauſ. in dorſ. 17. R. 2. m. 10.

CAP. XIII.

ITem petitur quod perſonæ Eccleſiaſticæ, quas Dominus Rex ad Beneficia præſentet Eccleſiaſtica, ſi Epiſcopus eas non admittat, ut puta propter defectum ſcientiæ, vel aliam cauſam rationabilem, non ſubeant examinationem laicarum perſonarum in caſibus antedictis, prout his temporibus attentatur de facto, contra Canonicas ſanctiones: ſed adeant Judicem Eccleſiaſticum, ad quem de jure pertinet pro remedio, prout juſtum fuerit, conſequendo. Reſponſio: De idonietate perſonæ præſentatæ ad Beneficium Eccleſiaſticum pertinet examinatio ad Judicem Eccleſiaſticum: & ita eſt hactenus uſitatum, & fiat in futurum.

¶ De idonietate perſonæ.] It is required by law, that the perſon preſented be idonea perſona; for ſo be the words of the Kings writ, Præſentare idoneam perſonam. And this idonietas conſiſteth in divers exceptions againſt perſons

Regiſtr. 53. b. 38. E. 3. 2. 29. E. 3. 44. 5. R. 2. tryall 54. 11. H. 4. 34. H. 6. 40. per Priſot, 5. H. 7. 13. 11. H. 7. 7. 37. 15. H. 7. 7. 9. El. Dyer 154. 13. El. Dyer 332. lib. 5. fol. 57. Specots caſe.

perſons preſented: Firſt, concerning the perſon, as baſtardy, villenage, outlawry, excommunication, a lay-man, under age, and the like: Secondly, concerning his converſation, as if he be criminoſus, &c. Thirdly, concerning his inability to diſcharge his paſtorall duty, as if hee be unlearned, and not able to feed his flocke with ſpirituall food, &c. And the examination of the ability and ſufficiency of the perſon preſented belongs to the Biſhop, who is the Eccleſiaſticall Judge; and in this examination he is a Judge, and not a Miniſter, and may and ought to refuſe the perſon preſented, if he be not idonea perſona. And if the cauſe of refuſall be for default of learning, or that he is an Heretick, Schiſmatick, or the like, belonging to the knowledge of Eccleſiaſticall law, there he muſt give notice thereof to the Patron; but if the cauſe be Temporall, as a felon, or homicide, or other Temporall crime; or if the diſability grow by any Act of Parliament, or other Temporall law, there no notice ought to be given, unleſſe notice be preſcribed to be given thereby. But in a Quare impedit brought againſt the Biſhop, for refuſall of the Clerke, he muſt ſhew the cauſe of his refuſall ſpecially and directly (for whether the cauſe thereof be Spirituall or Temporall, the examination of the Biſhop concludes not the Plaintife) to the intent the Court, being Judges of the principall cauſe, may conſult with learned men in that profeſſion, and reſolve whether the cauſe be iuſt or no; or the party may deny the ſame, and then the Court ſhall write to the Metropolitane to certifie the ſame; or if the cauſe bee Temporall, and ſufficient in law (which the Court muſt decide) the ſame may be traverſed, and an iſſue thereupon joyned, and tried by the Country. And yet in ſome caſes, notwithſtanding this ſtatute, idonietas perſonæ ſhall be tried by the Country, or elſe there ſhould be a failer of iuſtice (which the Law will never ſuffer) as if the inability or inſufficiency be alledged in a man that is dead, this caſe is out of this Statute: for the Biſhop cannot examine him, and the words of this Act be, De idonietate perſonæ præſentatæ ad beneficium Eccleſ. pertinet examinatio, &c. And conſequently, though the matter be Spirituall, yet ſhall it be tried by a Jury, and the Court, being aſſiſted by learned men in that profeſſion, may inſtruct the Jury as well of the Eccleſiaſticall law in that caſe, as they uſually doe of the Common law.

39. E. 3. 2. 40. E. 3. 25.

¶ Et ita eſt hactenus uſitatum.] So as this Act is a declaration of the common Law and cuſtome of the Realme.

CAP. XIIII.

ITem, ſi vacet aliqua dignitas, ubi electio eſt facienda, petitur quod electores libere poſsint eligere, abſque incuſsione timoris à quacunque poteſtate ſeculari: & quod ceſſent preces, & oppreſsiones in hac parte. Reſponſio: Fiant libere, juxta formam ſtatutorum & ordinationum.

W. 1. cap. 5.

The Clergy either remembred not the Statute of W. 1. or if they did, they doubted whether it extended to Eccleſiaſticall elections, although without queſtion it did, and ſo it is declared by this Act, and it is an excellent law, and worthy to be put in execution.

See more hereof before in the expoſition upon the ſtatute of W. 1.

Cap.

CAP. XV.

ITem, licet Clericus coram ſeculari Judice judicari non debeat, nec aliquid contra ipſum fieri, per quod ad periculum mortis, vel ad mutilationem membrorum valeat perveniri: ſeculares tamen Judices Clericos ad Eccleſiam confugientes, & reatus ſuos forte confitentes faciunt abjurare regnum, & eorum abjurationes admittunt ex illa cauſa, quanquam eorum Judices ſuper hiis non exiſtant: ſicque datur laicis indirecte poteſtas hujuſmodi Clericos cruciandi, ſi ipſos poſt hujuſmodi abjurationem in regno contigerit inveniri: ſuper quo petunt Prælati, & Cler' tale remedium adhiberi, ut immunitas Eccleſiæ, & perſonarum Eccleſiaſticarum conſervetur illæſa. Reſponſio: Clericus ad Eccleſiam confugiens pro felonia, pro immunitate Eccleſiaſtica obtinenda, ſi aſſerit ſe eſſe Clericum, regnum non compellatur abjurare, ſed legi regni ſe reddens gaudebit Eccleſiaſtica libertate, juxta laudabilem conſuetudinem regni hactenus uſitatam. Cuſtumier de Norm. cap. 83.

Here the claime of the Clergy is generall, that Clericus coram ſeculari Judice judicari non debeat, nec aliquid contra ipſum fieri, per quod ad periculum mortis, vel mutilationem membrorum valeat perveniri: **Let us ſee what priviledge the Clergy had allowed unto them in criminall caſes: Firſt, let us obſerve what our ancient Authors have holden in that caſe: Secondly, what Records of Parliament, and other Records have delivered to us: Thirdly, what Acts of Parliament have eſtabliſhed in theſe caſes: Fourthly, what have the judgements and reſolutions been of Judges in our bookes and reports. And laſtly, from what root this priviledge of Clergy ſprang, to exempt them from the common juſtice of the Realme.**

Bracton **ſaith,** Cum Clericus cujuſcunque ordinis vel dignitatis captus fuerit pro morte hominis, vel alio crimine, & impriſonatus, & de eo peratur Curia Chriſtianitatis ab Ordinario loci, &c. impriſonatus ſtatim ei deliberetur, &c. donec à crimine ſibi impoſito ſe purgaverit competenter, vel in purgatione defecerit, propter quod debet degradari, &c. cum autem Clericus ſic de crimine convictus degradetur, non ſequitur alia pœna pro uno delicto, vel pluribus, ante degradationem perpetratis. **Here three things are to be noted: Firſt, that he beginneth with the greateſt felony, that is, the death of man: Secondly, that albeit he were found guilty, and could not purge himſelfe before the Ordinary, yet all that the Ordinary could doe was to degrade him. Thirdly, that he could have no other puniſhment for that felony, or any other formerly done, but degradation.** Cuſtumier ubi ſupra. See the ſtatute of 23.H.8.cap.11. & cap.1. 1.E.6. cap.10.&c. Bract.lib.3. fol.123 b.

Britton **alſo ſpeaketh only of felony:** Et ſi le Clerk encoupe de felonie alledge Clergie, & ſoit tiel trove, & per Ordinarie demand, ſi ſoit enquiſe coment il eſt meſcru, & ſil ſoit nient meſcru, &c. ſoit arge tout quits, & ſil ſoit meſcrue, ſi ſoient ſes chateux taxes, & ſes terres priſes in nre maine, & ſon cors deliv' al Ordinarie. Brit.fol.11. Stamf.pl.cor. 123.c. 8.E.2.coron.417 17.E.2.ibid.386 3.H.7.12.

According to Britton, when one of the Clergy was indited of felony, &c. and the Ordinary demanded him, yet to the end (ſaith the * Record) ut ſciatur qualis deliberaretur * Mirr.cap.3. del exception de Clergie accord.

deliberaretur Ordinario, an enquest was charged by the Court to enquire, whether he were guilty, or no. And though hee was found guilty by this enquest of office, yet was he delivered to the Ordinary, and his chattels seised, and his lands taken into the Kings hands, as Britton saith.

Flet.lib.6.ca.36. Fleta saith, Si criminaliter agatur versus Clericum, quamvis Clericus respondere voluerit in foro seculari, Judex tamen Ecclesiasticus cognitionem habere non poterit, nec regiam auferre jurisdictionem: In causa enim sanguinis non poterit Ecclesiasticus Judex cognoscere, neque judicare, nisi irregularitatem committat. Et quamvis neminem valeat morti condemnare, degradare tamen poterit criminum convictos, vel perpetua carceris inclusione custodire.

Mirr.ubi supra. The Mirror hath generall words, Lesglise & cy enfranchise que nul lay Judge ne poet aver conusans de Clarke, tout le voiloit le Clarke conustre pur son judge, &c.

Two of these ancient Authors have spoken of felony, and so are the other two to be intended; for the priviledge of the Church did not extend to high treason, crimen læsæ Majestatis, as by divers judiciall records and authorities in law shall appeare.

Rot.Parl.anno 21.E.1.rot.9. Walter de Berton Clerke counterfeited the great Seale, which was high treason, crimen læsæ Majestatis, whereof he was indited and convicted: for so the record saith, Qui convictus fuit pro falsificatione Sigilli Domini Regis, quod tradatur Episcopo Sarum, qui eum petiit ut Clericum suum, sub pœna & forma qua decet, quia videtur Concilio, quod in tali casu non est admittenda purgatio.

This delivery to the Ordinary was by ordinance of Parliament de gratia, & non de jure: for it was resolved, that hee could not make his purgation; and therefore hee was delivered to him sub pœna, &c. In the reigne of Ed.3. it was taken for a generall rule, Quod privilegium Clericale non competit seditioso equitant' cum armis, platis & cotearmuris, secundum leges Angliæ.

Trin.21.E.3.coram rege, rot.173 Hertford. 17.E.2.rot Rom. m.6. In 17.E.2. in the time of the Parliament, Adam de Orleton, Bishop of Hereford, was indited of high treason, for being party and privie, aiding and abetting of Roger Mortimer Earle of March with horse and armes in his open rebellion; and because he could not have any priviledge of Clergy by the common Law, the Archbishop of Canterbury, Yorke, and Dublin, and their Suffragan Bishops, came to the Barre (in that disordered time) and with force tooke him from the Barre: all which was done by pretext and colour of the Canons of the Church, which you may reade in Linwood.

Henricus Blanford. Linwood tit. De foro compet' cap. Contingit. But, omitting many other things that might be here rehearsed, let us see what Acts of Parliament have ordained in this case; for the Clergy never thought themselves sure of this priviledge, till it was confirmed to them by authority of Parliament. By the Statute of W.1. it is provided, Que quant Clerke est prise pur ret de felonie, & soit demand per Lordinarie, a luy soit liver solonque le priviledge de saint Esglise, in tiel perill come ils appent, solonque le custome avant ces heures use, &c. where note, this Act extendeth but to felony.

W.1.cap.2. See Marlbridge, cap.27. See hereafter, cap.5. See the exposition of the Statute of W.1. in this point, and the charge as is given to Ordinaries, that none be delivered without due purgation: but it is worthy our paines to reade the Statutes of 4.H.4. and 23.H.8.

4.H.4.cap.3. 23.H.8.cap.1. After this Statute, and in this Kings time, Guinandus de Briland, Parson of Snodland in the County of Kent (in which Towne Solomon de Rolfe, one of the Kings Justices in Eire, and one that punished the extortions and other crimes of the Clergy, dwelt) came to dine with Solomon de Rolfe, and brought poyson with him of his malice prepensed, to murder by poyson the said Solomon; and the record of his inditement saith, Cum eo comedit, & posuit venenum in cibo & in potu ipsius Solomonis, & ipsum impoisonavit, per quod, post quindecim dies sequentes inde obiit: And albeit of all felonies, murder is the worst, and of all murders, murder by poyson is the most unabordable and detestable, and Guinand being indited and arraigned upon the said inditement, Et quæsitus qualiter se vellet acquietare, dicit, quod Clericus est, & non potest hic inde respon-

Pl. coram Domino Rege apud Sandwicum in cro' Hilarii, an. 22.E.1.rot.15. Kanc'.

dere,

dere, & ſuper hoc venit frater Thomas Epiſcopus Roſſenſis, & petit ipſum tanquam Clericum, &c. Et ut ſciatur qualis deliberare debet, inquiratur rei veritas per patriam; & Jurat' &c. dicunt ſuper ſacramentum ſuum, quod prædict' Guinandus dedit prædict' Solomoni venenum unde impoiſonatus fuit, & inde obiit, ut prædictum eſt. **But in the end he was deliuered to the Ordinary, as by the record it appeareth, and thereby, for any thing that wee find in that or any other record, he eſcaped the ſentence of death, which was due for his offence by the Law of God, and by the common Law of the Realme grounded vpon the ſame,** Quicunque effuderit humanum ſanguinem, fundetur ſanguis illius ad imaginem quippe Dei factus eſt homo. **And againe, in the booke of** Numbers, Hæc ſempiterna erunt & legitima in cunctis, homicida ſub teſtibus punietur, &c. non accipies pretium ab eo, qui reus eſt ſanguinis, ſtatim & ipſe morietur, ne polluatis terram habitationis veſtræ quæ inſontium cruore maculatur, nec aliter expiari poteſt, niſi per ejus ſanguinem, qui alterius ſanguinem fuderit.

Genes. cap. 9. ver. 6. Numer. cap. 35. ver. 29, 30, 31, 33.

In 8. E. 2. a Clerke convict for felony, and deliuered to the Ordinary, murdered his Keeper, and fled, & non obſtante clerimonia ſua, **hee was hanged. And the like was done in 22 E. 3.**

8. E. 2. coron. 419

22. E. 3. ibid. 248

The abuſe of deliuery of Clerkes to the Ordinary grew ſo intolerable, as in the end it was taken away; as hereafter ſhall be ſhewed.

See the ſtatute of 18. E. 3. cap. 2. concerning this matter.

At the Parliament holden in anno 25 E. 3. **the Clergy did complaine, that one** Hankerun Honby **a Knight, and one of the Clergy, had iudgement giuen againſt him for high treaſon to be hanged, drawne, and quartered: Alſo for a iudgement giuen againſt a Prieſt at Nottingham, for killing of his Maſter, Sir** Thomas Cibethorp, **a Clerke of the Chancery, one of the Kings Iuſtices.**

Rot. Parl. 25. E. 3 nu. 68. &c.

And laſtly, for hanging of diuers Monkes of Combe for felony. Thereupon at this Parliament an Act of Parliament was made, wherein it is recited, that the Prelates had grieuouſly complained, praying thereof remedy, for that ſecular Clerkes, as well Chapleines, as other Monkes, and other people of religion had been drawne, and hanged by award of the ſecular Iuſtices, in prejudice of the franchiſes of holy Church, &c. It is accorded and granted by the King, that all manner of Clerkes, as well ſecular as religious, which ſhould be convict before ſecular Iuſtices for any treaſons or felonies touching other perſons, then the King himſelfe or his royall Maieſtie, ſhould freely have and enioy the priuiledge of holy Church, &c. Hereby two things are to be obſerued: Firſt, that hee ſhall not be deliuered to the Ordinary before hee be conuicted: Secondly, that the priuiledge of the Church extended not to high treaſon touching the King, crimen læſæ Majeſtatis, **but to petit treaſons and felonies touching other perſons.**

25. E. 3. ca. 4. & 5. 4. H. 4. cap. 3.

About ſix yeares after this Act, the Abbot of Piſſenden in the County of Buckingham, was adiudged to be drawne and hanged for high treaſon, viz. for contrafactione, & reſectione legalis monetæ.

Coram rege Mich. 31. E. 3. rot. 55 Buck.

At the Parliament holden in the firſt yeare of H. 4. on the firſt Thurſday after the Biſhop of Canterbury had willed the Lords, that in no wiſe they ſhould diſcloſe any thing that ſhould be there ſpoken, the Earle of Northumberland demanded of the Lords what were beſt to be done for the life of King Richard **the ſecond; thus farre are the words of the Roll of the Parliament. At this time ſpake that worthy Prelate** John Merkes **Biſhop of Carliſle, and ſaid, that they ought not to proceed to any iudgement againſt King** Richard **for foure cauſes: Firſt, that the Lords had no power to giue iudgement vpon him that was their ſuperiour, and the Lords annointed: Secondly, that they obeyed him for their Soueraigne Lord and King 22 yeares or more: Thirdly if they had power to giue iudgement againſt him, they ought in iuſtice to call him to his anſwer: for that (ſaid he) is granted to the cruelleſt murderer, or arranteſt thiefe in ordinary Courts of iuſtice: Fourthly, that the Duke of Lancaſter had done more treſpaſſe to King** Richard **and his Realme, then King** Richard **had done to him or them, &c. and deſired, that if they would proceed againſt him, that the names of them that ſo**

Rot. Parl. 1. H. 4. nu. 73. *Nota*

would proceed might be entred into the Parliament Roll. It is true, that the Parliament Roll omitteth this speech of the Bishop, but it appeareth by the Parliament Roll, that the Lords proceeded against King Richard, and adjudged him to perpetuall prison, whose life they would by all meanes to be saved, as the Roll reporteth. The names of the Bishops, and Lords, and Knights that assented, are set downe, as the Roll of the Parliament reports; so as it seemeth, that the stout and resolute speech of the worthy Bishop wrought some effect: For this speech he was arrested by the Earle Marshall, and being for a small time committed to the custody of the Abbot of Saint Albons was soon delivered: against him neber any judiciall proceeding was had for this speech in Parliament: but this Bishop, transported with excesse of zeale, and affectionate desire of the enlargement and restitution of King Richard, was party and privie to the conspiracie of Thomas Holland Earle of Kent, John Holland Earle of Huntingdon, John Montacute Earle of Salisbury, Edward Earle of Rutland, Thomas Lord Spencer, and others, to kill the King, under colour of Jousting and Pastimes in the Christmasse time, at the Castle of Windesor, where the King lay in the first peare of his reigne: for this he was indited of high treason, arraigned, tryed, and had judgment as in case of high treason. But cor Regis in manu Domini, the King pardoned him, and set him at liberty. Many more presidents might to this end be produced, but we will conclude this point with a resolution of all the Judges in 24.H.8. A Priest was attainted by verdict at the Gaole-delivery at Newgate, for clipping of the Kings coine, viz. George Nobles, and by advice of all the Judges judgement was given against him to be drawne and hanged, as another lay person, because it was high treason, and without degradation he was executed at Tiborne.

Vid.Rot.Parl. an.2.H.4.nu.30. See the Record of his attainder, Hill.2.H.4.coram Rege,rot.6.

Trin. 24.H.8. Justice Spilmans report.

Now for Murder, Burglary, Robbery, Sodomy, Rape, Burning of houses, and many other Felonies, the benefit and priviledge of Clergy is taken away by divers Acts of Parliament, whereunto the Bishops were party, whereof you may reade lib. 11. Alexander Poulters case, and where the benefit and priviledge of Clergy remaineth, the party that takes the benefit of it shall not be delivered to the Ordinary, nor make any purgation (which had been much abused) but forthwith be enlarged and delivered out of prison by the Justices, by whom such Clergy is allowed, as by another Act of Parliament, whereunto the Bishops were party appeareth.

Lib.11.fol.29. Alexander Poulters case.23.H.8. ca.1. 25.H.8.c.3 28.H.8.cap.1. 32.H.8.cap.3. 1.E.6.cap.12. 5.E.6.cap.9. 8.El.cap.4. 39.El.ca.9.& 15. 18.El.cap.7.

* Amongst the ancient customes and liberties of England recognized and declared in the Parliament before mentioned, holden in the eleventh peare of Henry the second, this was one, Cleri accusati de quacunque re, summoniti à Justiciario Regis, veniant in Curiam ipsi responsuri ibidem de hoc, unde videbitur Curiæ Regis quod ibi sit respondendum, & in Curia Ecclesiastica, unde videbitur quod ibi sit respondendum, ita quod Regis Justiciarius mittet in Curiam sanctæ Ecclesiæ, ad videndum quomodo res ibi tractabitur, & si Clericus convictus, vel confessus fuerit, non debet eum de cætero Ecclesia tueri. So as in effect the ancient law and custome of England in that case is restored.

* 11.H.2.apud Clarendon, ubi sup.cap.12.

Lastly, out of what root this priviledge sprang? It took his root from a Constitution of the Pope, that no man should accuse the Priests of holy Church before a secular Judge, which being contrary to the Crowne and Dignity of the King, and the common Law bound not here, till it was confirmed by Parliament, and the rather, for that the Church had no power to punish the offence; but where their claime was generall, the Parliament of Edw.1. and custome of the Realme restrained it onely to felony, so as they were to answer to high treason, and all offences under felony.

Polichro.lib.4. cap.24. Gaius Pope.

¶ Clericus ad Ecclesiam confugiens, &c.] By this Law, if any that was infra sacros ordines committed felony, and for his tuition fled to a Church, if he claimed the priviledge of his Clergy, he should not be compelled to abjure, but submitting himselfe to the law of the Kingdome, hee should enjoy the priviledge of his Clergy. See more of this matter in the next § secundum laudab'.

Vid.Stamf.pl. cor.122,123.&c.

¶ Secundum

¶ Secundum laudabilem consuetudinem regni.] So as this priviledge of the Clergy took not his vigour or strength by force of any forraine Councell or Canon, but by authority of Parliament, and by the laudable law and custome of the Kingdome, a point worthy of observation, the answer being so cautelously penned in those dayes, lest any thing in the petition should countenance any forraigne iurisdiction: But so farre as lex & consuetudo regni have allowed of the priviledge of the Clergy, so farre, and no further it is to be allowed; and yet with this limitation, so as the Clerke would submit himselfe (as hath been said) to take it by the law of the Kingdome expressed in these words, Sed legi regni se reddens, &c. Vid. W. 1. cap. 2. Solonque le custome avant ces heures use.

He that is within orders hath a priviledge, that albeit hee have had the priviledge of his Clergy for a felony, he may have his Clergy afterwards againe, and so cannot a lay-man: and he that is within orders, and hath his Clergy allowed, shall not be branded in the hand. But these priviledges are given by Act of Parliament. 4 H. 7. cap. 13.

CAP. XVI.

ITem, quanquam confessio coram illo qui non est Judex confitentis, locum non teneat, nec sufficiat ad faciend' processum, vel sententiam proferendam: quidam tamen seculares Judices Clericos, qui de foro suo in hac parte non existunt, reatus proprios, & enormes, ut puta furta, roberias, homicidia, coram eis confitentes, admittunt accusationem illorum, quam ipsi communiter vocant appellum, ipsos sic confitentes, & accusantes, seu appellum facientes, non liberant Prælatis eorum post præmissa, quanquam super his fuerint sufficienter requisit', licet coram eis etiam per confessionem propriam judicari vel condemnari nequeant, absque violatione Ecclesiasticæ libertatis. Responsio: Appellatori in forma debita, tanquam Clerico, per Ordinarium petito libertatis Ecclesiasticæ beneficio, non negabitur. Nos desiderantes statui Ecclesiæ Anglicanæ, & tranquillitati, & quieti Prælatorum, & Cleri prædictorum (quatenus de jure poterimus) providere, ad honorem Dei, & emendationem status dictæ Ecclesiæ, & Prælatorum, & Cleri prædictorum, omnes & singulas responsiones prædictas, ac omnia & singula in eisdem responsionibus content' ratificantes & approbantes, ea pro nobis & hæredibus nostris concedimus, & præcipimus in perpetuum inviolabiliter observari: volentes, & concedentes pro nobis & hæredibus nostris, quod prædicti Prælati, & Clerus, & eorum successores in perpetuum in præmissis jurisdictionem Ecclesiasticam exerceant, juxta tenorem responsionum prædictarum, absque occasione, inquietatione, vel

vel impedimento noſtri, vel noſtrorum hæredum, ſeu miniſtrorum quoruncunque. In cujus, &c. Teſt. &c.

Wee have been the longer in expoſition of the former Chapter, becauſe wee ſhould be the ſhorter in this which ſomewhat concerneth the ſame matter.

¶ Appellatori, i. *Probatori.*] Albeit the Clergy here pretended, that the confeſſion of a Clerke (when he was indited of felony, and confeſſed the felony, and became an approver) was coram non Judice; yet the continuall opinion and reſolution of the Judges were againſt this: for they reſolved, that ſuch a Clerke as confeſſed the felony before a ſecular Judge, could not make his purgation, and conſequently, the confeſſion did bind him: and therefore Shard in 25. E. 3. ſpake in the perſon of a Prelate. And when the Clerke was delivered to the Ordinarie, without any purgation to be made, he ought to have degraded him: but commonly, if the offender were a Monke, he delivered him to his Abbot to remaine in the Abbey perpetually: and if he were ſecular, he remained in the Biſhops priſon, &c. in a very favourable manner; which abuſes grew ſo odious and inſufferable in encouragement of malefactors in their wickednelle, as they were iuſtly taken away, as is aforeſaid.

10. E. 3. cor. 247. 27. H. 6. fol. 7. 13. E. 4. 3. 3. H. 7. 2. 25. E. 3. coron. 128. Vid. 12. R. 2. coron. 109. & 247. 8. E. 2. coron. 417

An appeale of robbery was brought againſt J. de B. Monke of L. who pleaded not guilty, and put himſelfe upon the tryall of the Country, who found him not guilty, whereupon the Abbot of L. and the ſaid Monke, brought a writ of conſpiracie againſt divers, which procured and abetted the ſaid appeale, and recovered a 1000. Markes in damages, which could not have been recovered, unleſſe the Monke had been legitimo modo acquietatus, before a competent Judge: and hereby it appeareth, that a Clerke might wave the priviledge of his Clergy, if he would, and be tryed by the courſe of the common Law. And note, when hee knew himſelfe free and innocent, then hee would be tryed by the common Law; but when he found himſelfe ſowle and guilty, then would he ſhelter himſelfe under the priviledge of his Clergy: and though they committed Temporall crimes, yet would they not be tryed by the Temporall lawes, which was the more againſt reaſon, becauſe no other law within this Realme could puniſh them for the ſame, but the Temporall lawes onely.

24. E. 3. 73. 2. 22. E. 3. cor. 276. lib. 11. fol. 77. Magd. Colledge caſe.

The

The Expoſition of 18. Edw. 3. Cap. 7. of Tithes.

ITem que per la ou Briefes de Scire fac' eient eſtre grantes a garner Prelates religious & auters Clerkes, a reſpondre des Diſmes a noſtre Chancerie, & a monſtrer ſils eient riens pur enſachent riens dire pur quoi tiels Diſmes a les Demandants ne deinent eſtre reſtitus, & a reſponder auxibien aux nous, come a partie de tieux Diſmes. * Que tieux Briefes deſere en avant ne ſoient grantes, & que les proceſſes pendants ſur tieux Briefes ſoient anientes & repeales, & que les parties diſmiſes devant ſecular Juges de tiels manners de pleas: ſaves a nous noſtre droit tiel come nous & nous Anceſtres avouns eit, & ſoloions avoir de reaſon. En teſtimoinance de quele choſe, a le requeſt des dites Prelates a ceſtes preſentes lettres avons fait metre noz ſeale. Done a Londres le 8. jour de July lan de noſtre reigne Engleterre Diſoitiſme, & de France Quints.

Le Preamble.

* Le Act.

Before we enter into the expoſition of this Act, we will cleare it of an objection againſt the life of it, viz. That it ſhould be no Act of Parliament, but an ordinance made by the King onely at the requeſt of the Prelates: And that the King to theſe letters had put his ſeale, and the Teſte and date as done by the King only; all which, ſay they, appeare in the Parliament Roll, and that the clauſe of En teſtimoinance de quel choſe &c. is left out of the print.

But herevnto we anſwer, that by the ſaid clauſe En teſtimoinance de quel &c. is to be underſtood, that this Act was ſo plauſible to the Prelates, that they requeſted the King, that it might be exemplified under the great Seale for the better preſervation thereof, which the King granted. This Parliament began the Munday after the Octab. Trinitatis, which was 16. Junii; and this exemplification was 8. Julii after this Act was paſſed, there being but ſeven Acts paſſed at this Parliament. And En teſtimoinance de quel, and the whole clauſe following, are words of an exemplification.

Vide Rot. Parl. 18. E. 3. nu. 31.

Now that this ordinance before the clauſe of the exemplification is an Act of Parliament, Firſt, is proved by divers reaſons, viz. The title of the Parliament is, Incipit Statutum Regis Edwardi anno regni ſui decimo octavo. Secondly, it is entred in the Parliament Roll. Thirdly, it was by force of the Kings writ, (as the uſage then was) proclaimed as an Act of Parliament, which writ in French we thinke good to tranſcribe in theſe words: Edward per le grace de Dieu Roy dangleterre & de France, & Seignieur dirland a noſtre Viſcount de Nottingham, ſalus. Saches que a noſtre Parliament tenus a Weſtm' le Lundye procheine apres les Octaves de la Trinity procheine paſſes entre autres choſes monſtres, aſſentus, & accordes en dit Parliament, ſi furent monſtres, aſſentus & accordes les choſes ſous eſcrites. And after a rehearſall of all the Statutes, whereof this ſeventh Chapter is one, the concluſion is, Et pur ceo vous mandous, que touts les Statutes faces crier & publier, & fermement tener per mye voſtre Baillie ſolonque la forme & tenur dicelle. Et ceo ne leſſes en aſcun mannere, &c.

And

And F.N.B. 30.E. taketh it for a Statute, and so it hath ever been by the generall consent from time to time of learned men. And if it should not be a Statute, it would worke great trouble and disquiet in the Realme. Now that wee have cleared this objection, let us perule the words of the Act.

¶ Ou brieſes de Scire facias eient eſtre grantes, &c.] This rehearſall in this Statute is true; for wee have found, that upon divers matters of record, that is to ſay, enrolled, returned, or removed into the Chancery: First, upon tithes granted by the Kings Letters Patents, which are inrolled in the Chancery, writs of Scire fac' were brought in that Court; as taking one example for many: In 17.E.3. a Scire fac' was brought by the King, and the Dean and Canons of the Kings free Chappell of Saint Martins London, upon Letters Patents of Mawd, quondam Reginæ Angliæ of tithes, &c. against the Abbot of Saint Johns of Colcheſter, who took the ſame after ſeverance, whereunto the Abbot pleaded, &c. worthy to be ſeen.

In bundello brevium, an. 17.E.3. part. 1. & 3. in turri London, vic. Eſſex.

¶ A garner Prelates religious & auters Clerks, &c.] Note, this Scire fac' was not brought against the poſſeſſors of the land for ſubſtraction of tithes, but against the Prelates, or other Clerkes, which took the tithes after they were ſevered. See 6.E.1. in bundello petitionum in turri London, where the petition was for ſubſtraction of tithes, to be put in poſſeſſion: the anſwer was in Parliament anno 6.E.1. Rex non intromittit ſe de hiis quæ taliter ſpectant ad forum Eccleſiaſticum, proſequatur jus ſuum verſus Clericum coram Ordinario. Herewith agreeth Bracton, lib. 5. fol. 403. & 407.

Commiſſions out of the Chancery were directed to certaine perſons, giving them authority to enquire, whether ſuch a ſpirituall perſon ought to have tithes of ſuch lands, whereupon Inquiſitions were taken and returned; and if it were found for the ſpirituall perſon, upon this record he might have a * Scire fac' against any Prelate religious, or other Clerke that took them after ſeverance.

[a] Compertum eſt per inquiſitionem Rectorum & Vicariorum vicinorum de Ewel, quod Vicarius Eccleſiæ ibidem percipere debet minutas decimas omnium animalium ibidem, & molend' aquatic' ibidem. But no Scire fac' was ſued hereupon, for that the Vicar was to ſue for ſubſtraction of theſe tithes against the owner of the land in the Spirituall Court.

[b] Alſo upon a fine executory of tithes before this Act, the tenour whereof was removed into Chancery, a Scire fac' did lye therefore against the ſpirituall perſon that perned the ſame after they were ſevered.

* See 22.aſſ. pl. 75.
a Rot. clauſ. 7. E.2.
b In fin. Term. Trin' 10 regis Johannis.
c 22.aſſ. pl. 75. 38.aſſ pl. 20. Bro. tit. Diſmes 10. Pla. Parlam. Hill. & Paſch. 18.E.1. the Biſh. of Carliſles caſe, to whoſe predeceſſors Hen. rex vetus conceſſit omnes decimas in Foreſta de Englewe. 14.H.4.17

¶ Savant a nous noſtre droit, &c.] By force of this [c] ſaving not onely the King himſelfe, but the Provoſt of C. being the Kings Patentee of tithes of the new aſſarts in the Forreſt of Rockingham in the County of Northampton, brought a Scire fac' in the Chancery after this Statute, against certaine perſons of holy [d] Church, who had taken the tithes granted to him, to have execution of the ſaid tithes, according to the Kings Letters Patents. The [e] Defendants pleaded to the iuriſdiction of the Court, that the conuſance of this cauſe for tithes appertained to Court Chriſtian, and not to the Chancery, whereunto it was anſwered by the Court, that that was to be underſtood, where the ſuit was taken againſt them that ought to pay the tithes (that is to ſay) for ſubſtraction of tithes, and not when it was brought againſt them, that were wrongfull takers of the tithes. And all this is well warranted by the book, whereupon the Defendants pleaded to iſſue, and the record delivered over to be tried in the Kings Bench. See Hill. 32.E.1. coram Rege Wigorn' the Prior of Worceſters caſe reſolved by the Chancellor, Treaſurer, and all the Judges and Barons, that appropriation of tithes is no Portmaine, [f] Quia decimæ ſunt meræ ſpirituales, quarum cognitio ad Curiam Chriſtianitatis pertinet, & non ad Curiam iſtam.

c Note, albeit this book was after the Stat. yet doth it open the true ſenſe & reaſon of the common law before this ſtatute of 18.E.3.
d Note, this Act of 18.E.3. is not mentioned in this book of 22.aſſ. becauſe the caſe was taken to be within the Saving.
e
f Paſch. 20.E.1. in banco regis, rot. 135. Buck. F.N.B. 30 E.

And yet the inference that Fitzherbert maketh, that before this Statute of 18.E.3. the right of tithes was tryed in the Kings Court was true: for upon a Scire facias by a ſpirituall perſon againſt a ſpirituall perſon, and for tithes,

tithes which were Spirituall, the right of tithes was tried in the Scire fac' before this Statute, albeit the tithes were severed, which is now taken away in case of the Scire fac' by this Statute.

28 E.3. fo.6,8.a.b 22 E.4.23,24. 20 H.6.17.31H.6 11.35 H.6.39,47. 38H.6.12. 6E.4.3

And at this day, albeit in case of tithes, the parties by pleading about the Jurisdiction of the Court, yet if it be betwixt Spirituall persons, and the right of tithes come to be tried, albeit it be after the tithes severed, the Court Ex officio shall ouste the Court of Jurisdiction, which we hold, where the right of patronage was not thereof in question, was wrought by the construction and consequent of the said Statute of 18 E. 3. for before that Statute right of Tithes, after severance was tried in a Scire fac' by the Common Law in certaine cases. But when the right of tithes trench to the dissolution or diminution of the Advowsan, &c. in certaine cases, the right of tithes at this day (as hath beene said) shall be tried in brevi de recto advocat' decimarum, and in the Indicavit: but neither of these Writs give any jurisdiction to the Kings Court, to hold plea for subtraction of tithes, but that is sent to the Ecclesiasticall Court to determine.

Trin.5E.1. in Banco 29.Norff.Pasch. 12 E.1.Rot.28.Norff. Abb.de Selbies Case. Pasch.19 E.1. in Banco Rot.45. Pasch.7 E. 1. in Banco Rot.78. Gloc'. Eliz. Penbreges Case. Mich.9 E.1. in Banco Rot.88. Salop. Bract.l.5. 402. Placita de advocat. Eccl. spectant ad Coronam. Fleta l.6.ca.36. Glanv.l.4. cap.13. acc'. 18 E.2.brē 825. 4E.3.27. Rot.pat.27 E.3. 1. ps. nu.18. F.N.B. 49.k.45.b.c.d. 50.g.r.51. c.1. 30.c.g. 37.c. Vid.brē de Indicav. Vid.Regist. 29.b. de rect. advocat. decim. Regist. 36.b. prohibition de decimis reparatis. W.2. cap. 5. 4 E.3. 27. per Parning.

7 E.3. 42. 8 E.3.49. 38 E.3.13. 16 E.3. Quare Impedit 147. 31 H.6.13. 38 H.6.20. 12 E.4.13. 2 H.7.12. Doct. & Stud. Lib.2. cap. 25. fol. 108.

Nullus pro decimis quæ sunt spirituales de aliqua reparatione pontis seu aliquibus oneribus temporalibus onerari debet. But at this day if tithes be in the hands of Temporall men, they are by reason of them contributory to temporall charges.

Hil.35E.3.coram Reg.Rot72.Mid. Vid.32 H.8. ca.7. Dier7E.6.83.l.11 fo.25.b. in Henry Harpers Case.

Where it is said in some of our Books, that of auncient time before the Councell of Lateran, any man might have given his tithes to what Spirituall person he would, and that at that Councell it was provided that tithes in one Parish should be given to the Rector or Parson of the same Parish, that he that gave the Spirituall food, should reap Temporall, &c. The truth is, that I have perused the Councels holden at Lateran, and specially that holden under Pope Alexander the third, Anno Domini 1179, Anno 15 H.2. and cannot finde any such Decree: But Pope Innocent the third, in a decretall Epistle, in or about the yeare of our Lord † 1200. and the first yeare of King John dated at Lateran, directed to the Archbishop of Canterbury, Ut Ecclesiis parochialibus justè decimæ persolvantur, hath these words, Pervenit ad audientiam nostram, quòd multi in Dioceſi tua decimas suas integras vel duas partes ipsarum non illis Ecclesiis in quarum parochiis habitant, vel ubi prædia habent, & à quibus Ecclesiastica percipiunt sacramenta, persolvunt, sed eas aliis pro sua distribuunt voluntate. Cum igitur inconveniens esse videatur, & a ratione dissimile, ut Ecclesiæ, quæ spiritualia seminant, metere non debeant à suis parochianis temporalia, & habere; fraternitati tuæ authoritate præsentium indulgemus, ut liceat tibi super hoc, non obstante contradictione vel appellatione cujuslibet, seu consuetudine hactenus observata, quod canonicum fuerit ordinare & facere quod statueris per censuram Ecclesiasticam firmiter observari, nulli ergo, &c. confirmationis, &c. Dat. Lateran. Nonas Julii. And (that I may speak ante for all) this Epistle Decretall bound not the Subjects of this Realme, but the same being just and reasonable they allowed the same, and so became Lex terræ.

10 H.7. fol.18.a. per Brian. 44 E.3.5. Doct. & Stud. lib. 2. cap. 55. 7 E. 6. Dier fo.84. & F.N.B 54.b. Lib.2. fol 44. in Levesque de Winchesters case. But Parning in 7 E.3. fo.5. pl.8. who not long after was Lord Treasurer, and after Lord Chauncellor, voucheth it truly, for hee saith that of auncient time before a new constitution made by the Pope, the Patron of one Church might grant his tithes to another Parish, that is, by the constitutions made by Pope Innocent the third, Anno Dom. 1200. in his decretall Epistle, which you shall finde in his 6. Epistle. Decret. lib.1. pag. 452. Edit Colon. See the Statutes of 18 E.3 cap.7. 1 R.2.cap.14.5 H.4.ca.1. 27 H.8.c.20. 32.H.8.c.7.28.6.c.13. Regist.179,180 † Anno 2. Regis Johannis. In Bundello petitionum Parliam. Anno 6 E.1 in Turri.

See Linwood Cap. de locato et conducto, fo. 117. verbo portiones, where he saith, Quod ante concilium Lateranense, Anno Domini 1179. bene poterunt laici decimas in feudum retinere, et eas alteri Ecclesiæ dare, non tamen post dicti concilii, &c. And thus began portions of tithes, that the Parson of one

parish hath in another. Vide concilium Lateran', Anno Domini 1215. 17 Joh. Regis.

Albeit the parochiall right of tithes is now established by divers Acts of Parliament as before it appeareth, (a matter tending to the exceeding benefit and quiet of the Clergy) yet he that is desirous to know what the auncient Lawes of England were concerning the paiment of tithes before the Conquest, let him reade Fœdus Edvardi & Guthruni Regum, cap. 6. et inter leges Ethelstani, cap. 1. Inter leges Edmundi Regis, Cap. 2. Leges Edgari Regis, Cap. 2. & 3. Leges Canuti Regis, Cap. 8, 10, 11, 12. & leges Edwardi Regis, * cap. 8, 10. Quas Willielmus conquestor recitavit, et confirmavit. All which Lawes M. Lambard hath well translated out of the Saxon into the Latine tongue, which was faithfully, but not so accurately, done before him, which wee have.

Having spoken of Tithes, it is said, * *Hæc prædicavit beatus Augustinus, & concessa sunt à Rege Baronibus, & populo, &c.* Lamb. 128.

There hath bæn great controversie heretofore concerning the *tithes of wood*, as appeareth by divers petitions in Parliament, which petitions together with the answers we will recite, and incidently will shew, how that controversie is quieted, and ended.

Vide inter leges Edwardi Regis, *cap. 8. ubi supra. de bosco.

That no man be impleaded for tithes of wood, or underwood, but in places accustomed. The Answer was, As heretofore the same shall be. Item pria le commen, que come * constitution soit fait per les Prelats a prender dismes de chescun maner de boyes, quel chose ne fuit unques usee, et que nies, et femes poent faire testaments, que est contre reason, que plese per luy, et per son bon counseil ordeiner remedie, et que son people demoerge en mesme lestate quilz soloient estre en temps de tours ses progenitors, et que prohibitions soient grantes a touts ceux que sont impledes de dismes de bois sans avoir consultation. Whereunto the answer of the King was, The King willeth that Law and reason be done.

Rot. Parl. anno 17 E. 3. nu. 51.

Rot. Par. 18 E. 3. Artic. 9.

*This constitution was made in Ann. 17 E. 3. Anno Dom. 1343. Vide Linwood.

Item monstre la commune come nadgaires Lercheveſque de Canterbury, et les autres Prelates ordeinerent une constitution a doner dismes de subbois vendus tantsolement la ou avant ses heures nulles dismes furent dones, ore les gents de Seint Esglise per force de la constitution pernent et demandent les dismes auxibien de gros bois, come de subbois vendus et neient vendus, econtre ce qui is ont uses puis temps de memorie a la grand damage de la commune de quoi ilz prions remedie, de lun point et del autre.

Note the asseveratiõ of the whole body of the Realm in this petition, cõcerning the paiment of Tithe wood.

Whereunto the answer is, The Archbishop of Canterbury, and the other Bishops have answered that such tithe is not demaunded by reason of the said constitution, but of underwood. But the Subject being still molested for woods not tithable complained again in Anno 25 E. 3. all which were preparatives to a good Law made in Anno 45 E. 3. cap. 3. De grosse boyes dage de vint ans, ou de greinder age nul dismes serra demands in nosme de cest parol sylva cædua, est ordeine et establie .que prohibition en ceo case, soit grant, et sur ceo attachment come ad estre use avant ceux heures.

Rot. Parl. 25 E. 3. nu. 37.

Rot. Parl. 45 E. 3. nu. and in the print cap. 3.

It appeareth before that all the Bishops claimed onely tithes de subbois, of underwood, under the name of silva cædua, so as of hautboyes, of great wood no tithes were claimed; but herein rested two doubts; 1. What should be said high or great wood. 2. Of what age the same should be, because it is parcell of the inheritance.

As to the first, this Act, which is declaratory of the Common Law, as it appeareth by the Book in 50 E. 3. fol. 10. b. 9 H. 6. fol. 56. Pl. Com. fol. 471. and this Act it selfe proveth it, for it concludeth, Come ad estre use devant ceux heures; and this is confirmed by divers judgements hereafter cited.

Li. Intrat. R. fo. Regist. fo. 44. See the old Book of Entries, fol. 34. b. & 34. a. premunire, printed Anno Dom. 1546. 50 E. 3. 10. 9 H. 6. 56. Pl. Com. 47. Lib. 11. fol. 48. b. Lifords Case.

And it is to be understood that this Act useth these words grosse boyes. and not haut boyes, or graund boyes, which word is also used in the Books of 50 E. 3. and 9 H. 6. And in this Act this word [grosse] signifieth specially such wood as hath bæn, or is either by the Common Law or Custome of the Country timber, for this Act extends not to other woods, that have not bæne, or will not serve for timber, though they be of the greatnesse or bignesse of timber.

And

And it is to be obſerved, that the prohibition in 50 E. 3. for ſuing for Tithes in Court Chriſtian of groſſe boys, was grounded upon the Common Law, without mentioning of this Act.

Here it is to be demanded, To what kinde of wood groſſe boys do extend? And the anſwer is, that Oke, Aſh, and Elm, are included within theſe words; and ſo is Beech, Horſbeche, and Hornbeam, becauſe they ſerve for building, or reparation of houſes, Mills, Cottages, &c. againſt the opinion in Plowd. Comment. fol. 470. in Molyns caſe, holden without Argument, which opinion the whole Court upon deliberate advice held to be no Law.

[a] It was reſolved by the whole Court, that Aſh is alſo comprehended within groſſe boys, becauſe it may ſerve for building, or reparation, ut ſupra. But otherwiſe it is of Birch, (as it was ſaid) it was adjudged in the Caſe of Lennard cuſtos brevium, becauſe that kinde of wood ſerveth not for building.

[b] If a Timber tree be arida: ſicca, et non portans folia nec fructus in æſtate, nec exiſtens maeremium, and the owner cut it down, and convert it to fuell, &c. no Tithe ſhall be paid thereof for the inheritance which was once in it.

[c] So for the bark of Okes, being Timber trees, no Tithes ſhall be paid, becauſe it is parcell of the tree, and renueth not de anno in annum. [d] But for Acorns Tithe ſhall be paid, becauſe they renue yeerly.

As to the ſecond doubt, of what age thoſe groſſe or Timber trees, whereof no Tithes ſhould be had, ſhould be; The Statute reſolveth this doubt in theſe words, Groſſe boys del age de 20. ans, ou greinder. Which point was alſo declaratory of the Common Law, as by the concluſion of this Act, and the authorities aforeſaid appeareth: for this groſſe boys thus deſcribed, it appeareth by the Act, that Parſons and Vicars ſued for Tithes of them, en noſme de ceſt parol, ſylva cædua.

See the firſt part of the Inſt. ſo. 3. waſt in Beech.

So it was adjudged coram Rege Paſch. 2 Jac. Regis rot. 292. betweene Henry Halſ, and Dorothy Fettiplace. Banc.

[a] Pl. Com fo. 470. Molyns caſe. Tr. 26 El. coram rege.

[b] Hil. 2 Jac. in Com. Banc. Rot. 229. int. Brooke et Rogers.

[c] Lib. 11. fo. 49. Lifords caſe. Doct. & Stud. fo. 174, 175.

[d] Regiſt. fo. 49. lib. 11. fo. 49.

50 E. 3. 10. b. 44 E. 3. 32. a. meriſme.

¶ Del age de 20. ans.] This is the age, as to bar all ſuits in Court Chriſtian for Tithes. And theſe words are to be underſtood of groſſe trees, which may ſerve for Timber, and grow out of the own ſtubs: for if a man uſually top or lop Timber trees, Tithes ſhall not be paid, though they be under the age of 20. yeers. For as the Law priviledgeth the body of the tree, being parcell of the inheritance, ſo it doth priviledge the branches alſo.

Pl. Com. 470. b. Doct. & Stud. fo. 175. Br. diſmes 14. lib. 11. fo. 49. Lifords caſe.

So if a man cut down Timber trees, Tithe ſhall not be paid for the germyns or branches, which grow out of the roots, of what age ſoever; for that the root is parcell of the inheritance.

Pl. Com 470 So reſolved Paſch. 29 El. coram Rege Lib. 11. fo. 49. Lifords caſe.

The Biſhops, and others of the Clergie taking upon them to interpret this Statute, which belonged not unto them, gave out and publiſhed that this Ordinance did not reſtrain their ancient Juriſdiction, and that this Ordinance was never affirmed for a Statute: and thereupon the Subject was ſtill vexed in Court Chriſtian, both contrary to the Common Law, and the ſaid Statute: And thereupon a Bill was exhibited in the next Parliament following, holden in the 47. yeer of E. 3. reciting the Statute of 45 E. 3. and then ſhewing that the perſons of holy Church intending that this Ordinance did not reſtrain their ancient incroachments; and ſurmiſing, that this was not affirmed for a Statute, held plea in Court Chriſtian to the contrary of the Ordinance aforeſaid, to the great damage of the people. Wherefore may it pleaſe our Soveraign Lord the King to affirm the ſaid Ordinance for a Statute to indure for all times to come; and that a ſpeciall prohibition upon the ſame Statute thereupon be made in the Chancery, prohibiting that they ſhould not hold plea in Court Chriſtian of Tithes of wood of the age aforeſaid. Whereunto the anſwer was, that ſuch Prohibition be granted, as hath been uſed of ancient time. Which anſwer being compared with the concluſion of the Act of 45 E. 3. hath given ſuch an end to both theſe points, as no queſtion hath been made thereof at any time ſince. And to ſay the truth, that the ſurmiſe that this Act of 45 E. 3. was but an

Ordinance, and no Statute, was but a meer cavill, without any colour of probability: For 1. It is entred in the Parliament Roll amongst the other Statutes made at that Parliament. 2. It is under the title in that Roll of Statut. E.3. de Anno regni sui 45. 3. It was proclaimed by the Sheriffes (as the usage in those dayes was) amongst the rest of the Statutes of that Parliament. 4. It hath the phrase of an Act of Parliament, [Ordeine est et establie] agreeing therein in effect with the other Acts in that Parliament. 5. It hath the consent of the Lords and Commons (who joyn in the Petition in the Preamble) and of the King. 6. Infinite prohibitions upon this Statute, as taking some few Precedents, whereof we have the number Roll, of such as be not in print.

Regist. 34. the same prohibitiõ. & 50 E.3.10.

Coram Rege Tr. 27 E. 1. Rot. 28. Linc: Magister Willielmus Persona ecclesiæ de Epworth attachiatus fuit ad respondend' Stephano de Rodnes de Generlaco, & Willielmo Stel de Cottingham de placito quare secutus fuit placitum in curia Christianitatis, de catallis & debitis quæ non sunt de testamento, vel matrimonio contra prohibitionem Regis, &c. Et unde queruntur, quod cum prædictus Magister Willielmus secutus fuit placitum versus eos in curia Christianitatis coram Offic' Episcopi Lincol' de catallis & debitis laicis, viz. de quercubus et aliis arboribus per ipsos empt' de quodam Rogero Mubey. Et idem Stephanus et Willielmus super hoc proculissent prohibitionem domini Regis coram prædict' Officiariis in ecclesia omnium Sanctorum de Northt' die Martis prox' post festum Sancti Nicholai, anno regni Regis nunc 25. et ei inhibuissent ne placitum illud contra prohibitionem prædictam ulterius sequeretur in præsentia Rogeri de Waldebye, Gened' de Cave, Willielmi de Clere, et Thomæ de Redneſſe tunc ibidem præsentium, idem tamen Magister Willielmus non obstante prohibitione prædicta placitum præd' ulterius secutus fuit quousque ipsi per sectam suam prædictam excommunicati fuerunt; unde dicunt quod deteriorati sunt et dampnum habent ad valentiam C.l. et in contempt' domini Regis mille libr', &c.

De quercubus & arboribus. Vide Pasch. 15 E. 1. in banco Rot. 52. Linc: mille quercus, &c.

The Law at this day, and long after was holden, that in this case he might wage his Law. 18 E.3.4. 24 E.3 39. so adjudged, 32 E.3. tit. Ley. 62. But in 44 E.3. fol. 32. It is otherwise ruled, because it is not in a Writ of Contempt; and so hath the Law been taken ever since.

Et prædictus Magister Willielmus venit & defendit, &c. et dicit quod nullum placitum de bonis et catallis laicis secutus fuit in curia Christianitatis contra prohibitionem domini Regis sicut ei imponunt, et vadiavit eis inde legem se 12. manu, &c. And had a day to make his Law, at which he came; and Incepit (with the Record) jurare, et post quartum juratum defecit de lege, Ideo consideratum est, quod prædict' Stephanus et Willielmus recuperarent damna sua prædicta centum librarum, et fecit finem cum Rege ad 40. l.

It is to be noted, that the Parson stood not upon his right to have Tithes of Oke and other trees; but the colour he had to wage his Law, was in respect of these words, De bonis et catallis laicis, and Tithes are not Lay-chattels: but he durst not in that case stand to it to make his Law, but upon failing therein, Judgement was given against him of the damages, as the Plaintifes had counted.

Prohibitions coram rege tempore H.8.

See Lib. Intrat. Fast. fol. 448. b. nu. 2. 449. a prohibition sur lestatute de 45 E.3. circa 14 H.7. The old Book of Entries, fol. 34 b.

Hil. 33 H.8. Rot. 78. Inter Stelling et Spooner.
Ibidem Rot. 103. Inter Peiers et Dixon.
Mich. 34 H.8. Rot. 116. Inter Felton et Glover.
Pasch. 36 H.8. Rot. 116. Inter Smy et Ap. Richard.
Mich. 36 H.8. Rot. 1. consimilis prohibitio.
Hil. 36 H.8. Rot. 1. consimilis prohibitio.
Pasch. 38 H.8. Rot. 1. consimilis prohibitio.
Mich. 38 H.8. Rot. 1. consimilis prohibitio.

Coram Rege tempore E.6.

Trin. 1 E.6. Rot. 94. consimilis prohibitio. Inter Herne & Croft.
Mich. 2 E.6. Rot. 97. Inter Heford & Howe.
Mich. 3 E.6. Rot. 1. consimilis prohibitio.
Pasch. 4 E.6. Rot. 1. consimilis prohibitio.
Hil. 5 E.6. Rot. 2. consimilis prohibitio.
Trin. 6 E.6. Rot. 1. consimilis prohibitio.

Mich.

Mich. 1. Ph. et Mar. Rot. 159. Inter Gray et Philpot, consimilis prohibitio. Coram Rege tempore Mariæ.
Pasch. 1 Mar. Rot. 1. consimilis prohibitio.
Hil. 1. et 2 Ph. et Mar. Rot. 1. consimilis prohibitio.
Pasch. 1. et 2 Ph. et Mar. Rot. 3. consimilis prohibitio.
Trin. 1. et 2 Ph. et Mar. Rot. 10. consimilis prohibitio.
Mich. 2. et 3 Ph. et Mar. Rot. 4. consimilis prohibitio.
2. et 3 Ph. et Mar. Rot. 1. consimilis prohibitio.
3. et 4 Ph. et Mar. Rot. 2. consimilis prohibitio.
Hil. 4. et 5 Ph. et Mar. Rot. 1. consimilis prohibitio.
Mich. 4. et 5 Ph. et Mar. Rot. 1. consimilis prohibitio.

We could cite a world of other examples of this kinde, out of the Kings Bench, Chancery, and Common place, but in a case whereof never any learned man made any doubt, these shall suffice.

But this is against the Provinciall Constitution of Simon Mepham, Anno domini 1332. Anno 6 E. 3. and the Exposition of Linwood thereupon.

There is a Consultation de sylva cædua, where the prohibition was, De catallis & decimis quæ non sunt de testamento et matrimonio; and yet in the Consultation there is a restraint (according to the Common Law, and the said Act of 45 E. 3.) Dummodo tamen de grossis arboribus in hac parte non agatur, &c. Regist. 44. a. b. See the old book of Entries, fol. 34. a. the like prohibition. The latter book of Entries, R. 449. a. b. Old book of Entries, 34. a.

If any sue in Court Christian for Tithes de grossis arboribus ultra ætatem 20. annorum, he incurs the danger of a Præmunire, if so it be contained in the Libell. 31 H. 8. tit. prohib. Brook 17. Regist. 49. a.

In the Register it is said by Herlaston, Concordatum fuit coram concilio regis in Parliamento apud Sarum, quod consultationes fieri debent de sylva cædua, eo non obstante, quod non renovatur per annum; & super hoc facta fuit quædam consultatio pro Abbate de Notley, de sylva cædua.

Great question hath been made, when this Parliament at Salisbury was holden, but we shall make it evident, that it was holden the Friday next after the Feast of Saint Mark the Evangelist, in the seventh yeer of R. 2. which appeareth by William de Herlaston here named, who was a Clerk of the Chancery, and as here it appeareth, inserted this into the Register.

This Herlaston lived at the time of the holding of this Parliament at Salisbury; for afterward in the same Register, fol. 80. b. it is said, Nota quæ nul home serra prise, ne imprison, par vert ne par venison, si il ne soit trove ove le mayneur, ou si il ne soit indite, &c. Et vide inde Statute R. 2. de Anno 7. cap. 4. Quando quis taliter fuerit indictatus, et virtute indictamenti illius est convictus, ita quod non ponet se super patriam, et sic fiet de illis, qui indictati sunt de receptamento, ac si essent principales transgressores per Herlaston. Regist. fol. 80. b. 7 R. 2. cap. 4.

And in the Register, fol. 201. 2. you shall finde this note. Hoc breve concessum fuit pro hominibus de Odiham, et concessum fuit pro omnibus aliis antiquis dominicis per Cancellarium Lescrope, et W. de Herlaston. Note this Lescrope Lord of Bolton was Chancellor in annis 2. & 5 R. 2. as we finde of Record.

Thus have we discovered the Clerk that inserted into the Register the said Concordatum in the Parliament at Salisbury: But looking diligently into that Parliament Roll, no such Concordatum as Herlaston inserted into the Register can be found, and therefore you must take it upon the trust and credit of this Clerk. But admitting that any such Concordatum hath been, as in the Register it is set down, it may well stand with Law: For in the Register, fol. 44. there is a Consultation (as before hath been said) De sylva cædua, and is consonant to Law, having such a restraint in the same Writ, as is aforesaid.

A Country may prescribe to be quit of Tithes of wood, or any other Tithe, so there be sufficient maintenance and sustentation of the Incumbent besides; but a Town cannot so prescribe. Doct. & Stud. 147. b. Br. Dismes 14.

Rex tali Judici salutem. Monstravit nobis venerabilis pater H. Lincoln' episcopus, quod cum I. præcentor ecclesiæ beatæ Mariæ Lincoln' teneat de dono suo omnes Regist. 36. b.

omnes decimas dominicarum terrarum suarum vel dominici sui de N. quas idem Episcopus & prædecessores sui Episcopi loci prædicti libere conferre consueverunt: Prior beatæ Catherinæ extra Lincoln. clamans decimas illas pertinere ad Ecclesiam suam de B. trahit eum inde in placitum, &c. Et quia placitum prædictum tangit coronam & dignitatem nostram, præsertim cum collatio earundem decimarum ad nos possit devolvi ratione custodiæ vel escaetæ, quia etiam consimiles decimas conferimus in quibusdam dominicis, & similiter quamplures magnates regni nostri in dominicis suis: Vobis prohibemus ne placitum illud teneatis in curia Christianitatis, nec aliquid quod in derogationem regiæ dignitatis nostræ cedere valeat in hac parte attentetis, seu per alios attentari faciatis, quoviſmodo. T. &c.

Opus est interprete, **Therefore we will peruse the words of this writ in such order as they doe lye in the same.**

This was S. Hugh Bishop of Lincolne, as wee conceive it.

¶ Venerabilis pater H. Lincoln. Episcopus,] **is intended as I take it of Hugh Bishop of Lincoln, who deceased soone after: And hereby it appeareth, that this writ was in use before the said constitution of Pope Innocent the third, as also is proved by latter words of this writ, which we shall observe when we come to it.**

¶ Quod cum præcentor Ecclesiæ Beatæ MARIÆ *Lincoln.* de dono suo teneat omnes decimas dominici de N. &c. Prior Beatæ Katherinæ extra Lincoln. clamans decimas illas ad Ecclesiam suam de B. trahit eum inde in placitum, &c.] **Here it may be demanded that seeing the suit is between spirituall persons, and for tithes which are spirituall things, wherefore they should bee prohibited. Hereof three reasons are rendred in this writ. First,** quia placitum prædictum tangit coronam & dignitatem nostram. **For all Advowsons are lay fee, and pleas of them doe belong to the Kings law, and seeing the whole benefit of the patron of this Advowson consisteth in conferring of these tithes to any of his Chaplains, &c. And if the tithes be recovered, the Advowson vanisheth as a thing without fruit or benefit, and therefore the Ecclesiasticall Court cannot hold plea of them.** Quia tangit, &c. **See the writ of Indicavit, & breve de recto de advocatione decimarum, before in this second part of the Institutes W. 2. cap. 2. versus finem. & Articuli cleri cap. 2. And if the suit in the Ecclesiasticall Court were for subtraction of tithes, after the right of the Advowson be tryed for the patron of the person that saeth, he shall proceed in the Ecclesiasticall Court.**

Bſe de Indicavit
Bſe de recto advoc. decimarum.
Regiſt. 29. b.
Artic. cleri ca. 2.
12. E 4. 13. b 4. E 3. 2.
Glanvil. lib. 4. ca. 13.
Bract. lib. 5. fol. 402. 403.
Fleta lib. 6. c. 36.
Fitz. N. B. 30. g.
Vet. N. B. 24. a.
Vide Mich. 2. E 1. in communi banco. Rot. 52. leic. the Prior of S. Mary de pratis caſe. indicavit bſe de indicavit ſuper 4. partem.

2. **The second reason yeelded in this writ is,** Præsertim cum collatio earundem decimarum ad nos possit devolvi ratione custodiæ, &c. **And if the tithes should be recovered, as hath been said, the Advowson should vanish, &c.**

3. Quia etiam consimiles decimas conferimus in quibusdam dominicis, & similiter quamplures magnates nostri in dominicis suis, &c.

By this it is probable, that the King speaking in this writ for himselfe and the Grandees of the Realme in the present time, that this writ was in use before the constitution that confined tithes to parishes, and hereby it is proved that at this time the King, and the Nobles of the Realme might give their tithes to what spirituall person they would. Lastly albeit the King and the Nobles be for honour sake named in the writ, yet the liberty of granting of tithes extended at this time to all the Kings subjects.

The marginall note in the Register is de decimis separatis, so called because they had been granted to some spirituall person, and not annexed to any parish Church.

Extravagant tit. de Decimis cap. 13. quoniam.

For the better understanding of the opinion of Sir William Herle *in the said book of* 7 E. 3. **which is,** Ore ne poet home ses dismes que sont hors de parish; grant a que il voudra, car leveſque del lieu les avera. **Hee grounded his**

opinion

opinion in this case upon the Canon Law, which is, that the Bishop is to have all Tithes growing in lands not assigned to any Parish within his Diocese. Yet this Canon being against the Law of the Land, never had allowance within this Realme, for in such part of Forests as are out of any Parishes, the King shall have them. See a notable Record, Term' Mich. An. 5 E. 3. Coram Rege. Rot. 168. Cumbria; adjudged for the King against the Canon, and the opinion of Herle. And this had been formerly resolved in Parliament, Inter placita coram ipso domino Rege & ejus Consilio ad Parliament' sua post festum Sancti Hilarii, & etiam post festum Pasch', Anno 18 E. 1. fo. 8. Int' Episcopum Carliſle, & Priorem ejusdem de decimis assartorum vocat' Linthwait & Kirkethwait in foresta de Englewood. The words of which Record are, Quod decimæ prædictæ pertinent ad Regem, & non ad alium, quia sunt infra bundas Forestæ de Englewood, & quod Rex in Foresta sua prædicta potest villas ædificare, Ecclesias constituere, terras assertare, & Ecclesias illas cum decimis terrarum illarum pro voluntate sua cuicunque voluerit conferre, &c. And E. 1. granted tithes coming of land within the Forest of Deane, as were not within any Parish, to the Bishop of Landaffe, and his Successors.

Mich. 5 E. 3. cor. Rege. Rot. 168. Cumbr. 22 Ass. p. 75. 38 Ass. p. 2. 14 H. 4. fo. 17. Br. dismes 10. Acc' Rot. Parl. 18 E. 1. fo. 8. Lib. 5. fo. 15. in Caudries case. Ll. 2. fo. 44. in Leveſque de Winchesters Case.

Rot. Parl. anno 8 E. 2. nu. 17. in dorſ.

An

AN EXPOSITION UPON THE STATVTE ENTITVLED,

An Act for the true paiment of Tithes.

Anno 2 E. 6. cap. 13.

THE noise of the dissolution of Monasteries in the Parliament holden in the 27 peare of H.8. (Lay-men taking small occasions to withdraw their tithes) was the occasion of the making of the Statute of 27 H.8.c.20. The principall cause of the making of the Statute of 32 H.8. cap.7. was to inable Lay-men, that had estates or interests in Parsonages, or Vicarages impropriate, or otherwise in tithes, to sue for subtraction of tithes in the Ecclesiasticall Courts, and to provide that no Parson should bee sued, or compelled to pay any manner of tithes for any Mannors, Lands, Tenements, or Hereditaments, which by the Lawes or Statutes of this Realme were discharged, or not chargeable for payment of any such tithes.

27 H.8. ca. 20. acc'. Vid. 31 H.8. ca.10.vers.finem.

This Act of 2 E.6. is an Act of Addition, as by the words thereof hereafter following appeare.

Where in the Parliament holden at *Westminster* the fourth day of *February*, *Anno* 27 *H.*8. there was one Act made concerning paiment of Tithes prediall, and personall: And also in another Parliament holden at *Westminster*, 24 *July*, 32 *H.*8. another Act was made concerning true paiment of Tithes, and Offerings: In which severall Acts, many and divers things be omitted and left out, which were convenient and very necessary to be added to the same. In consideration whereof, and to the intent the said Tithes may be hereafter truly paid, according to the minde of the makers of the said Act: Bee it ordained and enacted, &c. that not onely the said Acts made in the said 27 and 32 yeare of *H.* 8. concerning true paiment of Tithes, and every Article, and Branch therein contained shall abide and stand in their full strength and vertue: But also be it further enacted by the Authority of this present Parliament, that every of the Kings Subjects shall from henceforth truly and justly, without fraud or guile, divide, set out, yeeld, and pay all manner of their prediall Tithes, in their proper kinde, as they arise and happen, in such manner

27 H.8.ca.20.

32 H.8.cap.7.

manner and forme, as hath been of right yelded and payd within 40 yeares next before the making of this act, or of right or cuſtome ought to have been paid. And that no perſon ſhall from henceforth take or carry away any ſuch or like tithes, which have been yeelded or payd within the ſaid 40 yeares or of right ought to have been payd in the place or places tithable of the ſame, before he hath iuſtly divided or ſet forth for the tithe thereof, the tenth part of the ſame, or otherwiſe agreed for the ſame tithes with the Parſon, Vicar, or other owner, proprietory or Farmer of the ſame tithes, under the paine of forfeiture of treble value of the tithes ſo taken or carried away.

¶ Prediall tithes.] This branch extends only to prediall tithes.

Paſch. 1. Ia. Rot. 1119. in Communi banco. Int. Booth & Southraie in debt upon this ſtatute by the Parſon of the Church pro non extrapoſitione decimarum pro caſeo, vitulis, agnis, ceraſis, volemis & pyris to have the treble value, &c. The Defendant pleaded nihil debet per patriam; and it was found againſt him. And it was moved in arreſt of iudgement that the ſaid tithes of Cheeſe, of Calſes, and Lambes were no prediall tithes, and therefore not within this branch of the ſtatute; and this Act is penall, and ſhall not be taken by equity, quod fuit conceſſum per totam curiam. And it was reſolved, quòd decimarum tres ſunt ſpecies; quædam perſonales, quæ debentur ex operè perſonali, ut artificio, ſcientia, militia, negotiatione, &c. Quædam prædiales, quæ proveniunt ex prædiis, i.e. ex fructibus prædiorum, ut blada, vinum, fenum, linum, canabium, &c. ſeu ex fructibus arborũ, ut poma, pyra, pruna, volema, cerala, & fructus hortorum, &c. Quædam mixtæ, ut de caſeo, lacte, &c. aut ex fœtibus animaliũ, quæ ſunt in paſcuis, & gregatim paſcuntur, ut in agnis, vitulis, hœdis, capreolis, pullis, &c. Ex prædialibus ſunt quædam majores, quædam minutæ. Majores, ut frumentum, ſigilo, zizania, &c. fenum, &c. minores ſive minutæ, quidam dicunt, ſunt quæ proveniunt ex menta, aneto, oleribus, et ſimilibus juxta illud dictum Domini. *Luk.* 11. *verſ.* 42. Væ, qui decimatis mentam et rutum & omne olus, & præteritis judicium & charitatem Dei; hæc autem oportuit facere, illa non omittere. Alii dicunt quod in Anglia conſiſtunt decimæ minutæ in lino quæ ſunt prædiales, & lana, lacte, caſeis, & in decimis animalium, agnis, pullis, & ovibus, decimæ etiam mellis & ceræ numerantur inter minutas, quæ ſunt mixtæ. Vide *Linwood cap.* de decimis *cap.* Quoniam *fol.* 140. *verb.* talibus decimis.

And the Levite (to whom tithes were aſsigned) ſhall come, and the ſtranger, the fatherleſſe, and the widow which are within thy gates ſhall eat and be filled. Deut. 4. verſ. 29. Here is ſhewed the true uſe whereto tithes ſhould be imployed.

¶ Henceforth truly and iuſtly without fraud or guile divide, &c.] Trin. 44. Eliz. coram Rege. In a prohibition between Walter Heale and Iohn Sprát, the caſe was, Walter Heale ſet out his prediall tithes, and divided them iuſtly from the 9 parts, and ſoone after carried the ſame away. Sprat ſued for ſubſtraction of the ſame in the Eccleſiaſticall Court, Heale pleaded that hee had ſet them out ut ſupra, whereunto Sprat ſaid, that preſently after his ſetting out, &c. he carryed them away in fraudem legis. Adiudged that this was fraud and guile within this Act, albeit he did iuſtly devide the ſame within the letter of this law. It was further reſolved, that if the owner of the corne before ſeverance grant the ſame to another of intent that the grantee ſhould take away the ſame to the end to defraud the Parſon, &c. of his tithe, this is fraud and guile within this ſtatute. *The firſt Addition.* Simile in the ſame tearme in the caſe of Webb Parſon of Frettenden in Kent.

¶ Within forty yeares.] This time of 40 yeares is here ſet downe becauſe it is the uſuall time for the proofe de modo decimandi. Lib. Int. Coke 384.

¶ Or of right or cuſtome ought to have been yeelded, &c.] The ſenſe of theſe words [as hath been of right yeelded] is of tithes to be yeelded in ſpecie within 40 yeares, and the ſenſe of the words [or of right or cuſtome] is, or by right full cuſtome de modo decimandi ought to have been paid.

The ſecond Addition.

¶ And that no perſon from henceforth, &c.] Albeit this branch doth not give the forfeiture to any perſon in certaine, and therefore it was pretended that the forfeiture ſhould be given to the King. And thereupon, upon this branch, the Attourny generall, Hil. 29. Eliz. did exhibit an Information in the Exchequer againſt Wood of Cambridgeſhire for this treble forfeiture for carrying away his tithes before they were juſtly divided. The defendant pleaded not guilty, and by a Jury at the barre he was found guilty, & in arreſt of judgement it was moved that in this caſe the forfeiture was not given to the King, for that the words of the Act be, under the paine of the forfeiture of the treble value of the tithes ſo taken away. And whenſoever a forfeiture is given againſt him that doth diſpoſſeſſe, &c. the owner of his property, as here he doth of his tithes, there the forfeiture is given to the party grieved or diſpoſſeſſed, and the rather for that this is an additionall law, as hath been ſaid, and made for the benefit of the proprietor of the tithes. And ſo it was adjudged by Sir Roger Manhood & the whole Court of the Exchequer Paſch. 29. Eliz. And this was the firſt leading caſe, that was adjudged upon this point, and ever ſince it hath been reputed for law, and the party intereſſed in the tithes doth in an action of debt recover the treble value. And ſo it was alſo adjudged Hil. 40. Eliz. Rot. 699. where Rob. Redell and Sarah his wife in the right of his wife ſequed in an action of debt for the treble forfeiture. A record well examined and adjudged, and worthy to be a precedent. In which caſe it was reſolved that the generall allegation in the Count that the Defendant Anno 38. Eliz. grano. ſeminavit 20 acras terræ, &c. & quod decimas inde attingunt ad valorem 15ˡⁱ without ſhewing what kind of graine, was good.

The third Addition.

And be it alſo enacted by the authority aforeſaid, that at all times whenſoever, and as often, as the ſaid prediall tithes ſhall bee due at the tithing time of the ſame, it to be lawfull to every party to whom any of the ſaid tithes ought to be paid, or his deputy or ſervant to view and ſee their ſaid tithes to be iuſtly and truly ſet forth and ſevered from the nine parts, and the ſame quietly to take and carry away. And if any perſon carry away his corne, or hay, or his other prediall tithes before the tithe thereof be ſet forth, or willingly withdraw his tithes of the ſame, &c. that then upon due proofe thereof made before the ſpirituall Iudge, or any other Iudge, to whom heretofore he might have made complaint, the party ſo carrying away, withdrawing, letting, or ſtopping ſhall pay the double value of the tenth, or tithe ſo taken, loſt, withdrawn, or carryed away, over and beſides the coſts, charges, and expences of the ſuit in the ſame, the ſame to be recovered before the Eccleſiaſticall Iudge, according to the Kings Eccleſiaſticall lawes.

Mich. 9 E 2. fol. 61. in libro meo. Labbe & Oſneis caſe. 19 R 2. action ſur le caſe. 52. 17 H 6. Iuriſdiction. 58.

¶ That at all times whenſoever, and as often, &c.] The firſt part of this branch is declaratory of the common law, becauſe for the ſtopping of his way, &c. an action of the caſe did lye at the Common law.

So reſolved by all the Iudges of England Paſch. 4. Iac.

¶ Shall pay the double value, &c.] The reaſon why the double value, &c. is by this branch to be recovered in the Eccleſiaſticall Court, where by the former branch, the Parſon, &c. at the Common law ſhall recover the treble, is,

is, for that in the Eccleſiaſticall Court hee ſhall recover the tithes themſelves, and therefore the value recovered in the Eccleſiaſticall Court is equivalent with the treble forfeiture at the Common law. Vide Artic. cleri 4 Iac. Artic. 16.

¶ Beſides the coſts, charges, and expences, &c.] So as the ſuit in the Eccleſiaſticall Court is more advantagious then the ſuit for the treble forfeiture at the Common Law: For at the Common Law he ſhall recover no coſts, but he ſhall recover in the Eccleſiaſticall Court coſts and expences. But then it is demanded, whether in an Action of debt for the treble value at the Common law, if the Plaintiffe be nonſuite, or if the verdict paſſe for the Defendant, the Defendant ſhall recover his coſts by the ſtatute of 23 H. 6. c. 15. And the anſwer is, that in that caſe he ſhall recover no coſts, and ſo it was adjudged Trin. 43. Eliz. in communi banco, inter Dounton Plaintiffe in debt upon this ſtatute, & S. Moile Finch Defendant, that this action of debt is no action of debt within the ſtatute of 23. H. 8. becauſe it is neither upon a ſpecialty or by Contract; neither is this action upon this ſtatute any action for wrong perſonall immediately done to the Plaintiffe, for it is a non-feſance, viz. a not-ſetting out of the tithes, Trin. 42. Eliz. in communi banco adjudged in an action of debt for the treble value upon this ſtatute, not guilty, or nihil debet are good uſes, and ſo upon the ſtatute of 5. Eliz. upon perjury.

And be it further enacted. &c. That all and every perſon which hath or ſhall have any beaſts or other cattell tithable, going, feeding, or depaſturing in any waſt or common ground, whereof the pariſh is not certainly knowne, ſhall pay their tithes for the increaſe of the ſaid cattel ſo going in the ſaid waſt or common to the Parſon, Vicar, proprietory, portionary, owner or other their Farmours or Deputies, of the ſaid pariſh, hamlet, towne, or other place, where the owner of the ſaid cattell inhabiteth, or dwelleth. *The fourth Addition.*

¶ All and every perſon which hath or ſhall have any beaſts or other cattel tithable, &c.] Where the King ought to have the the tithes within the waſts or commons in his forests, which are not within any pariſh, this branch giveth the tithes of the increaſe of cattle to the Parſon of the pariſh where the owner dwelleth. Rot. parl. 18. E 2. fol. 8. Int. Epiſcopum Carliel. & decan. 22. aſſ. p. 75.

Provided, &c. that no perſon ſhall be ſued, or otherwiſe compelled to yeild, give, or pay, any manner of tithes for any mannours, lands, tenements, or hereditaments, which by the lawes, and ſtatutes of this Realme, or by any priviledge or preſcription are not chargeable with the payment of any ſuch tithes, or that be diſcharged by any compoſition reall. *The fifth Addition.*

¶ By the lawes of the Realme, &c.] (and ſo ſpeaks the ſtatute of 32 H. 8. cap. 7.) That is, by the Common Lawes and Cuſtomes of the Realm, terræ ſunt indecimabiles; Hereof you may read divers examples lib. 8. fol. 48, 49, 81. So reſolved; Mich. 21. & 22. Eliz. coram Rege per Wray chiefe Iuſtice & totam curiam. F. N. B. 53. g. Regiſt. 54, b. Rot. parl. 51. E 3. nu. 57. 7 H. 12 H 8. 4. b. 4. nu. 105.

Note, that tithes ſhall not be paid of any thing that is of the ſubſtance of the earth and are not annuall, as of quarries of ſtone, turfe, flagges, tynne, lead, brick, tyle, lime, marle, coales, chalke, pots of earth, and the like, nor of beaſts that be feræ naturæ, as deere, &c. nor of agiſtment of ſuch beaſts, as the Parſon hath tithe of, nor of cattle that manure the ground; but of barren beaſts he ſhall have tithe for agiſtment, or herbage of them, unleſſe they be nourished for the pale or plough, and ſo imployed. Mich. 41. & 42. Eliz. coram Rege in prohibition

prohibition Int. Greene & Hull. & Mich. 37. & 38. Eliz. Inter Grisman & Lewes in communi banco. Nor of Rakings left without Covin, nor of after pasture. No tithes shall bee payd for sylva cædua imployed to hedging or for fewell, for maintenance of the plough or pale. Nor for the herbage of meres, bawkes, nor fearne, locks of wooll, or stubble, &c. but are free thereof by the Common law and custome of the Realme. Vide Hil. 8. Iac. coram Rege Tho. Baxters case. And in that case it was resolved and adjudged, that a Parson shall not have two tithes of one land in one yeare, as of corne, and of the stubble or herbage, of hay, and of the after-pasture, & sic in similibus. But if the fruit of an Orchard be sowne with any kinde of graine, the Parson shall have tithe of the fruit trees and of the grains, for they bee of severall and distinct kindes. But if hee pay tithe for the fruit of the trees, and after cut downe the trees, and sell them in Billet, or Faggot, he shall pay no tithe, for they bee not of severall kindes.

If a man pay tithe for his corne, and after grindeth the same corne at a mill within the same parish, no tithe meale shall be payd therefore. Vide Antic. deri. cap. 2.

Deut. 14. vers. 22, 23. Decimam partem separabis de cunctis fructibus quæ nascuntur in terra per annos singulos &c. Decimam frumenti tui, & vini, &c. Thou shalt tithe all the increase of thy seed that the field bringeth forth peare by peare, as of corne, Wine, &c.

Register 54. b. F. N. B. 53. E. Brooke Dismes. 16.

25 H. 8. cap. 19. All Canons and Constitutions made against the Lawes &c. of the Realme are made voide.

¶ By the Statutes, &c.] Viz. 27 H. 8. cap. 20. 31 H. 8. cap. 13. 32 H. 8. cap. 7.

¶ By prescription.] The orders of Cistercienses, Templarii, & Hospitalarii decimas prædiorum suorum, quæ propriis manibus aut sumptibus excolunt, non tenentur solvere, &c. Vide Dier. 10 Eliz. fol. 277, 278. & 2 H. 4. 5. cap. 14.

This privilege to these three orders of Religion was granted to them by the councell of Lateran, Anno Domini 1215. & anno 17. Iohannis Regis, and was allowed by the generall consent of the Realme, but this privilege extendeth only to the lands which they had before that generall Councell.

Innocent the 3. in Epist. decretali lib. 1. pag. 262. Vid. 38 E. 3. 6. a. Pope Innocent the third by his Bull discharged those of the order of Premonstratenses of the payment of tithes of such lands as were of their owne manurance, or other improvement. Note, about the yeare of our Lord 1150. most of all religious orders were exempt from payment of tithes out of their possessions kept in their owne hands. Which Pope Adrian the fourth about that time restrained to Cistercienses, Templarii, & Hospitalarii, and that all other orders should pay tithes, &c.

2 H. 4. cap. 4. By the statute of 2. H. 4. not only the Cistercienses, but all other religious and seculars which put any Bulls in execution for discharge of tithes of

28 H. 8. cap. 16. their lands in the hands of their Farmours should be in danger of a Præmunire.

Vid. 25 H. 8. cap. 21. By the statute of 28 H. 8. it is enacted that all bulls, brieves, faculties, dispensations, of what names, natures, or qualities whatsoever they be of, heretofore had or obtained of the Bishop of Rome, or of any of his predecessours, or by authority of the See of Rome, by or to any subjects, reliants, or bodies politique or corporate of or in this Realme, or of or in other the Kings dominions, should from thenceforth be clearely voyde, and of no value, force, strength, nor vertue, and should never after that act be used, admitted, allowed, pleaded, or alledged in any places or Courts of this Realme or any other the Kings dominions, upon paine contained in the statute of Præmunire, &c. This is a generall Law, and plenarily and strictly penned against all bulls, &c. True it is, that there are some exceptions or qualifications in the Act, which you may read there; but there is no exception or qualification therein for any dispensation or discharge of not payment of tithes by any bull

Vid. 11 H. 4. 76. 12 H. 8. 5, 6.

Præmunire.

of

of the Pope. And we are of opinion, that the Pope by his bull could not discharge any ſubject of this Realme of payment of tithes, for it ſhould be againſt the liberty of the ſubject, when he had liberty to grant his tithes to what ſpirituall perſon he would, and againſt the right of the perſons, &c. of pariſhes, after parochiall rights were eſtabliſhed.

This Act of 28. H. 8. extendeth not to generall Councells, but leave them as they were before, but all Canons (as elſewhere hath been ſaid) which are againſt the prerogative of the King, the Common Law or Cuſtome of the Realme, are of no force. Let not therefore only Serjants, Apprentices, and Attournyes, but the parties themſelves be well adviſed how they plead or alledge any bull, breſe, faculty, or diſpenſation from Rome, &c. which is not warranted by this Act, the puniſhment being ſo penall as a Præmunire, if they plead or alledge any Bull, &c. againſt that Act.

Vid. Dier. 10. Eliz. 277, 278.

Vid. 25 H. 8. cap. 19

Vid. 18. Eliz. Dier. fol. 347. Weſtons caſe.

And in ſome caſes, this maketh for the Clergy. By the Common Law pariſh Churches are to be repaired by the Parſons of the pariſh, but the cuſtome of this Realme being that the pariſh Churches are to be repaired by the Pariſhioners or Inhabitants of the parithes, this Canon bound not the Clergy.

Extr. tit. de Eccl. ædific. cap. 4. De his Lindwood fol. 39. verb. reparat

Alſo by another Canon, neither Arch-Biſhop nor any other of the Clergy could by their Teſtament bequeath any thing wherein he had property in the right of his Church; but this being contrary to the cuſtome of the Realme originally obtained by the Biſhops of this Realme for themſelves and their whole Clergy, for which at this day a recompence is given to the King, as elſewhere we have ſhewed.

Extr. tit. de offic. judicis ordinar. cap. 4. cum vos. Lindwood fol. 121. verb. legitima. Rot. Clau. 30. H. 3. m. 4. in turri Lond. Pat. 13. E. 1. m 11. ib. de monitura Epiſcopi Hil. 2. E. 2. in mem. Scaccarii. Tr. 36. E. 3. ib. proces verſ. Epiſcopum, Ceſtr. Hil. 5. E. 4. int. communia Rot. 47. Larchevequé de Yorkes caſe.

¶ [a] Preſcription:] As modus decimandi, lands given in ſatisfaction, &c. [b] And a country may preſcribe to be quit of tithes, or in non decimando. But for the better underſtanding both of this ſtatute, and of our books, it is good to be knowne what the time of preſcription for tithes is by the Canon Law, and by what Authority. And the time for preſcription in that caſe is forty yeares, by which time of preſcription a ſpirituall perſon may gaine by the Canon Law a right of tithes in another pariſh, &c. [c] And this preſcription hath this ground and warrant by a decretall Epiſtle of Pope Alexander the third, Anno Domini 1180. But this Canon being againſt the Common Law which alloweth no preſcription unleſſe it be time out of mind of man, never had allowance in England. [d] Of preſcription according to the Common Law, you may read in the firſt part of the Inſtitutes Sect. 170. at large. And the Epiſtle decretall of Pope Alexander we have thought good to recite in hæc verba, *Alexander Mauricio* Epiſcopo: Ad aures noſtras te ſignificante pervenit, duas Eccleſias ſæpius ſub examine tuo litigare ſuper decimis, quas una Eccleſiarum in alterius parochia 40. annis poſſedit, ac per hoc petit ejus actionem extentam, Altera vero volens eas jure parochiali evincere præſcriptionem non debere ſibi obeſſe proponit; ideo quid juris ſit in hoc caſu tua nos dixit fraternitas conſulendos. Tuæ itaque fraternitati literis præſentibus innoteſcat, quod jure * divino & humano melior eſt conditio poſſidentis, quoniam * quadragenalis præſcriptio omnem prorſus actionem ſecludit.

[a] Regiſt. 38. F. N. B. 41. g. 8 E 4. 24. 18. H. 6. 14.

[b] Doct. & Stud. 174.

[c] 10. H 6. fol. 17. ac preſcription per le ley de St. Egliſe eſt 40. ans, & en noſtre ley neſt vailent. preſcrip. per C. ans. 2 E 4. 15. 6 E 4. 3.

[d] 1. part. Inſtitut. Sect. 170.

* Iure Canonico.

* This is le ley de St. Egliſe mentioned in 20 H. 6.

[c] Mich. 43. & 44. Eliz. In a prohibition between Nowell and Hicks Vicar of Edmonton in Midd. the Plaintiffe in the prohibition alleged a cuſtome within the ſaid pariſh of Edmonton time out of mind of man to pay for every Lambe a penny, &c. And iſſue was taken upon the cuſtome, and the Jury found, &c. before twenty yeares laſt paſt time out of mind, that there was within the ſaid pariſh ſuch a cuſtome, and modus decimandi; but for twenty yeares laſt paſt by reaſon of ſuits and troubles, the Inhabitants of the ſaid pariſh had payd tithe Lambs in kinde. And in this caſe theſe two points were adjunged. Firſt, when a cuſtome doth create an inheritance, this cannot be waved or annulled by payment or other matter in Paiis 2. Albeit that the modus decimandi had not been yeelded or payd by twenty yeares, yet the preſcription may be generall,

[c] Mich. 43. & 44. Eliz. coram Rege.

rall, for that the cuſtome once eſtabliſhed doth continue. As if a man hath a common of paſture, &c. and taketh a leaſe of the land, &c. for many yeares, yet after the yeares ended he may preſcribe generally; for the inheritance of the common continued: and if the Law ſhould be otherwiſe, it were dangerous for the parties that doe preſcribe for one yeare, and tenne or twenty yeares, &c. is all one in judgement of Law. And ſo herewith doe agree the books in 15 E. 3. tit. judgement 133. in a writ of meſne. 14 E 3. ibidem 155.

Mich. 13 E 1. in banco Rot. 119. Salop. Free chaſe appendant al manor. Iſſue, non fuit ſeiſitus. Verdict.

Edmundus de mortuo mari attachiatus fuit ad reſpondendum Iohanni de Segrave & Chriſtianæ uxori ejus, quare impedit eos habere liberam chaceam in boſco ſuo de Kinkeſwood pertinen' ad manerium ſuum de Stoteſden quod tenent de rege in capite, & quod habent ex feoffamento Hugonis le Pleſſye quondam domini dicti manerij. Edmundus dicit quod Rogerus pater ſuus obiit ſeiſitus inde tenend' in ſuo ſeperali, & quod prædictus Hugo tempore quo feoffavit prædictos Iohannem & Chriſtianam de dicto manerio, non fuit ſeiſitus de dicta Chacea. Et de hoc ponit ſe ſuper patriam, & præd' Iohannes & Chriſtiana ſimiliter. Iur' dicunt quod Iohannes de Pleſſy pater prædicti Hugonis de Pleſſy fuit ſeiſitus de prædicta chacea dum fuit dominus dicti manerij, & dicunt quod dictus Hugo voluit ibidem fugaſſe, poſtquam prædictum manerium pervenit ad manum ſuam, ſet Rogerus de mortuo mari ipſum impedivit & non permiſit. Et dicunt quod Hamo le Strange, & Hugo de Tuberville parentes uxoris ipſius Hugonis ex rogatu ipſius Hugonis venerunt ad manerium de Stoteſden, & prædictam chaceam ſimul cum prædicto Hugone intraverunt nomine ipſius Hugonis cum equis & armis, & in ea cum equis & armis per tres dies fugaverunt abſque impedimento prædicti Rogeri de mortuo mari aut hominum ſuorum. Et queſit' Iur' &c. dicunt quod illud fecerunt tempore pacis, & abſque impedimento prædicti Rogeri aut hominum ſuorum eo quòd dictus Rogerus neſcivit quod ibi fugaverunt, & quòd ab eo tempore dictus Hugo nunquam fugavit ibi; quia quotieſcunq; fugare ibidem voluit, dictus Rogerus ipſum impedivit. Poſtea Term' Trin' anno 20. venerunt partes, et petierunt Iudicium ſuum per Attornatos ſuos. Iudicium reddituum, quòd quia Iohannes de Pleſſy fuit de chacea ſeiſitus tanquam pertinen', &c. Et poſtea dictus Hugo per tres dies continue tempore pacis ſeiſinam ſuam obtinuit abſque impedimento Rogeri de mortuo mari, aut alicujus paren' ſuorum, per quod videtur cur' quod ſeiſina illa eſt ſufficiens, bona, et pacifica in hoc caſu; Conſideratum eſt, quod Edmundus injuſte impedivit dictos Iohannem et Chriſtianam de prædicta chacea, et ipſi re' chaceam illam & dampn' 100'.

Multiplex interruptio non tollit præſcriptionem ſemel obtentam. Note an interruption to chace is no diſſeiſin thereof, but at the will of the owner. Iudgement. Seiſina bona debet eſſe pacifica. Mich. 2 E 2. coram rege. Warw. in monſtravetunt.

The mannour of Brimſgreen and Norton was ancient demeſne, and in the Kings hands, and William of Brimingham and his anceſtours time out of minde and before the Conqueſt had taken toll aſwell of the tenants of the ſaid mannour as of others, whereupon judgment was given, as it appeareth in the Record in theſe words: Et quia manifeſte conſtat &c. quod manerium de Brymmeſgreen et Norton eſt de antiquo dominico coronæ Angliæ, et à tempore quo non extat memoria, extitit in ſeiſina progenitorum Reg' quondam Regum Angliæ, et adhuc in ſeiſina Domini Regis nunc exiſtit. Et homines de eodem manerio ſicut et cæteri homines de antiquis dominicis coronæ domini Reg' quiet eſſe debeant à præſtatione theolonii per totum regnum Angliæ, ut prædictum eſt, &c. Et ſuper hoc viſo et lecto recordo placiti prædicti manifeſtè patet quòd prædict' Willielmus de Brimingham recognovit quòd ipſe et anteceſſores ſui habuerunt mercatum in prædicta villa de Brimingham, et theoloniam de omnibus mercandiſis in eadem villa, de quibus theolonium præſtari deberet, perceperunt et habuerunt, et etiam de hominibus de Bremeſgreen et Norton, quam de alijs ibidem vendentibus et ementibus ante Conqueſtum, et ſine temporis interruptione, et quòd ipſe ſtatum eorundem anteceſſorum continuavit diſtringendo et percipiendo ab eiſdem hominibus theoloniam, tam pro minutis, ut pro victualibus et alijs neceſſarijs ſuis, quam de alijs quibuſcunque mercandiſis ſicut de alijs mercatoriis. Conſideratum eſt quòd prædicti Richardus, Robertus, Iohannes, et omnes alii

Nota. ante Conqueſtum. Note a poſſeſſion beyond time of memory ſhall not ſtand, but give place to law. Conſuetudo licet ſit magnæ authoritatis, nunquam tamen præjudicat veritati.

alii de manerio prædicto, quieti sint imperpetuum à præstatione Theolonii in villa prædicta præstandi secundum legem et consuetudinem in regno usitat', et quod recuperent damna, quæ taxantur per discretionem Iusticiariorum ad vigint Marc'. Et prædictus Willielmus pro injusta continuatione, usurpatione antecessorum suorum in misericordia. Et inhibitum est eidem Willielmo ne homines de manerio prædicto decætero distring' ad Theolonium in dicta villa de Brimingham præstand' contra legem et consuetudinem prædictas, &c.

Abbas de Sancto Edmundo implacitat Rogerum de Bigod com' Norff' maresc. Angl', & duos alios pro captione duorum leporariorum suorum in villa de magna Thorpe. Comes dicit, quod dicta villa est infra præcinctum demid' hundredi sui de Ersham quod tenet ingarennatum prout Rogerus avunculus suus, cujus hæres ipse est, illud tenuit, & quia invenit prædictum Abbatem ibidem fugantem, ipse cepit, &c. Abbas dicit quòd ratione terrarum suarum ibidem ad ipsum pertinet fugare, prout omnes prædecessores sui ibidem fecerunt, &c. Ideo ven' Iur' qui per speciale veredictum dicunt, quòd Abbas & prædecessores sui solebant ante bellum de Lewes ibidem semper fugare, &c. Et dicunt quod tam Rogerus comes, quam Rogerus nunc ipsum Abbatem & homines suos sæpe impedivit ibidem fugare, & leporarios suos surripuerunt.

Trin. 18. E. 1. in banco rot. 50. Norff.
Nota pro leporariis.
Ingarennatum.
pertinet fugare.
Verdict speciall.
Bellum de Lewes 48 H. 3. anno Domini, 1264.

¶ Not chargeable by payment of tithes, &c.] As by unity of possession. lib. 2. fol. 46, 47, 48, 49. lib. 11. fol. 10, 11, 14, 16.

¶ Discharged by any composition realt, &c.] Either before time of memory, or within time of memory, that is by parson, patron, and ordinary. Vide 8 H. 6. 22, 23. 9 H. 6. 17. 41 E. 3. 27. 17 E. 3. 11. 38 E. 3. 18 8. 22 H. 4. 13. 19 H. 6. 75. 32 H. 6. 4 34 H. 6. 36. 31 H. 6. 28. 35 H. 6. 5. a. 37 H. 6. 25. 1 E. 4. 6. 8 E. 4. 14. 18. 14 H. 7. 3. 26 H. 8. 7. 27 H. 8. 20, 21.

Concordia facta inter Willielmum Mallet et Rectorem Ecclesiæ de Aure heiton Bathon, et Wellen' diocesis ex una parte, & * nobilem virum Iohannem de Acton mil' ex altera parte, de * modo decimandi omnia infra parochiam de Aure per consensum Episcopi & Capitul' Bathon' unde placitat' fuit prius in curia Cantuar'. Nota.

Mich. 9. E. 1. in banco rot. 63. Somerset.
* Miles est nobilis.
* Modus decimandi per realem compositionem.

Provided, &c. that all such barren, heath, or wast ground, other then such, as be discharged for the payment of tithes by Act of Parliament, which before this time have lyen barren and payd no tithes by reason of the same barrennesse, and now be or hereafter shall be improved and converted into arable ground or meadow, shall from henceforth, after the end and tearme of seven yeares, next after such improvement fully ended and determined, pay tithe for the corne and hay growing upon the same, any thing in this Act to the contrary in any wise notwithstanding.

The fifth Addition
With a Proviso.

¶ Barren.] Terra sterilis ex vi termini est terra infœcunda, nullum ferens fructum. *Virgil.* Infelix lolium, & steriles dominantur avenæ.

But it is not only so strictly taken in this Act, but hath also a more restrained sense. For albeit it doth yeeld some fruit, yet if it be barren land, quoad agriculturam, as to tillage, which this branch meant to advance, it is within this Act, for albeit barren grounds (as to tillage) doth pay tithe wooll and lambe, yet is it within this Act, and this appeares by the next proviso in this Act for the payment

Dier. 2. Eliz. fol. 170, 171. lib. Int. Cok. 462, 463.

payment of ſuch tithe as during the ſeven yeares before the improvement was payd. But yet if the ground be not apt for tillage, yet if it be not ſuapte natura barren, it is not within this Act. As if a wood be ſtubbed and grubbed, and made fit for the plough, and imployed thereunto, yet ſhall it pay tithes preſently; for wood-ground is terra fertilis, & fœcunda.

6 E 6. ex libro Bendloes.

Virgil. Æneid.

Devenere locos lætos, & amœna vireta
Fortunatorum nemorum, ſedeſq; beatas.

And ſo was it reſolved Hil. 9. Jac. Reg. upon the motion of Serjant Houghton by the whole Court of Common Pleas.

Hil. 38. Eliz. coram Rege.

In a prohibition between Sharington and Fleetwood for tithes in Dywell in the County of Lancaſter, it was reſolved, that if marſh meadow, or other land for not cleanſing of the trenches or ſewers, or by ſuddaine accident, or inundation of waters be ſurrounded; or by ill husbandry or unprofitable negligence any land become overrunne with bushes, furres, whinnes, and bryers, yet are not they or any of them ſaid to bee barren land within this ſtatute, becauſe of their owne nature they are fruitfull, and the Parſon, &c. ſhall not by this Act be barred of his tithes by the ill husbandry or negligence of the owner or poſſeſſour.

¶ Heath.] In French it is called bruyere; In legall Latin bruera, Regiſt. 2. In domeſday it is called bruaria; Latinè erix, erica an unprofitable kinde of ground, but wholly barren, for thereon ſheep and beaſts will bruſe, and ſome poore people the flags and turfes thereof doe apply to ſewell; and this heath cannot without great skill, charge and induſtry bee converted to tillage. It ſendeth forth a flower in Autumne (when all others ceaſe) which bees doe exceedingly covet, as it is ſaid, this is within this Act. Some ſay, eſt quoddam genus myricæ, a kinde of wilde tamariske, and in Lincolnſhire a litle religious houſe was called Temple bruer, becauſe it was ſeated in the heath.

Lib. Intr. Coke ubi ſupra.

Waſt.] It is called vaſtus fundus, waſt ground, becauſe it lyeth as waſt with little or no profit to the Lord of the Pannour, and is ſo called to diſtinguiſh it from the reſidue of the demeſnes in the Lords hands, and cannot without great charge and induſtry be improved or converted to tillage being ſuapte natura unprofitable, and being converted to tillage it ſhall pay no tithes by the ſpace of ſeven yeares.

Lib. Intr. Coke ubi ſupra.

¶ Shall after the end and terme of ſeven yeares next after ſuch improvement pay tithe.

Dier. 2 Eliz. 170. b.

Note, here are no expreſſe words of diſcharge of the tithes during the ſeven yeares, but by reaſonable conſtruction it doth implyedly amount to a diſcharge during the ſeven yeares, and the ſeven yeares are to be accounted next after the improvement.

The ſixth Addition With the Proviſo.

And be it enacted, &c. that every perſon exerciſing merchandizes, bargaining, and ſelling, clothing, handicraft, or other art or faculty, being ſuch kinde of perſons as heretofore within theſe forty yeares have accuſtomably uſed to pay ſuch perſonall tithes, or of right ought to pay, (other then ſuch as bee common day-labourers) ſhall yearly, &c. pay for his perſonall tithes, the tenth part of his cleare gaines, his charges, &c. deducted; and where handicrafts men have uſed to pay their tithes within this forty yeares, the ſame cuſtome of payment of

of tithes to be obſerved. And if any perſon refuſe to pay his perſonall tithes,&c. it ſhall be lawfull to the Ordinary of the ſame Dioceſſe,&c. to call the ſame party before him, and by his diſcretion to examine him by all lawfull and reaſonable meanes, other then by the parties owne corporall oath, concerning the true payment of the ſaid perſonall tithes.

¶ Pay for his perſonall tithes the full tenth part of his cleare gaines, &c.] **Of perſonall tithes we have ſpoken before.** Vid.37.H.8.cap.12. Vid.Linwood,tit.de Decimis, fol.141,142.

¶ Cuſtome of payment of tithes.] Nota,**there may be** modus decimandi **for perſonall tithes.**

¶ By all lawfull and reaſonable meanes, other then by the parties owne corporall oath.] **Here is iuſt occaſion offered to ſpeake** de juramento calumniæ, **wherein we will endeavour to find out three things: Firſt,the beginning of the bringing in of this oath: Secondly, how the law hath ſtood therein in former ages: and thirdly, what the right is at this day.**

By a Conſtitution Domini Othonis Diaconi Cardinalis Sancti Nich. Apoſt. ſedis Legati, **at a Prouinciall Councell, holden** Octab' Sancti Martini in Eccleſia Sancti Pauli London,an.Dom.1236. anno 21.H.3. **it was ordained in theſe words**: Juſ-jurandum calumniæ in cauſis Eccleſiaſticis & civilibus de veritate dicenda in ſpiritualibus, quout veritas facilius aperiatur, & cauſæ celerius terminentur,ſtatuimus præſtari de cætero in regno Angliæ, ſecundum Canonicas & legitimas ſanctiones obtenta,conſuetudine in contrarium non obſtante. **By this it appeareth, that by the cuſtome of the Realme of England,** juramentum calumniæ **was not to be miniſtred: but to conſeſſe the truth, the cuſtome was not ſo generall, as in this Canon is alledged; for lay-men were free by the cuſtome of the Realme for taking of that oath, unleſſe it were** in cauſis matrimonialibus & teſtamentariis: **and in thoſe two caſes the Eccleſiaſticall Judge might examine the parties upon their oath, becauſe contracts of matrimony were often made in private, and legitimation of children depended thereupon. And in cauſes teſtamentary many things conſiſt in ſecrecie,and the truth therein is to be drawn out by oath,** & intereſt reipublicæ teſtamenta hominum rata haberi. **And this appeareth by a** * **prohibition by authority of Parliament directed to the Sheriffes, &c.** Quod non permittant quod aliqui laici in baliva ſua in aliquibus locis conveniant ad aliquas recognitiones p ſacramenta ſua facere, niſi in cauſis matrimonialibus & teſtamentariis. **But this cuſtome extended not to them of the Clergy, but to lay-people only, for that they of the Clergy being preſumed to be learned men, were better able to take** juramentum calumniæ: **for concerning the teſtimony of witneſſes in the Eccleſiaſticall Court, that Act, or the cuſtome of the Realme extends not unto.**

1.

* Prohib.format' ſuper Artic' Cleri,tit.Prohib.Raſtall 4.vet.Magn.Chart.2.part.fol.70.a. Vid.aſſ. de Claredon, 10.H.2. Brit.fol.35.b. acc' Hill. 7.E.3. rot.285.in communi banc. Hill.7.H.6.rot.135.ibid. Trin.3.H.6.rot.41.ibid. 19.E.4.10. per Brian, that it is a Statute. 20.E.4.3.b.

a Regiſt.fol.36.b. F.N.B.53.d. A prohibition, and thereupon an attachment, contra conſuetudinem regni, but there is a conſultation for witneſſes. Fitzh. Juſtice of peace 72. Lamb.Juſtice of peace 338.

But if in a penall law the juriſdiction of the Ordinary be ſaved, as by 1.Eliz. [b] **for hearing of Maſſes, or by** 13.Eliz. [c] **for uſury, or the like, neither Clerke nor lay-man ſhall be compelled to take** juramentum calumniæ, **becauſe it may be an evidence againſt him at the common Law upon the penall ſtatute.**

b Dyer manuſcript. propria manu, Trin.9.Eliz. in communi banco, Leighs caſe, Habeas corpus.

c 18.Eliz.Dyer 175. in margine, Hindes caſe, Habeas corpus.

But it is obiected, that this oath hath long continued in the Eccleſiaſticall Court. To this it is anſwered: Firſt, that it had the warrant of an Act of Parliament (as it was holden, in 2.Hen.4.cap.15. **whereby it was enacted,** Quod Dioceſanus per ſe, vel Commiſſarios ſuos contra hujuſmodi perſonas, &c. ad

2.

omnem juris effectum publice, & judicialiter procedat, & negotium hujuſmodi terminet juxta Canonicas ſanctiones. By this Statute, and the ſaid Prouinciall Conſtitution, and other the Canons of the Church, the Dioceſans, &c. miniſtred the ſaid oath, even in the caſe of hereſie, &c. This Statute of 2. H. 4. was repealed by the Act of 25. H. 8. (which Act is partly declaratory of the ancient law of the Realm) in theſe words: "It ſtandeth not with the right order of ju-"ſtice, nor good equity, that any perſon ſhould be convict, and put to loſſe of life, "good name, or goods, unleſſe it were by due accuſation and witneſſe, or by preſent-"ment, verdict, confeſſion, or proceſſe of outlawry, &c. And that it is not reaſonable, "that any Ordinary, upon any ſuſpicion conceived of his owne fantaſie, without "due accuſation or preſentment, ſhould put any ſubject of this Realm in any infa-"my and ſlander of hereſie, to the peril of life, or loſſe of name, or goods. And in a former clauſe of the ſaid Act it is ſaid: "That the moſt expert and beſt learned "man of this your Realm, diligently lying in wait upon himſelfe, can eſche-w and "avoid the penalties and dangers, &c. if he ſhould be examined upon ſuch captious "interrogatories, as is, and hath been accuſtomed to be miniſtred by the Ordina-"ries of this Realme, in caſes where they will ſuſpect any man of hereſie, &c.

25 H. 8. cap. 14. & 1. E. 6. cap. 12.

This Statute of 2. H. 4. was revived in an. 1. & 2. Phil. & Mar. ca. 6 and repealed again an. 1. Eliz. 1. & ſo remaineth.

Secondly, the words of the ſaid Act of Parliament are contra voluntatem eorum, and of the Regiſter, ipſis invitis; ſo as ſuch as willingly have taken it, ſerveth for no poſſeſſion againſt the law.

3. But now laſtly it is to be ſeen, how the right ſtandeth touching this oath at this day. It is confeſſed, as before it appeareth, as well by the ſaid Prouinciall Conſtitution of Otho, as by the Regiſter, that the ſaid Conſtitution was contra conſuetudinem regni, whereupon it followeth, that no cuſtome of the Realme can be taken away by a Canon of the Church, but only by Act of Parliament, and ſpecially in caſe of an oath, which is ſo ſacred a thing, and which generally concerneth all the Nobility, Gentry, and Communalty of the Realme of both ſexes. And by the ſtatute of * 25. Hen. 8. cap. 19. no Canon againſt the Kings Prerogative, the Law, Statutes, or Cuſtome of the Realme, is of force, which is but declaratory of the common Law.

Vid. the third part of the Inſtitutes, cap. Perjury * 25. H. 8. ca. 19. Rot. pat. an. 15. E. 2. part. 1. m. 8. 19. E. 3. quare non admiſit. 7. 10. H. 7. fo. 6. per Brian.

d Wee have read over what Doctor Coſin hath in his book ſpoken for the maintenance of this oath, and certainly, he toucheth not the ſtate of the queſtion, as will appeare to the learned Reader.

See the fourth part of the Inſtitutes, cap. The Court of Convocation.

d Doct. Coſin in his book intitled, An Apology, &c. cap. 13.

To conclude: This branch of 2. Ed. 6. giveth no life to any forreigne Canon, which is againſt any law or cuſtome of the Realme, but, according to the law and cuſtome of this Kingdome prohibiteth the Ordinary in caſe of perſonall tithes to examine the party upon his corporall oath; for the Parliament did take that to be no lawfull and reaſonable meanes (whereof it ſpeaketh); for a Parliament would never have prohibited any thing that was lawfull and reaſonable; and yet the cleare gains of Merchants, Clothiers, or Handicraft men do lye in great ſecrecie, and hardly to be proved by witneſſes. And before, in the clauſe concerning the ſecond Addition, for recovery of predial tithes, it is ſaid; Upon due proofe thereof, made before the Spirituall Judge, &c. for that they are open, viſible, and eaſie to be proved by witneſſes: and at this time the ſtatute of 2. H. 4. ſtood repealed.

L. 18. F. de pœna. Cogitationis pœnam nemo meretur.

No perſon Eccleſiaſticall or Temporall ought in any Eccleſiaſticall Court to be examined upon the cogitation of his heart, or what hee thinketh, &c. as it was holden by the Judges in the Parliament holden 4 Jac. and as it was after holden in the Court of Common Pleas, Mich. 6. Jac. in Doctor Wolſtons caſe in a prohibition.

The 7. Addition.

Provided, &c. that all and every perſon and perſons, which by the lawes or cuſtomes of this Realme ought to make or pay their offerings, ſhall yearly from henceforth well and truly content and pay his or their offerings to the Parſon, &c. of the Pariſh or Pariſhes, where it ſhall fortune or happen him or them to dwell or abide, &c.

¶ Offerings.]

¶ Offerings.] Offerings or oblations, oblationes, these are of two sorts, viz. free or voluntary, and consuet; or by custome, as here it appeareth. Offerings and obventions are in London the profits of the Church, and not in coin, or other manner.

A writ of right of Advowson brought of the fourth part of the tithes and offerings of the Church of Saint Dunstan in the West in Fleetstreet London, and adjudged to be good. 30.E.3.1. in account.

See lib.11.fol.16. Doctor Grants case. Vid. there for obventions, 38.E.3.13. & 16.E.3. ubi sup. and see here the 10. Addition. Vid. the next Addition. 38.E.3.13. per Finch.acc'. 16.E.3. quare Imped.147.

Provided, &c. That this Act, or any thing therein contained, shall not extend to any Parish, which stands upon and towards the Sea coasts, the commodities, and occupying whereof consisteth chiefly in fishing, and have by reason thereof used to satisfie their tithes by fish, but that all and every such Parish and Parishes shall hereafter pay their tithes, according to the laudable customes, as they have heretofore of ancient time within these 40. yeares used and accustomed, and shall pay these offerings, as is aforesaid. The 8. Addition.

Provided that this Act, &c. shall not extend in any wise to the inhabitants of the Citie of London and Canterbury, and the Suburbs of the same, ne to any other towne or place, that hath used to pay their tithes by their houses, otherwise then they ought or should have done before the making of this Act, any thing in this Act to the contrary in any wise notwithstanding. The 9. Addition.

Mich. 5. Jac. in communi banco, between John Skidmore and Robert Eire Plaintifes in a prohibition against John Bell Parson of Saint Michael Queenhithe in London: The case upon the said statute of 37.H.8. and the decree thereupon was this: The said Parson libelled before the Chancellor of London for the tithes of an house, called the Boares head in Breadstreet in the said Parish, by force of the said Act and Decree, the ancient farme rent whereof was five pounds, at the time of the said Decree, and after, and that of late a new Lease was made of the said house, rendring the rent of five pounds per annum, and over that a great income or fine, which was covenanted and agreed to be paid yearly at the same day; that the rent was paid as a summe in grosse, and that so much rent might have been reserved for the said house, as the rent reserved, and the summe in grosse amounted unto; which reservation and covenant, &c. were made to defraud the said Parson of the tithes of the true rent of the said house, which to him did appertaine by the purport and true intention of the said Decree. And in this case foure points were resolved by the whole Court.

First, if so much rent be reserved as was accustomed to be paid at the making of the said Decree in 37.H.8. (whatsoever fine or income be paid) that the Parson can averre no covin; for the words of the Decree be: Where any Lease is or shall be made of any dwelling house, &c. by fraud or covin in reserving lesse rent then hath been accustomed, or is paid, &c. So as if the accustomed rent be reserved, no fraud can be alledged; for the fraud by the Decree is, when lesser rent then was then accustomed to be paid, is reserved; or if no rent at all be reserved, &c. for then tithe shall be paid according to the rent, that then was last before reserved to be paid. The words of the Decree are: Or that any Lease shall be made without any rent reserved upon the same by reason of any fine or income, then the Fermor shall pay for his tithes after the rate aforesaid, according to the quantity of such rent, as the house was lastly letten for, without fraud or covin, before the making of such Lease. So as the Decree consisteth upon foure points, viz. First, where the accustomed rent, &c. was reserved.

Secondly, where the rent was increased, there the tithes should be paid according to the whole rent. Thirdly, where lesser rent was reserved. Fourthly, where no rent was reserved, but had been formerly reserved. And this Act and Decree were very beneficiall for the Clergy of London, in respect of that which they had before: And the Defendant in his libell confesseth, that the accustomed rent &c. was reserved: and therefore no cause of suit.

Secondly, it was resolved, that such houses as were never letten to farme, but inhabited by the owner, this is casus omissus, and shall pay no tithes by force of the Decree.

Thirdly, it was resolved, that where the Decree saith, Where no rent is reserved by reason of any fine or in-come paid before-hand, albeit no fine or in-come be paid in that case, yet if no rent be reserved, the Parson shall have his tithes according to the Decree. for that is put but for an example or cause, why no rent is reserved, and whether any fine or in-come were paid, or no, is not materiall, as to the Parson.

Fourthly, it was resolved, that the Parson could not sue for the said tithes in the Ecclesiasticall Court, for that the Act and Decree that ratified and gave these kind of tithes, did limit and appoint how, and before whom the same should be shewed for, viz. That if a controversie were moved in the City for not payment of those tithes, or concerning the true rent or tithes, that then upon complaint made by the party grieved to the Lord Maior of London, hee by advice of his assistants should make a finall end, with costs to be awarded by his discretion. And if the Maior doth not make an end of it within two moneths, or if any of the parties find themselves grieved, that then the Lord Chancellor within three moneths shall make an end thereof with costs, according to the true intention of the said Decree: therefore as the Decree gave a new and speciall kind of tithings; so it did appoint new and speciall Judges to heare and determine the same. And in the end it was awarded, that the prohibition should stand. Vid. for tithes in London, 27.H.8.cap.20. & 32.H.8.cap.7.

See lib.5.fo.73. the case of Orphanage, in London.

The 10. Addition.

And be it further enacted, &c. that if any person do substract or withdraw any manner of tithes, obventions, profits, commodities, or other duties before mentioned, or any part of them, contrary to the true meaning of this Act, or of any other Act heretofore made, that then the party so substracting or withdrawing the same, may or shall be convented and sued in the Kings Ecclesiasticall Court by the party from whom the same shall be substracted or withdrawne, to the intent the Kings Judge Ecclesiasticall shall and may then and there heare and determine the same, according to the Kings Ecclesiasticall lawes. And that it shall not be lawfull unto the Parson, Vicar, Proprietorie, Owner, or other their Fermors or Deputies, contrary to this Act to convent or sue such with-holder of tithes, obventions, or other duties aforesaid, before any other Judge then Ecclesiasticall. And if any Archbishop, Bishop, Chancellor, or other Judge Ecclesiasticall give any sentence in the aforesaid causes of tithes, &c. and (no appeale ne prohibition hanging) & the party condemned do not obey the said sentence; that then it shall be lawfull for every such Judge Ecclesiasticall to excommunicate the said party so, as aforesaid, condemned & disobeying: In the which sentence of excommunication, if the said party excommunicate, wilfully stand and endure still excommunicate by the space of 40. daies next after, upon denunciation, and publication thereof in the Parish Church, or the place or Parish, where the party so excommunicate is dwelling, or most abiding, the said Judge Ecclesiasticall may then at his pleasure signifie unto the King into his Court of Chancery of the state

ſtate and condition of the ſaid party ſo excommunicate, and thereupon to require proceſſe *de excommunicato capiendo*, to be awarded againſt every ſuch perſon as hath been ſo excommunicate.

¶ Obventions.] Obventions aforeſaid are offerings.

That the juriſdiction of tithes belong to the Eccleſiaſticall Court, it appeareth by the Acts of Parliament, viz. of Circumſpecte agatis, an. 13. E. 1. Artic' Cleri anno 9. E. 2. 18. E. 3. cap. 7. 1. R. 2. cap. 13. 27. H. 8. cap. 20. 32. H. 8. cap. 7. and this Act.

Of ancient they were determined in the Sheriffes Turne, as it appeareth in lib. rubeo inter leges H. 1. cap. 8. After by Scire fac' at the common Law before the ſtatute of 18. E. 3. Vid. Rot. clauſ. 21. H. 3. m. 3. & Rot. Eſchaet' 8. E. 1 nu. 67. Regiſt. fol. 165. a writ of covenant to levie a fine de decimis garbarum, &c. 38. H. 6 20. F. N. B. 30. e. f. 4. E. 3. 27, 29. 7. E. 3. fol. 5. per Parning. 8. E. 3. 49. Bracton, lib. 5. fol. 401. Britton, cap 4. fol. 11. omitted tithes, &c. Fleta, lib. 6. cap. 36. 28. E. 3. 97.

Vid. Mich 7. E. 1. coram Rege, rot. 21.

At this day a writ of right of Advowſon lyeth de advocatione decimarum Eccleſiæ, &c. for the tithe is the profit of the Church; and if the tithes be taken away, the advowſon is of none effect, and the eſples in a writ of right of advowſon (which is the fruit of the Advowſon) are alledged in the Parſon, in taking of the great and ſmall tithes by the preſentment of the Patron. See 16. Ed. 3. tit. Quare Imped. 147. 30. E. 3. fol. 1. 38. E. 3. 13. 45. E. 3. 12. Brit. cap. 4. and the writ of Indicavit, whereof you may reade at large before in the expoſition of the ſtatute of W. 2. cap. 5.

4. E. 3. 27. per Shard & per Stoner, &c. 26. H. 8. 3. F. N. B. 30. c. F. N. B. 30. c. Vet. N. B. 31. 4. E. 3. 27. 8. E. 3. 49. 31. H. 6. 16. 12. E. 4. 13. 13. H. 7. 16. 31. H. 8. prohib. 17.

This 10. Addition for the eſtabliſhment of Eccleſiaſticall juriſdiction for tithes was made, but by the generality thereof which obſerves well, it ſhould have been doubted, whether the writ of right of advowſon of tithes, and of Indicavit had been taken away: but to cleare the doubt, there is hereafter a ſpeciall proviſion therefore, as hereafter ſhall be ſhewed. See the 12. Addition.

¶ Proceſſe de excommunicato capiendo.] See the ſtatute of 5. Eliz. cap. 23. for divers notable things concerning this matter; but none of the penalties of that ſtatute doe extend to the proceeding upon cauſe of tithes, but onely upon nine cauſes belonging to Eccleſiaſticall juriſdiction particularly expreſſed in that Act.

The 11. Addition.

Be it further enacted, &c. that if any party at any time hereafter, for any matter or cauſe before rehearſed, limited, or appointed by this Act to be ſued or determined in the Kings Eccleſiaſticall Court, or before the Eccleſiaſticall Judge, doe ſue for any prohibition in any of the Kings Courts, where prohibitions before this time have been uſed to be granted: that then in every ſuch caſe the ſame party, before any prohibition ſhall be granted to him or them, ſhall bring and deliver to the hands of ſome of the Juſtices or Judges of the ſame Court, where ſuch party demanded prohibition, the very true copy of the libell depending in the Eccleſiaſticall Court concerning the matter, wherefore the partie demandeth prohibition, ſubſcribed, or marked with the hand of the ſame party; and under the copy of the ſaid libell ſhall be written the ſuggeſtion, wherefore the party ſo demandeth the ſaid prohibition. And in caſe the ſaid ſuggeſtion by two honeſt and ſufficient witneſſes at the leaſt, be not proved true in the Court where the ſaid prohibition ſhall be ſo granted within 6. moneths next following after the ſaid prohibition ſhalbe ſo granted & awarded, that then the party that is letted or

or hindered of his or their ſuit in the Eccleſiaſticall Court by ſuch prohibition, ſhall upon his or their requeſt and ſuit, without delay, have a conſultation granted in the ſame caſe in the Court, where the ſaid prohibition was granted, and ſhall alſo recover double coſts and damages againſt the party that ſo purſued the ſaid prohibition, the ſaid coſts and damages to be aſſigned or aſſeſſed by the Court, where the ſaid conſultation ſhall be ſo granted; for which coſts and damages the party to whom they ſhall be awarded may have an action of debt by bill, plaint, or information in any of the Kings Courts of record, wherein the Defendant ſhall not wage his or their law, nor have any eſſoine or protection allowed or admitted.

¶ Rehearſed.] This word is very materiall, for this additionall Act of 2. E. 6. extendeth onely to prediall and perſonall tithes; but in as much as this Act doth rehearſe the ſtatutes of 27. H. 8. cap. 20. and 32. H. 8. cap. 7. both which ſtatutes extend unto all kind of tithes, viz. prediall, perſonall, and mixt, and to offerings alſo; therefore this branch extendeth to them all. And it is to be obſerved, that this branch reſpecteth the cauſe of ſuit, viz. for tithes or offerings, and not the cauſe of the prohibition. Vid. Dyer 2. Eliz. fol. 170.

¶ And in caſe the ſaid ſuggeſtion, &c. be not proved true in the Court, &c.] This clauſe was made in favour of the Clergy for proofs by witneſſes, which they had not at the common Law.

If the ſuggeſtion be in the negative, as if the proprietary of a Parſonage impropriate ſue for tithes, and the cauſe of the ſuggeſtion be, that the Parſonage is not impropriate; or if the Parſon of Dale ſue for tithes of lands in that Parith, and the party ſue a prohibition, for that the land lieth not in that Parith, or that the Parſon that ſueth for tithes was not inducted, &c. or any the like cauſe in the negative of any matter of fact, hee ſhall not produce any witneſſe by force of this branch, becauſe a negative cannot be proved: and therefore a prohibition upon cauſes in the negative remaines at the common Law.

If a man plead a deed in barre, wherein witneſſes be, and iſſue is joyned, non eſt factum, and proceſſe is awarded againſt the witneſſes, who are joyned in the Jury, and it is found non eſt factum, notwithſtanding this joynder, the party grieved ſhall have an attaint; for it is a maxime in law, That witneſſes cannot teſtifie in the negative, but in the affirmative: otherwiſe it is, if they found it to be the deed of the party in the affirmative, there no attaint doth lye. Vid. 11. aſſ. p. 19. 22. aſſ. p. 15. 23. aſſ. p. 11. 40. aſſ. p. 23. 12. H. 6. 6. F. N. B 106 h. So it is, if the ſuggeſtion be grounded upon any matter in law, for that the ſuit for tithes in that kind are not due by law. As if the libell be in the Eccleſiaſticall Court, for the tithe of tiles, turfes, or the like, there need no witneſſes to be produced; for that matters in law are to be decided by the Judges, and not to be proved by witneſſes: and quod conſtat Curiæ, opere teſtium non indiget, and the cauſe of this prohibition, or the like, appeareth in the libell it ſelfe. See before Artic' Cleri 3. Regis Jacobi, Artic' 18.

A proviſo touching the 11. Addition.

Provided alwaies, and be it enacted by the authority aforeſaid, that this Act, or any thing therein contained, ſhall not extend to give any Miniſter or Judge Eccleſiaſticall any juriſdiction to hold plea of any matter, cauſe, or thing, being contrary or repugnant to, or againſt the effect, intent, or meaning of the Statute of *Weſt.* 2. the fifth Chapter, the Statutes of *Articuli Cleri*, *Circumſpecte agatis*, *Sylva cædua*, the Treatiſe *de regia prohibitione*, ne againſt the Statute of *Anno primo Edwardi tertii* the tenth Chapter, or any of them, ne yet hold plea in any matter,

ter, whereof the Kings Court of right ought to have jurisdiction: any thing therein contained to the contrary in any wise notwithstanding.

¶ Statute of W.2.cap.5.] Hereby, if need were, the writ of Indicavit, and the writ of right of the fourth part of tithes, and all dependances thereupon are saved. See before in the exposition of this Act of W.2.cap.5. anno 13.E.1.

¶ Articuli Cleri.] These Articles were established by Act of Parliament anno 9.E.2. See before in the exposition upon these Articles. By this Act also cap.2. the writs of Indicavit, and of right of advowson of tithes are saved.

¶ Circumspecte agatis.] This Act is (as here it appeareth) a Statute, and enacted anno 13.E.1. See before the exposition hereof. 10.H.4.1.b.

¶ Silva cædua.] Here is intended the Statute of 45.E.3.cap.3. concerning tithes de Silva cædua, and not of great wood above 20. yeares growth.

¶ The Treatise de regia prohibitione.] Herein some difference is in our Bookes; for in Hill.7.H.4. it is said, that the Statute de Regia prohibitione doth rehearse how per venditiones spirituales fiunt temporales, which clause is in Artic' Cleri, cap.1. in fine. Also in 31.H.6. it is said, that the Statute de Regia prohibitione, and recite the effect of the second Chapter of Artic' Cleri. So as by these Bookes the Statute de Regia prohibitione is the Statute of Artic' Cleri: but it cannot be so conceived in this Act, because herein they are distinguished as two severall Statutes, and so in truth in the intendment of this Act they are: and the Treatise de regia prohibitione intended by this Act is that Treatise de regia prohibitione, intitled Prohibitio formata super Artic'. Vide Vet.Mag.Chart.part 2.fol.7. Rastall abridg.Stat.tit.prohib.pl.6. Hill.7.H.4.pl.2. 31.H.6.13,14.

¶ Statute of 1.E.3.cap.10.] This is mis-printed; for the Act is 1.E.3. stat.2.cap.11. that if any suit be in the Spirituall Court against inditers, a prohibition doth lye. This Act is in affirmance of the common Law. Vide Regist. fol.39.lib.intr.R 447.b. tit.Defamation. 21.E.3.29.2. Concerning lay fee, &c. this is affirmed to be a Statute.

¶ Ne yet hold plea in any matter where the Kings Court of right ought to have jurisdiction.] So provident the makers of this Statute were to keep both jurisdictions within their proper bounds, a great meanes to make both Church and Common-wealth flourish. And this is a large and a generall saving of the jurisdiction of the Kings Courts of the common law.

Provided nevertheless, where heretofore such a custome hath been in many parts of Wales, that of such cattell and other goods as have been given with marriage of any person, there tithes have been exacted and levied by the Parsons and Curats in those parts; which custome being dissonant from any part of this Realme, as it seemeth, when the country of Wales was through civill dissention unculted for want of other sufficient profits, that might otherwise grow to the Curats and Ministers there, to have been for that time tolerable; so now the countrie being now well manured and husbanded, and the tithe is duly paid there of corne, hay, wooll, and cheese, and of other increase of all manner of cattell, as it is commonly in all other parts of this Realm, the same custome seemes to be grievous and unreasonable, specially where the Benefices are else sufficient for the finding of the said Ministers and Curats: that it be therefore enacted by the authority aforesaid, that The 13. and last Addition.

that from and after the first day of May next coming no such tithes of marriage goods be exacted or required of any person within the said dominion of Wales, or Marches of the same: any thing in this Act contained, or any other Act, Custome, Prescription had or made to the contrary hereof notwithstanding.

¶ To have been for that time tolerable.] Here is first to be noted, that a custome once reasonable and tolerable, if after it become grievous, and not answerable to the reason, whereupon it was grounded, yet is to be (as here it appeareth) taken away by Act of Parliament; for an inheritance once fixed cannot be taken away, but by Parliament. Secondly, here is to be noted, that by custome a Parson, &c. may have tithes of such things, as are not tithable of common right.

The

An Expoſition upon the Statute of 1. *H.5. Cap.5.* of Additions.

ORdeines eſt & eſtablies, que en cheſcun briefe originall des actions perſonels, appeales, & indictments, & en queux exigends ſerr' agard', que aux noſmes des Defendants en tiels briefes originals, appeales, & indictments ſoient faits addition de lour eſtate, ou degree, ou de meſtier, & les villes ou hamlets, lieux, & les counties de queux ils fueront ou ſont, ou en queux ils ſont ou fueront converſantes. Et ſi per proces ſur les dits briefes originals, appeales, ou indictments, en queux les dits Additions ſoient enterleſſes aſcuns utlagaries ſoient pronouncies, que ils ſoient voides, irrites, & tenus pur nul. Et que avant les utlagaries pronouncies les dits briefes & endictments ſoient abatus per exception du partie, per la ou en icell' les dits Additions ſoient enterleſſes. Purview touts foits, que meſq; les dits briefes dactions perſonels ne ſoient accordants as recordes, & faits per le ſurpluſage de Additions ſuiſdits, que pur cel cauſe ils ne ſoient abatus. Et que les Clerkes del Chancellarie, ſouth que noſmes tiels briefes iſſeront eſcriptes ne enterleſſent, ne facent omiſsion des dits Additions, come deſuis eſt dit, ſur peine deſtre punis, & faire fine al Roy per diſcretion de le Chancellor. Et commencera ceſt ordinance a tener lieu al ſuit de partie, de la Feaſt de Saint Michael prochein enſuant.

We ſhall, in expounding the words of this Act, ſhew what was the common law before the making hereof.

¶ En briefe originall.] Though it be in writ originall, yet if the plea be not holden upon the originall, this Act extendeth not to it; as in a Recordare to remove a plaint of Replevin into the Common place, becauſe the plea is holden upon the plaint, this Act extends not to it. * So in a returne of Reſcous, though there lyeth proceſſe of outlawry, yet this Statute extends not to it, becauſe this Act ſpeaketh only of writs originall. 3.H.6.30. 14.H.6.21. 35.H.6.30 10.E.4.16.2. 18.E.4.9. * 10.E.4.16. 10.H.7.21. 13.H.7.21.

¶ Des perſonels actions, &c. en queux exigends ſerr' agard'.] In an aſſiſe of Novel diſſeiſin, if the Diſſeiſin be found with force and armes, a Capias pro fine and exigent doe lye for the King: yet the Defendant ſhall have no addition within this Statute, for that the originall writ is in the realty, and this Act extendeth onely to perſonall actions. 9.aſſ.pl.1. 9.E.3.aſſ.449. 7.H.4.39.

¶ Aux noſmes des Defendants.] * Regularly by the common Law every naturall man, having no name of dignity, ought to be named in all originalls, and other ſuits by his Chriſtian name and ſirname, and that before this * 17.E.3.44.b. 11.H.6.11. in maintenance. 27.H.6.3. 10.E.4.16. 10.E 4.12 35.H.6.12.

Act ſutſiſed; but if he had a name of inferiour dignity (as Knight, or Banneret) he ought to be named by his Chriſtian name and ſirname, and by the addition of his name of dignity by the common Law, which is implyed in theſe words: Aux noſmes des Defendants.

27.H.6.9. 10.H.6.1. 7.E.4.bre. 163. 18.E.4.21. 8.E.3.247. 24.E.3.31. 39.E.3.17. 35.H.6.12. 32.E.3.bre. 291. 32.H.6.28,29. * 12.E.4.10. 18.E.4.9. 21.E.4.158.

If there be a Corporation of one ſole perſon that hath a fee-ſimple, and may have a writ of right, he may be named in originals, &c. by the common Law by his Chriſtian name, without any ſirname; for the name of his Corporation is in lieu of his ſirname (ſome ſay both Chriſtian name and ſirname) as John Abbot of D. &c. John Biſhop of N. but otherwiſe it is of a Parſon: for hee muſt be named by his Chriſtian name and ſirname.

* If it be a Corporation aggregate of many able perſons; as Maior and Comminalty, Dean and Chapter, Maſter of an Hoſpital and Confreres, &c. the Maior, Deane, or Maſter need not be named by his Chriſtian name, becauſe that ſuch a Corporation ſtandeth in lieu both of the Chriſtian name and ſirname.

2.H.6.29. 7.E.3.26. 25.E.3.39,40. 7.E.4.bre.163. 5.E.3.28.99. 22.aſſ.24.

If a man be created by Letters Patents Duke, Marqueſſe, Earle, Viſcount, or Baron, the dignity is ſo incorporated to him, according to the ſtate given unto him by thoſe Letters Patents, as the Duke, &c. by the common Law might be named by his Chriſtian name, and by the name of his dignity, which ſtandeth in lieu of his ſirname: as Præcipe Johanni Duci Lancaſtriæ. And the reaſon thereof is, for that the King by thoſe Letters Patents creates him to the ſtate, honour, and degree of Duke, & imponit ei ſtilum & titulum Ducis Lanc' &c. habend' &c. et ſic in ſimilibus. And albeit a creation by writ hath not the ſame words, yet it hath the ſame effect.

Nota, Nobility in a manner incorporated.

And it is to be obſerved, that ſurnoſme is derived of ſur (id eſt) ſuper, and noſme (that is) nomen, quaſi ſuper nomen, becauſe it is ſuperadded to the Chriſtian name, which legally is prænomen, in Latine cognomen, quia conjunctum nomen.

¶ Soient faits addition de lour eſtate, ou degree, ou de meſtier.] Eſtate, Status à ſtando, the condition wherein any ſubject ſtandeth. Degree, Gradus à gradiendo, the degree wherein any ſubject ſtandeth. So as in legall underſtanding theſe two words are of * one ſignification, and doe extend to perſons of nobility, of dignity, and under the degree of nobility and dignity; as Yeoman, &c. and doe extend as well to the Clergy as to the Temporalty, and to graduates and degrees in Univerſities in any kind of profeſſion.

* 37.E.3.cap.8. 22.E.4.cap.1. 8.E.4.cap.2. 13.R.2.ſtat.2. cap.1.

22.E.4.cap.1. 37.E.3.cap.10.

Eſtate of a Lord, 3.E.4.cap.5.ſæpe.

Under the eſtate of a Knight, & cap.14. of the eſtate of Carriers, Plowmen, &c. and the eſtate of a Groome attending to husbandry, cap.13. degree and eſtate of Clerkes.

3.E.4.cap.5. 16.R.2.cap.4. 20.R.2.cap.2. 24.H.8.cap.13. 8.Eliz cap.11.

Degrees applied to all, as well women as men.

No Yeoman, nor lower eſtate then an Eſquire.

Under the degree of a Knight or Lords ſon.

Under the degree of a Barons ſon, or Knight.

So as in legall underſtanding, ſtatus and gradus ſunt ſynonyma. And ſo in the ancient writ of the call of a Serjeant, * ad ſtatum & gradum ſervientis ad legem.

* Forteſc.ca.50. 14.H.6.15.Britt. Addition 44.

The eſtates and degrees againſt whom originall writs may be brought, are the Queen, Conſort of the King, the Prince of Wales, Dukes, * Marqueſſes, Earles, Viſcounts, and Barons. Theſe are of the greater Nobility.

* Marchiones. 26.H.6.bre.100.

Knights of Saint George, Knights Bannerets, Knights of the Bathe, Knights of the Chamber, [b] milites cameræ, Knights Batchelors, Baronets, Eſquires, Gentlemen. Theſe are of the leſſer Nobility.

b Rot.pat.29.E 3 part 1.m.29.

Cives, Burgenſes, and Yeomen, which are of the loweſt eſtates or degrees.

Armigeri, Scutiferi, unde Scutagium, Generoſi.

There is another diviſion made in our * Books of leſſer Nobility, viz. ſome be names of dignities, as all the Knights aboveſaid, and Baronets; and ſome of worſhip, as Eſquires and Gentlemen.

* 14.H.6.14. Camb.Brit.p.24.

Baronets were firſt raiſed and created by King James, of an eſtate to them and

and the heires males of their bodies: and where in some * Statutes and Records Baronets are named, it is vitium impressoris, seu scriptoris, and should be Bannerets, who were not of inheritance, for that they were Knights, which dignity was not descendable, nor yet is. Bannerets rightly named. Rot. Parl. 46.E.3.nu.10. 50.E.3.nu.40. 1.H.4.nu.53.&c. In Letters Patents, Rot. Pat. anno 13.E.3.m.13. Will. de la Pool statum & honorem Baneretti, part 2. 15.E.3. m.22,23. & Rot. Pat. anno 7.R.2. 8.Octab' Thomas Camois Banerettus, &c. 22.E.3.fol.18. a Banner, quia nomen habet à vexillo, of the Banner, &c. Corruptly Baronet, in 35.H.6.46. for Baron. But let us proceed to some more profitable matter.

* Rot.Parl. 2.R.2.nu.13,14. 13.R.2.stat.2. cap.1. 14.R.2.cap.11. 16.R.2.cap.6.

Vid.Camd.ubi sup.

There have been within this Realme since the Conquest divers names of dignities, which are growne to disuse, and in a manner lost: as, Vicedomini, Vidams. Vavasores, viri (as Bracton saith) magnæ dignitatis. Vavasor enim nihil melius dici poterit, quam vas fortitum ad valetudinem: unde Vavasoria in divers ancient Records. Camden Brit.123. Vavasores sive valvasores proxime post Barones locum olim tenuerunt. See Chaucer our English Poet in the Franklyns Prologue.

Lib.rubr 8. Bract.lib.1.cap.8

Some doe hold, that it had been more fit to have revived some of the ancient dignities, then to have created any of a new invention.

We have spoken of all the names of Dignity, let us now speake of the names of Worship.

Esquier, Armiger, Scutifer, &c.] In legall understanding he is derived ab armis, quæ in clypeis Gentiliciis honoris insignia gestant. In Spanish Escudero, ab escudo, id est, scuto.

In this sense, as a name of estate and degree, it was used in divers Acts of Parliament before the making of this Act, and after this Act also. Et Rot. Parl.an.1.E.4. John Lord Audeley, an ancient and a noble Baron, was named Johannes Audeley Armiger, for that all the rest of the Barons that appeared at that Parliament were Knights; and all Dukes, Marquesses, Earles, Viscounts, and Barons of other Nations, or which are not Lords of the Parliaments of England, are named Armigeri, if they be no Knights; and if Knights, then are they named Milites.

37.E.3.cap.10. 1.R.2.ca.7.16.R. 2.ca.4. 20.R.2. ca.2. 7.H.4.7. 28.H.6.8. 32.H. 6.28,29. * 3.E.4.cap.5. Rot.Parl.anno 1.E.4.

The sonnes of all the Peeres and Lords of Parliament in the life of their fathers, are in law Esquires, and so to be named. By this Statute the eldest son of a Knight is an Esquire.

¶ Gentleman, Generosus, Gentill home.] This is also a good addition. And every Gentleman must bear arma gentilitia, and the best tryall of a Gentleman in blood (which is the lowest degree of Nobility) is by bearing of armes. For as in ancient time the Statues or Images of their ancestors were prooves of their Nobility, which was a solemne and honourable, but yet a cumbersome tryall, whereof, and how in time they decayed, the Poet speaketh,

See before Stat. de Militibus, anno 1.E.2.

Stemmata quid faciunt? quid prodest Pontice longo
Sanguine censeri, pictosque ostendere vultus
Majorum, & stantes in curribus Æmylianos,
Et Curios jam dimidios, nasumque minorem
Corvini, & Galbam auriculis nasoque carentem? &c.
Tota licet veteres exornent undique ceræ
Atria: nobilitas sola est atque unica virtus.

Juvenal. sat.8.

Flavia gens obscura quidem, & sine imaginibus
Nobiles sunt qui imagines generis sui proferre possunt.

Cicero.
Cicero.

So of later times Coat-armes came in lieu of those Statues or Images, & are the most certaine prooves & evidence of Nobility & Gentry. So as in these dates the rule is, Nobiles sunt qui insignia Gentilicia generis sui proferre possunt.

There is small difference between an Esquire and a Gentleman; for every Esquire is a Gentleman, and every Gentleman is arma gerens.

And Generosus and Generosa are good additions: and if a Gentlewoman be named Spinster in any originall writ, &c. appeale, or indictment, she may abate and quash the same; for she hath as good right to that addition, as Baroness, Viscountesse, Marchionesse or Dutchesse have to theirs.

21. E. 4. 15. Lib. int. Rast. 108 10. E. 4 16. 28. H. 6. 3, 4. 7. E. 6. Dyer fo. 88 lib. int. fol. 107. nu. 9. de gradu hominis generosi, & non de gradu hominis vocat' a Yeoman.

[a] A man may have an addition of Gentleman within this Statute, if hee be a Gentleman by office (though he be not by birth) as many of the Kings houshold, and of other Lords, be; and * Clerkes, being officers in the Kings Courts of record: and if they be out of their office, they are but Yeomen; and yet as long as they continue in their office, they ought to be named Gentlemen, as their due addition.

a 28. H. 6. fo. 4. a. 5 E. 4. 33. acc' 14 H. 6. 15. * 20. H. 6. 30. b.

A Gentleman by [b] reputation, that is, neither gentle by birth, nor by office, nor by creation, but commonly called Gentleman, and knowne by that name, is a sufficient addition within this Act. And so was it adiudged in [c] Caters case, Hill. 25. Eliz. in communi banco, but if he be named Yeoman, hee cannot abate the writ.

b Reputatio est vulgaris opinio, ubi non est veritas.

c Lib. 6. fol. 67. Hill. 25. Eliz. in communi banco, Caters case. Lib. int. R. fo. 107 nu. 8. Vid. lib. int. fol. 107. nu. 7. a fellow of Clements Inne, &c.

A French Knight challenged [d] John Kingston Yeoman, the Kings subject, at certaine points and deeds of armes, &c. unde Rex (saith the Record) ut dictus Johannes honorabilius in præmissis accipiatur, ipsum Johannem in ordinem * Generosorum adoptavit, & Armigerum constituit, & cætera honoris insignia concessit. And such a Gentleman or Esquire so created, is an addition within this Statute.

d Rot. pat. 13. R. 2 part 1. * Note, the creation of a Gentleman.

[e] Since the making of this Statute, Esquire and Gentleman were more frequently by force of this Act used, as additions in originalls, &c. and afterwards here commonly used in deeds and other specialties. * He that hath taken any degree in either Universitie, may be named by that degree without question, being within the direct letter and meaning of this Act; and if he hath taken any degree in Divinity, he may have the addition of Clerke.

e 21. H. 6. brc. 89. 28. H. 6. 8. 7. H. 4. 7. 16. H. 6. 28. * 35. H. 6. 55. b.

[f] ¶ Yeoman *or* Yeman.] This is a Saxon word geuen gemen, the Giuing turned in common speech (as is vsuall in like cases) into a Y. In a legall understanding a Yeoman is a free-holder, that may dispend 40. shillings, anciently 5. nobles per annum: And he is called probus & legalis homo.

f Lib. 6. fol. 67.

g See the first part of the Institutes, sect. 464. 2 H. 5. cap 3. See the first part of the Institutes, sect. 95.

And as of ancient time the [h] Gentleman held per servitium Scuti, by Knights-service, so the Yeoman held per servitium Socæ, by Socage. Of this degree see Fortescue, cap. 25. & 29.

h Forteſc. ca. 25. & cap. 29.

[i] This degree is a good addition within this Statute, and is applyed onely to the man, and not to the woman.

i 10. E. 4. 16. 1. H. 4. cap. 7. 2. H. 4. cap. 21.

We have omitted * Citizens and Burgesses (albeit they are such as are called to Parliament) yet because they are no sufficient additions (being too generall) within this Act, we have omitted them.

* 27. H. 6. 4. 4. E. 4. 10. 5. E. 4. 142. 1. H. 5. 3. 35. H. 6. 12.

[k] ¶ Mistier.] i. ars, seu artificium, Latinè dicitur, Mysterium, Anglicè Mysterie. Mistier derivatur à maistre, Latinè Magisterium, because no man ought to exercise it, but he that is a master of it. Mistier is a large word, and includeth all lawfull arts, trades, and occupations, as Taylor, Merchant, Mercer, Husbandman, Labourer, and the like. But [l] Servant, Groome, or Feruor are no additions within this Act, because they are not of any mysterie. And [m] Chamberer, Butler, Pantler, or the like, are additions of offices, and not of any mysterie or occupation.

k 22. E. 4. 1. 2. R 3. 2. 9. H. 6. 65. 35. H. 6. 55. 4. H. 6. 26. 5. E. 4. 33. 3 H. 6, 31. 11. H. 6 11.

Neither doth this Act extend to unlawfull practices, as Extortioner, Maintainer, Abetter, Hereticke, &c.

l 7. E. 4. 10. 9. E. 4. 50. 28. H. 6. 4.

Trade dicitur à tradendo, quia tradit nobis necessaria: The Saxon word is Cpæpu. Cræft, hodie Craft, id est, Trade.

m 5. E. 4. 32.

If a man have divers arts, trades, or occupations, he may be named by any of them: but if a Gentleman by birth be a Mercer (as many younger sonnes of Gentlemen

14 H. 6. 15. 5. E. 4. 33.

Gentlemen be bound prentices to arts and trades in London, and elsewhere) if he in an original, &c. be named Mercer, or of any other trade, whereof hee is in truth, he may abate the writ, &c. for he ought to be named by the degree of a Gentleman, because it is worthier then the addition of any mysterie.

And so it is, if one man be a Duke, a Marquesse, Earle, Viscount, and Baron, all these dignities stand distinctly in him, and the greater driveth not the lesser, yet shall hee be named in original writs, &c. by the worthier dignity, viz. by the name of a Duke onely within this Act. 27 H.6 4. 4.E. 4.10. 5.E.4.142 35.H.6.12.

Having diligently observed the order of this Act, we find, that in some cases the order thereof is observed, and in others not. In appeales and inditements of treason or felony, &c. against the greater Nobility, as Dukes, Marquesses, the order of the Statute is pursued, viz. For, 1. the estate and degree (for example) of a Duke, &c. is named, and after the Towne and County. Edwardus Dux Buckingham nuper de N. in com' Glouc'. And so it is when one is named of a Citie, which is a County of it selfe, the like order is observed: as J. S. pannarius de London in com' Civitatis London.

But in case of the lesser Nobility, and all other under them, the Towne and County are named before the addition: as, Th. C. nuper de D. in com' M. miles. Jo. C. nuper de D. in com' M. Armiger. N. C. nuper de D. in com' M. Merchant, &c.

¶ Et les Villes, ou Hamlets, ou Lieus, & les Counties.] Villes. For these see the first part of the Institutes, sect. 171. And if there be D. major, and D. minor, and not D. tantum, he cannot be named of D. for there is no such Towne. 7.H.6.39. 22.H. 6.29. 21.E.4.51

¶ Hamlets.] See the first part of the Institutes, ubi sup. And it is at the election of the party to name him of the Hamlet or Towne.

¶ Lieus.] These be understood of places knowne out of any Towne or Hamlet. 14.H.6.24. 35.H.6.30. 21.Ed.4.89. 4.E.3.129. 19.Ed.3.bre.467. 7.H.6.24,37. 20.H.6.30. 7.H.4.27. 17.E.3.56. 43.E.3.5.

By the ancient common Law of England, secundum antiquam consuetudinem dici poterit de familia alicujus, qui hospitatus fuerit cum alio per tres noctes, & vocatur Hoghenehyne. Bract.lib.3. fol. 124.b. 19.H.6. 1

¶ Counties.] See the first part of the Institutes, sect 61. & 248.

But seeing that ancient Boroughes were first Townes, and Cities were formerly Boroughes, if a City be a County of it selfe, wherein are divers Parishes, yet the addition de London, or nuper de London, is sufficient within this Statute. See the first part of the Institutes, sect. 171. 7.H.6.1. 27.H. 6.4. 4.E.4.10. 5.E 4.142. 21.E.4.15. * 22.H 6.47. 35.H.6.30. 4.E. 4.41. 5.E.4.20. 22.E.4.2. 1.E. 3.8. lib.4. fo.14. Arundell.

* The addition of a Parish, if there be two or more Townes within it, is not good, but if there be one Towne, the addition of Parish is good within this Statute: and it shall not be intended (if it be not pleaded) that there be more Towns then one in the Parish; for non præsumitur pluralitas.

This Statute extends not to some cases, though the Defendant be not named of any Towne, Hamlet, or place. ° As in an action of debt, the writ is, Præcipe R. G. Rectori Ecclesiæ de T. without alledging in what Town, Hamlet, or place he is dwelling. So if the Præcipe in an action of debt be, Prec' Tho. Chase Cancellario Universitatis Oxon', without saying de Oxonia. So in a writ brought against the husband and his wife, or the Abbot and his Commoigne, the Plaintife need not shew in what Towne, &c. the wife or Commoigne dwell: for the Law shall intend (which ever intendeth the best) that the Parson is resident upon his rectory, the Chancellor upon his office, the wife with her husband, and the Monke with his Soveraigne. ° 7.H.6.1. 10.H.6 8. 8.H.6.38. 3 H.6.31.

P The addition as well of the estate, degree, or mysterie, as the Towne, Hamlet, or place, ought by force of this Act to be alledged in primo nomine; for the proper use of an Alias dict' is, to agree with the record, or specialty whereupon the writ is grounded, and is not traversable. p Alias dict' 30.H.6.5.& 6. 32.H 6 33. 36.H.6.28. 4.E.4.10. 21.E. 4.15,18. 33.H.8 Dyer 50.b. 1.E. 4.1. 5.E.4.141. 26.H 6.bre.100. 28.H.6.9.

The

9.E.4.2. 21.H.6. 3.b. 2.H.6.4. 32.H.6.20,29. 5.E.3.28.

The addition of the eſtate, degree, or myſtery ought to be by force of this Act, as the Defendant was of at the day of the writ purchaſed, and not with a nuper, as nuper Armiger, nuper Monachus, aut nuper Comes de D. &c. but a nuper may be of the Towne, &c. becauſe men doe often remove their habitation. And this diſtinction appeareth by the Act it ſelfe, by reaſon of theſe words in the Act, relating to the Townes, Hamlets, &c. Ou ils fuer', ou ſont.

The end of the purview of this Act was, that the perſon of the Defendant in originalls, &c. where proceſſe of outlawry did lye, ſhould be ſo deſcribed by certaine additions, as one man might not be troubled for another. See other Statutes made to the ſame end. 8.H.6.cap.10. * 6.H.8.cap.4. 5.E.6.cap.26. 31.El. cap.3. & 9.

* Dyer 4.Eliz. 213,214.

¶ Aſcũs utlagaries ſont pronounce, que ils ſoient voides, &c.] This being a judgment in law is interpreted to be made void by a writ of error, or by the plea of the party coming in upon a Cap. utlegat', according to the courſe of the common law: for though the words of the Statute be voides, yet it is but voidable by a writ of error, or plea; which is worthy of obſervation. 19.H.6.fo.1. 8.H.6.cap.10.pl.com.137.b. 7.H.6.27,39. 10.H.6.8. 11.H.6.19,67. 19.H.6. 58.&c. 20.H.6.20. 21.H.6.23,55. 37.H.6.1. 38.H.6.1.22.H.6.18. & 23,36. 30.H.6.1. 21.E.4.94.73. 1.E.4.2. 2.E.4.10. 4.E.4.10,41,42. 22.E.4.37. 10.E.4.13.5.H.7.16. 11.H.7.5. 21.H.7.13. 3.El.192.b. 4.El.Dyer 213,214.

¶ Per exception du partie.] But if the Defendant, albeit hee hath not ſuch addition as this Act requireth, yet if he appeareth upon proceſſe and plead, taking no advantage thereof by exception, he hath loſt the benefit of this Act.

7.H.6.37. 35.H.6.12. 5.E.4. Vid.Br.tit.error 69. 3.H.6.24,35. 28.H.6.9. 21.E.4.95.

¶ Ne ſoient accordant al records & faits, &c.] Abundans cautela non nocet; but if the addition preſcribed by this Act had varied from the record or deed, yet being injoyned by Act of Parliament to be contained in the writ, &c. ſuch variance ſhould not have abated the writ, albeit this clauſe had been omitted; but yet an Act of Parliament cannot be made too plaine.

¶ Et que les Clerkes del Chancerie.] *i.e.* les Courſetours. Clerici de curſu, that make out originall writs. Of theſe there be in the Chancery twenty in number. To every of theſe are appointed certaine Counties, and are a Corporation of themſelves.

Fleta, lib.2.ca.12 14 & 15.H.8. cap.8.

¶ Deſtre punies, & faire fine per le diſcretion del Chancellor.] This extendeth to the Lord Keeper of the great Seale, as often elſewhere hath been obſerved.

¶ Et commencera ceſt ordinance a tener lieu al ſuit de partie de la Feaſt de S.Michael prochein enſuant.] This Parliament began 15.Paſch' 1.H.5. And this Statute was made, when Acts of Parliament were not printed, but were by the Sheriffes proclaimed in every County (as elſewhere hath been ſhewed:) And therefore to the end the ſubject might take notice thereof, day was given by this Act untill the Feaſt of Saint Michael the Archangel following; but at the Kings ſuit this Act began preſently, for that the Kings learned Councell were attendants in Parliament, and had ſufficient notice of this Act.

An

An Expoſition upon the Statute of 27. *H.* 8. *ca.* 16. intitled, An Act concerning Inrolments of bargaines, and Contracts of lands and tenements.

BE it enacted by the authority of this preſent Parliament, that from the laſt day of July, which ſhall be in the yeare of our Lord God 1536. no mannors, lands, tenements, or other hereditaments ſhall paſſe, alter, or change from one to another, whereby any ſtate of inheritance or freehold ſhall be made, or take effect in any perſon or perſons, or any uſe thereof to be made, by reaſon onely of any bargaine and ſale thereof, except the ſame bargaine and ſale be made by writing indented, ſealed and inrolled in one of the Kings Courts of record at Weſtminſter, or elſe within the ſame Countie or Counties where the ſame manors, lands, or tenements ſo bargained and ſold, lye or be, before the *Cuſtos Rotulorum*, and two Juſtices of the Peace, and the Clerke of the peace of the ſame Countie or Counties, or two of them at the leaſt, whereof the Clerke of the peace to be one: And the ſame Inrolment to be had and made within ſix moneths next after the date of the ſame writings indented, the ſame *Cuſtos Rotulorum*, or Juſtices of the Peace, and Clerke, taking for the Inrolment of every ſuch writing indented before them, where the land compriſed in the ſame writing exceed not the yearly value of 40. ſhillings, 2. s. that is to ſay, 12. d. to the Juſtices, and 12. d. to the Clerke, and for the Inrolment of every ſuch writing indented before them, wherein the land compriſed exceed the ſumme of 40. ſhillings yearly value, 5. s. that is to ſay, 2. s. 6. d. to the ſaid Juſtices, and 2. s. 6. d. to the ſaid Clerke for the inrolling of the ſame. And that the Clerke of the peace for the time being, within every ſuch County, ſhall ſufficiently inroll and ingroſſe in parchment the ſame deeds or writings indented, as is aforeſaid, and the rolls thereof, at the end of every yeare ſhall deliver unto the *Cuſtos Rotulorum* of the ſame County for the time being, there to remaine in the cuſtody of the ſaid *Cuſtos Rotulorum* for the time being, amongſt other records of every of the ſame Counties, where any ſuch Inrolments ſhall be ſo made, to the intent that every party that hath to doe therewith may reſort and ſee the effect and tenour of every ſuch writing ſo inrolled.

¶ Of inheritance, or freehold ſhall be made, &c.] After the Statute of 27. H. 8. cap. 10. of transferring uſes into poſſeſſion, If a man by his deed had bargained, and ſold for valuable conſideration, any lands, &c. of any eſtate of inheritance, free-hold, or for yeares, the ſame had been executed by the ſaid Act of 27. H. 8. cap. 10. Now this Act of Inrolments reſtraines onely eſtates of inheritance and free-hold: and therefore bargaines and ſales for yeares, for what number ſoever, are not reſtrained by this Act, though it be not by deed indented nor inrolled. Lib. 2. fol. 36. Sir Rowl. Heywards caſe.

¶ By reaſon only of any bargaine, &c.] If a man for valuable conſideration by deed indented doe bargaine and ſell lands to another and his heires, and before Lib. 8. 94. Foxes caſe.

before the deed be inrolled he leuieth a fine, or maketh a feoffment to the bargainee and his heires of the same lands, and after, and within the six moneths the deed is inrolled, the bargainee shall be in by the fine or feoffment, and not by the bargaine and sale, both by reason of this word Only, &c. and that the estate by the common law vested shall be preferred.

Trin. 33. Eliz. in communi banco, int' Ric. Libbear. Plaintife en waste, & Eliz. Hynd Defendant, lib. 5. fol. 71. Hynds case.

¶ Of any bargaine and sale thereof.] First, what is a bargain and sale, &c. A bargaine and sale is a reall contract * upon valuable consideration for passing of mannors, lands, tenements, or hereditaments by deed indented and inrolled within six moneths after the date of it, without livery of seisin, or attornement of tenants.

* Pl. com 307. a. 30. H. 8. tit. Attornemẽt, Br. 29.

If the bargainor be in possession, this is a facile and ready assurance, but the feoffment reduceth and restoreth the possession to the feoffor, and passeth the land to the feoffee, though the feoffor had been disseised, &c. and the inrolment is not pleadable as the feoffment is.

19. H. 6. 6.

Secondly, whether these words of [bargain and sale] only, or equipollent words may be used, &c. to take effect by force of this Statute? Though it be good to use these words mentioned in this Act, yet are they not of necessity to be used; for whatsoever word upon valuable consideration would have raised an use of any lands, tenements, or hereditaments at the common law, the same doe amount to a bargaine and sale within this Statute: As if a man by deed indented and inrolled according to this Act doth covenant for valuable consideration to stand seised of lands to the use of another, &c. this is in nature of a bargaine and sale within this Act.

Lib. 8. fol 93, 94. Foxes case.

Lib. 7. fol. 40. Bedles case.

Lib. 8. fol. 93, 94. Foxes case.

Lib. int. Co. 116. a. b.

A. seised of certaine lands in fee, demised the same to C. for life, the remainder for life reserving a rent at the Feast of Saint Michael, and of the Annuntiation; A. by indenture, in consideration of 50. pounds, doth demise, grant, set, and to farme let the same lands to B. for 99. yeares, reserving a rent at the same Feasts presently, and C. the lessee for life did not attorne; and it was adjudged, that the said demise and grant upon the consideration of 50. pounds amounted to a bargaine and sale for the said terme. So if a man for valuable consideration doth by deed indented and inrolled alien or grant the land to a man and his heires, &c. this is a bargaine within this Statute, & sic de similibus. But inasmuch as the intention of the parties is the principall foundation of the creation of uses, if by any clause in the deed it appeareth, that the intention of the parties was to passe it in possession by the common law, there no use shall be raised: and therefore if any letter of attorney be in the deed, or a covenant to make livery, or the like, there nothing shall passe by way of use, but according to the intention of the parties possession by the common law. And albeit no valuable consideration be expressed in the Indenture, yet if any were given, the same may be averred, and the land doth sufficiently passe.

Lib. 8. fol. 93, 94. Foxes case. Vid. lib. 2. fol. 35. Sir Rowland Heywards case.

4. Mar. Dyer fol. 146. Villiers case. Lib. 11. fol. 25. a. Harpers case.

A. by deed indented and inrolled in consideration of 100. pounds paid by B. bargaineth and selleth the land to B. C. and D. parties to the Indentures: In this case the land passeth to them all; for although the valuable consideration be expressed to be paid by one, yet it must be intended, that it was paid for them all, to the end, that the land may passe to them all, according to the meaning of all the parties, and a consideration given by one of the parties, is sufficient to convey the land to them all.

Lib. 1. fol. 176. Mildmayes case.

¶ Except the same bargaine and sale be made by writing.] First, it must be by writing, and not by print or stamp.

* Lib. 5. fol. 20. b. Stiles case.

Secondly, it must be * written in parchment or paper, and not upon wood, stone, lead, or other material.

See Stiles case, ubi supra.

¶ Indented.] If the deed begin, Hæc Indentura, or, This Indenture, yet if the deed be not indented, it is no Indenture; but if the deed be indented, though the deed doth begin, This deed made, without mentioning the word of Indenture, yet is it a writing indented within this Statute.

In

In an action of debt between Scudamore and others Plaintifes, and Vandenſtene Defendant, upon an Indenture of Charter party the caſe was this: The Indenture of Charter party was made between Scudamore and others owners of the good Ship, called B. whereof Robert Pitman was Maſter, on the one partie, and Vandenſtene on the other party. In which Indenture the Plaintife did covenant with the ſaid Vandenſtene and Robert Pitman, and alſo Vandenſtene covenanted with the Plaintife and Robert Pitman, and bound themſelves to the Plaintife and Robert Pitman, for performance of covenants in 600 pounds. And the concluſion of the ſaid Indenture was, "In witneſſe "whereof the parties abovеſaid to theſe preſent Indentures have put to their "ſeals. And the ſaid Robert Pitman to the ſaid Indenture put his hand and ſeal, and delivered the ſame. The Defendant in barre of the ſaid action pleaded the releaſe of Pitman, &c. whereupon the Plaintife demurred. And it was adjudged, that the releaſe of Pitman did not barre the Plaintife, becauſe hee was no party to the Indenture. And the diverſity was taken and agreed betweene an Indenture reciprocall betweene parties on the one ſide, and parties on the other ſide, as this was; for there no bond, covenant, or grant can be made to or with any that is not party to the deed. But where the deed indented is not reciprocall, but is without a Between, &c. as, Omnibus Chriſti fidelibus, &c. there a bond, covenant, or grant may be made to divers ſeverall perſons.

Trin' 29. Eliz. in the Kings Bench.

See the firſt part of the Inſtitutes, ſect. 66. fol. 52. Vid. 4. E. 2. tit. Obligation 16. 39. E. 3. 39. 40. E. 3. 5.

¶ And inrolled.] Albeit the Indenture (as hath been ſaid) may be either of parchment or paper, yet the inrolment muſt be in parchment onely; and ſo it is expreſſed in the clauſe of inrolment by the Clerke of the peace, viz. That hee ſhall ſufficiently inroll and ingroſſe * in parchment the ſame. And ſo much is implied, when the inrolment is in any of the Kings Courts of record at Weſtminſter; and ſo was it adjudged, as Mr. Plowden cited it before the Lords in Parliament, anno 23. Eliz. in the great caſe between Herbert and Vernon, which I heard, and obſerved.

* Nota.

A deed knowledged by the husband and wife ſhall by the common law be inrolled onely for the husband, and not for the wife, by reaſon of the coverture; and though it be inrolled for both, it bindeth her not. Otherwiſe it is by cuſtome, and none hath power to examine a feme covert without writ. 29. H. 8. tit. Faits inroll' Br. 14. 7. E. 4. 5. Vid. 34. H. 8. ca. 22. 18. E. 3. 29. 45. aſſ. 8. 14. E. 3 execution 73. 19. R. 2. eſtoppel 281. 21. E. 3. 43. 24. E. 3. 64. 21. Eliz. Dyer fol. 363. Kelwey 12. H. 7. fol. 4 &c. 12. H. 4. 12. 29. H. 8. faits inroll Br. 15. lib. 10. Mary Portingrons caſe, fol 42.

If an infant acknowledgeth a Recognizance, Statute Merchant, Statute Staple, or Obligation in the nature of a Statute Staple, or inroll an Obligation, in all theſe caſes he muſt avoid it in an audita querela, during his minority; for it muſt be tryed by Inſpection, and theſe concerne but perſonall duties. But if an infant bargaine and ſell lands which are in the realty by deed indented and inrolled, he may avoid it when he will; for the deed was of no effect to raiſe an uſe: and this Statute is to be intended of lawfull and effectuall bargaines and ſales, and ſuch as would have raiſed uſes at the common law, and doth onely reſtraine the execution of them that be of effect, except the deed be inrolled. And this ſtandeth with the reaſon of the common law, that none but effectuall deeds ought to be inrolled; and therefore a deed of feoffment ought not to be inrolled before livery. But in caſe of a fine the infant muſt reverſe it during his minoritie: for the conuſance is taken by force of the Kings writ before a Judge, and is voidable by the common law.

Vid. Regiſt. fol. 150. F. N. B. 104. k. Dyer 7. El. 132. b. Harriſons caſe. 7. E. 4. 5. 13. E. 3. audit. querela 26. 17. E. 3. 76. 10. E. 3. enfant 61 28. E. 3. audita quer. 27. 8. H. 6. 30. 15. E. 4. 51. 1. H. 7. 15. 11. H. 7. 5. 48. E. 3. 33. 16. H. 7. 5. 44. E. 3. 7. b.

That upon a bargaine and ſale by deed indented and inrolled, a rent may be reſerved, for the uſe and poſſeſſion paſſeth tanquam uno flatu. See lib. 2. fol. 54. in Sir Hugh Cholmleys caſe.

¶ In any of the Kings Courts of record at Weſtminſter.] That is, in

the Kings Bench, the Chancery, the Common Pleas, and the Exchequer. And though the words be, at Westminster, for that at the time of the making of this Act, these Courts were there: yet if these be adiourned into another place, the inrolment may be in any of these Courts; for the inrolment is confined to the Courts, wheresoever they be holden.

¶ Or else in the same County, &c. before the *Custos Rotulorum*, and two Justices of peace, and the Clerke of the peace, &c.

37. H. 8. cap. 1. 3. E. 6. cap. 1.

¶ Custos Rot.] This Officer is a Iustice of Peace, and is of the gift of the Lord Chancellor, or Lord Keeper, and he may exercise his office by deputy. He hath the keeping of all bargaines and sales by deed indented and inrolled, and of all the records and rolls of the Sessions of peace, * and of the commission of peace it selfe, and thereof he taketh the name of his office, to put him in mind of his duty. He hath the gift of the Clerkship of the peace, to exercise by himselfe or his deputy, but he continueth no longer in his place, then the Custos Rotulorum doth.

* 9. E. 4. 2. 10. H. 7. 7.

Dyer 5. El. 218. Pasch' 4. El. rot. 812. adjudge sur demurrer, Pophams case. Lib. int' Coke fol. 596. Lib. 5. fo. 1. b. Claytons case.

¶ The same inrolment to be had within six moneths next after the date of the same writing indented.] The six moneths shall be accounted after the computation of 28. dayes to the moneth. After the date, and after the day of the date upon this Act is all one; so as the date it selfe is taken exclusive. And yet in the report of Iustice Dalison it is said, that it was holden anno 4. Eliz. that if it be inrolled the same day it beares date, it is sufficient; but the safer way is to inroll it after the day of the date. And yet where it hath a date, and is delivered after, it shall take effect to passe from the bargainor from the delivery; for then it became his deed, and not from the date: but the deed must be inrolled within six moneths after the date.

Every deed shall be intended to be delivered on the same day that it beares date, unlesse the contrary be proved. And it is the best course (according to the intendment of law) to deliver it the same day that it beares date. But if the deed indented hath no date, then the day of the delivery is the day of the date of that deed, and may be inrolled within six moneths after the delivery. And when the deed is inrolled within the six moneths, then it passeth from the delivery of the deed. And albeit after the delivery and acknowledgement, either the bargainor or the bargainee dye before inrolment, yet the land passeth by this Act; for the words thereof be: No mannors, lands, tenements, or hereditaments shall passe of any estate of inheritance or freehold, * except the deed be inrolled. So as by the common law and the statute of 27. Hen. 8. of uses, it should have passed. And by the words of this statute, when the deed is inrolled, it passeth ab initio.

Lib. 5. fol. 1. b. Claytons case, ubi sup. adjudge Trin' 21. Eliz. in communi banco. 6. E. 6. faits inrol Br. 9. parles Iustices.

* Nota, Except is more then Unlesse.

Trin' 42. Eliz. rot. 1037. in communi banco in repl.

Between Andrew Mallery Plaintife, and Jennings and others Defendants, the case was this: One Sewster was seised of certaine lands in fee, and knowledged a Recognizance to Turner, whose Executrix brought a Scire fac' upon the Recognizance bearing date the 9. day of November, an. 41. Eliz. against Sewster, and alledged him to be seised of the said lands in dominico suo, ut de feodo, the day of the Scire fac' brought, which was traversed by the other party. And the truth of the case, being by long pleading disclosed to the Court, was this: Sewster 7. die Novem. before the Recognizance knowledged, by deed indented for money, had bargained and sold the said land to another, and the deed was inrolled 20. Nov. following. The question was, Whether Sewster was upon the whole matter seised in fee the 9. day of November. the deed being not inrolled until the twentieth of the same November. And it was adjudged una voce, that Sewster was not seised in fee of the land the 9. day of November, for that when the deed was inrolled, the bargainee was in iudgement of law seised of that land, from the delivery of the deed. And it was resolved, that neither the death of the bargainor

gainor, nor of the bargainee before inrolment, shall hinder the passing of the estate. And that a release of a stranger to the bargainee before inrolment is good. So as it hold not by relation between the parties by fiction of law; but in point of state as well to them as to strangers also. And that a recovery suffered against the bargainee before inrolment (the deed indented being after within the six moneths inrolled) is good, for that the bargainee was tenant of the freehold in judgement of law at the time of the recovery. And non refert, when the deed indented is knowledged, so it be inrolled within the six moneths. And all this was afterwards affirmed for good law by the Court of Common Pleas Trin. 3. Jac. Regis, upon a speciall verdict given in an ejectione firmæ between Lellingham Plaintife of the demise of Thomas Fitzherbert Esquire, and Alsop Defendant: And further, it was there resolved, that if the bargainee of land after the bargaine and sale, and before the inrolment doth bargaine and sell the same by deed indented and inrolled to another; and after the first deed is inrolled within the six moneths, the bargaine and sale by the bargainee is good: but there in the principall case, in respect of the speciall manner of the penning of the meane bargaine and sale, the Court being divided, viz. three Judges against two, judgement was given against it.

Trin. 3. Jac. in communi banco in eject. firmæ between Lellingham Plaintife, and Alsop Defendant.

The day of the moneth, and the yeare of our Lord and Saviour Christ, and the yeare of the Kings raigne are the usuall dates of deeds. And the day of the moneth by the Nones, Ides, or Kalends is sufficient.

¶ The *Custos Rotulorum*, or Justices of the Peace, and Clerke, taking for the inrolment of every such writing, &c. two shillings, &c.] A good president, when Parliaments appoint new labours, &c. that they would also limit and set downe in certaine what fees shall be taken for the same, as here it is done.

¶ The Clerke of the peace shall sufficiently inroll in parchment, &c.] Of this somewhat hath been said before.

¶ Shall deliver them to the *Custos Rotulorum*.] For (as hath been said) he is the keeper of the Records and Rolls of the Sessions of the peace of that County.

Provided alwaies that this Act, nor any thing therein contained, extend not to any mannor, lands, tenements, or hereditaments, lying or being within any Citie, Borough, or Towne corporate within this Realme, wherein the Maiors, Recorders, Chamberlaines, Bailifes, or other Officer or Officers have authority, or have lawfully used to inroll any evidences, deeds, or other writings within their precinct or limits: Any thing in this Act contained to the contrary notwithstanding.

¶ In any Citie, Borough, or Towne corporate, wherein the Maiors, &c. have authority to inroll evidences, &c.] Resolved by the opinion of the Justices of both Benches, that a bargaine and sale for valuable consideration of houses, or lands in London, &c. by word onely is sufficient to passe the same; for that houses and lands in any City, &c. are exempted out of this Act: and at the common law such a bargaine and sale by word only raised an use. And the statute of 27. H. 8. cap. 10. doth transferre the use into possession.

6. El. Dyer 229. in Chilberns case.

When the makers of this Act had appropriated the inrolment of all Indentures of bargaine and sale to the Kings foure Courts aforesaid, it was necessary to make a provision for Cities, &c. which had authority to inroll, and that there such bargaines and sales should be inrolled. Sed desunt verba: for by the words, the Mannors, Lands, Tenements, and Hereditaments are exempted out of the said Act, without any provision for inrolment within those Cities, &c.

Hill. 20. E. 1. in banco Rot. 100. Somerset.

If a deed be shewed in Court, or in the custody of the Court, and by mischance the seale is broken off, the Court shall inroll the deed in Court for the availe of the party.

See 29 Car 2 Chap 3

An

An Expoſition upon the Statute of 32. *H.* 8. *Cap.* 5. of Executions.

WHereas before this time divers and ſundry perſons have ſued executions, as well upon judgements for them given of their debts or damages, as upon ſuch ſtatutes Merchants, ſtatutes of the Staple, or Recognizances, as have been to them before made, recognized, and knowledged; and thereupon ſuch lands, tenements, and other hereditaments, as were lyable to the ſame execution, have been by reaſonable extent to them delivered in execution for the ſatisfaction of their ſaid debts and damages, according to the lawes of this Realme. Nevertheleſſe, it hath been oftentimes ſeen, that ſuch lands, tenements, and hereditaments ſo delivered, and had in execution, have been recovered, or lawfully deveſted, taken away or evicted from the poſſeſſion of the ſaid recoverers, obligees or recognizees, their executors or aſſignes, before ſuch time as they have been fully ſatisfied and payed of their debts and damages, without any manner fraud, deceit, covin, colluſion, or other default in the ſaid recoverers, obligees, or recogniſees, their executors and aſſignes, by reaſon whereof the ſaid recoverers, obligees and recogniſees have been thereby ſet cleerly without remedy, by any maner ſuit of the law, to recover or come by any ſuch part or parcell of their ſaid debts and damages as was behind, and not by them levied or received, before ſuch time as the ſaid lands, tenements, and other hereditaments ſo by them had in execution, were recovered, lawfully deveſted, taken or evicted out of, and from their poſſeſſions, as is aforeſaid, to their great hurt and loſſe, and much ſeeming to be againſt equall juſtice and good conſcience.

For reformation whereof, be it enacted by authority of this preſent Parliament, that if hereafter any ſuch lands, tenements, or hereditaments, as be, or ſhall be had and delivered to any perſon or perſons in execution, as is aforeſaid, upon any juſt and lawfull title, matter, condition, or cauſe wherewithall the ſaid lands, tenements, and hereditaments were lyable, tied, and bound, at ſuch time as they were delivered and taken into execution, ſhall happen to be recovered, lawfully deveſted, taken, or evicted out of, and from the poſſeſſion of any ſuch perſon and perſons as now have and hold, or hereafter ſhall have and hold the ſame in execution, as is aforeſaid, without any fraud, deceit, covin, colluſion, or other default of the ſaid tenant or tenants by execution, before ſuch time as the ſaid tenants by execution their executors or aſſignes, ſhall have fully and wholly levied or received the ſaid whole debt and damages, for the which the ſaid lands, tenements, and other hereditaments were delivered and taken in execution, as is aforeſaid: then every ſuch recoverer, obligee, and recognizee ſhall and may have and purſue a writ of *Scire facias* out of the ſame Court, from whence the ſaid former writ of execution did proceed againſt ſuch perſon

ſon or perſons, as the ſaid writ of execution was firſt purſued, their heires, executors, or aſſignes of ſuch lands, tenements, or hereditaments, as were or been then liable or charged to the ſaid execution, retornable into the ſame Court at a certaine day, being full forty dayes after the date of the ſame writ.

At which day if the Defendant, being lawfully warned, make default, or appeare and doe not ſhew and plead a ſufficient matter or cauſe, other then the acceptance of the ſaid lands, tenements, and hereditaments, by the ſaid former writ of execution, to barre, avoid, or diſcharge the ſaid ſuit for the reſidue of the ſaid debt and damages remaining unlevied, or unreceived by the ſaid former execution: then the Lord Chancellor, or other ſuch Juſtice or Juſtices, before whom ſuch writ of *Scire facias* ſhall be retornable, ſhall make eſtſoones a new writ or writs out of the ſaid former record of judgement, ſtatute Merchant, ſtatute Staple, or recognizance of like nature and effect, as the ſaid former writ of execution was, for the levying of the reſidue of all ſuch debt and damage, as then ſhall appeare to be unlevied, unſatisfied, or unpayed of the whole ſumme or ſummes in the ſaid former writ of execution contained: Any law, cuſtome, or other thing to the contrary hereof, heretofore uſed, in any wiſe notwithſtanding.

See before the ſtatute of W.2. cap.18. and the expoſition upon the ſame.

¶ That if hereafter any ſuch lands, tenements, or hereditaments, as be or ſhall be had and delivered to any perſon in execution, &c.

To what executions this Act extendeth unto.

¶ Such lands.] This hath relation to the Preamble, where there are rehearſed foure kinds of executions of thoſe lands, &c. Firſt, upon Judgements: 2. upon ſtatutes Merchant: 3. ſtatutes of the Staple: 4. Recognizances. Theſe Recognizances bee of two ſorts; one, uſuall Recognizances taken in any of the Kings Courts of record at Weſtminſter: another, in nature of a ſtatute Staple, by the ſtatute of 23.H.8.cap.6. This Conuſee of the ſtatute Staple hereafter in this ſtatute is called Obligee, becauſe in them both the ſeale of the party is put, and the [a] tenant by Elegit upon Judgements and Recognizances ſhall hold the land, &c. untill he be anſwered his debt without miles, coſts, &c. But [b] tenant by ſtatute Merchant, [c] tenant by ſtatute Staple, or by Recognizance [d] in nature of a ſtatute Staple ſhall hold the land, &c. untill his debt be paid together with miles; coſts, &c. Vid. Regiſt. 151, 152. 289. F.N.B. 131. Fleta lib. 2. cap. 57. lib. intr' Co. 236. Raſt' pl. 542. Dyer 2. Eliz. 180. b. 37. Hen. 6. 6. 36. H. 6. 2. 2. R. 3. 8, 17. 15. H. 7. 40. E. 3. 28.

a By the ſtat. of W 2. cap. 8. for Judgements, and cap. 45. for Recognizances.
b By the ſtat. of Acton Burnel, 11 E. 1. & 13. E. 1. de mercat.
c By the ſtat. of 27. E. 3. cap. 9. & 22.
d By the ſtat. of 23. H. 8. cap. 6.

¶ So had and delivered.] Had, is by Elegit upon Judgements or Recognizances, to have the moity in execution.

Delivered, is by Liberate upon the other three of the whole land, &c. of the Conuſor; but after the extent in theſe three caſes (of the ſtatutes, or recognizances in nature of a ſtatute) returned, the Conuſee may enter without any delivery by the Sheriffe by force of the Liberate: and he that ſo entreth without any delivery is within the aide and benefit of this Act, which ſpeaketh of delivery.

Lib. 4. fol. 67. Fulwoods caſe.

¶ Upon any juſt and lawfull title, matter, condition, or cauſe.] That is, upon ſome former juſt and lawfull title, &c. before the Judgements, Statutes, or Recognizances.

¶ Shall happen to be recovered, deveſted, taken or evicted.] By the contexte of this law, the whole land, &c. had in execution, and the whole intereſt of the land in execution muſt be recovered, deveſted, or evicted for the reaſons and cauſes there expreſſed.

Lib. 4. fol. 66. Fulwoods caſe.

Execution

Execution of a Recognizance by Elegit of lands, &c. of Thomas Camoys was had by two Merchants; and afterwards by a former statute the same lands were out of the hands of the said Merchants delivered to the former Conusee, whereupon the two Merchants desired to have execution of other lands of the said Thomas Camoys, & conceditur. Hill. 11.E.3 coram rege, rot. 93. Norff.

A man maketh a lease for yeares, rendring a rent, the lessor ouſteth the lessee, and bindeth himselfe in a statute, the land is extended, and delivered to the Conusee, the lessee re-enters, this is no eviction within this statute: for it appeareth by the Preamble, that the Conusee must be clearly without remedy, &c. but here the Conusee shall have the rent reserved, and the reversion. So was it holden Pasch' 12.El. in communi banco.

¶ Before such time, as the said tenants by execution their executors or assignes, &c.] Here are Administrators, and so through the whole Act understood, because they are in equall mischiefe. And likewise and for the same reason, albeit assignees be named in this branch, yet are they implyed throughout this Act in branches necessary, where they are not named.

The assignee of parcell is not within this Act, as appeareth by that which hath been said; but if there be severall assignees, and the land is evicted from them all, they are within the letter and remedy of this Act, because the whole is evicted from them, and they may have a re-extent for the whole debt, according to the words and meaning of this Act. Vid. 46.lib.ass. tit. Scire fac' 134.

Which case in 46.lib ass. because it hath been often mistaken, and mis-applyed by many, wee will truly put the same. A. seised of blacke acre and white acre in fee. acknowledgeth a statute Merchant to J. and infeoffeth B. of white acre, J. sueth execution of black acre out of the possession of A. the Conusor, and of white acre out of the possession of B. A. conveyeth blacke acre to C. in fee. J. tenant by statute Merchant assigneth his interest to D. C. the assignee of A. sueth a Scire fac' against D. assignee of J. and tenders the mony that is behind, D. the Defendant pleadeth to the writ, for that C. tenant of the freehold of white acre, whereof execution was also sued of record, is not named in the writ, to whom this suit was as well given, as to the Plaintife, Judgement of the writ, & non allocatur; whereby it appeareth by the rule of the Court, that any one feoffee may have a Scire fac', & tender * the whole money to the tenant by statute Merchant, or to his assignee. Another exception was taken to the writ, for that every Scire fac' ought to be warranted or grounded upon a record, and this Scire fac' is not grounded upon the record, but maintained upon a suggestion of tendring of the money, in which case hee ought to have a Venire fac', and not this writ of Scire fac', & non allocatur; whereby it appeareth, that partly upon a record, and partly upon a suggestion (no Scire facias being granted without some suggestion) the Scire fac' upon this certainty of the tender was maintainable. Lastly, it was excepted against the writ, that it appeared to the Court, that the Scire fac' was brought by the assignee of blacke acre, against the assignee of tenant by statute Merchant, so as each of them, as well of the one part as of the other, Plaintife and Defendant, were strangers to the record, & non allocatur, for that it had been often seen, that this writ did lye as well between strangers, as privies, and the writ of Venire fac' also to make the Conusee, &c. to account, &c. Then doth Belknap of counsell with the Defendant put a case upon the statute of Gloc. cap. 3. It is given by statute (saith hee) that if the father alien the right of the mother, that the son and heire of the mother shall not be barred, if he hath not assets by discent, &c. and other lands may after descend to him from his father, that the alienee of the father shall have recovery against him by Scire facias: but if lands descend to him afterwards from his father, and he alieneth the lands, which he recovered as heire to his mother, the alienee of the father shall not have a Scire fac' against the alienee of the heire; which opinion

See the stat. de Mercat. 13.E.1. Soient liuers al Merchant touts les biens del dettor, & touts ses terres per reasonable extent a tener jesque a tant que le dett ser' levie pleinment. Notwithstanding by good construction the Conusor shall have a Scire fac' upon tender of the debt, with mises and costages; for the land was delivered in nature of a gage (although 17.E.3.43.b. and 18.E.3.11. seeme to the contrary, but in 21.E.3. tit. Scire facias 109. & 47.E.3.11. a Scire facias was granted. 32.E.3. Scire fac' 101. the assignee of the Conusor shall have the Scire fac' 6.E.3.53. acc'.

* Nota, Hereby the land of the other feoffee shal be discharged, when the whole debt is paid. 2.R.3.17. 15.H.7.15.

Vi. 17.E.3.43.b. 21.E.3. Scire fac' 109. 47.E.3.11.

Gloc. 6.E.1.ca 3

See the Stat. de Mercat. 13.E.1. ubi sup.

opinion is grounded upon these words in the Statute, Donques avera le tenant, (id est, the alienee of the father) recovery vers luy (id est, the son and heire of the mother) de la seisin son mere, &c. And therefore Belknap concludeth, that no Scire fac' lyeth against the alienee in that case, no more here. Wherevnto Thorp chiefe Iustice answereth, Although it be so in the case put by Belknap, it is given by the Statute, &c. Wherefore, (saith Thorp) will you receive the money, or no? Belknap, Yes, if hee will tender the mises and costages. Kirton, the mises and costages shall be taxed by the Court. Thorp, they shall not; for wee cannot know them: and after he tendred a demy Marke for mises and costages, and the other said they were not sufficient, and the Court held them insufficient. Thorp demanded, if he would receive the money, or no, for mises and costages as he tendred, otherwise we will (saith he) re-baile to the party his money. And afterwards he received the same, and the Plaintife had execution.

These things are necessary to be knowne, for the better understanding of this Statute of 32.H.8.

¶ Shall have fully and wholly levied or received the said whole debt.] Although the Consulee have received the whole debt by execution upon the Statute Marchant, Statute Staple, or Recognizance in the nature of a Statute Staple, yet cannot the Consulor enter; for he must hold the land untill he be satisfied, not only of his debt, but of his costs, damages, labours, and expences: otherwise it is in case of Elegit, as hath been said, for there after the debt satisfied, the Consulor may enter: for tenant by Elegit holdeth the land but untill the debt be satisfied.

Vid. lib. 4. fo. 67. in Fulwoods case. 2.R.3.8,17. 15.H.7. 47.E.3. fol 11,12. 44.E. 3.14,16.

¶ For which the said lands were delivered, &c.] These words are not to be taken literally, but according to the meaning of the makers of this law, and ever such construction is to be made, as the party grieved, and in equall mischiefe may be relieved: And therefore if a Seignior consisting of fealty and rent be delivered in execution, and after the rent become secke by surplusage, and after is evicted, he shall have the remedy of this Statute: but if a villaine be delivered in execution, and the villaine purchase land in fee, and the tenant by execution enter into the perquisite of the villaine, and after it is evicted, he shall have no remedy by this Statute, the cause is apparent.

¶ Then every such recoverer, obligee, and recognisee shall and may have a writ of *Scire fac'* out of the same Court.] If judgement and execution be awarded in the Court of Common Pleas, and in a writ of error the judgement is affirmed in the Kings Bench, the tenant by execution may upon eviction have a Scire fac' out of the Kings Bench; for it is the same Court in equall mischiefe to the party grieved.

An

An Expoſition upon the latter part of the Statute of 32. *H.* 8. *Cap.* 28. concerning Diſcontinuances, &c.

AND moreover, for certaine conſiderations, be it enacted, by authority aforeſaid that no fine, feoffment, or other act or acts hereafter to be made, ſuffred, or done by the husband onely, of any mannors lands, tenements, or hereditaments, being the inheritance or freehold of his wife, during the coverture between them, ſhall in any wiſe be, or make any diſcontinuance thereof, or be prejudiciall or hurtfull to the ſaid wife, or to her heires, or to ſuch as ſhall have right, title, or intereſt to the ſame, by the death of ſuch wife or wives. But that the ſame wife or her heires, and ſuch other to whom ſuch right ſhall appertaine, after her deceaſe, ſhall and may then lawfully enter into all ſuch mannors, lands, tenements, and hereditaments, according to their rights and titles therein: any ſuch fine, feoffement, or other act to the contrary notwithſtanding: fines levied by the husband and wife (whereunto the ſaid wife is party and privy) onely except.

See lib. 8. fol. 71, 72. &c. Grenelies caſe, Dier. 4. & 5. Ph. & Mar. 162. 2. El. 191. b. Hawtries caſe. 21. El. 363. b.

We will adde hereunto a notable and a leading caſe upon this part of the act vulgarly and commonly cited by the name of Beaumonts caſe; the truth of which was, that Humfrey Foſter ſeaſed in fee of the ſite of the monaſterie of Gracedieu int' alia, gave them to John Beaumont Eſquire, and Eliz. his wife, and to the heires of their two bodies begotten, the remainder in fee to the ſaid Jo. Beaumont. An. 6. E. 6. John Beaumont leuied a fine thereof, with proclamation come ceo, &c. to King Ed. 6. his heires and ſucceſſours: King Ed. 6. anno regni ſui 7. granted the ſaid ſite &c. by his letters patents to Francis Earle of Huntingdon and his heires in fee farme; afterwards John Beaumont died, after whoſe death, and within fiue yeares Eliz. entred, inclaiming her eſtate; the fee farme rent was behind: Henry Earle of Huntingdon, ſonne and heire of Francis, hauing the inheritance of Gracedieu &c. was called into the Exchequer for the arrerages of the ſaid fee farme, where all the ſaid caſe being diſcloſed in pleading, at the laſt upon open argument, great deliberation and conference, fiue points were reſolued and adjudged:

Mich. 4. & 5. El. in Scaccario.

Juſtice Dalyſon 5. Eliz.

First, albeit the King is not named in the act, yet he is bound by the act, becauſe it is made to ſuppreſſe a wrong, and to give her &c. that right had a more ſpeedy remedy, viz. by entry, where, by the common Law, ſhe &c. was driuen to a reall action, and euery [a] diſcontinuance worketh a wrong, and the King being Gods Lieutenant [*] cannot doe wrong, and therefore that the entry of Eliz. was lawfull, &c.

[a] Vi. li. 11. fo. 72. a Magd. Colledge caſe. Pl. com. 246. Segnior Berklyes caſe acc'.

[*] 13. E. 4. 8. lib. 1. fol. 44. Alten Woods caſe acc'

Secondly, albeit the words of this act be [being the inheritance or freehold of the wife:] and in this caſe the lands were as well the freehold and inheritance of the husband as of the wife, yet for that it was a beneficiall law to ſuppreſſe a wrong, and to giue the party wronged a ſpeedy remedy, and that it was in equall miſchief, it was adiudged to be within this Statute: and this point hath beene commonly cited in arguments in Weſtminſter-hall, and at Poots, &c. by the name of Beaumonts caſe.

[a] Juſt. Dalyſon an. 5. El. Dyer 18. El. 351. acc'. Dier 16. El. 362. ſimil. lib. 9. fol. 139. Beaumonts caſe.

[a] Thirdly, that the fine with proclamations levied by the husband only, was a barre by the Statute of 4. H. 7. becauſe the iſſue in taile muſt claime as heire to both of them.

5. H. 7. 32. by Brian

Lib.9.fol.139. ubi ſupra.

7.H.4.16.lib.9. fol.139.ubi ſup.

Otherwiſe it is in the caſe of a common perſon, for he ſhall be exoncrated of the rent during the ſtate evicted, becauſe the rent was reſerved out of the whole eſtate.

Fourthly, that the ſtate of the Iſſue was changed to an eſtate for life diſpunishable of waſte, for that the iſſue in taile by the fine was diſabled to inherit; as if the Donees had been divorced cauſa conſanguinitatis, &c. wherby the ſame was diſabled to inherit, the Donees ſhould have had but an eſtate for life: but in that caſe they ſhall be puniſhable for waſte, becauſe the eſtate in taile was neuer perfect, but defeaſible by divorce ab initio.

Fiftly, that when Eliſ. entred upon Earle Henry into Gracedieu, &c. and defeated the fee farme during her eſtate, yet the Earle having an eſtate of inheritance remaining in him, the fee farme rent, which was reſerved preſently by the Kings prerogative, was leviable upon his other lands during the eſtate of Eliſabeth; for now upon the matter it is as much in the Kings caſe, as if Eliſabeth, being in ſeiſon of her eſtate, the King had granted the inheritance after her eſtate ended to the Earle and his heires, reſerving the rent preſently: But Queen Eliſabeth, being acquainted with the equity of the caſe, was pleaſed by Letters Patents under the great Seale, which we have ſeen, to exonerate Earle Henry of the arrerages, and of the fee farme it ſelfe, during the continuance of the eſtate of the ſaid Eliſ. that had evicted the land from him: which caſe we have reported the more at large, for that in the collections of my Lord Dyer, written with his own hand, which we have ſeen, reporteth this caſe, and maketh a queſtion in theſe words: Si lentre la feme ſoit congeable per leſtatute, eo que le Roy neſtly per leſtatute, which was fully omitted out of the print, for that the iudgement, as is aforeſaid, was given againſt that private opinion. And it hath been very many times there adiudged in the Exchequer, in pleading for the diſcharge of the debts of Henry Earle of Huntingdon, that the entry of the ſaid Eliſ. was lawfull, divers whereof we have ſeen.

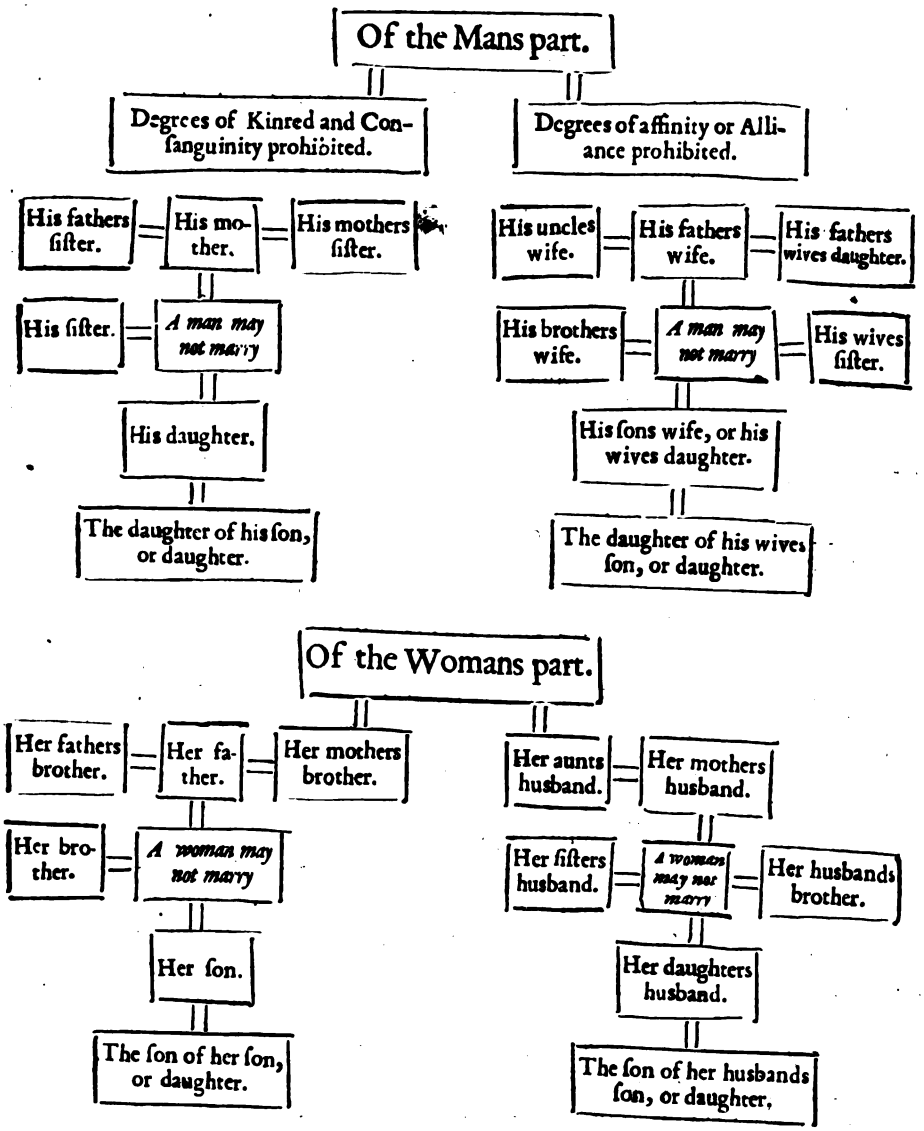
An

An Expoſition upon the Statute of 32. *H.*8. *cap.*38. concerning what marriages be lawfull, and what not.

See the firſt part of the Inſtitutes, ſect.380. fol.235.a. Parſons caſe upon this Act of 32.H.8.

For the better underſtanding whereof, and of this ſtatute, the Leviticall degrees are neceſſary to be ſet downe in certaine.

It is to be underſtood, that by the 18. Chapter of Leviticus, not onely degrees of kinred and conſanguinity, but degrees of affinity and alliance doe let matrimonie, which may beſt be illuſtrated and expreſſed in this manner:



See theſe degrees truly ſet down in the Stat. of 25.H.8.cap.22.& 28.H.8.cap.7.

Theſe be the Leviticall degrees, which extend as well to the woman as to the man. And herein note, that albeit the marriage of the nephew cum amita & matertera is forbidden by the ſaid 18. Chapter of Leviticus, and by expreſſe words the marriage of the uncle with the niece is not thereby prohibited, yet is

the ſame prohibited, Quia eandem habent rationem propinquitatis cum eis qui nominatim prohibentur, & ſic de ſimilibus.

By the Preamble of this ſtatute it appeareth, "That by other prohibitions "then Gods Law admitted for their lucre by that Court inuented, the diſpenſa- "tion whereof they alwayes reſerued to themſelues (where there are expreſſed "theſe examples :) firſt, as in kinred and affinity betweene [a] Couſins germans, "and ſo to the fourth degree. Secondly, [b] carnall knowledge of any of the ſame "kin or affinity before in ſuch outward degrees. But now by this Act all per- ſons are declared to be lawfull to contract matrimony, that be not prohibited by Gods Law to marry, and that no reſeruation or prohibition (Gods Law ex- cepted) ſhall trouble or impeach any marriage without the Leviticall degrees. So as without queſtion, the ſon of the father, by another wife, and the daughter of the mother, by another husband, and è converſo, may marry. And now at this day men need not to be at that charge and ſuit that Roger Donington was, who for that he had committed fornication before marriage, with one that was of kin to his wife in the fourth degree, was driuen to ſue for a ligitimation of his mar- riage.

a 18.E.4.28,29. 11.H.4.76.

b 24 H.8.baſtard Br.44. Vid. 28.H.8.cap.7. Paſch.30.E.1. coram rege, Chadworths caſe in the 1.part Inſtit.ubi ſupra.

See the ſtatute of 1.& 2.Phil.& Mar.cap.8.a diuorce propter impedimentum publicæ honeſtatis & juſtitiæ.

Neither after this ſtatute can the husband be affraid to loſe his wife, or the wife her husband, nor the heirs of them to be baſtarded, for that the husband be- fore marriage had been godfather either at Baptiſme, or Confirmation to the Couſin of his wife, or that ſhe had been godmother before the marriage to the Couſin of her husband, for the diuorces cauſa * compatrernitatis & commaterni- tatis (which in the act of 1.& 2.Phil.& Mar. is called cognatio ſpiritualis) are by this act taken away; and the diuorce cauſa profeſſionis alſo, and ſo is the de- uorce cauſa cognationis legalis, that is to ſay, jure adoptionis, & ſic de ſimili- bus.

Vid.Conc. Trid. ſeſſ.24.cap.2.de reform.Bract.li.4 298.b.an.39.E.3 fol.31,32.in aſſiſe. Vid.10.E.3. 34,35.

* Bract.ubi ſup. 1.& 2.Phi.& M. ca.8. 47.E.3. fol.27. 21.H.7.

Alice de Stircheley took to husband William de Chaddeworth, and after, at her ſuit, was diuorced from him, and the cauſe of the diuorce is expreſſed in the record, Et fuit cauſa divortii, eò quòd dictus Willielmus de Chaddeworth car- naliter cognoverat quandam filiam dictæ Aliciæ Stircheley, antequam ipſam deſponſavit.

Paſch.32.E.1. coram rege, rot. 83.Nott.

By the Leviticall degrees it is prohibited, that a man ſhall not uncouer the nakednes of his wife, and of her daughter, and ſo it is of the reſt of the degrees there prohibited.

Levit.cap.18. ver.17.

By this act of 32.H.8. the diuorce cauſa præcontractus was taken away, where the marriage was conſummate by carnall copulation, &c. but that is repealed, and the diuorce allowed by the ſtatute of 2.E.6.cap.23. and 1.El.cap.1.

The reſidue of the act of 32.H.8. was repealed by 1.& 2.Phil.& Mar.cap.8. and reuiued 1.Eliſ.cap.1.

Lib.4.fol.29.a. Charles Buntings caſe, lib.6. fol.66. Bracton, lib.4.fol.298.b.

But our chiefe aime and endeauour being to ſet downe in all the parts of the Inſtitutes, how the Law at this day ſtandeth, notwithſtanding the change and alteration of many ſtatutes, and the repeales of diuers, and after repeales of thoſe repeales, and the reuiuing of ſtatutes repealed, &c. and having mentioned the di- uorce cauſa profeſſionis, it ſhall be neceſſary in this place to declare what the Law is at this day concerning the marriage of Eccleſiaſticall perſons. And to that end we will report a caſe reſolued, which concerneth not onely the point in queſtion, but another matter of great conſequence, which, becauſe the rule and diſ- cuſſing of both points ſtand in effect upon the ſame ground of reaſon, we will re- late the whole caſe:

At the Seſſion of Parliament holden anno 4.Regis Jacobi, upon a branch of an act made at the firſt Seſſion in the firſt yeare of his Majeſties reigne, for con- tinuance and reuiuing of diuers ſtatutes, it was enacted, That an act made in the firſt yeare of Queen Mary, ſtat.2.cap.2. entituled, An act for the repeale of cer- tain ſtatutes made in the time of King Edw.6. ſhould ſtand repealed and void, two doubts were moued: the firſt concerning the Biſhops, the ſecond touching

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the lawfulneſſe of Eccleſiaſticall perſons marriages; the firſt was diuided into two queſtions: the one, Whether any Biſhop made eſpecially ſince the firſt day of that firſt Seſſion of Parliament, were lawfull or no; the other, Whether the proceedings in the Biſhops, or other Eccleſiaſticall Courts, being made under the name, ſtile and ſeale of the Biſhops, were warranted by law. And the reaſon and cauſe of theſe two doubts was this: By the ſtatute of anno 1. Ed. 6. cap. 2. it was enacted, That Biſhops ſhould not be elective, as before that time they had been, but donative by the Kings Letters Patents. Secondly, by the ſaid act it is prouided, That all ſummons, citations, and proceſſe in Eccleſiaſticall Courts ſhould be made in the name and ſtile of the King, and that their proceſſe ſhould be ſealed with a ſeale of the Kings armes, &c. And it was ſtrongly urged and enforced, that this act of 1. Ed. 6. was now in force, and conſequently, all Biſhops made (at the leaſt ſince it became of force) by election, &c. and not by donation, according to the ſaid act of 1. Edw. 6. are unlawfull, and all their proceſſe, proceedings, being in their owne names, ſtiles and ſeales (where by the ſaid act they ought to haue been in the Kings name, and under the Kings ſeale) were all unlawfull, and void. And to proue, that the ſaid act of anno 1. Edw. 6. was now in force, they alledged, that this act of 1. Edw. 6. was repealed by the ſaid act of 1. Mar. aboue mentioned, which act of repeale, being repealed by the ſaid branch of primo regis Jacobi, conſequently the ſaid act of 1. Edw. 6. was thereby reuiued: for when an act of repeale is repealed, the firſt act that was repealed is reuiued, remoto impedimento reuiuiſcit ſtatutum, and herewith agreeth the booke caſe in 15. Ed. 3. tit' Petition, placit' 2. And this is true, and cannot be denied.

The King hauing vnderſtanding hereof, and being informed of the conſequents thereof, being matters tending not onely to the infinite preiudice of his ſubiects in caſes of great importance (eſpecially, if any Dioceſſe had no lawfull Biſhop or Ordinary) but to the ſcandall and impeachment of his Maieſties iuſtice not onely in theſe proceedings, but alſo in adminiſtration of iuſtice in certaine caſes in his Courts of common Law at Weſtminſter, commanded his two chiefe Iuſtices to conſider of the ſaid obiections, and to informe him of the true ſtate thereof, that either the ſcruple conceiued might be cleared and ſatisfied, or the inconuenience (if any were) timely prouided for and preuented; who vpon diligent conſideration had of the ſaid obiection, agreed the Law to be (as the ſaid caſe was put) as it had been taken. But vpon further ſearch and conſideration had, other manifeſt and direct matters were found to ſatisfie and cleare the ſaid ſcruple and queſtion, which afterwards was agreed & reſolued accordingly by the chiefe Baron and other Iudges then attending in the vpper houſe of Parliament. For the vnderſtanding whereof it is to be obſerued, that the ſaid act of 1. Edw. 6. was repealed by three ſeuerall acts of Parliament, viz. by the ſaid ſtatute of anno 1. Mar. in the whole. 2. by the act of 1. & 2. Phil. & Mar. cap. 8. by ſufficient words, as concerning the name, ſtile, and ſeale of their proceſſe, &c. And laſtly, by the ſtatute of 1. Eliz. cap. 1. the whole act of 1. Edw. 6. is alſo repealed: for, Leges poſteriores priores contrarias abrogant. And as a man that is ſtrongly bounden with three cords or ligaments, albeit one or two of them be vntied or cut aſunder, remaines bound, notwithſtanding by and with the ſecond or third, which remaine firme and vntouched; ſo a ſtatute repealed by force of three ſeuerall acts remaines repealed, ſo long as any of them remaine in force, albeit one or two of them be made void: and therefore although the act of 1. Mar. be repealed by 1. regis Jacobi, yet the other two acts remaining in force, the act of anno primo E. 6. remaine repealed.

First therefore, as to the name ſtile, and ſeale, &c. in Eccleſiaſticall Courts, it is enacted by 1. & 2. Phil. & Mar. cap. 8. in theſe words: 1.

"And the Eccleſiaſticall iuriſdiction of the Archbiſhops, Biſhops, and Ordi-
"naries to be in the ſame ſtate for proceſſe of ſuites, puniſhment of crimes, and
"execution of cenſures of the Church, with knowledge of cauſes belonging to
"the ſame, and as large in thoſe points as the ſaid iuriſdiction was in anno
"20. Hen. 8.

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By which clauſe, if the act of repeale of 1.Mar. (now repealed) had never been made, the act of 1.Ed.6. as to the name, ſtile, and ſeale in Eccleſiaſticall proceedings had been repealed by this latter act of 1.& 2.Phil.& Mar.

2. But it was objected, that the ſaid act of 1.& 2.Phil. & Mar. (which is the ſecond cord or ligament) is repealed by the act of 1.Eliſ.cap.1. To this it was anſwered and reſolved, that this ſecond cord or ligament remaines in force: for true it is, that the act of 1.Eliſ. repeales the act of 1.& 2.Phil.& Mar. ſecundum quid, but not ſimpliciter; for the act of 1.Eliſ. doth repeale every branch and article of 1.& 2.Phil.& Mar. other then for ſuch branches as therein be excepted. And afterwards, by another branch of the ſaid act of 1.Eliſ. it is enacted, That all other lawes and ſtatutes repealed, and made void by the ſaid act of 1.& 2.Phil.& Mar. and not in that act ſpecially mentioned and revived, ſhould ſtand, remaine, and be repealed and void, as the ſame were before the making of that act. But the act of 1.Ed.6. (as it hath been often ſaid) is ſufficiently repealed by the act of 1.& 2. Phil.& Mar. as to the name, ſtile, and ſeale, &c. and the act of 1.Ed.6. is not ſpecially mentioned and revived by the act of 1.Eliſ. ſo the ſame remaine repealed by the act of 1.& 2.Phil.& Mar.

3. The third act which clearly repeales and annulls the act of 1.E.6. as well for the making & conſtituting of Biſhops, as for the name, ſtile, and ſeale of proceſſe, is the act of 1.Eliſ.cap.1. for that act doth revive the act of 25.H.8. cap.20. and further enacteth, that the ſame ſhall ſtand in full force and effect to all intents, conſtructions, and purpoſes. By which act of 25.H.8. it is enacted as followeth:

"And that at every avoidance of any Archbiſhoprick, or Biſhoprick, the King, "his heires & ſucceſſors may grant to the Prior & Covent, or to the Dean and "Chapter a licence under the great Seale, as of old time hath been accuſtomed to "proceed to an election of an Archbiſhop or Biſhop, with a letter miſſive, contain- "ing the name of the perſon which they ſhall elect and chooſe, &c. And according to this ſtatute revived by anno 1.Eliſ. all Archbiſhops and Biſhops at this day be made, and if they were made according to the act of 1.E.6. they were unlawfull.

And further it is enacted by the ſaid act of 25.H.8. "That every perſon cho- "ſen, elected, inveſted, and conſecrated Archbiſhop or Biſhop, according to the "forme and effect of this act, &c. ſhall doe and execute in every thing and things "touching the ſame, as any Archbiſhop or Biſhop of this Realme, &c. might at "any time heretofore doe.

Which latter branch doth extend to all proceſſe and proceedings in Eccleſiaſticall Courts, and that the ſame ſhall be in ſuch ſort, as the ſame were before the act of 25.H.8. and before that act, the name, ſtile, and ſeale of their proceſſe, &c. were as now they be.

And the ſaid act of 1.Eliſ. reviving the act of 25.Hen.8. doth impliedly repeale the act of 1.Ed.6. which had repealed 25.H.8. in both the ſaid points: for, as by repealing of a repeale, the firſt act is revived; ſo by reviving of an act repealed, the act of repeale is made of no force.

As to the ſecond point, concerning the marriage of Eccleſiaſticall perſons, it is to be obſerved, that the intention of the act of repeale of anno 1.regis Jacobi, was to repeale the ſtatutes of 2.Ed.6.cap.2. and 5.E.6.cap.12. concerning the marriage of Eccleſiaſticall perſons, by which ſtat. of 5.E.6. it is enacted, "That "the matrimony of all and every Prieſt, and other Eccleſiaſticall perſon, ſhall be "adjudged, deemed, and taken for juſt, true, and lawfull matrimony, to all intents, "conſtructions, and purpoſes, and that all children borne in any ſuch matrimony "ſhall be deemed, and judged to all intents & purpoſes to be borne in lawfull ma- "trimony, & legitimate, and hereditable to lands, tenements, and hereditaments, "and that there ſhall be tenant by the curteſie, and tenant in dower, &c. But the act of 1.Mar. repealing the ſaid ſtatutes of 1.E.6. concerning Biſhops, as of 2.E.6. cap.21. and of 5.E.6. concerning marriages of Eccleſiaſticall perſons, and the ſtatute of 1.regis Jacobi repealing generally the ſtatute of 1.Mar. it followeth, that if no other ſtatute had repealed the ſaid act of 1.E.6. concerning Biſhops, but the ſaid act of 1.Mar. then all the ſaid three ſtatutes, and 5.E.6. had remained

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in force, when the act of 1.Mar. was repealed; but other acts repealing 1.Edw.6. as before hath appeared, and no other act repealing the acts of 2.& 5.E.6. concerning marriages, it followeth, that by the repeale of the said act of 1.Mar. the acts of 2.& 5.E.6. are of force, and that if 1.E.6. remaine repealed, and is not for the causes abovesaid revived by the statute of 1.regis Jacobi.

And it is to be observed, that it appeareth in our bookes, that if a Deacon or secular Priest had taken wife, the marriage was not void, but voidable, causa professionis, and if either party had died before divorce, their issue had been legitimate, and should have inherited, for that Deacons and Priests within England were not votaries, that is, had not vowed chastity. But if a Monk or a Nun had married before the statutes of 32.H.8.cap.38. and of 2.E.6.cap.21. and this act of 5.E.6. the marriage had been (as it was then holden) meerly void, for that they had taken a vow of chastity, as it appeareth by our bookes in 5.E.2. tit' non habilit' 26. 19.H.7. tit' battard' 33. 21.H.7.39.b. for avoiding of which scruple, the said acts of 32.H.8. 2.E.6. and 5.E.6. were made.

See the Stat. of 31.H.8.cap.6.

There be also other divorces which declare the marriage to be void, as a divorce causa * frigiditatis, where the party hath perpetuam impotentiam generationis, &c. And [b] causa metus, sive duritiæ, also [c] causa impuberitatis: these marriages are said to be prohibited by Gods Law, otherwise the statute of 32.H.8. would extend unto them.

Gen.2.ver.24. Mat.19.5. Ephes. 5.31. 1 Corin. 7.2.&c. Mar.10. 7,8.

* Dyer 2 Eliz. 118.b. lib.5.fol. 98. Buries case.

b 11.H.4 14. rot. Parl. 17.H.6. nu.15. Isabel Lady Butlers case.

c 39.E.3.32,33.

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An Expoſition upon the Statute of 2. *E.* 6. *Cap.* 8. of Offices.

WHere many and divers perſons holding, or that have holden lands, tenements, or hereditaments, ſome for terme of yeares, and ſome by copy of Court roll, have been expulſed, and put out of their termes and holds, by reaſon of Inquiſitions, or Offices founden before Eſchetours, Commiſſioners, and other, containing tenures of the King in *Capite*, intitling the King to the wardſhip or cuſtody of ſuch lands or tenements; and ſometime intitling the King to the ſame, upon attainders of treaſon, felony, or otherwiſe, by reaſon that ſuch leaſes for terme of yeares, or intereſt by copie of Court roll of ſuch perſons, have not been found in ſuch inquiſitions or offices: after which expulſion or putting out, the ſaid perſons have been without remedy, for the obtaining of the ſaid fermes and holds, during the Kings poſſeſſion therein, and can have no *Traverſe*, *Monſtrance de droit*, nor other remedy for the ſame, becauſe their ſaid intereſt is but a chattell in the law, or cuſtomary hold, and no eſtate of freehold. And alſo, where any perſon or perſons hath any rent, common, office, fee, or other profit apprender of any eſtate of freehold, or for yeares, or otherwiſe, out of ſuch lands or tenements, ſpecified in ſuch offices or inquiſitions, the ſaid rent, common, office, fee, or profit apprender, not found in the ſame office or offices, ſuch perſons are in like manner without remedy to obtaine, or have the ſaid rent, common, office, fee, or profit apprender by any *Traverſe*, or other ſpeedy meane, without great and exceſſe charges, during the Kings intereſt therein, by force of ſuch inquiſition or office.

Where and in what caſes before the ſtatutes of 34. E. 3. cap 14. and 36. Ed. 3. cap. 13. and 8. H. 6. cap. 19. the party grieved by any office might have had his Traverſe, or Monſtrans de droit by the common Law, and where he was driven to his petition, and how, and in what manner, and in what caſes the ſubject was relieved by thoſe ſtatutes. And where before this ſtatute of 2. E. 6. the party was put to his petition, you may reade in lib. 4. fol. 54, 55. &c. 24. E. 3. 55. untill the end of the caſe, adding thereunto, that Mich. 34. & 35. Eliſ. it was reſolved in the Court of Wards by the two chiefe Juſtices, in the caſe of the Counteſſe of Rutland, upon conſideration had of the ſaid acts of 34. E. 3. 36. E. 3. & 8. H. 6 that he in the remainder expectant upon an eſtate taile or freehold, or that hath a dire reverſion expectant upon any eſtate of freehold, without any rent or profit, but onely fealty, ſhall not traverſe a falſe office, finding the dying ſeiſed of ſuch a remainder or reverſion: for theſe ſtatutes give a Traverſe, when the lands are ſeiſed by the King, and the party ouſted thereof; and the ſeiſin of tenant for life is the ſeiſin of him in remainder or reverſion. And the judgement cannot be given, Quod manus Domini Regis amoveantur. See Stamf. prerog. 13. he in the reverſion may ſue livery, &c. Dyer 14. Eliſ. 319. Stamf. prerog. 62. a. b.

Lib. 4. fol. 54, 55. &c. Br. travers 55. Stamf. prerog.

¶ Leaſes for terme of years, or intereſt by copie of Court roll, &c.] Upon theſe words it hath been doubted, whether a tenant by ſtatute merchant, by

See 37. aſſ. p. 11. 4. E. 4. 21.

by ſtatute ſtaple, by Elegit, or Executors that have intereſt in lands by deviſe for payment of debts, and the like were within this law, becauſe they are not leſſees for yeares; but the common opinion is, that theſe intereſts are within the purview of this act: for that they are not onely within the ſame miſchiefe, being without remedy, but within the expreſſe reaſon of this Law, viz. becauſe their ſaid intereſt is but a chattell reall, and all the abovеſaid intereſts are but chattels reals, & ratio legis eſt anima legis. Lex beneficialis rei conſimili remedium præſtat. Quæcunque intra rationem legis inveniuntur, intra ipſam legem eſſe judicantur.

29.H.8.tit.Travers d' office 50. A termor could not traverſe an office by the common Law, but if it were found in the office, he might have a Monſtrans de droit, and ſo of others that had but chattels reals, 13.E.4.8. 7.H.7.11. Vid.9.H.6.21.

But nota, though there be a double matter of record to entitle the King to a chattell perſonall, as an attainder, and an office, that the perſon attainted was poſſeſſed of a horſe, the office may be traverſed, 34.H.6.51. 4.E.4.24. 47.E.3.26. 13.E.4.8. 1.H.7.fol. becauſe chattels perſonall are bona peritura, and cannot abide the delay of a petition. Vid.W.1.cap.4. that goods wrecked be in ſafety, and kept by the view of the Sheriffes, &c. and yet ſuch as be bona peritura the Sheriffe, &c. may ſell them within the yeare.

By the words of the writ of diem clauſit extremum, mandamus, &c. the Eſcheatour might, according to the common Law, ſeiſe, &c. before office: but by the ſtatute of Lincolne, anno 29.E.1. de Eſcheatoribus, Vet.Mag.Chart.108. and by Artic' ſuper Chart.anno 28.E.1. cap.19. the Eſcheatour, &c. cannot ſeiſe before office, and yet the words of the writs keep their old forme. Here it appeareth, that the King is intitled by office.

For remedy whereof, be it enacted by authority of this preſent Parliament, that where any ſuch office or inquiſition is or ſhall be founden, omitting ſuch titles, intereſts, or matters, as aforeſaid, that in all ſuch caſes, every leſſee, tenant for terme of yeares, or copiholder, and every ſuch perſon or perſons that have, or ſhall have any intereſt to any rent, common, or profit apprender, for terme of yeares, life, or otherwiſe, out of any of the lands, tenements, or hereditaments contained in ſuch office or inquiſition, where the King, his heires or ſucceſſors is, or ſhall be entituled, as is aforeſaid, to any ſuch lands, tenements, or hereditaments, ſhall have, hold, enjoy, and perceive all and every their leaſes and intereſts for terme of yeares, or by copie of Court roll, rents, commons, offices, fees, and profit apprender, in ſuch manner, forme, ſtate, and condition, as they and every of them ſhould, or might have done, in caſe there had been no ſuch office or inquiſition found, and as they ſhould or lawfully might, or ought to have done, in caſe ſuch leaſe, intereſt by copie of Court roll, rent, common, office, fee, or profit apprender, had been founden in ſuch office or inquiſition: any law, cuſtome, or uſage to the contrary heretofore uſed in ſuch caſes, in any wiſe notwithſtanding. And alſo, where it is or ſhall be founden for the King, his heires or ſucceſſors, that the heire or heires of his tenant or tenants, is, or ſhall be within age, where in deed ſuch heire or heires is, or ſhall be at the ſame time of full age, or of a more or greater age, then is, or ſhall be contained within ſuch office. Note this firſt branch of this beneficiall law.

¶ Where any ſuch office or inquiſition is, or ſhall be found, &c.] This hath reference to the Preamble, and extendeth not only to offices in caſe of wardſhip by tenure in capite, but to offices upon attainders of treaſon, felony, or otherwiſe. Wherin the generality of theſe words [or otherwiſe] are to be obſerved.

The 2.branch. Be it further enacted by the authority aforeſaid, that in every ſuch caſe, ſuch heire and heires, ſhall and may at his or their very full age, or after, proſecute a writ of *Ætate probanda*, and ſue his or their Liverie, or *Ouſter le maine*, as his or their caſes ſhall lye, and have the profits of his or their lands, tenements, or hereditaments, from the time of his or their very full age: any ſuch untrue office or inquiſition, or any law or cuſtome to the contrary in any wiſe notwithſtanding. Alſo where one perſon or moe is or ſhall be founden heire to the Kings tenant by office or inquiſition, where any other perſon is, or ſhall be heire; or if one perſon or moe be or ſhall be founden heire by office, or inquiſition in one County, and another perſon or perſons is or ſhall be founden heire to the ſame perſon in another County, or if any perſon be, or ſhall be untruly founden Lunatick, Ideot, or dead.

See 5.E.4.3.Stamf.prer.61.b. 21.R.2.livery 4. 13.H.4.6,7. Caleſtens caſe. 1.H.7.3.14.& 28.Bro.tit.Office devant Eſchеator 27.40.& ibid.50.Br.tit.Travers de office 47. Kelwey, 7.H.8.fol.177.

¶ Or after ſue a writ of *Ætate probanda*, &c.] Dz a commiſſion in the nature of an Ætate probanda, F.N.B. 257.c.d.e. Regiſtr.294,295,296.

See a notable preſident of an Ætate probanda, together with the reaſons of the Jurors. Suff.Hill' 25.E.1.rot.14. coram rege, Benedict de Blakenhams caſe.

See Rot.Parl.40 E.3.nu.14,15. where the heire is found of full age, where in truth he is within age.

¶ Alſo where one perſon or more is, or ſhall be found heire to the Kings tenant by office or inquiſition,&c.] This act is generall, and extendeth as well to offices found virtute officii (whereof there was * no interpleader by the common Law, becauſe a generall liberty could not be ſued thereupon: but ſpeciall liberties (note and long ſince in uſe) may be ſued upon ſuch an office found virtute officii) as to offices found virtute brevis aut commiſſionis.

* 30 aſſ.28. Kelway.10.H.8. fol.198.b. Stamf.prer.59.b. 21.H.7.fol.35.

The reaſon wherefore no generall liberty could be ſued at the common Law upon an office found virtute officii, was, Quia vigilantibus, non dormientibus jura ſubveniunt. And the office, whereupon liberty is to be granted to the heire, is to be upon *an office* to be found by writ or commiſſion at the ſuit of the heire, and the Eſcheator may retorne an office virtute officii into the Court.

Vid.32.H.8. cap.46. for the Court of Wards. F.N.B.232, 233. 29.aſſ.43. 16.E.3. liverie 30. 32.E.3. travers 38. 32.aſſ.28. 50.aſſ.2.See the juriſdiction of Courts, cap.the Court of Wards.

The 3.branch. Be it enacted by the authority aforeſaid, that every perſon and perſons grieved, or to be grieved by any ſuch office or inquiſition, ſhall and may have his or their traverſe to the ſame, immediatly, or after, at his or their pleaſure, and proceed to tryall therein, and have like remedie and advantage, as in other caſes of traverſe upon untrue inquiſitions or offices founden: any law, uſage, or cuſtome to the contrary in any wiſe notwithſtanding.

See the ſtatute of Marlbridge, ca.16. and the expoſition thereupon. 2.E.4.18. 5.E.4.3,4. F.N.B.262. 12.E.4.18. 2.H.6.5. 8.Hen.7.118. 11.H.7.3. Vide Dyer 5.Mar.161,162. lib.7.45. in Kennes caſe. this act doth not take away any incidents in Law: for if one heire traverſe the office of another, he firſt muſt have an office found for himſelfe, as there it is reſolved. Vid.36.E.3.tit.Travers 44. 12.H.6.travers 45. 5.E.4.4. 1.H.7.14. 29.aſſ.13. 43.aſſ.p.20. 32.H6. travers 39. 16.E.4.4. F.N.B.262. Stamf.prer.58. Kennes caſe, ubi ſupra, the cauſe of this word [immediately] to make it cleare that before lons vexata quæſtio, ſo as by this an interpleader, as the caſe ſhall require, ſhall be immediatly.

And

And where it is or ſhall be hereafter untruly founden by office or inquiſition, that any perſon or perſons attainted, or that ſhall be attainted of treaſon, felonie, or premunire, is or ſhall be ſeiſed of any lands, tenements, or hereditaments, at any time of ſuch treaſon, felonie, or offence committed or done, or any time after, whereunto any other perſon or perſons hath, or ſhall have any juſt title or intereſt of any eſtate of freehold, that then in every ſuch caſe, every perſon and perſons grieved thereby, ſhall have his or their traverſe, or *Monſtrans de droit* to the ſame, without being driven to any petition of right: And like remedy and reſtitution upon his or their title, found or judged for him or them therein, as hath been accuſtomed and uſed in other caſes of traverſe, although the Kings Majeſtie, his heires or ſucceſſors be, or ſhall be, in ſuch caſe intitled to any ſuch lands, tenements, or hereditaments, by double matter of record: any law, cuſtome, or uſage to the contrary in any wiſe notwithſtanding. The 4. branch.

Lib. 4. fol. 57. b. the reaſon is notably expreſſed, wherefore in theſe caſes at the common Law the party grieved was put to his petition. See 49. Ed. 3. 11. 13. H. 4. 7. 10. H. 6. 15. 4. E. 4. 25. 21. E. 4. 2, 3. 4. H. 7. fol. 7. Stamf. prer. 72, 73. 1. E. 5. 8. Pl. com. 486, Rot. Parl. 11. H. 6. nu. 29. John Earle of Somerſets caſe, Br. travers de office 51. Vid. 43. aſſ. p. 28. 33. H. 8. petition Br. 35.

¶ Shall have his or their traverſe, or *Monſtrans de droit* to the ſame, &c.] Note, that the traverſe and Monſtrans de droit are here diſiunctively divided, and by the ninth branch of this act, the party that ſhall traverſe, muſt ſue out one writ or ſeverall writs of Scire facias, as the caſe ſhall require, and that there ſhall be two writs of ſearch granted upon every traverſe, that ſhall be purſued by vertue or meanes of this act. But nota, that Proviſo extends onely to traverſes, and not to any Monſtrans de droit to be purſued by force of this act, either for the ſuing out of writs of Scire facias, or that therein writs of ſearch ſhall be granted, becauſe the Monſtrans de droit doth confeſſe and avoid the title of the King, and the traverſe denieth it, 14. E. 4. 1, 7. Stamf. prer. 70, 71. ſimile.

And further be it enacted by the authoritie aforeſaid, that where any inquiſition or office is or ſhall be founden by theſe words, or the like, *Quod de quo, vel de quibus tenementa prædicta tenentur, jurat' prædict' ignorant*: or elſe founden holden of the King, *Per quæ ſervitia ignorant*, or ſuch like; that in ſuch caſe, ſuch tenure ſo uncertainly founden, *De quo, vel de quibus tenementa prædicta tenentur, ignorant*, ſhall not be taken for any immediate tenure of the King; nor ſuch tenure ſo founden of the King, *Per quæ ſervitia ignorant*, ſhall not be taken any tenure *in capite*; but in ſuch caſes a *Melius inquirendum* to be awarded, as hath been accuſtomed in old time: any uſage of latter time to the contrarie notwithſtanding. The 5. branch.

¶ That where any inquiſition or office is or ſhall be found, &c.] Upon an office found before the Eſcheator, virtute officii, there lay no Melius inquirendum before this act; for the words of the writ be, Per quandam inquiſitionem capt' coram A. Eſchaetore noſtro, &c. de mandato noſtro capt' F. N. B. 255. Regiſt. fol. But this act is generall, and giveth it when it is found, virtute officii. Vid. 8. H. 6. cap. 16. Kelwey 199.

¶ *Quod de quo vel de quibus, &c.*] Vide 10. H. 4. 2. b. 13. H. 7. 4. 29. Hen. 8. Br. office 58. & 30. H. 8. ibid. 59.

¶ But in ſuch caſes a *Melius inquirendum* to be awarded, &c.] Vide Dyer 12.Eliſ.fol.291. Si ſur le melius tenure eſt trove dun common perſon in certaine, ne beſoigne travers. Dyer 13.Eliſ.fol.306. Si ignoramus ſoit trove ſur le melius, ceo ſerra priſe tenure in capite. Iſſint fuit reſolve Mich.33.& 34. Eliſ.per les 2.chiefe Juſtices in le Court de Gardes. **For this act extends not to the ſecond inquiſition upon the Melius. And it was then reſolved, that he which ſhould traverſe ſuch an office, ſhould traverſe, that the land was not holden of the King in capite; for ſo much is implyed in the office,** Dyer 5.Mar.161,162.

Dyer 13.Eliſ. ubi ſupra, ſi ſur le melius ſoit trove tenure dun roigne ut de manerio, &c. ſed per quæ ſervitia ignorant. **This is a tenure by knights-ſervice, as of the Mannor.** Vide pur melius inquirend' lib.8.fol.168. *Paris* Stoughters **caſe,** & 5.Mar.Dyer 155.b.156. **that no** melius inquirendum **is graunted of any office found** de quo vel de quibus, &c. **before this ſtatute.**

The 6.branch. And be it further enacted by the authoritie aforeſaid, that where it is or ſhall be found by any office or inquiſition, that any lands, tenements, or hereditaments, are, or ſhall be diſcended, remained, or common to any heire within age, and in the Kings ward, or that ought to be in the Kings ward, and that ſuch lands, tenements, or hereditaments are holden of the King immediately, where in deed the ſame are, or ſhall be holden of ſome other common perſon, and not of the King immediately: that in ſuch caſe, ſuch heire or heires ſhall and may have their traverſe to the ſame within age, and like remedie and reſtitution upon his or their title founden or judged for him, or them therein, as hath been accuſtomed and uſed in other caſes of traverſes: any law, uſage, or cuſtome to the contrarie in any wiſe notwithſtanding.

¶ Where it is, or ſhall be found by any office or inquiſition, &c.] **Note the generality of this clauſe.**

¶ Shall be holden of ſome other common perſon, &c.] **The Lord might traverſe by the common Law.** 5.Mar.Dyer 161,162. **but the heire could not before this act.** Vide 1.H.7.3.

The 7.branch. Alſo where the Kings Majeſtie by his prerogative ought to have as well ſuch lands and tenements as be holden of other perſons, as holden of himſelfe immediately, whereof his tenant holding of him in chiefe, dyeth ſeiſed, his heire being within age, untill ſuch time as liverie be ſued by ſuch heire, and that the meane lords, of whom the ſaid other lands and tenements of ſuch heire be holden, uſed to ſpare the rents due to them for the ſame lands or tenements holden of them, during the Kings poſſeſſion. And when ſuch heire hath ſued his or their liverie they uſe by diſtreſſe, or otherwiſe to compell the ſaid heire to pay to them the arrerages of ſuch rents, for ſuch time as the ſaid lands, or tenements were in the Kings poſſeſſion by ſuch minoritie, where they ſhould have ſued by petition to the Kings Majeſtie, to have obtained the ſame out of the Kings hands, if they would have the ſame, which is to the great detriment, loſſe, and hindrance of ſuch heire and heires. For redreſſe whereof, be it enacted by the authoritie of this preſent Parliament, that from henceforth ſuch meane Lords, during ſuch minoritie ſhall have, receive, and take the ſaid rents by the hands of ſuch of the Kings officers, as ſhall be appointed to have, receive, and take

take the iſſues, revenues, and profits of the ſame lands and tenements ſo holden of ſuch meane Lords, during the minoritie and nonage of ſuch heire and heires, and untill ſuch heire and heires ſue his or their liverie, and that ſuch heire and heires, untill ſuch time as he or they ſhall have ſued their liverie, or might conveniently have ſued their liverie, ſhall be thereof clearly diſcharged. And that ſuch officer or officers, ſhall upon requeſt made, pay the ſame to ſuch meane Lords (they giving to ſuch officer and officers a ſufficient acquittance, or acquittances for the receipt of the ſame.) And that ſuch payment thereof made with acquittance, or acquittances thereof ſhewed, ſhall be to ſuch officers a ſufficient diſcharge againſt the Kings Majeſtie and his heires, upon his or their accompt in that behalfe: Any law, uſage, or cuſtome heretofore had, or uſed to the contrary hereof in any wiſe notwithſtanding.

¶ Untill ſuch time as liverie be ſued.] Nota, there be two ſorts of liveries, viz. liveries in deed, and liveries in law. Of liveries in deed there be two kinds, viz. a generall livery, and a ſpeciall livery. For a generall livery an office muſt be found in every County, an Ætate probanda found and returned in the Chancery; a writ to the Lord privie Seale, that the heire is of full age: and thereupon a privie ſeale to the Chamberlaine of England to receive his homage, &c. which kind of livery is dangerous, tedious, and chargeable. Vid. 44.E. 3.12. 12.H.4. livery 4. 21.R.2.livery 5. 1.H.7.14. E.4.18. 7.H.8.Kelwey 176,177.

There is alſo a ſpeciall livery with a pardon much more ſafe, ſpeedy and beneficiall for the party, and it may be had upon any office found in any one County, and all the reſt to come in by Certificate, as now the uſe is without Ætate probanda,&c. 7.H.8.Kelwey 177. or without any office at all, and may be made to the heire within age, 21.E.3.40. 29.H.8. livery Br.56.

By the ſtatute of 33.H.8.cap.22. power is given to the Maſter of the Wards, Surveyor, Attorny, and Receiver, or three of them, whereof the Maſter or Surveyor to be one, to grant a generall or ſpeciall livery. Whereupon ſome have thought, that ſpeciall liveries became commonly to be granted; but it appeareth by 7.H.8. ubi ſupra, that it was ſo commonly uſed by a good time then paſt. Dyer 23.Eliſ.fol.377. a ſpeciall livery is not grantable at this day ex debito juſtitiæ.

If the office be traverſed, and the King, hanging the traverſe, grant livery, &c. the traverſe goeth to the ground. Kelw. 2.H.8.157.a.b. 1.H.7.12.27.adjudged. See Dyer 23.Eliſ.ubi ſupra.

13.H.4.6.7.tit.Travers, An office is found, that A. died ſeiſed of the Manor of B. and held the ſame in capite by knight-ſervice his heire within age; this office is traverſed, that A. infeoffed him that traverſeth in fee, and traverſe the dying ſeiſed: Whereupon the King taketh iſſue, and hanging the traverſe, it is found by another office, that the ſaid feoffment was by colluſion, and after the iſſue was found againſt the King; whereupon, by the rule of the Court, the party had judgement, and an Amoveas manum. For the office, found depending the traverſe, ſhall not grieve the party; for ſo he might be infinitely vexed: but in a Seire fac' by the King upon the latter office he ſhall anſwer, &c. an excellent caſe for the benefit and ſpeed of them that are driven to traverſe. Vid. 11.H.4.fol.8. 13.H.4. tit.Travers 16.et 13.H.4.tit.Livery 21.

* There be alſo liveries in law, as by pardons, either by act of Parliament, or by Charter under the great Seale, to the heire of the Kings tenant in capite, be he within age, or of full age. But where ſome Books ſay, that a pardon of intruſions to ſuch an heire amount in law to a livery, it is ſo to be underſtood, that in the pardon there be words alſo, that the heire may enter, &c. for a ſpeciall livery is

* 23.H.8.Br. intruſion 19.21. 2.H.6.57. Kelw. 10.H.8.198. 13.H.4.3. See Dyer 12.El. 286. 46.E.3. grant 50. 34.H.8. Charter de pardon 54. 29.H.8. ibid.52. 16.E.4.fol.1.

is no other, but that the heire habeat licentiam ingrediendi, &c.

32.H.8.Br.62. Stamf.prer.40.b. Note, upon every livery the King hath the value of the land for halfe a yeare, but upon an Ouſter le maine the Kings hands be amoved without any profit, &c.

¶ Uſed to ſpare the rents, &c.] Not onely rents, but reliefes alſo were due by the common law, 26.H.8.8. 24.Ed.3.24. 29.aſſ.p.5. 39.E.3.reliefe 1. Vide Br.tit' Arrerages, pl.1.& 19. For though there be a kind of ſuſpenſion of rents, &c. by reaſon of the Kings poſſeſſion; yet the rents, &c. are due, becauſe the prerogative of the King doth no man wrong, 13.E.4.8.&c.

The 8.branch. Vid.Dier 5.Mar. 155,156. Provided alwaies, and it is enacted by the authoritie aforeſaid, that this act, or any thing therein contained, ſhall not in any wiſe extend to any inquiſition or office taken or founden, at any time before the twentieth day of March next coming; nor to hinder, prejudice, or take away the title, intereſt, or poſſeſſion of our Soveraigne Lord the King, or of any other perſon or perſons growne, or commen by vertue, meane, or occaſion of any inquiſition or office taken, or found before the ſame day; but that as well our ſaid Soveraigne Lord the King, as all other perſon or perſons, having any title, intereſt, or poſſeſſion by vertue, meane, or occaſion of any inquiſition or office found before the ſame day, ſhall, and may have, hold, and enjoy the ſame in like manner and forme, as though this act had never been had or made: any thing in the ſame act to the contrary in any wiſe notwithſtanding.

The 9.branch. Provided alſo, and it is enacted by the authoritie aforeſaid, that in all ſuch caſes, as any perſon or perſons ſhall be enabled by this act to have any traverſe, and ſhall purſue his or their traverſe, that then he or they that ſhall purſue ſuch traverſe, ſhall ſue one writ, or ſeverall writs of *Scire facias* (as the caſe ſhall require) againſt all and ſingular ſuch perſon and perſons, as ſhall have intereſt by the King, or by his patentee or patentees, in like manner and form as is requiſite upon traverſes, or petitions heretofore purſued. And that in every ſuch *Scire facias* the patentees, or other defendants ſhall have like plees and advantages, as they had in any *Scire facias*, before this time awarded againſt any patentee in any caſe of petition. And alſo, that upon every traverſe that ſhall be purſued by vertue or meane of this act, in ſuch caſe as the partie or parties that ſhall purſue any ſuch traverſe, ſhould, by the order of the common Lawes of this Realme, have been put to ſue by petition to the King, there ſhall be two writs of ſearch granted in manner and forme, as like writs have been granted upon petitions made to the King.

¶ Shall be enabled by this Act, &c.] Hereof ſomewhat hath been ſpoken in the fourth branch. Vid.5.E.4.3.

Nota, in many caſes two matters of record with neceſſary averrements ſhall amount to an office, but thereupon a Scire fac' is to be granted, wherein the partie may traverſe any of the materiall averrements, &c. 21.aſſ.p.36. 21.E.3. liverie. 40.aſſ.46. 50.aſſ.2. 2.E.3.10.b. but becauſe ſuch records amounting are not within any branch of this act, we will ſpeak no further of them.

The 10.branch. Provided alſo, and it is enacted by the authoritie aboveſaid, that if after any judgment ſhalbe given upon any traverſe that ſhalbe tendred, or ſued by vertue or mean of this act, it ſhal appear by any matter of record,

cord, that the King hath any other former title, right, or intereſt to the mannors, lands, tenements, or other hereditaments mentioned in the ſame traverſe, that then the ſame title, right, and intereſt ſhall be ſaved to the King, the ſaid traverſe and judgement thereupon given, in any wiſe notwithſtanding.

¶ Upon any traverſe.] This extendeth not to a Monſtrans de droit to be purſued upon this ſtatute.

This Proviſo was added (for that this act gave a traverſe, where none was at the common Law, and that it ſhould be judged for them, for whom it was found, &c.) leſt the judgement, being warranted by authority of Parliament, ſhould bind any former right the King had; and that appeareth alſo by the concluſion of this branch, viz. The ſaid traverſe and judgement thereupon given notwithſtanding: but it ſeemeth to be abundans cautela, for the judgement upon a traverſe is, Quod manus Domini Regis amoveantur, & poſſeſſio reſtituatur to him that traverſeth ſalvo jure, &c. Br.tit.Travers de office 54.

It is to be obſerved, that there be certaine Records which intitle the King, that by law are not traverſable; in which caſes, though the King be entituled but by ſingle matter of record, yet the party grieved is put to his petition, and cannot be holpen by traverſe or Monſtrans de droit. As taking one example for many: King Henry the fourth recovered in the Kings Bench in a Quare impedit againſt the Prior of T. the preſentation to a Church, and had a writ to the Biſhop, and his Clerke received, &c. where in truth the Prior never knew of the ſuit, nor was ſummoned, attached, or diſtrained by the Sheriffe; and thereupon the Prior moved the Court of Kings Bench to grant a writ, to cauſe to come before them the Summoners, the Pledges, and Mainpernors upon the diſtreſſe to be examined in this matter. And in this caſe five points were reſolved by Gaſcoigne chiefe Juſtice, and the Court, viz. firſt, that the Prior was driven to his petition in nature of a writ of deceit, albeit in this caſe the King recovered in auter droit. 2. That if a common perſon had recovered, the Defendant had been driven to his originall writ out of the Chancery, and could not proceed upon any judiciall proceſſe out of this Court. 3. That if the concluſion of the petition be, that the King ſhould command the Court of Kings Bench to proceed to the examination, &c. then without any writ out of the Chancery, the Court may proceed to the examination. 4. But if the petition doth conclude generally, that the King ſhould doe right, then the Prior ſhould be driven to his originall out of the Chancery. 5. That before ſuch writ be granted, the Prior upon a commiſſion out of the Chancery, ought to have his right found by enqueſt. Mich.10.H.4 tit. Travers 51.F.12. N.B.99.f. Stamf.prer.73.

But ſeeing our ſtatute extendeth to offices found by writ, commiſſion, or ex officio, and not to other records, we will ſpeak no further of them.

Mine advice to ſuch as ſhall traverſe by force of this act, is, that in the inducement to the traverſe, they alledge their owne title (which they ought to doe; for no man ſhall have the lands out of the Kings hands, without making a title) juſtly and truly: For the Attorney generall for the King may either take iſſue upon the traverſe, or by the Kings prerogative upon the title of the party, that traverſeth at his choice. 3.H.4.14. 13.E. 4.8. 46.E.3. travers 17.

It is a maxime in Law, that whenſoever any man is by any office traverſable amoved from his poſſeſſion, that he muſt traverſe the office in the Court, where the office is returned. Of houſes and lands which doe lye in livery, and whereof there is manuall occupation, and profit preſently taken, the party by finding of the office is out of poſſeſſion; but of rents, billeins, commons, advowſons, and other inheritances incorporeall which lye in grant, the owner is not out of poſſeſſion (be they appendant, or in groſſe) by the finding of an office: and therefore in any information or action brought by the King for the ſame, the party may traverſe the office in that Court, where the information or action is brought for the King. 17.E.3.10. Henry Hills caſe. 20.E.4.11.14. 21.E.4.1.2. quare imped.101. 14.H.7.21. 15.H.7.6.

And

29.ass.p.40.
32.ass.p.28.
50.ass.2.Stamf. prer. 54.b.

And in all cases, when the King is not in possession by the office, and he obtaine not possession within the yeare after the office found, then cannot the King seize without a Scire facias.

We have taken this statute of 2.E.6. into our consideration, the rather, for that Justice Stamford wrote his Treatise upon the prerogative (wherein he setteth forth the common Law) before this statute of 2.E.6. by which statute the subject is relieved in many things, which lay heavie upon him, when Justice Stamford wrote; our chiefest endeavour being, that it may be knowne how the Law standeth at the edition of this second and other parts of the Institutes.

An

An Expoſition upon the Statute of 22. *H.*8. *Cap.*5. concerning the repairing of decayed Bridges in High-waies, and by whom.

BE it enacted by the King our Soveraigne Lord, and the Lords Spirituall and Temporall, and the Commons in this preſent Parliament aſſembled, and by authoritie of the ſame, That the Juſtices of Peace in every Shire of this Realme, Franchiſe, Citie, or Borough, or foure of them at the leaſt, whereof one to be of the *Quorum*, ſhall have power and authoritie to enquire, heare, and determine in the Kings generall ſeſſions of peace, of all manner of annoyances of Bridges broken in the high-waies, to the damage of the Kings liege people, and to make ſuch proceſſe and paines upon every preſentment afore them for the reformation of the ſame, againſt ſuch as owen to be charged for the making or amending of ſuch Bridges, as the Kings Juſtices of his Bench uſe commonly to doe, or as it ſhall ſeem by their diſcretions to be neceſſary and convenient for the ſpeedy amendment of ſuch Bridges.

And where in many parts of this Realme it cannot be knowne and proved what Hundred, Riding, Wapentake, Citie, Borough, Towne, or Pariſh, nor what perſon certain, or bodie politick, ought of right to make ſuch Bridges decayed, by reaſon whereof ſuch decayed Bridges, for lacke of knowledge of ſuch as owen to make them, for the moſt part, lye long without any amendment, to the great annoyance of the Kings ſubjects.

For the remedy thereof, be it enacted by authoritie aforeſaid, that in every ſuch caſe the ſaid Bridges, if they be without the Citie or Towne corporate, ſhall be made by the inhabitants of the Shire or Riding, within the which the ſaid Bridge decayed ſhall happen to be: And if it be within any Citie or Towne corporate, then by the inhabitants of every ſuch Citie, or Towne corporate, wherein ſuch Bridges ſhall happen to be. And if part of any ſuch Bridges ſo decayed happen to be in one Shire, Riding, Citie, or Towne corporate, and the other part thereof in another Shire, Riding, City, or Town corporate; or if part be within the limits of any Citie, or Towne corporate, and part without; or part within one Riding, and part within another: that then in every ſuch caſe the inhabitants of the Shires, Ridings, Cities, or Townes corporate ſhall be charged, and chargeable to amend, make, and repaire ſuch part and portion of ſuch Bridges ſo decayed, as ſhall lye and be within the limits of the Shire, Riding, Citie, or Towne corporate, wherein they be inhabited at the time of the ſame decaies.

And be it further enacted, that in every ſuch caſe, where it cannot be knowne and proved what perſons, lands, tenements, and bodies politick owen to make and repaire ſuch Bridges, that for ſpeedy reformation and amending of ſuch Bridges, the Juſtices of Peace within the Shires or Ridings, wherein ſuch decayed Bridges been out of Cities and Townes corporate; and if it be within Cities or Towns corporate,

then the Juſtices of Peace within every ſuch Citie, or Towne corporate, or foure of the ſaid Juſtices at the leaſt, whereof one to be of the *Quorum*, ſhall have power and authority within the limits of their ſeverall commiſſions, and authorities, to call before them the Conſtables of every Town and Pariſh, being within the Shire, Riding, City, or Town corporate, as well within liberty, as without, wherein ſuch Bridges, or any parcell thereof ſhall happen to be, or elſe two of the moſt honeſt Inhabitants within every ſuch Towne or Pariſh in the ſaid Shire, Riding, City, or Towne corporate, by the diſcretion of the ſaid Juſtices of Peace, or foure of them at the leaſt, whereof one to be of the *Quorum*: And at, and upon the apparances of ſuch Conſtables, or Inhabitants, the ſaid Juſtices of Peace, or foure of them, whereof one to be of the *Quorum*, with the aſſent of the ſaid Conſtables, or Inhabitants, ſhall have power and authority to taxe, and ſet every Inhabitant in any ſuch City, Towne or Pariſh, within the limits of their commiſſions and authorities, to ſuch reaſonable aide, and ſumme of money, as they ſhall thinke by their diſcretions convenient and ſufficient for the repairing, re-edifying, and amendment of ſuch bridges, and after ſuch taxation made, the ſaid Juſtices ſhall cauſe the names and ſummes of every particular perſon ſo by them taxed, to be written in a roll indented. And ſhall alſo have power and authority to make two Collectors of every Hundred, for collection of all ſuch ſummes of money, by them ſet and taxed, which Collectors receiving the one part of the ſaid roll indented under the ſeales of the ſaid Juſtices, ſhall have power and authoritie to collect and receive all the particular ſummes of money therein contained, and to diſtraine every ſuch Inhabitant, as ſhall be taxed, and refuſe payment thereof, in his lands, goods, and chattells, and to ſell ſuch diſtreſſe, and of the ſale thereof retaine and perceive all the money taxed, and the reſidue (if the diſtreſſe be better) to deliver to the owner thereof. And that the ſame Juſtices, or foure of them, within the limits of their commiſſions and authorities, ſhall alſo have power and authoritie to name and appoint two Surveyors, which ſhall ſee every ſuch decayed bridge repaired, and amended from time to time, as often as need ſhall require, to whoſe hands the ſaid Collectors ſhall pay the ſaid ſummes of money taxed, and by them received: And that the Collectors and Surveyors, and every of them, and their executors and adminiſtrators, and the executors and adminiſtrators of them, and every of them, from time to time ſhall make a true declaration and accompt to the Juſtices of Peace of the Shire, Riding, Citie, or Town corporate, wherein they ſhall be appointed Collectors or Surveyors, or to foure of the ſame Juſtices, whereof one to be of the *Quorum*, of the receipts, payments, and expences of the ſaid ſummes of money: And if they, or any of them refuſe that to doe, that then the ſame Juſtices of Peace, or foure of them, from time to time by their diſcretions, ſhall have power and authoritie to make proceſſe againſt the ſaid Collectors and Surveyors, and every of them, their executors and adminiſtrators, and the executors and adminiſtrators of every of them, by attachments under their ſeales returnable at the generall Seſſions of Peace: And if they appeare, then to compell them to accompt, as is aforeſaid, or elſe if they, or any of them,

refuſe

refuſe that to doe, then to commit ſuch of them, as ſhall refuſe, to ward, there to remaine without baile or mainpriſe, till the ſaid declaration and accompt be truly made.

And where any Bridge or Bridges lien in one Shire or Riding, and ſuch perſons inhabitants, bodies politick, lands or tenements, which owen to be charged to the making and amending of ſuch Bridges, lien and abiding in another Shire or Riding, or where ſuch Bridges been within any Citie, or Towne corporate, and the perſons inhabitants, bodies politick, lands or tenements, that owen to make or repaire any ſuch Bridges, lien and been out of the ſaid Cities and Townes corporate: Be it enacted, that in every ſuch caſe, the Juſtices of Peace of the Shire, Citie, or Towne corporate, within the which ſuch decayed Bridges, or any part thereof ſhall happen to be, ſhall have power to enquire, heare, and determine all ſuch annoyances, being within the limits of their commiſſions or authorities. And if the annoyance be preſented, then to make proceſſe into every Shire within this Realme againſt ſuch as owen to make, or amend any ſuch Bridges ſo preſented before them, to be decayed, to the annoyance and let of the paſſage of the Kings ſubjects, and to doe further in every behalfe in every ſuch caſe, as they mought doe by authoritie of this Act, in caſe that the perſons or bodies politick, lands or tenements, which owen to be charged to the amending or making of ſuch Bridges, or any part thereof, were in the ſame Shire, Riding, Citie, or Towne corporate, where ſuch annoyance ſhall happen to be. And that all Sherifes and Bailifes of Liberties and Franchiſes, ſhall truly ſerve and execute ſuch proceſſe, as ſhall come to their hands from the ſaid Juſtices of Peace, afore whom any preſentment ſhall be had for any ſuch annoyance, according to the tenour and effect of the ſaid proceſſe to them directed, without favour, affection or corruption, upon paine to make ſuch fine as ſhall be ſet upon them, or any of them, by the diſcretion of the ſaid Juſtices.

Provided alway, that this Act, nor any thing therein contained, be not prejudiciall to the liberties of the five Ports, or members of the ſame, and for reformation of annoyance of Bridges within the ſaid ports and members.

Be it enacted by authoritie of this preſent Parliament, that the Warden, Maiors, and Bailiffes elected, and Jurates of the ſame Ports, and every of them, have power and authoritie to enquire, heare, and determine all manner of common annoyances of Bridges within the ſame ports and members, and to make ſuch proceſſe, paines, taxations, and all other things within the ſame ports and members, as the Juſtices of Peace may doe in other Shires, or places out of the ſame ports, by vertue and authoritie of this preſent Act in every behalfe.

And be it further enacted by the authoritie aforeſaid, that the Juſtices of Peace, or foure of them, ſhall have full power and authoritie to allow ſuch reaſonable coſts and charges to the ſaid Surveyors and Collectors, as by their diſcretions ſhall be thought convenient.

For as much that albeit Bridges decayed were amended and repaired, according to the tenour of this Act, yet nevertheleſſe, if ſpeedy remedy for the amendment of the waies next adjoyning to every of the ends of ſuch Bridges, ſhould not be had and made, the Kings ſubjects

should take little or none availe or commoditie in any parts of this Realme by the making of the Bridges: In consideration whereof, be it enacted by the King our Soveraigne Lord, and the Lords Spirituall and Temporall, and the Commons in this present Parliament assembled, and by the authoritie of the same, That such part & portion of the high-waies in every part of this Realme, as well within Franchise, as without, as lye next adjoyning to any ends of any Bridges within this Realme, distant from any of the said ends, by the space of three hundred foot, be made, repaired, and amended as often as need shall require. And that the Justices of the Peace in every Shire of this Realm, Franchise, Citie, or Borough, or foure of them at the least, whereof one to be of the *Quorum*, within the limits of their commissions and authorities, shall have power and authoritie to enquire, heare, and determine in the Kings generall Sessions of peace, all manner of annoyances of and in such high-waies, so being and lying next adjoyning to any ends of Bridges within this Realme, distant from any of the ends of such Bridges, three hundred foot, and to doe in every thing and things concerning the making, repairing, and amending of such high-waies, and every of them, in as large and ample manner as they might and may doe, to and for the making, repairing, and amending of Bridges, by vertue and authoritie of this present Act.

Before we enter into the exposition of this act, we will take into consideration, for a necessary introduction thereunto, what the common Law was concerning the reparation of bridges in three points: First, who were to repair the same: 2. what was the remedy for the reparation thereof: 3. before what Judges.

*. Pons significat omne quod super aquas transimus, unde ponticulus.

Nil Tadcaster habet musis aut carmine dignum,
Præter magnificè structum sine flumine pontem.
Vidit & scripsit poeta in ætate.

As to the first some persons spirituall or temporall, incorporate, or not incorporate, are bound to repaire bridges ratione tenuræ suæ terrarum, sive tenementorum, &c. some ratione præscriptionis tantum, ratione tenuræ, by reason that they and those, whose estate they have in the lands or tenements, are bound in respect thereof to repaire the same: 2 but they which have lands on the one side of the bridge, or on the other, or on both, are not bound of common right to repaire the same.

44.E.3.31.
21.E.4.fol.46.
5.H.7.3.
a 8.H.7.5.b.

b If a man, which holdeth an hundred acres of land, ought to repaire a bridge by the tenure of them, if he for example alien twenty acres of them to one, and ten to another, and after one of them is oneip upon a presentment found thereof, distrained to repaire this bridge, he shall have a speciall writ de onerando pro rata portione, & sic de similibus.

b Regist. 268.a. F.N.B.235.b.

Ratione præscriptionis tantum, but herein there is a diversity between bodies politicke or corporate, spirituall or temporall, and naturall persons: For c bodies politicke or corporate, spirituall or temporall, may be bound by usage and prescription only, because they are locall, and have a succession perpetuall: but a naturall person cannot be bound by act of his Ancestor, without a tenure or tenure, and assets.

c 21.E.4.38.b. 46. 43.ass.37. 49.E.3.5.b. the Prior of Markiats case. 10.E 4. 10.a.& b.in Scir' fac' 19.H.6.75. a.b.

d Nota, if a Bishop or Wales, &c. hath of once or twice of almes repaired a bridge, it bindeth not (and yet is evidence against him, untill he prove the contrary) but if time out of mind, they and their predecessors have repaired it of almes, this shall bind them to it.

d 10.E.3.28,29. 27.ass.pl.8. 44.E.3.31.

* De pontibus & calcetis fractis in omnibus transitionibus quis ea reparare, & sustentare debet.

* Cap. Itineris. M.13.E.3.fo.73. 74. in libro meo, the Abbot of S. Austins case.

e But admit none at all were bounden to the reparation of the bridge, here

e Pasch.10.E.3.28.29. in the Mast. of Leonards case. Vid. Regist. 191. 2.E.3.coron.147. 14.E.3.stat.1.cap.4. where the whole County is amerced.

there

then? and by whom should it be repaired by the common Law? The answer is, That the whole County, that is, the Inhabitants of the County or Shire, wherein the bridge is, shall repaire the same; for of common right the whole Cointy must repaire it, because it is for the common good, and ease of the whole County.

If a bridge be within a Franchise, those of the Franchise are to repaire it. If the bridge be part within a Franchise, and part within the Ordinable, so much as is within the Franchise shall be repaired by those of the Franchise; and so much as is within the Ordinable, by those of the Ordinable. [f] And so it is, if it be in two Counties, mutatis mutandis.

If a man make a bridge for the common good of all the subjects, yet is not bound to repaire it; for no particular man is bound to reparation of bridges by the common Law, but ratione tenuræ, or præscriptionis.

As to the second the remedy was, if it were a private bridge: as to a Mill which A. was bound to maintaine, over which B. had a passage, &c. if the bridge were in decay, B. might have his writ de ponte reparando. But if the bridge were for the publicke, &c. the remedy was by presentment at the suit of the King, for avoiding of multiplicity of suits.

As to the third, this presentment might be at the common Law before the Justices of the [g] Kings Bench, or before [h] Justices in Eire, or [i] Commissioners of Oier and Terminer, or before the Sheriffe by commission, or [k] writ in nature of a commission. [l] But as to the Sheriffe, his power to take inditements by force of any such writ or commission in the nature of a commission, is taken away by the statute of 28.E.3.cap.9. But it may be presented in the [m] Turns or Leet.

See the second part of the Institutes, Mag.Chart. cap.15. Nulla villa nec liber homo distringatur facere pontes, &c. nisi qui ab antiquo & de jure facere consueverunt tempore regis Henrici avi nostri.

For Pontage, Vid. the second part of the Institutes, Westmin' 1.cap.31. W.2. cap.25. 3.E.3. ass.445. 35.H.6.29.b. per Fortescue, Pl.Com.334.407. Vide 13.H.4.17. F.N.B.178.f. Flet.lib.4.cap.1. Vid.1.H.8.cap.9. 39.El.cap.24.

Pontage is a toll or contribution for repaire of bridges. See a reasonable taxation therefore 39.Elis.cap.24. See also of Pontage, lib.8. fol.46.b. John Webscase.

It appeareth in our Bookes, that before bridges were made holy orders by faults were saved, and delayes had per cretance del eve, by counsell of learned.

None can be compelled to make new bridges, where neither any were before, but by act of Parliament.

[n] The law before the Conquest was, Oppida pontesque passim instaurantur. And againe, Qui pensionem ad oppida pontesve reficiendos denegabis, militiamve subterfugerit, dabit is regi (si Anglus fuerit) 26.solidos, &c.

Now having considered what the common Law was concerning the reparation of bridges, we will perule the parts of this act of 22.H.8. which may be divided into eight branches.

1. That [o] Justices of Peace, or any foure or more of them, whereof one to be of the Quorum, at the Kings generall Session of peace, shall have power and authority (which consisteth in these foure things) first to enquire, heare and determine.

2. Whereof [p] of all manner nuisances of bridges broken in the high-waies, to the damages of the Kings liege people. This extendeth only to common bridges in the Kings high-waies, where all the Kings liege people have, or may have passage, and not to private bridges to Mills, or the like. And therefore the inditement upon this statute saith, Quod P pons publicus & communis situs in alta regia via super flumen, seu rivum aquæ, &c.

3. In what place? In every Shire of this Realme, Franchise, Citie, or Borough.

But this is to be understood, reddendo singula singulis, that is to say, 1. in every

f Regist.154.a. F.N.B.127.e.

14.E.3.tit.Barre 276. the Bishop of Chesters case.

8.H.7.5.

Regist.153, 154. F.N.B.127.d.

g 21.E.3.54. 43.ass.37.
h 3.E.3.ass.445.
i 27 ass.p.8. 33.ass.p.10.
k 38.ass.p.15. 22.E.3.1.
l 14.E.3.barre 276.
m 29.E.3.21.

5.E.3.2. 7.H.4. 3 &c.

39.Elis.cap 24. 43.Elis.cap.16. 9.H.5.cap.12. H.6.cap.28. 3.Jac.cap.24.

n Inter leges Canuti regis, ca.10. & 62.

The first branch.

o Just. of Peace have power to enquire of Nusances, &c. in high-waies, by the statutes of 2 Mar. cap.8. 5.Elis.cap.13. 18 Elis.cap.9.

p Pons à pendendo, quia tanquam in aere pendet.

every Shire or County where there be foure or more Justices of Peace, whereof one or more is of the Quorum. 2. Franchise, where there be foure or more Justices of the Peace, and one or more of the Quorum. 3. Citie, where be foure or more Justices of the Peace, and one or more of the Quorum. 4. Or Borough, where there be foure or more Justices of the Peace, and one or more of the Quorum, and where they keep generall Sessions of the peace for such Franchises, Cities, or Boroughes; but for want thereof, the Justices of Peace of the County shall enquire. But if the Franchise, Citie, or Borough be a County of it selfe, and have not foure or more Justices of Peace, whereof one or more is of the Quorum, no other Justices of Peace of any other Shire or County, have any power by this act to enquire of, hear and determine the decay of bridges there, but such decay must be reformed by such remedies (before specified) as the common Law did give; therefore it was necessary to be knowne what the common Law was before the making of this Statute.

* This whole branch, divided into these parts, extendeth only, where such as owen to be charged for making or amending of such bridges are knowne, and presented.

a If the whole bridge be decayed, &c. it must be made againe, and re-edified.

4. Such processe they are to make upon every presentment afore them, for reformation of the same, against such as owen to be charged for the a making or amending of such bridges, as the Justices of his Majesties Bench use commonly to doe, or it shall seem by their discretions to be necessary and convenient for the speedy amendment of such bridges.

The 2 and 3. branches.

Having provided remedy against such as owen to be charged for the making or amending of such bridges, &c. The second and third branches doe provide more speedy remedy, where it cannot be knowne or proved what Hundred, Riding, Wapentake, Citie, Borough, Towne or Parish, or what person certaine, or body politicke ought of right to make such bridges decayed, &c. how the same shall be repaired. And these branches doe consist on three parts.

* This was added for Yorkshire, wherein there are Ridings.

1. That in every such case the said bridges (if they be without City or Towne corporate) shall be made by the Inhabitants of the Shire or * Riding, within which the said bridges decayed shall happen to be.

2. And if they be within a City or Towne corporate, then by the Inhabitants of every such City or Towne corporate.

3. And if part of any bridges so decayed be within Shire, Riding, Citie, or Towne corporate, or if part be within the limits of any City, or Towne corporate, and part without, or part within one Riding, and part within another, that in every such case the Inhabitants of the Shires, Ridings, Cities, or Townes corporate shall be charged and chargeable to amend, make, and repaire such part and portion of such bridges so decayed, as shall lye and be within the limits of the Shire, Riding, City, or Towne corporate, wherein they be inhabited at the time of such decayes. By this part the law is declared by whom such decayed bridges in any Shire, Riding, City, or Towne corporate ought to be repaired: A necessary clause to be added, for that such decayed bridges may not be within the remedy of the fourth branch; yet the law (who are chargeable) being declared hereby, the remedy shall be by the course of the common law, which before hath been shewed.

See the Statute of 23. H. 8. cap. 2. concerning making of Gaoles.

¶ That the Inhabitants of the said Shires, &c.] The persons to be charged by this act are comprehended under this only word [Inhabitants;] which word is needfull to be explained, being the largest word of this kind.

* Vid. lib. 5. fol. 66, 67. Jeffreyes case. ibid. fol. 64. in Clarkes case. Vid. 3. Jac. ca. 23.

First, although a man be dwelling in an house in a forraigne County, Riding, City, or Towne corporate, yet if he hath lands or tenements in his owne possession and manurance in the County, Riding, City, or Towne corporate, where the decayed bridge is, he is an inhabitant, both where his person dwelleth, and where he hath lands or tenements in his owne possession within this Statute. Nota, Habitatio dicitur ab habendo, quia qui propriis manibus, & sumptibus possidet, & habet, ibi habitare dicitur.

2. If a man dwelleth in a forraigne Shire, Riding, City, or Towne corporate,

rate, and keepeth a house and servants in another Shire, Riding, City, or Towne corporate, he is an Inhabitant in each Shire, Riding, City, or Towne corporate within this Statute.

3. Ex vitermini. Every person that dwelleth in any Shire, Riding, City, or Towne corporate, though he hath but a personall residente, yet is he said in law to be an Inhabitant, or a dweller there, as servants, &c. But this Statute extendeth not to them, but to such as be Houseolders. And this is gathered by the words of the fourth branch of this act, that giveth the distresse, viz. and to distraine every such Inhabitant, &c. in his lands, goods, and chattells. And besides, it were in a manner infinite and impossible, to take by the next branch of this act every Inhabitant, being no Householder.

4. Every corporation and body politicke residing in any County, Riding, Citie, or Towne corporate, or having lands or tenements in any Shire, Riding, City, or Towne corporate, quæ propriis manibus & sumptibus possident & habent, are said to be Inhabitants there within the purview of this Statute.

5. An infant that hath house or lands by discent or purchase, is lyable to this publike charge, and so is the husband of a femes Covert.

Now the law being declared who were chargeable to repaire decayed bridges, where no person, &c. were bound thereunto. The fourth branch, for a more speedy reformation and remedy, provideth and enacteth these five things: The 4. branch.

1. That in every case, where it cannot be knowne and proved what persons, lands, tenements, and bodies politick owen to make and repaire such bridges, for the speedy reformation and amendment of such bridges, the Justices of Peace within the Shires or Ridings, where such bridges been (being out of Cities and Townes corporate) and if it be within Cities or Townes corporate, then the Justices of Peace in every such City or Towne corporate, or foure of the said * Justices at the least, whereof one to be of the Quorum, shall have power and authority within the limits of their severall commissions and [a] authorities, to [b] call before them the Constables of every Towne or Parish, being within the Shire, Riding, Citie, or Towne corporate, as well within liberty as without, where such bridges, or any parcell thereof shall happen to be, or else two of the next honest Inhabitants within every Towne or Parish in the said Shire, Riding, City, or Towne corporate, by the discretion of the said Justices, or foure of them at the least, whereof one to be of the Quorum. But it is good policie, that more then foure Justices, &c. doe take upon them the authority committed to them by any branch of this act: for if there be but foure, if any of them dyeth, or be out of the commission, the surviving three have no authority to proceed.

* These words referre as well to the Justices of the Shires or Ridings, as of the Cities or Townes corporate.

a Justices of Peace in Shires and Ridings are by commission, in Cities and Townes corporate for the most part by Charter; therefore this word [*Authorities* is used.

b The first thing the Justices are to doe when they are assembled, is to call, &c. if they be present (as commonly they are) at the generall Sessions of peace, or else to make warrants to call, &c. before them at a certain day and place, and in those warrants to signifie that it is for a taxation of the Inhabitants of the whole County, for reparation of such a bridge.

¶ Where it cannot be knowne or proved, &c.] By the intent and order of this Statute, first, for inquiry at the generall Sessions, who ought to repaire such decayed bridges: And secondly of this branch, where it cannot be knowne or proved (that is, at the generall Sessions who owen to repaire it.) It hath been gravely [c] advised, that for the better warrant of these foure Justices of Peace, inquiry should be made by the great Inquest for the body of the County at the generall Quarter Sessions, who ought to repaire it, and if that cannot appeare upon any proofe made, then a presentment to be made, that the bridge is in decay. And to conclude, Et ulterius Juratores prædicti præsentant, quod prorsus nescitur quæ personæ, quæ terræ, sive tenementa, aut corpora politica eundem pontem, aut aliquam inde parcellam ex jure, aut antiqua consuetudine reparare debent, aut consueverunt. And by this meanes, the foure or more Just. of Peace, being Judges of record, shall be informed of record, that it cannot be knowne or proved,

c Hereof we have seen a good president; and the like for the presentment you may reade in Lambards Justice of Peace.

proved, &c. A safe way for these foure or more of the Justices; for to charge the subject without just cause, and not warranted by this act, is a great misprision.

2. At the apparance of such Constables or Inhabitants, the said Justices of Peace, or foure of them, whereof one to be of the Quorum, with the assent of the said Constables or Inhabitants, shall have power and authority to tax, and set every Inhabitant in such City, Towne, or Parish, &c. to such reasonable sithe and summe of mony, as they shall thinke by their discretions convenient and sufficient, for the repairing, [d] re-edifying, and amendment of such bridges.

[d] Nota, for re-edifying, or new building.

It is not here mentioned by any expresse words, that these foure or more Justices must execute their authority of this act in the generall Sessions of the peace, as it was in the first branch. See for this in the last branch.

First by whom, and in what manner taxation shall be made.

¶ Justices of Peace, or foure of them, &c.] That is, in such Cities, or Townes corporate, where foure Justices, &c. be: for if there be not foure such Justices, they are not within the remedy of this branch, but (as hath been said) are left to the remedy at the common law.

¶ With the assent of the said Constables or Inhabitants.] So as neither the Justices, without such assent, nor the Constables or Inhabitants, without the Justices, can make any taxation by this act.

¶ To taxe and set every Inhabitant.] Unumquemque Inhabitantium, i. singulos inhabitantes, so as every one may be taxed by himself, and each one beare his owne burthen. And the taxation cannot be set upon the Hundred, Parish, Towne, &c. for then one or a few might be distrained for the whole. What Inhabitant is here meant, we have touched before.

By these words [every Inhabitant] all priviledges of exemptions or discharges whatsoever from contribution, for the reparation of decayed bridges (if any were) are taken away, although the exemption were by act of Parliament.

See the second part of the Institutes, Magn. Chart. cap. 15.

How the mony so taxed shall be collected.

¶ And after such taxation made, the said Justices shall cause the names and summes of every particular person so by them taxed, to be written in a roll indented.

Note the names and sums of every particular person, so as (as hath been said) the taxation must be severall and particular.

¶ In a roll indented.] This is intended of every severall Hundred, and they must be inrolled in parchment, and sealed by the said Justices, and this to be done presently after the taxation made.

3. ¶ And shall also have power and authoritie to make two Collectors of every Hundred, for collection of all such summes of money, by them set and taxed, which Collectors (*viz.* of every Hundred) receiving the one part of the said roll indented, under the seales of the said Justices, shall have power and authoritie, to collect and receive all the particular summes of money * therein contained.

* By this it appeareth, that the severall ingrossements must be of the severall summes, &c. in every severall Hundred, because the Collectors be severall of every severall Hundred, and these rolls ingrossed are their severall warrants.

4. ¶ And to distraine every such Inhabitant, as shall be taxed, and refuse payment thereof, in his lands, goods, and chattells.] Herein foure things are to be observed: first (as hath been said) that the taxation must be severall.

rail. 2. That the remedy for levying, is by diſtreſſe in his lands, goods, and chatels in any place within that Hundred, and to ſell ſuch diſtreſſe. And this the Collectors of that Hundred may doe by force of this Act. 3. That if upon demand the ſumme be not paid, albeit the Inhabitant doe not expreſſly refuſe, it is a refuſall in law. 4. Albeit two Collectors be appointed, yet one of them by the command and conſent of the other, may diſtraine and ſell; for this is the diſtreſſe and ſale of them both.

¶ And if the diſtreſſe be better, to deliver to the owner thereof.] That is, the ſurplusage upon the ſale, above the ſumme ſo diſtrained for, muſt be delivered to the owner Inhabitant. 5.

The reſidue of this branch, concerning the appointment of two Surveyors, and the account of them, and of the two Collectors, and other things depending on the ſame, are evident, and need no explanation. 6.

The 7. branch of this Act giveth power to the Juſtices to allow reaſonable coſts and charges to the Surveyors and Collectors.

* The effect of this branch is, that the ſaid Juſtices in every Shire, Riding, City, or Towne corporate, ſhall make proceſſe reſpectively into every Shire, and other place out of the Shire, Riding, City, or Towne corporate. And that the Sheriffe ſhall ſerve the proceſſe, upon paine of ſuch fines as ſhall be aſſeſſed by ſuch Juſtices. * The 5. branch.

The ſixth branch exceepteth the five Ports, and provideth remedy, and giveth juriſdiction to the Warden, Mayors, and Bayliffes elect, and Jurats of the ſame Ports, to enquire, heare and determine all manner of annoyances of bridges. The 6. branch.

The ſeventh branch giveth power to the ſaid Juſtices of Peace, or foure, or more of them, to allow reaſonable coſts and charges to the ſaid Surveyors and Collectors. The 7. branch.

The laſt branch containeth a law for amendment of high-wates at the end of the bridges, and power given to foure or more Juſtices of Peace, whereof one to be of the Quorum in every Shire, Franchiſe, or Borough, to enquire, heare, and determine in the * "Kings generall Seſſions of the peace, all manner of an- "noyances of and in ſuch high-wates ſo being and lying, next adjoyning to any "ends of bridges within this Realm, diſtant from any ends of ſuch bridges three "hundred foot, and to do in every thing and things concerning the making, repair- "ing, and amending of ſuch high-wates, and every of them, in as large and ample "manner, as they might and may do to and for the making, repairing, and amend- "ing of bridges, by vertue and authority of this preſent Act. The 8. branch. * Nota.

¶ In the Kings generall Seſſions of the peace, &c.] Hereupon it is collected, that ſeeing the firſt branch referreth the proceeding concerning the decay of bridges to the generall Seſſions of the peace, and the ſecond branch concerning the calling of the Conſtables, &c. and this laſt branch referreth the proceeding for the amendment of high-wates at the end of bridges, to the generall Seſſions of the peace: It is the ſafeſt way, and neareſt to the meaning of the makers of this law (all the parts thereof being conſidered) that the Juſtices of Peace, where no certain perſon, &c. is knowne, that ought to repaire any decayed bridge, (and the Inhabitants of the whole County are generally to be charged) doe proceed as well for the reparation of the bridges, as of the high-wates at the end of thoſe bridges at the generall Seſſions of the Peace, one of them as it were depending upon the other.

The freehold as well of bridges, as of the high-wates, is in him that hath the freehold of the ſoile, but the free paſſage is for all the Kings liege people.

See the Statutes of 13. Eliſ. cap. 18. 18. El. cap. 18. & 17. 23. El. ca. 11. 39. El. cap. 24 &c. concerning bridges.

See the [a] Statute of 23. Hen. 8. cap. 2. concerning the new erecting of Gaoles, which cannot be done without act of Parliament. That act had little effect; for that the Juſtices of Peace did little or nothing within the time to them preſcribed

[a] 23. H. 8. cap. 2. Parliam. 5 1. E. 3. nu. 68. it appeareth that Gaoles were to be repaired at the Kings charge.

led by that act; yet vnder it, for it hath diuers good prouiſions in it, and diuers of them much like to our act.

43. Eliſ. cap. 4.

A right profitable law was made anno 43. Eliſ. for Commiſſioners to enquire for miſ-imployment of lands, tenements, rents, annuities, profits, hereditaments, goods, chattels, money, and ſtockes of money giuen, limited, appointed, or aſſigned to or for repaire of bridges (inter alia) and by their orders to reforme the ſame, which in ſome caſes is a ready and ſpeedy way, and hath brought good effect. And therefore we will in the next place enumerate and explaine the parts and branches of that act, for the better incouragement and inſtruction of the Commiſſioners in that behalfe.

A ſpeedy remedy in many caſes.

An

An Expoſition upon the Statute of 43. *Eliſ. cap.* 4. concerning Commiſsioners authorized to enquire of miſ-imployment of lands or goods given to Hoſpitalls, by their orders ſhall be reformed.

WHereas lands, tenements, rents, annuities, profits, hereditaments, goods, chattels, money, and ſtockes of money, have been heretofore given, limited, appointed and aſſigned, as well by the Queenes moſt excellent Majeſtie, and her moſt noble Progenitors, as by ſundry other well diſpoſed perſons; ſome for reliefe of aged, impotent, and poore people; ſome for maintenance of ſicke and maimed Souldiers and Mariners, Schooles of learning, free Schooles, and Scholars of Univerſities; ſome for repaire of Bridges, Ports, Havens, Cawſies, Churches, Sea-bankes, and High-waies; ſome for education and preferment of Orphans, ſome for or towards reliefe, ſtocke or maintenance for houſes of Correction; ſome for marriages of poore maides, ſome for ſupportation, aide, and help of young tradeſmen, handy-craftſ-men, and perſons decayed, and others for reliefe or redemption of priſoners or captives, and for aide or eaſe of any poore inhabitants, concerning payment of fifteens, ſetting out of Souldiers, and other taxes: which lands, tenements, rents, annuities, profits, hereditaments, goods, chattels, money, and ſtockes of money, nevertheleſſe have not been imployed according to the charitable intent of the givers and founders thereof, by reaſon of frauds, breaches of truſt, and negligence in thoſe that ſhould pay, deliver, and imploy the ſame. For redreſſe and remedy whereof, be it enacted by authoritie of this preſent Parliament, That it ſhall and may be lawfull to and for the Lord Chancellor, or Keeper of the great Seale of England for the time being, and for the Chancellor of the Duchie of Lancaſter for the time being, for lands within the County Palatine of Lancaſter, from time to time, to award Commiſſions under the great Seale of England, or the Seale of the County Palatine, as the caſe ſhall require into all or any part or parts of this Realme, reſpectively, according to their ſeverall Juriſdictions, as aforeſaid, to the Biſhop of every ſeverall Dioceſſe and his Chancellor (in caſe there ſhall be any Biſhop of that Dioceſſe, at the time of awarding of the ſame Commiſſions,) and to other perſons of good and ſound behaviour, authorizing them thereby, or any foure or more of them, to enquire as well by the oaths of 12. lawfull men or more of the County, as by all other good and lawfull waies and meanes of all and ſingular ſuch gifts, limitations, aſſignments, and appointments aforeſaid, and of the abuſes, breaches of truſts, negligences, miſ-imployments, not imploying, concealing, defrauding, miſ-converting, or miſ-government of any lands, tenements, rents, annuities, profits, hereditaments, goods, chattels, money, or ſtockes of money, heretofore given, limited, appointed, or aſsigned, or which hereafter ſhall be given, limited, appointed, or aſsigned, to or for any the charitable and godly uſes before rehearſed.

hearsed. And after the said Commissioners, or any foure or more of them (upon calling the parties interessed in any such lands, tenements, rents, annuities, profits, hereditaments, goods, chattels, money, and stockes of money) shall make enquiry by the oathes of twelve men or more of the said County (whereunto the said parties interessed shall and may have, and take their lawfull challenge and challenges) and upon such enquiry, hearing, and examining thereof, set downe such orders, judgements, and decrees, as the said lands, tenements, rents, annuities, profits, goods, chattels, money, and stockes of money, may be duly and faithfully imployed, to and for such of the charitable uses and intents before rehearsed, respectively, for which they were given, limited, assigned, or appointed, by the donors and founders thereof. Which orders, judgements, and decrees, not being contrary or repugnant to the orders, statutes, or decrees of the donors or founders, shall by the authoritie of this present Parliament stand firme and good, according to the tenour and purport thereof, and shall be executed accordingly, untill the same shall be undone or altered by the Lord Chancellour of England, or Lord Keeper of the great Seale of England, or the Chancellour of the County Palatine of Lancaster, respectively within their severall jurisdictions, upon complaint by any party grieved to be made to them.

Provided alwaies, that neither this Act, nor any thing therein contained, shall in any wise extend to any lands, tenements, rents, annuities, profits, goods, chattels, money, or stockes of money given, limited, appointed, or assigned, or which shall be given, limited, appointed or assigned to any Colledge, Hall, or House of learning within the Universities of Oxford or Cambridge, or to the Colledges of Westminster, Eaton, or Winchester, or any of them, or to any Cathedrall or Collegiat Church within this Realme.

And provided also, that neither this Act, nor any thing therein, shall extend to any Citie, or Towne corporate, or to any the lands, or tenements given to the uses aforesaid, within any such Citie, or Town corporate, where there is a speciall Governour or Governours appointed to governe or direct such lands, tenements, or things disposed to any the uses aforesaid, neither to any Colledge, Hospitall, or free Schoole, which have speciall Visitors, or Governours, or Overseers appointed them by their Founders.

Provided also, and be it enacted by the authoritie aforesaid, that neither this Act, nor any thing therein contained, shall be any way prejudiciall or hurtfull to the jurisdiction of the Ordinary, or power of the Ordinary, but that he may lawfully in every cause execute and perform the same, as though this Act had never been had or made.

Provided also, and be it enacted, That no person or persons that hath or shall have any of the said lands, tenements, rents, annuities, profits, hereditaments, goods, chattels, money, or stockes of money in his hands or possession, or doth or shall pretend title thereunto, shall be named a Commissioner or a Jurour for any the causes aforesaid, or being named, shall execute or serve in the same.

And provided also, that no person or persons, which hath purchased or obtained, or shall purchase or obtaine upon valuable consideration of

of money or land, any eſtate or intereſt of, in, to, or out of any lands, tenements, rents, annuities, hereditaments, goods, or chattels that have been, or ſhall be given, limited, or appointed to any the charitable uſes above mentioned, without fraud or covin, having no notice of the ſame charitable uſes, ſhall not be impeached by decrees or orders of Commiſſioners above mentioned, for or concerning the ſame his eſtate or intereſt. And yet nevertheleſſe, Be it enacted that the ſaid Commiſſioners, or any foure or more of them, ſhall and may make decrees and orders for recompence to be made by any perſon or perſons, who being put in truſt, or having notice of the charitable uſes above mentioned, hath or ſhall breake the ſame truſt, or defraud the ſame uſes by any conveyance, gift, grant, leaſe, demiſe, releaſe, or converſion whatſoever, and againſt the heires, executors, and adminiſtrators of him, them, or any of them, having Aſſets in law or equitie, ſo farre as the ſame Aſſets will extend.

Provided alwaies, that this Act ſhall not extend to give power or authoritie to any Commiſſioners before mentioned, to make any orders, judgements or decrees for or concerning any mannors, lands, tenements, or other hereditaments, aſſured, conveyed, granted, or come unto the Queens Majeſtie, to the late King *Henry* the eighth, King *Edward* the ſixth, or Queene *Mary*, by Act of Parliament, ſurrender, exchange, relinquiſhment, eſcheat, attainder, conveyance, or otherwiſe. And yet nevertheleſſe, Be it enacted, that if any ſuch mannors, lands, tenements, or hereditaments, or any of them, or any eſtate, rent, or profit thereof, or out of the ſame, or any part thereof have, or hath been given, granted, limited, appointed, or aſſigned to or for any the charitable uſes before expreſſed at any time ſithence the beginning of her Majeſties reigne, That then the ſaid Commiſſioners, or any foure or more of them, ſhall and may as concerning the ſame lands, tenements, hereditaments, eſtate, rent, or profit ſo given, limited, appointed or aſſigned, proceed to enquire, and to make orders, judgements and decrees according to the purport and meaning of this Act, as before is mentioned: the ſaid laſt mentioned Proviſo notwithſtanding.

And be it further enacted, That all orders, judgements and decrees of the ſaid Commiſſioners, or of any foure or more of them, ſhall be certified under the ſeales of the ſaid Commiſſioners, or any foure or more of them, either into the Court of the Chancery of England, or into the Court of the Chancery within the Countie Palatine of Lancaſter, as the caſe ſhall require reſpectively, according to the ſeverall juriſdictions, within ſuch convenient time as ſhall be limited in the ſaid Commiſſions.

And that the ſaid Lord Chancellor, or Lord Keeper, and the ſaid Chancellor of the Dutchy, ſhall and may, within their ſaid ſeverall Juriſdictions, take ſuch order for the due execution of all or any of the ſaid Judgements, Decrees, and Orders, as to either of them ſhall ſeem fit and convenient.

And that if after any ſuch certificate or certificates made, any perſon or perſons ſhall find themſelves grieved with any of the ſaid Orders, Judgements, or Decrees, That then it ſhall and may be lawfull to and for them, or any of them to complaine in that behalfe unto the ſaid Lord

Lord Chancellour, or Lord Keeper, or to the Chancellour of the ſaid Duchie of Lancaſter, according to their ſeverall Juriſdictions, for redreſſe therein. And that upon ſuch complaint, the ſaid Lord Chancellour, or Lord Keeper, or the ſaid Chancellour of the Duchy, may, according to their ſaid ſeverall Juriſdictions, by ſuch courſe as to their wiſdomes ſhall ſeem meeteſt, the circumſtances of the caſe conſidered, proceed to the examination, hearing and determining thereof: and upon hearing thereof, ſhall and may adnull, diminiſh, alter or enlarge the ſaid Orders, Judgements and Decrees of the ſaid Commiſſioners, or any foure or more of them, as to either of them in their ſaid ſeverall Juriſdictions ſhall be thought to ſtand with equitie and good conſcience, according to the true intent and meaning of the Donors and Founders thereof, and ſhall and may taxe and award good coſts of ſuit by their diſcretions, againſt ſuch perſons as they ſhall find to complaine unto them without juſt and ſufficient cauſe of the Orders, Judgements, and Decrees before mentioned, *39. El. 6. 43. El. 9.*

Authority is given to the Lord Chancellour, or Lord Keeper, and to the Chancellour of the Dutchy reſpectively, to grant commiſſions under the ſeverall ſeales.

Concerning theſe commiſſions, theſe ſixe things are to be obſerved:

Firſt, the number muſt be foure, or more.

2. The Commiſſioners to be the Biſhop and Chancellor of that Diocelle (if there be a Biſhop) and other perſons of good and ſound behaviour.

3. In that commiſſion any foure of them doe ſuffice to make orders and decrees, for therein none is of the Quorum.

4. None ſhall be Commiſſioners that have any part of the lands, &c. or goods, or chattels, money, or ſtockes in queſtion.

5. The commiſſion is to limit a certaine time, within which the Commiſſioners are to order, decree, and certifie.

6. Their authority is to enquire as well by the oath of twelve lawfull men, or more, as by all other good waies and meanes.

Concerning the Jurors, or Inqueſt of Inquiry, theſe two things are to be obſerved:

Firſt, the parties intereſted may have and take their lawfull challenge and challenges.

2. None that pretend title to any of the lands, &c. goods, or chattels, money, or ſtockes in queſtion, ſhall be a Juror, &c.

They are to enquire of all and ſingular gifts, limitations, and appointments of any lands, tenements, rents, annuities, profits, hereditaments, goods, chattels, money, and ſtockes of money, for 21. charitable uſes in relieving, maintaining, repairing, educating, preferring, marrying, ſupporting, aiding, helping, redeeming and eaſing.

1. For relefe of aged, impotent, and poore people, 2. for maintenance of ſicke and maimed ſouldiers, 3. Schooles of learning, 4. Free Schooles, 5. Scholars in Univerſities, 6. and houſes of Correction, 7. for repaire of Bridges, 8. of Ports or Havens, 9. of Cauſies, 10. of Churches, 11. of Sea-bankes, 12. and of High-waies, 13. for education and preferment of Orphans, 14. for marriage of poore maides, 15. for ſupportation, aide, and help of young tradeſmen, 16. of handi-craftſmen, and 17. of perſons decayed, 18. for redemption or relefe of priſoners or captives, 19. for eaſe and aide of any poore Inhabitants, concerning payment of Fifteenes, 20. ſetting out of ſouldiers, 21. and other taxes.

And

And the Commissioners have power also to enquire of these nine things:

1. Of abuses,
2. Breaches of trust,
3. Negligences,
4. Ill-imployments,
5. Not imploying,
6. Concealing,
7. Defrauding,
8. Ill-converting,
9. Ill-government,

of any lands, tenements, &c. rents, &c. goods, money, &c. given to any of the charitable uses aforesaid.

But this Act doth not extend to all lands, &c. nor to all goods and chattels, money, or stockes given to any of the charitable uses aforesaid; but certaine are excepted in these eight severall cases, viz.

First, of the Colledges, Halls, or Houses of learning in either of the Universities.

2. Of the Colledge of Westminster.

3. Of the Colledge of Eaton.

4. Of the Colledge of Winchester.

5. Of any City, or Towne corporate, where there is a speciall Governour or Governours of such lands, &c.

6. Of any Colledge, Hospitall, or Free Schoole, which have speciall Visitors, or Governors, or Overseers, appointed to them by their Founders.

7. Of Purchasers, having these three qualities: First, for * valuable consideration of money or land: 2. without fraud or covin: 3. having no notice of the same charitable use. But albeit the Commissioners cannot make any decree against any such Purchasers, yet may they make decrees for recompence to be made by any person or persons, who being put in trust, or having notice of the charitable uses aforesaid, have or shall breake the said trust, or defraud the same uses by any conveyance, gift, grant, lease, release, or conversion, and against his or their heires, executors and administrators, having assets in law or [a] equity, so farre as the same assets will extend.

* So as none but valuable consideration, and no valuable consideration, but for money or land, will serve the turne.

a Nota, Assets in equity, as trusts, confidences, and the like.

8. Of Purchasers of lands, tenements, and hereditaments assured, conveyed, or come to Queen Elisabeth, Hen. 8. Edw. 6. or Queen Mary by Act of Parliament, surrender, exchange, relinquishment, escheat, attornment, conveyance, or otherwise. But if any such mannors, lands &c. have since the beginning of Queen Elisabeths reigne been given, &c. to any of the charitable uses before expressed, then this Act doth extend to the same.

Concerning the certificate of the Commissioners, these foure things are to be observed:

First, that they certifie their order and decree respectively, either into the Court of the Chancery of England, or into the Chancery of the County Palatine of Lancaster, as the case shall require.

2. That it ought to be in parchment, under the hands and seals of the Commissioners.

3. It must be within the time limited in the Commission.

4. That the Lord Chancellor, or Lord Keeper, and the said Chancellor of the Duchy shall and may within their severall Jurisdictions take such order for the due execution of all or any of the said judgements, decrees and orders so certified, as to either of them shall seem fit and convenient.

In the remedy for the party grieved with such decrees so certified, these five things are to be considered:

First, that he complaine to the Lord Chancellour, or Lord Keeper, or to the Chancellour of the Duchy, according to their severall Jurisdictions for redresse thereof. And this complaint is to be by Bill.

2. Upon such complaint, first, they shall respectively by such course, as to their wisedomes shall seem meetest, the circumstance of the case considered, proceed to the examination, hearing, and determining thereof. 2. Upon hearing thereof shall

shall or may annull the whole (which rarely is done) diminish (in part) or enlarge (that is, to confirme the former, and to enlarge the same by adding something thereunto) the judgements and decrees so certified.

3. As shall be thought to stand with equity and good conscience,

4. According to the true intent and meaning of the * Donors and Founders thereof.

5. And shall and may take and award good costs of suit by their discretions (respectively) against such persons as shall complaine to them respectively, without just and sufficient cause of the orders, judgements, and decrees before mentioned. But this order being given and limited by Act of Parliament, no costs (if the order, judgement, or decree be annulled, diminished, or enlarged) ought to be given to the party complaining.

* This is the *Lapis ductilius*, whereby the Commissioners and Chancellors must institute their course.

The

The Expoſition of the Statute of 31. *Eliſ. Cap.* 12. concerning Sellers of Horſes in * Faires and Markets, &c.

* Forum à ferendo (aut quod ſit foris) quia ibidem merces aſportari ſolent: Latinè, Feriæ, quia ibidem merces portantur. Unde *Feires*, or *Faires* Anglicè, & *Foire* Gallicè. Nundinæ à nono die, &c. Mart is derived à Mercando, of buying and ſelling, and ſo is Mercatus alſo. Emporium, Græcè Ἐμπόριον, quia ibi conveniunt Ἔμποροι, i. Mercatores.

Before we enter into the expoſition of this Statute, we will conſider, firſt, what the common Law was before the making of this Statute. 2. what any Acts of Parliament have wrought in this caſe, before this Act of 31. Eliſ. 3. we will deſcend to the expoſition of our ſaid Act of 31. Eliſ.

As to the firſt, the common Law did hold it for a point of great policie, and behovefull for the Common-wealth, that Faires and Markets overt ſhould be repleniſhed, and well furniſhed with all manner of commodities, vendible in Faires and Markets, for the neceſſary ſuſtentation and uſe of the people. And to that end the common Law did ordaine (to incourage men thereunto) that all ſales and contracts of any thing vendible in Faires or Markets overt, ſhould not be good onely between the parties, but ſhould bind thoſe that right had thereunto. But this rule hath many exceptions.

Firſt, it ſhall not bind the King for any of his goods ſold in Market overt by any perſon, but regularly the ſale by a ſtranger in Market overt bindeth an infant, a feme covert that hath right either in their owne right, or as executor, or adminiſtrator, idiots, non-compos mentis, men beyond ſea, and in priſon, that right have to the ſame. 35. H. 6. 29. Pl. Com. 243. Doct. & Stud. 39. b.

2. Although the Faires or Markets be overt, yet the ſale muſt be made in a place that is overt and open, not in a back roome, ware-houſe, &c. as you may reade, lib. 5. fol. 83 b. Caſe de Market overt. Lib. 5. fol. 83. b. Lib. int' Raſt. 327. 2. & 3. Ph. & Mar. cap. 7.

3. Although it be in an open place, yet Overt in this caſe implies apt and ſufficient, as not to ſell plate openly in a Scriveners ſhop, or the like, but openly in a Goldſmiths ſhop, &c. lib. 5. fol. 83. ubi ſupra. Lib. 5. fol. 83. b. 35. H. 6. 7. ſimile.

4. It muſt be a ſale, and not a free gift, without any valuable conſideration: for Faires and Markets were not inſtituted for gifts, but for ſales; therefore gift in this Act is to be intended of a gift for valuable conſideration, and not a free gift. 12. E. 4. 12. b. and all the bookes. Doct. & Stud. 64. b. 33. H. 6. 5. 12. H. 8. 10. b.

[a] 5. If the buyer doth know whoſe goods they were, and that the ſeller thereof hath at the moſt but a wrongfull poſſeſſion, this ſhall not bind him that right hath. [a] 14. H. 8. 8. Pl. Com. 46. 18. E. 4. 24. lib. 3. fol. 78. b. in Fermors caſe, & 83. a. in Windhams caſe.

[b] 6. If they be ſold by covin between two of purpoſe to barre him that right hath, this barreth not. Doct. & St. fo. 39

[c] 7. If a ſale be made of goods by a ſtranger in a Market overt, whereby the right of A. is bound, yet if the ſeller acquireth the goods againe, A. may take them againe, becauſe he was the wrong doer, and he ſhall not take advantage of his owne wrong. [b] Vid. the books to the 5. [c] 34. H. 6. 10. & 11.

8. There muſt be a ſale and contract; and therefore a ſale to a man of his owne goods in Market overt, bindeth not; and likewiſe a ſale in market overt by an infant of ſuch tendernelle of age, as it may appeare to the buyer that he is within age, or by a [d] feme Covert, if the buyer know her to be a feme Covert (unleſſe for ſuch things as ſhe uſually trades for, or by the conſent of her husband) bindeth not. Et ſic de ſimilibus. 7. E. 4. 15. 32. H. 6. 1. 18. E. 4. 6. 24. 9. H. 6. 45. [d] 21. H. 7. 40. b. Fineux chiefe Juſtice. Alſo for the feme Covert, vid. Mich. 22. & 23. Eliſ. coram

[e] 9. The contract muſt be originally and wholly made in the Market overt, rege in action ſur le caſe, inter Guibſon & Thorpnell, Suff. [e] Dyer 1. Mar. fol. 99. 121.

and not to have the inception out of the Market, and the conſummation in the Market.

Vid. 9. H. 6. 45. 35. H. 6. 2. & 3. Ph. & Mar. cap. 7. Doct. & Stu. 39. b

10. By the common Law the property was altered (though ſome opinions be to the contrary) by ſale in Market overt, albeit no toll was paid either in reſpect of the freedome of the Faire or Market, wherein no toll at all was to be paid, or for that many were diſcharged of payment of toll, as the King, and ſome of his ſubjects by Charter, and ſome by tenure, as ancient demeſne, &c. where toll of others was to be taken.

Lib. int' Raſt. 327. diviſione Feires, &c.

11. The ſale muſt not be in the night, but between the riſing of the Sun, and the going downe of the ſame: for he that hath a Faire or Market, either by grant or preſcription, hath power to hold it per unum diem, ſeu duos, vel tres dies, &c. where (dies) is taken for dies ſolaris; for if it ſhould be taken for dies naturalis, then might the ſale be made at midnight. And yet the ſale that is made in the night is good between the parties, but not to bind a ſtranger that right hath.

See Stamf. Pl. Cor. 365. b.

12. A. commit a robbery or felony of the goods of B. the officer of the King doth ſeiſe the goods (in lawfull manner) to the Kings uſe. B. purſueth his appeale freſhly, the Kings officer, or any other ſelleth the goods in Market overt; B. purſueth his appeale againſt A. untill he hath convicted him of the felony, the King ſhall make him reſtitution of his goods, notwithſtanding the ſale in Market overt, becauſe of the freſh and diligent ſuit and purſuit of record, the goods were ſo protected thereby, and by the Kings ſeiſure, that the property of the ſame, being tanquam in cuſtodia legis, cannot be altered by ſale in Market overt. And by the ſtatute of 21. H. 8. cap. 11. It is enacted, that if any felon be of any money, goods, or chattels, and the ſaid felon be indicted, and after arraigned of the ſame felony, and found guilty, or otherwiſe attainted, by reaſon of evidence given by the party ſo robbed, or owner, or by any other by their procurement, [a] that the party ſo robbed, or owner ſhall be reſtored to his ſaid money, goods and chattels. And that the Juſtices, &c. have power by this preſent Act to award from time to time writs of reſtitution, &c. in like manner, [b] as though any ſuch felon were attainted at the ſuit of the party in appeale.

21. H. 8. cap. 11. Nota hoc.

[a] Note theſe abſolute words for reſtitution, upon the evidence given upon this Act, there needeth no freſh ſuit to be enquired of, as we know by experience.

[b] Theſe words referre only to the manner of the writs of reſtitution.

So as in this caſe alſo the party robbed, or owner ſhall have reſtitution, notwithſtanding any ſale in Market overt. See the third part of the Inſtitutes, cap. Reſtitution. And the reaſon of the law in this caſe of reſtitution is, to incourage the owners to purſue the felons, that they might be condignly puniſhed, ut pœna ad paucos, metus ad omnes perveniat. And although in this rare caſe it may be, that one may loſe the horſe which he came to bona fide in Market overt; yet ſpoliatus debet ante omnia reſtitui. And the old rule, Caveat emptor, doth hold herein: and when two rights come together, the ancient right is to be preferred.

And it is to be obſerved, that none of theſe 12. exceptions are abrogated by any Act of Parliament, but yet remaine in full force.

As to the ſecond, we are to conſider the ſtatute of 2. & 3. Ph. & Mar. cap. 7. entituled, Sellers of horſes in Faires, Markets, &c. which (becauſe horſe-dealers may flee farre off in a ſhort ſpace) hath made void the ſale of horſes in Market overt in divers caſes. The tenour of which Act enſueth:

2. & 3. Phil. & Mar. cap. 7.

Foraſmuch as ſtollen horſes, mares, and geldings, by theeves and their confederates, be for the moſt part ſold, exchanged, given, or put away in houſes, ſtables, backſides, and other * ſecret and privie places of Markets and Faires, and the toll alſo privily paid for the ſame, whereby the true owners thereof, being not able to trie the falſhood and covin betwixt the buyer and ſeller of ſuch horſe, mare, or gelding, is by the common lawes of this Realme without remedy:

* Hereby the vulgar people were deceived, but in law this changed no property, as before it appeareth, lib. 5. fo. 83. ubi ſupra. The 1. branch.

Be it therefore enacted by the authoritie of this preſent Parliament, that the owner, governour, ruler, fermor, ſteward, bailiffe, or chiefe keeper of every Faire and Market overt within this Realme, and other the

the Queenes dominions, ſhall before the Feaſt of Eaſter next; and ſo yearly appoint and limit out a certaine and ſpeciall open place within the towne, place, field, or circuit, where horſes, mares, geldings, and colts, have been and ſhall be uſed to be ſold in any Faire or Market overt, in which ſaid certaine and open place, as is aforeſaid, there ſhall be by the ſaid ruler or keeper of the ſaid Faire or Market, put in and appointed one ſufficient perſon or more, to take toll, and keep the ſame place, from ten of the clocke before noone, untill Sun-ſet of every day of the foreſaid Faire or Market, upon pain to loſe and forfeit for every default forty ſhillings.

A certain & ſpeciall place for the Horſe-Faire.

The 2. branch. A ſufficient perſon to take toll, & keep the Horſe-Faire from 10. of the clock before noon, till Sun-ſet.

And that every toll-gatherer his deputy or deputies, ſhall, during the time of every the ſaid Faires and Markets, take their due and lawfull tolls, for every ſuch horſe, mare, gelding, or colt, at the ſaid open place to be appointed, as is aforeſaid, and betwixt the houres of ten of the clocke in the morning, and the Sun-ſet of the ſame day, if it be tendered, and not at any other time or place, and ſhall have preſently before him or them at the taking of the ſame toll the parties to the bargaine, exchange, gift, contract, or putting away of every ſuch horſe, mare, gelding, or colt, and alſo the ſame horſe, mare, gelding, and colt ſo ſold, exchanged, or put away; and ſhall then write, or cauſe to be written in a booke to be kept for that purpoſe, the names, ſirnames, and dwelling places of all the ſaid parties, and the colour, with one ſpeciall marke at the leaſt of every ſuch horſe, mare, gelding, or colt, on paine to forfeit at and for every default contrary to the tenour hereof forty ſhillings.

The 3. branch. 1. The toll-gatherer to receive the toll between theſe houres. 2. And ſhall have preſently before him the parties to the bargain at the taking of the toll. 3. And the horſe, &c. 4. And ſhal write in a book the names, ſirnames, & dwelling places of the ſaid parties, & the colour, with one ſpeciall marke at the leaſt of every ſuch horſe, &c.

* And the ſaid toll-gatherer, or keeper of the ſaid book, ſhall within one day next after every ſuch Faire or Market, bring and deliver his ſaid booke to the owner, governour, ruler, ſteward, bailiffe, or chiefe keeper of the ſaid Faire or Market, who ſhall then cauſe a note to be made of the true number of all horſes, mares, geldings, and colts ſold at the ſaid Market or Faire, and ſhall there ſubſcribe his name, or ſet his marke thereunto, upon paine to him that ſhall make default therein to loſe and forfeit for every default forty ſhillings, and alſo to anſwer the partie grieved by reaſon of the ſame his negligence in every behalfe.

* The 4. branch. The toll-gatherer to deliver the book to the owner, &c. of the Faire or Market.

And be it further enacted by the authoritie aforeſaid, that the ſale, gift, exchange, or putting away after the laſt day of February now next coming, in any Faire or Market overt, of any horſe, mare, gelding, or colt, that is, or ſhall be theeviſhly ſtollen, or felonioufly taken away from any perſon or perſons, ſhall not alter, take away, nor exchange the propertie of any perſon or perſons to, or from any ſuch horſe, mare, gelding, or colt, unleſſe the ſame horſe, mare, gelding, or colt, ſhall be in the time of the ſaid Faire or Market, wherein the ſame ſhall be ſo ſold, given, exchanged, or put away, openly [1] ridden, led, walked, driven, or kept ſtanding, by the ſpace of one houre together at the leaſt, betwixt ten of the clocke in the morning, and the Sun-ſetting, in the open place of the Faire or Market, wherein horſes are commonly uſed to be ſold, [2] and not within any houſe, yard, backſide, or other privie or ſecret place; [3] and unleſſe all the parties to the bargaine, contract, gift, or exchange, preſent in the ſaid Faire or Market, ſhall alſo come together,

The 5. branch. Sixe points to ſave the property of the right owner, &c. 1. The horſe ſtolne muſt be ridden, &c. openly in the Faire or Market, by the ſpace of an hour, between ten of the clock before noon, and Sun-ſetting, or elſe no property ſhall be altered or changed. This is in affirmance of the common law.

and bring the horſe, mare, gelding, or colt ſo ſold, exchanged, given, or put away to the open place appointed for the toll-taker, or for the book-keeper, where no toll is due, 4 and there enter, or cauſe to be entred their names and dwelling places in manner as is aforeſaid, 5 with the colour or colours, and one ſpeciall marke at the leaſt of every the ſame horſes, mares, geldings, or colts in the toll-takers booke, or in the keepers booke for that purpoſe, whereunto toll is due, as is aforeſaid, 6 and alſo pay him their toll, if they ought to pay any, and if not, then the buyer to give one penny for the entry of their names, and executing the other circumſtances afore rehearſed, to him that ſhall write the ſame in the ſaid booke.

Which is added, for, as hath been aforeſaid, toll is not due nor payable by all perſons in Faires & Markets, to the end that the book-keeper may be equivalent in thoſe caſes to the toll receivers.

The 7.branch. * This maketh void the ſale in Faire or Market overt, if the horſe be not uſed, &c. in all the ſaid points, according to the tenour and intent of this act. See for theſe points in the 3, 4, 5. & 6.branches.

And if any horſe, mare, gelding, or colt, that is, or ſhall be theeviſhly ſtollen, or taken away, ſhall after the ſaid laſt day of February next coming be ſold, given, exchanged, or put away in any Faire or Market, * and not uſed in all points, according to the tenour and intent of this eſtatute, that then the owner of every ſuch horſe, mare, gelding, or colt, ſhall and may by force of this eſtatute ſeiſe, or take againe the ſaid horſe, mare, gelding, or colt, or have an action of *Detinue* or *Replevin* for the ſame, any ſale, gift, exchange, or putting away of any ſuch horſe, mare, gelding, or colt, other then according to this eſtatute in any wiſe notwithſtanding.

The 8.branch.

The one halfe of all which forfeitures to be to the King and Queens Majeſtie, her heires and ſucceſſours, and the other to him or them that will ſue for the ſame before the Juſtices of Peace, or in any of the King and Queenes Majeſties ordinary Courts of record, by bill, plaint, action of debt, or informarion, in which ſuits no protection, eſſoine, or wager of law ſhall be allowed.

The penalty to be recovered before Juſtices of Peace, &c.

The 9.branch. Juſtices of Peace to heare and determine all offences againſt this ſtatute.

And be it enacted by the authoritie aforeſaid, that the Juſtices of Peace of every place and County, as well within liberties, as without, ſhall have authoritie in their Seſſions within the limits of their authoritie and commiſſion, to enquire, heare, and determine all offences againſt this eſtatute, as they may doe any other matter tryable before them.

The 10.branch.

Provided alwaies, that in every ſuch Faire and Market, where any toll is, nor ſhall be due, ne leviable by reaſon of the freedome, liberty, or priviledge of the ſaid Faire or Market, the keeper or keepers of the booke touching the execution of this preſent Act, ſhall take nor exact but one penny upon and for every contract, for his labour in writing the entry, concerning the premiſſes in manner and forme, as is before declared.

The book-keepers fee for his labour in writing the entry of the contract.

But ſeeing neither the rules of the common Law, nor the proviſions of this Act wrought ſo good effect as was expected, therefore a right profitable additionall law was made in anno 31.Reginæ Eliſabethæ, **for the ſaving of the property of horſes, mares, geldings, colts, and fillies, to and for the right owners, which hereafter enſueth:**

Whereas through the Counties of this Realme, horſe-ſtealing is growne ſo common, as neither in paſtures or cloſes, nor hardly in ſtables the ſame are to be in ſafety from ſtealing, which enſueth by the ready buying of the ſame by horſe-courſers and others in ſome open

The cauſes wherefore horſes, &c. are ſo commonly ſtoln.

• Faires

Faires or Markets farre diſtant from the owner, and with ſuch ſpeed as the owner cannot by purſuit poſſibly help the ſame: And * ſundry good ordinances have heretofore been made touching the manner of ſelling and tolling of horſes, mares, geldings, and colts in Faires and Markets, which have not wrought ſo good effect for the repreſſing or avoiding of horſe-ſtealing, as was expected.

* 2. & 3. Phil. & Mar. cap. 7. See 2. E. 3. ca. 15. 5. E. 3. cap. 3. 27. H. 6. cap. 5.

Now for a further remedy in that behalfe, Be it enacted by the authoritie of this preſent Parliament, that no perſon after twenty dayes next after the end of this Seſſion of Parliament, ſhall in any Faire or Market, ſell, [a] give, exchange, or put away any horſe, mare, gelding, colt, or filly, unleſſe [1] the toll-taker there, or (where no toll is paid) the book-keeper, bailiffe, or chiefe officer of the ſame Faire or Market, ſhall and will take upon him perfect knowledge of the perſon that ſo ſhall ſell, or offer to ſell, give, or exchange any horſe, mare, gelding, colt, or filly, and of his true Chriſten name, ſirname, and place of dwelling or reſiancie, [2] and ſhall enter all the ſame his knowledge into a booke there kept for ſale of horſes, [3] or elſe that he ſo ſelling, or offering to ſell, give, or exchange, or put away any horſe, mare, gelding, colt, or filly, ſhall bring unto the toll-taker, or other officer aforeſaid of the ſame Faire or Market, one ſufficient or credible perſon, that can, ſhall or will teſtifie and declare unto, and before ſuch toll-taker, book-keeper, or other officer, that he knoweth the party that ſo ſelleth, giveth, exchangeth, or putteth away ſuch horſe, mare, gelding, colt, or filly, and his true name, ſirname, myſterie, and dwelling place: [4] and there enter, or cauſe to be entred in the booke of the ſaid toll-taker, or officer, as well the true Chriſten name, and ſirname, myſterie, and place of dwelling or reſiancie of him that ſo ſelleth, giveth, exchangeth, or putteth away ſuch horſe, mare, gelding, colt, or filly, as of him that ſo ſhall teſtifie or avouch his knowledge of the ſame perſon, [5] and ſhall alſo cauſe to be entred the very true price or value that he ſhall have for the ſame horſe, mare, gelding, colt, or filly ſo ſold.

Nota, for a further remedy; this is an Act of addition, conſiſting upon 6. points, for the ſaving of the property of the right owner.

a A gift, without valuable conſideration in Market overt, alereth no property, as before hath been ſaid. This ſtatute reſtraineth the very ſale, and maketh it void, if the act be not purſued, & this firſt branch is in the diſ-junctive, unleſſe either the toll-taker or book-keeper ſhall & will take upon him perfect knowledge, &c. or elſe that he ſo ſelling, or offering to ſell, &c. ſhall bring, &c. one ſufficient and credible perſon, &c. that ſhall avouch, &c. who vulgarly is called a Voucher: and this branch extendeth to all ſales of horſes in Market overt, whether the horſe, &c. be ſtolne, or not ſtolne.

The 2. branch. That he ſo ſelling, &c. cauſe to be entred the true Chriſten name, and ſirname, and place of dwelling, &c. and the very true price and value.

* And that no perſon ſhall take upon him to avouch, teſtifie, or declare, that hee knoweth the party that ſo ſhall offer to ſell, give, exchange, or put away ſuch horſe, mare, gelding, colt, or filly, unleſſe he doe indeed truly know the ſame party, and ſhall truly declare to the toll-taker, or other officer aforeſaid, as well the Chriſten name, ſirname, myſterie, and place of dwelling and reſiancie of himſelfe, as of him, of, and for whom he maketh ſuch teſtimony and avouchment.

See for the ſixth point in the ſeventh branch.

* The 3. branch. No perſon take upon him to avouch, unleſſe he do indeed truly know, &c.

And that no toll-taker, or other perſon, keeping any booke of entry of ſales of horſes in Faires or Markets, ſhall take or receive any toll, or make entry of any ſale, gift, exchange, or putting away of any horſe, mare, gelding, colt, or filly, unleſſe he knoweth the party that ſo ſelleth, giveth, exchangeth, or putteth away any ſuch horſe, mare, gelding, colt, or filly, and his true Chriſten name, ſirname, myſterie, and place of his dwelling or reſiancie, or the party that ſhall and will teſtifie and avouch his knowledge of the ſame perſon ſo ſelling, giving, exchanging, or putting away ſuch horſe, mare, gelding, colt, or filly, and his

The 4 branch. No toll-taker, or book-keeper ſhal make any entry, but upon the diſ-junctive in the firſt branch.

his true Chriſten name, ſirname, myſterie, and place of dwelling or reſiancie, and ſhall make a perfect entry into the ſaid booke of ſuch his knowledge of the perſon, and of the name, ſirname, myſterie, and place of the dwelling or reſiancie of the ſame perſon, and alſo the true price, or value that ſhall be, *bona fide*, taken or had, for any ſuch horſe, mare, gelding, colt, or filly ſo ſold, given, exchanged, or put away, ſo farre as he can underſtand the ſame, and then give to the party ſo buying, or taking by gift, exchange, or otherwiſe, ſuch horſe, mare, gelding, colt, or filly, requiring and paying two pence for the ſame, a true and perfect note in writing of all the full contents of the ſame, ſubſcribed with his hand, on * paine that every perſon that ſo ſhall ſell, give, exchange, or put away any horſe, mare, gelding, colt, or filly, without being knowne to the toll-taker, or other officer aforeſaid, or without bringing ſuch a voucher or witneſſe, cauſing the ſame to be entred as aforeſaid, and every perſon making any untrue teſtimony or avouchment in the behalfe aforeſaid, and every toll-taker, book-keeper, or other officer of Faire or Market aforeſaid, offending in the premiſſes contrary to the true meaning aforeſaid, ſhall forfeit for every ſuch default the ſumme of five pounds; but alſo that every ſale, gift, exchange, or other putting away of any horſe, mare, gelding, colt, filly, in Faire or Market not uſed in all points according to the true meaning aforeſaid, ſhall be void: the one halfe of all which forfeitures to be to the Queenes Majeſtie, her heires and ſucceſſors, and the other halfe to him or them that will ſue for the ſame before the Juſtices of Peace, or in any of her Majeſties ordinary Courts of record, by bill, plaint, action of debt, or information, in which no eſſoin or protection ſhall be allowed.

The 5. branch. To give to the party ſo buying, &c. a true & perfect note in writing, &c. requiring and paying two pence for the ſame.

* On pain, &c.

To forfeit five pounds.

The penalties to be recovered before Juſtices of Peace, &c.

And be it further enacted, that the Juſtices of Peace of every place and County, as well within liberties as without, ſhall have authoritie in their Seſſions within the limits of their authoritie and commiſſion, to enquire, heare, and determine all offences againſt this Statute, as they may doe any other matter tryable before them.

The 6. branch. Juſtices of Peace to enquire, heare, and determine.

And be it further enacted, that if any horſe, mare, gelding, colt, or filly, after twenty dayes next enſuing the end of this Seſſion of Parliament, ſhall be ſtollen, and after ſhall be ſold in open Faire or Market, and the ſame ſale ſhall be uſed in all points and circumſtances as aforeſaid: that yet nevertheleſſe, the ſale of any ſuch horſe, mare, gelding, colt, or filly, within ſixe moneths next after the felony done, ſhall not take away the property of the owner from whom the ſame was ſtollen, ſo as claime be made within ſixe moneths by the party from whom the ſame was ſtollen, or by his executors or adminiſtrators, or by any other by any of their appointment, at, or in the Towne or Pariſh where the ſame horſe, mare, gelding, colt, or filly ſhall be found, before the Maior or other head officer of the ſame Towne or Pariſh, if the ſame horſe, mare, gelding, colt, or filly ſhall happen to be found in any Towne corporate, or market Towne, or elſe before any Juſtice of Peace of that County neere to the place where ſuch horſe, mare, gelding, colt, or filly ſhall be found, if it be out of Towne corporate, or market Towne, and ſo as proofe be made within forty daies then next enſuing, by two ſufficient witneſſes to be produced and depoſed before ſuch

The 7. branch. Extendeth only to horſes, &c. that are ſtolne. The ſixth point for the ſaving of the property of the right owner. Albeit this Act be purſued in all points, yet the ſale in Market overt ſhall not take away the property, &c. if the owner, &c. claime within ſix moneths, &c.

Two ſufficient witneſſes.

ſuch head officer or Juſtice, (* who by vertue of this Act ſhall have authority to miniſter an oath in that behalfe) that the property of the ſame horſe, mare, gelding, colt, or filly ſo claimed, was in the party, by, or for whom ſuch claime is made, and was ſtollen from him within ſix moneths next before ſuch claime of any ſuch horſe, gelding, mare, colt, or filly, but that the party from whom the ſaid horſe, mare, gelding, colt, or filly was ſtollen, his executors or adminiſtrators, ſhall and may at all times after notwithſtanding any ſuch ſale or ſales in any Faire, or open Market thereof made, have propertie and power to have, take againe, and enjoy the ſaid horſe, mare, gelding, colt, or filly, upon payment or readineſſe, or offer to pay to the party that ſhall have the poſſeſſion and intereſt of the ſame horſe, mare, gelding, colt, or filly, if he will receive and accept it, ſo much money as the ſame party ſhall depoſe and ſweare before ſuch head officer, or Juſtice of Peace (* who, by vertue of this Act, ſhall have authoritie to miniſter and give an oth in that behalfe) that hee paid for the ſame *bona fide*, without fraud or colluſion, any law, ſtatute, or other thing to the contrary thereof in any wiſe notwithſtanding.

* None can examine witneſſes in a new manner, without Act of Parliament.

Upon payment of ſo much mony as was *bona fide* payed for the ſame.

* No man can give an oath in a new caſe, without Act of Parliament.

This Act is but an Act (as hath been ſaid) of addition to the common Law, and to the Act of 2. & 3. Phil. & Mar. cap. 7. **all ſtanding in force, and muſt be purſued.**

And be it further enacted by the authoritie aforeſaid, that after twenty daies after the end of this Seſſion of Parliament, not onely all acceſſaries before ſuch felony done, but alſo all acceſſaries after ſuch felony, ſhall be deprived and put from all benefit of their Clergy, as the principall by Statute heretofore made, is, or ought to be.

The 8. branch. Clergy taken from acceſſaries, &c. after.

So as what by the 12. points of the common Law, and what by the 12. points of additions by theſe two Statutes the property of horſes, &c. are ſo preſerved, as if the owner be of capacity to underſtand them (being collected together, and explained by our labours) and be vigilant and induſtrious to purſue the ſame, it is almoſt impoſſible that the property of the horſe, &c. either ſtoine, or not ſtoine, ſhould be altered by any ſale in Market overt by him that is malæ fidei poſſeſſor.

And let the owner or ruler of the Faire, the toll-taker, or book-keeper, and the avoucher take heed, that they performe the duty enjoyned to them by this ſtatute, otherwiſe it will be very penall to them. And hereby good direction is given to Courratiers, Horſe-courſers how they may ſafely deale.

Hippocomi, Mangones equorum.

The

The Expoſition of the Statutes of 39. *Eliſ. Cap.* 5. and 21. *Jac. Cap.* 1. concerning the erection of Hoſpitals and Houſes of Correction.

39. Eliſ. cap. 5.

BE it enacted by the authoritie of this preſent Parliament, that all and every perſon and perſons ſeiſed of an eſtate in fee-ſimple, their heires, executors, or aſſignes, at his or their wills and pleaſures, ſhall have full power, ſtrength, licence, and lawfull authoritie at any time during the ſpace of twenty yeares next enſuing, by deed inrolled in the high Court of Chancerie, to erect, found and eſtabliſh one or more Hoſpitals, *Meaſons de dieu*, abiding places, or houſes of Correction, at his or their will and pleaſure, as well for the finding, ſuſtentation and reliefe of the maimed, poore, needy, or impotent people, as to ſet the poore to worke, to have continuance for ever, and from time to time to place therein ſuch head and members, and ſuch number of poore, as to him, his heires and aſſignes ſhall ſeem convenient: And that the ſame Hoſpitals or Houſes ſo founded, ſhall be incorporated, and have perpetuall ſucceſſions for ever, in fact, deed, and name, and of ſuch head members, and numbers of poore, needy, maimed, or impotent people, as ſhall be appointed, aſſigned, limited, or named by the Founder or Founders, his or their heires, executors or aſſignes, by any ſuch deed inrolled: And that ſuch Hoſpitall, *Meaſon de dieu*, abiding place, or houſe of Correction, and the perſons therein placed, ſhall be incorporated, named, and called by ſuch name as the ſaid Founder or Founders, his heires, executors or aſſignes ſhall ſo limit, aſſigne, and appoint: And the ſame Hoſpitall, *Meaſon de dieu*, abiding place, or houſe of Correction ſo incorporated and named, ſhall be a body corporate and politick, and ſhall by that name of incorporation have *full* power, authority, and lawfull capacitie and abilitie, to purchaſe, take, hold, receive, enjoy, and have to them and to their ſucceſſors for ever, as well goods and cattells, as mannors, lands, tenements, and hereditaments, being freehold of any perſon or perſons whatſoever. So that the ſame exceed not the yearly value of two hundred pounds above all charges and repriſes, to any one ſuch abiding houſe, Hoſpitall, *Meaſon de dieu*, or houſe of correction: And ſo as the ſame, or any part thereof be not holden of our Soveraigne Lady the Queene, her heires or ſucceſſors, immediately in chiefe, or elſe of our ſaid Soveraigne Lady the Queen, or any other perſon by Knightſ-ſervice, without licence or writ of *Ad quod dumnum*, or the Statute of Mortmain, or any other Statute or Law to the contrary notwithſtanding. And that the ſame Hoſpitall, *Meaſon de dieu*, abiding place, or houſe of Correction, and the perſons ſo being incorporated, founded and named, ſhall have full power and lawfull authoritie by the true name of the incorporation thereof, to ſue and to be ſued, implead and to be impleaded, to anſwer and to be anſwered unto, in all manner of Courts and places that now are, or hereafter ſhall be within this Realme, as well Temporall as Spirituall, in all manner of

of ſuits whatſoever, and of what nature and kind ſoever ſuch ſuits or actions be or ſhall be: And that the ſame Hoſpitall, *Meaſon de dieu*, abiding place, or houſe of correction, ſhall have and enjoy for ever ſuch a common ſeale or ſeales, as by the ſaid Founder or Founders, his or their heires, executors or aſſignes ſhall be in writing under his or their hand and ſeale aſſigned, named or appointed: whereby the ſame corporation ſhall or may ſeale any maner of Inſtrument touching the ſame incorporation, and the lands, tenements, hereditaments, goods, or other things thereto belonging, or in any wiſe touching or concerning the ſame. And further ſhall be ordered, directed, and viſited, placed, or upon juſt cauſe diſplaced by ſuch perſon or perſons, bodies politick or corporate, their heires, ſucceſſors or aſſignes, as ſhall be nominated or aſſigned by the Founder or Founders thereof, their heires or aſſignes, according to ſuch Rules, Statutes, and Ordinances, as ſhall be ſet forth, made, deviſed, or eſtabliſhed by the ſaid Founder or Founders, their heires or aſſignes, in writing under his or their hand and ſeale, not being repugnant or contrary to the Lawes and Statutes of this Realme, any Law, Statute, Cuſtome, Uſage, or other thing whatſoever to the contrary in any wiſe notwithſtanding. And that it ſhall be lawfull unto the Founder or Founders, his and their heires or aſſignes, upon the death or removing of any head or member of any ſuch corporation, to place one other in the roome of him that dyeth, or is removed ſucceſſively for ever.

Provided alwaies, that all leaſes, grants, conveyances, or eſtates, to be made by any corporation ſo to be founded as aforeſaid, exceeding the number of one and twenty yeares, and that in poſſeſſion, and whereupon the accuſtomable yearly rent, or more, by the greater part of twenty yeares next before the making of ſuch leaſe, ſhall not be reſerved and yearly payable, ſhall be void: Saving to all perſons, bodies politick and corporate, their heires and ſucceſſors (other then the Founders and Givers, their heires and ſucceſſors) all ſuch right, title, claime, poſſeſſion, rents, ſervices, commons, demands, intereſt, and profits, which they or any of them ſhall have, or of right ought to have, of, in or to any the lands, tenements, or hereditaments, hereafter to be given, limited or aſsigned in forme aforeſaid, in as ample manner, as if this Statute had never been had or made.

Provided alſo, that this Act, or any thing therein contained, ſhall not extend to enable any perſon or perſons, being within age, women covert without their husbands, or of *non ſane memorie*, to make any ſuch corporation, or to endow the ſame: any thing in this preſent Act to the contrary thereof in any wiſe notwithſtanding.

Provided alwaies, that no ſuch Hoſpitall, *Meaſon de dieu*, abiding place, or houſe of correction ſhall be erected, founded, or incorporated by force of this Act, unleſſe upon the foundation or erection thereof, the ſame be endowed for ever with lands, tenements, or hereditaments of the cleare yearly value of ten pounds by the yeare.

Provided alſo, and be it further enacted, that no ſuch incorporation to be founded by force of this Act, ſhall at any time hereafter doe or ſuffer to be done any Act or thing, whereby, or by meanes whereof any of the lands, tenements, hereditaments, ſtocke, goods or chattels of ſuch

incorporation, or any eſtate, intereſt, poſſeſſion or property, of, or in the ſame, or any of them ſhall be veſted or transferred in or to any other whatſoever, contrary to the true meaning of this Act: and that ſuch conſtruction ſhall be made upon this Act as ſhall be moſt beneficiall and available for the maintenance of the poore, and for repreſſing and avoiding of all Acts and devices to be invented, or put in ure contrary to the true meaning of this Act, 21. *Jac.* 1. *made perpetuall.*

¶ That all and every perſon and perſons.] These words regularly doe extend to any body politick or corporate, but not to ſuch as are reſtrained by any Act of Parliament to alien, &c. but doth extend to ſuch bodies politick and corporate as may alien: As Maiors & Comminalties, Bayliffes and Burgeſſes, &c. and the like, and to all other perſons whatſoever.

See hereafter the proviſo to this effect. See li. 6. fol. 62. b. 22. E. 3. coron. 276. Sed abundans cautela non nocet.

This Act enables not perſons within age, or feme Coverts without their husbands, of non compos mentis, or any other perſons diſabled by law, to found, &c.

This is a very beneficiall law: for the charges of incorporation, and of the licence of Mortmaine in theſe dayes grow ſo great by one meanes or other, as it hath diſcouraged many men to undertake theſe pious and charitable workes, whereas in former times ſuch workes of pietie and charity for the poore did ever paſſe in forma pauperis, and ſo we hope to ſee it againe.

Whereof the Hoſpitall, &c. muſt be endowed.

¶ Seiſed of any eſtate in fee-ſimple, &c.] First, the manners, lands, tenements, or hereditaments, whereof the indowment is made, muſt be of an eſtate in fee-ſimple, either abſolute, conditionall, or qualified. 2. They muſt be free-hold. 3. They muſt be of the cleare yearly value of 10. pounds by the yeare, or more, and not exceeding the yearly value of 200. pounds by the yeare above all charges and repriſes. 4. They, or any part thereof muſt not be holden of the King immediately in chiefe, or of the King, or of any other perſon by Knights ſervice. But if the firſt indowment be of the yearly value of 10. pounds or more, and under the yearly value of 200. pounds, they may purchaſe (or any may give to them) manners, lands, tenements, or hereditaments, having the aforeſaid foure qualities untill they have manners, lands, tenements, or hereditaments, to the yearly value of 200. pounds, above all charges and repriſes by force of this Act of Parliament, without any licence of Mortmaine.

But if they be at the time of the foundation or indowment of the yearly value of 200. pounds, or under, and afterwards they become of greater value by good husbandry, riſing of prices, ſudden accidents, as by eſcheat, or otherwiſe, they ſhall continue good to be enjoyed by the Hoſpitall, &c. albeit they be above the yearly value of 200. pounds: for the yearly value muſt be accounted within this ſtatute, as it was at the time of the indowment made. Alſo goods and chattels (reall or perſonall) they may take of what value ſoever.

¶ Their heires, executors, or aſſignes.] That is, when the tenant in fee-ſimple that hath not time to found himſelfe, ſhall appoint his heires, executors, or aſſignes to doe the ſame; and yet if he make no appointment, his heires or aſſignes may doe it.

¶ During the ſpace of 20. yeares.] This Act is made perpetuall by the ſtatute of 21. Jac. Regis, cap. 1. as more at large ſhall be ſhewed when we come to it.

¶ By deed inrolled in the high Court of Chancery to erect, &c.] It cannot be erected by any other inſtrument, conveyance, or aſſurance, but by deed inrolled in the Chancery. This deed not be inrolled in the Chancery within 6. moneths after the date, but at any time after (but the ſooner the ſafer.) And this deed need not to be indented, but a deed poll ſufficeth. It is good, if the deed

deed bee in paper, but it muſt bee inrolled in parchment.

¶ One or more Hoſpitalls, *Meaſons de dieu*, abiding place, or houſes of Correction.] The firſt three are exprẽſed to be for the finding, ſuſtentation and reliefe of the maimed, poore, needy, or impotent people in the diſtinctive. And the fourth, viz. the Houſes of Correction, to ſet the poore to worke.

¶ To have continuance for ever.] The Founder cannot erect, &c. any of theſe for yeares, lives, or any other limited time, but for ever.

¶ And that the ſame Hoſpitalls, or Houſes ſo founded, &c.] That is, founded by deed inrolled in the Chancery.

Fundare is not onely fundamentum ponere, ſeu jacere, but alſo firmare, ſeu ſtabilire. Vid. in le caſe de Suttons Hoſpitall, lib. 10. fol. 23. &c.

¶ Shall be incorporated, and have perpetuall ſucceſſion, &c. And foraſmuch as the Hoſpitall, &c. is not properly incorporated, but the perſons therein placed &c. are to be incorporated; therefore it is in the next clauſe added, And that ſuch Hoſpitall, *Meaſon de dieu*, abiding place, or Houſe of Correction, * and the perſons therein placed ſhall be incorporated, named, and called by ſuch name as the ſaid Founder or Founders, his heires, executors, or aſſignes ſhall ſo (that is, by any ſuch deed inrolled) limit, aſſigne, and appoint. So as the perſons, to be by this Act incorporated, muſt be there placed and named, when the Founder giveth them their name of incorporation: for the Parliament incorporateth them, and the Founder giveth them only their name. * Note theſe words.

Now it is neceſſary, for the better furtherance of theſe godly & charitable workes, to ſet downe a preſident warrantable by the ſaid Acts. And foraſmuch as by this Act it muſt be done by deed (which muſt have writing ſealing, and delivery) and not by a writing only; it is the ſureſt way to have it by deed indented, between the Founder of the one part, and A.B. &c. of the other part, which the Founder may ſeale and deliver to A.B. &c. acknowledge it, and cauſe it to be inrolled in the Chancery: for inrolled it cannot be in any other Court.

This Indenture made the firſt day of May, in the firſt yeare of the reigne of our Soveraigne Lord King Charles, by the grace of God, &c. Between A.B. of B. in the County of C. Eſquire of the one part, and C.D. E.F. &c. of the other part, Witneſſeth, that whereas the ſaid A.B. of his charitable affection and diſpoſition hath erected and founded certaine buildings and edifices upon a parcell of ground in the Pariſh of F. in the ſaid County of C. lying between the &c. to be an Hoſpitall, for the finding, ſuſtentation, and reliefe of poore and impotent people, to have continuance for ever. And by theſe preſents the ſaid A.B. doth found, erect, and eſtabliſh the ſame for an Hoſpitall of poore and impotent people, to have continuance for ever. And according to the power and authority given to the ſaid A.B. by the ſtatute or ſtatutes in that caſe provided, the ſaid A.B. doth by theſe preſents limit, aſſigne, and appoint, that the ſaid Hoſpitall, and the poore and impotent perſons therein placed, viz. D.E. E.F. F.G. &c. to the number of ſhall for ever hereafter be incorporated by the name of the Maſter and Brethren of the Hoſpitall of the holy and individed Trinity of F. in the ſaid County of C. And further, the ſaid A.B. doth by theſe preſents name and appoint the ſaid D.E. E.F. F.G. &c. to be preſent Brethren of the ſaid Hoſpitall, and the ſaid D.E. to be preſent Maſter of the ſaid Hoſpitall, and that by the name of the Maſter and Brethren, they ſhall have full power and authority, and lawfull capacity and ability to purchaſe, take, hold, receive and enjoy, and have to them, and their ſucceſſors for ever, as well * goods and chattels, as manors, lands, tenements, and hereditaments, being free-hold, of any perſon or perſons whatſoever, according to the forme and effects of the ſtatutes in that caſe made and provided. And that the ſame Hoſpitall, &c. and the perſons ſo being incorporated, founded and named, ſhall have full power & lawfull authority by the ſaid name of Maſter and Brethren, &c. to ſue, and to be ſued, implead and be impleaded, to anſwer and to be anſwered unto in all manner of Courts and places within

A preſident of incorporation by force of this ſtatute.

(and abburtell the ſame.)

* Nota, they may take, without any reſtraint, goods & chattels, as well reall, perſonall and mixt, to what value ſoever.

within this Realme, as well Temporall as Spirituall, in all manner of ſuits whatſoever, and of what nature or kind whatſoever ſuch ſuits or actions be, or ſhall be. And the ſaid A.B. doth by theſe preſents aſſigne, name and appoint, that the ſaid Maſter and Brethren, and their ſucceſſors for ever hereafter ſhall have a common ſeale, with a croſſe graven therein, and in the circumference thereof, Sigillum Hoſpitalis ſanctæ Trinitatis de F. whereby the ſaid Maſter and Brethren, and their ſucceſſors, ſhall or may ſeale any manner of inſtruments touching the ſame incorporation, and the lands, tenements and hereditaments, goods, or other things thereto belonging, or in any wiſe touching or concerning the ſame. And that it ſhall be lawfull for the ſaid A.B. during his life, upon the death or removing of the ſaid Maſter, or any of the ſaid Brethren, to place one other in the roome of him that dyeth, or is removed. And after the death of the ſaid A.B. it ſhall be lawfull for the Parſon of the ſaid Towne of F. and the Church-wardens of the ſame for the time being, ſucceſſively for ever after the deceaſe of the ſaid A. B. upon the death or removing of the Maſter, or any of the Brethren of the ſaid Hoſpitall, to place one other in the roome of him that dyed, or is removed, ſucceſſively for ever. In witneſſe whereof, &c.

22.E.4. tit. Grant 30.lib.10. fol.30.b.& 32 a. in le caſe de Suttons Hoſpitall.

And albeit that the onely eſſentiall point that the Founder is to doe in this caſe is, to appoint and give a name to the Corporation, yet by way of illuſtration we have thought it fit to adde ſo much as we have done, following the very words and effect of this Act. And although that at the common Law a Corporation may be of an Hoſpitall that is in poteſtate of certaine perſons to be Governours of the Hoſpitall, and not of the perſons placed therein, yet the ſafeſt and ſureſt way upon this Statute is, firſt to prepare the Hoſpitall, and to place the poore therein, and to incorporate the perſons therein placed. And this we hold by reaſon of the ſaid words in this Act, viz. And that ſuch Hoſpitall, &c. and the perſons therein placed ſhall be incorporated, &c.

¶ Such a common ſeale or ſeals, as by the Founder or Founders, &c. ſhall be aſſigned.] It is neceſſary to be knowne, who ſhall be ſaid to be Founder by Founders, for the better underſtanding of the clauſes ſubſequent in this Act.

38.aſſ.p.22.adjudge lib.3.fol. 74.a. in le caſe de Dean & Chap. de Norwich.

Such onely are ſaid to be Founder or Founders within this Act, as are ſeiſed of an eſtate in fee-ſimple of any manners, lands, tenements, or hereditaments, having the foure qualities aforeſaid, and giveth the ſame at the firſt foundation of the Hoſpitall, &c. to the incorporation of the Hoſpitall. For it is a ſure rule, that he or they that give the firſt poſſeſſions, is the Founder or Founders.

But then it is demanded, What if R.S. Citizen of London, by his laſt will and teſtament doe devile, that his executors ſhall beſtow a thouſand pounds in purchaſe of lands, tenements, or hereditaments, and that an Hoſpitall ſhall thereupon be builded and incorporated for the ſuſtentation and reliefe of poore and impotent people, and dyeth: the executors purchaſe lands, tenements and hereditaments of the yearly value of threeſcore pounds, having the ſaid foure qualities, and cauſe the eſtate to be taken to certaine perſons and their heires, and build thereupon an Hoſpitall, and place therein poore and impotent people: In this and the like caſes the perſons that have the eſtate in fee ſimple in the lands, tenements, and hereditaments, are by the purview of this Statute to be Founders, and to doe all things that this Act doth appoint the Founder or Founders to doe. But when they name the Corporation, it ſhall be well and worthily done to name the Corporation by the name of the Maſter and Brethren of the Hoſpitall of the holy and undivided Trinity, founded in F. in the County of C. at the onely coſts and charges of the ſaid R.S. or the like; ſo as the charitable intention of the ſaid R.S. may be had in remembrance, with ſome juſt recitall in the beginning of the deed of foundation of the truth of the caſe.

The next thing that is to be done after the incorporation, is to endow the lands, tenements and hereditaments to the ſaid incorporation, which may be done ſafely, with greater facility and leſſe charge, by bargaine and ſale by deed indented

denſed and inrolled (accoꝛding to the ſtatute of 27. Hen. 8. cap. 16.) between the Founder oꝛ Founders of the one part, and the Maſter and Bꝛethꝛen, &c. of the other part, in conſideration of five ſhillings in hand paid by the Maſter of the ſaid Hoſpitall (foꝛ himſelfe and foꝛ his Bꝛethꝛen) and of other five ſhillings in hand paid by the ſaid Maſter and Bꝛethꝛen, &c. whereof you may haue a pꝛeſident in the tenth booke of my Repoꝛts in the caſe of Suttons Hoſpitall, fol. 17. b. & 34. a. reſpons al 9. objection, which judgement is after allowed and ratified by Act of Parliament, anno 4. Regis Caroli. And this bargaine and ſale to be a day oꝛ two, oꝛ ſome ſhoꝛt time after the incoꝛpoꝛation. But now let us returne to our Act of Parliament.

27. H. 8. cap. 16. See before the expoſition of this ſtatute.

Lib. 10. fol. 17. & 34. in the caſe of Suttons Hoſpitall.

¶ And further ſhall be ordered and viſited, placed, oꝛ upon juſt cauſe diſplaced, &c.] And foꝛaſmuch as nothing can pꝛoſper and continue, without good rule and gouernment, the next thing to be done after the lands, &c. be conueyed unto them is, That the Founder oꝛ Founders ſhall ſet foꝛth, make, deuiſe and eſtabliſh in wꝛiting under his oꝛ theiꝛ hand and ſeale (foꝛ ſo it muſt be by foꝛce of this Act) ſuch rules, locall ſtatutes and oꝛdinances foꝛ the oꝛder, diꝛection, viſitation, placing, oꝛ upon juſt cauſe diſplacing of ſuch Maſter and Bꝛethꝛen by ſuch perſon oꝛ perſons, bodies politick oꝛ coꝛpoꝛate, theiꝛ heiꝛes, ſucceſſoꝛs oꝛ aſſignes, as ſhall be nominated oꝛ aſſigned by the * Founder oꝛ Founders, the ſaid rules, locall ſtatutes and oꝛdinances being not repugnant oꝛ contꝛary to the lawes oꝛ ſtatutes of the Realme. And theſe oꝛders, &c. to containe (amongſt many others) two eſpeciall things, viz. daily pꝛayer to Almighty God: And that the Maſter and Bꝛethꝛen be not idle, but that they and euery of them exerciſe ſuch woꝛke meet foꝛ them, as the Parſon of the Pariſh, and the Church-wardens (oꝛ ſuch other as the Founder ſhall name) ſhall appoint oꝛ allow of, and to take a weekly account thereof. And theſe oꝛders, &c. to beare date after the bargaine and ſale, and it is good to haue them inrolled.

* If the Founder limit not, who ſhall viſit? The Biſhop of the Dioceſſe. Vid. 2. H. 5. ca. 1. ſtat. 1. Vſ. 14. Eliſ. cap. 5. El. cap. 18. 8. aſſ. p. 29. 31. But if the Founder or Founders limit who ſhall viſit, ſuch viſitor or viſitors by force of this Act of Parliament, ſhall ſtand by the ſtatute of 21. Jac. See the ſtatute of 13. El. cap. 17.

¶ Pꝛouided alſo, and be it further enacted, that no ſuch coꝛpoꝛation to be founded by foꝛce of this Act, ſhall at any time hereafter doe, oꝛ ſuffer to be done, &c.] This clauſe of reſtraint in this Act is as foꝛcible, and rather moꝛe then the reſtraint by the ſtatute of 13. Eliſ. cap. 10. And theꝛefoꝛe hereby they are diſabled as well to make any conueyance to the King, as to any Subiect, contꝛary to the tꝛue meaning of the Act.

Peꝛuſe well the ſtatute in pꝛint in 13. Eliſ. cap. 17. foꝛ the erection and foundation of an Hoſpitall by Robert Earle of Leiceſter, which was the paterne whereby this Act was fꝛamed. And ſee the oꝛders and locall ſtatutes made by him, foꝛ they were done by good aduice, and haue had good effect.

The

The Statute of 21. *Jac. Regis, Cap.* 1. concerning Hoſpitalls, and Houſes of Correction.

WHereas in the Parliament held in the nine and thirtieth yeare of the reigne of the late Queen *Eliſabeth* of happy memory, a good law was made, entituled, *An Act for erecting of Hoſpitalls, or abiding and working houſes for the poore:* but the power, licence and authoritie given by the ſaid Statute, to erect, found, and eſtabliſh ſuch houſes and abiding places, as are therein mentioned, was confined to the ſpace of twenty yeares then next enſuing, which ſaid time is now expired.

Be it therefore enacted by the authoritie of this preſent Parliament, That the ſaid Act, and all things therein contained, ſhall from henceforth be revived, and made perpetuall to have continuance for ever.

And be it alſo enacted, That all Hoſpitalls, *Meaſons de dieu*, and abiding places for poore, lame, maimed and impotent people, or for Houſes of Correction, at any time ſince the ſaid twenty yeares expired, erected, founded or made, or at any time hereafter to be erected, founded or made, according to the purport of the ſaid Statute, ſhall be incorporated, and have perpetuall ſucceſſion and capacitie, to have, take and enjoy all other priviledges, benefits, and immunities, to all intents and purpoſes, according to the proviſions, tenour, purport and true meaning of the ſaid Act, as if the ſame had been made, founded, or endowed within the ſpace of twenty yeares next enſuing the ſaid Statute, *Stat.* 43. *El.* 4.

¶ That the ſaid Act, and all things therein contained, from henceforth be revived, and made perpetuall to have continuance for ever.] **Theſe words** [made perpetuall, and have continuance for ever] **have made the ſaid Act of** 39. Eliſ. **and all things therein contained (at the making thereof but a probationer for** 20. **yeares long ſince expired) now by this Act perpetuall, and to have continuance for ever.**

Nota, *Hoſpitale* an Hoſpitall, is the generall word, & includes *Meaſons de dieu*, & abiding places for the poor, &c. alſo * Houſes of Correction, as here it appeareth. 13. Eliſ. cap. 7.

¶ That all Hoſpitals, *Meaſons de dieu* for the poore, &c. or for * Houſes of Correction, at any time ſince the ſaid twenty yeares expired, erected, &c.] **Whereas ſome Hoſpitalls, &c. or Houſes of Correction were founded after the ſaid twenty yeares expired, according to the ſaid Act, thoſe by this Act are incorporated, eſtabliſhed and confirmed.**

And likewiſe all Hoſpitalls, &c. and Houſes of Correction hereafter to be erected, &c. according to the purport of the ſaid ſtatute ſhall be incorporated, &c. And note, that this branch makes the Act of 39. Eliſ. &c. **a perpetuall law.**

Vid. 13. Eliſ. cap. 7. **the moity of the forfeiture of Bankrupts given to the poore within Hoſpitalls.**

31. Eliſ. cap. 6. None that have election, &c. to take reward, &c.

31. Eliſ. cap. 6. **If any which have election, nomination, voice, or aſſent thereunto of any perſon to have roome or place in any Hoſpitall, ſhall have or take any money, reward or profit, directly or indirectly, or promiſe of money, reward or profit, that then ſuch roome and place to be void, and another to be preferred to the place by thoſe that have authority to elect, &c.**

In

In 43. Eliſ. a right profitable law was made, for Commiſſioners to enquire of miſ-imployment of lands, tenements, rents, annuities, profits, hereditaments, goods, chattels, money, and ſtockes of money given or appointed, ſome for reliefe of aged, impotent, and poore people, and ſome for reliefe of ſicke and maimed ſouldiers and mariners, or for maintenance of Houſes of Correction (inter alia) and by their orders to reforme the ſame, which Act hath wrought very good effect in many caſes. 43. Eliſ. cap. 4. A ſpeedy remedy in many caſes.

An

An Exposition of the Statute of 7. *Jac. Regis* *Cap.* 4. concerning Houses of Correction, and the government of them.

MAny Statutes have been made for the punishment of Rogues, Vagabonds, and sturdy Beggars, but very few to find them worke, and to enforce them thereunto. The principall of that kind is the statute of 39. *Elis.* ca. 4. which doth enact, That from time to time it shall and may be lawfull to and for the Justices of Peace of any County or City, assembled at any Quarter Sessions of the Peace within the same County, City, Borough, or Towne corporate, to set downe order in three things: First, from time to time to erect, or cause to be erected one or more * Houses of Correction within their severall Counties or Cities. This first branch is a law perpetuall, and the Justices of Peace for the time being have power by this Act from time to time to erect as many Houses of Correction, or Work-houses, as they shall thinke convenient.

* Note, these are not only Houses of Correction, but Work-houses also, as hereafter appeareth. See 43. Elis. ca. 2. & 7. Jac. cap. 4. in the 2. branch.

2. For the providing of stockes of money, and all other things necessary for the same. This also is a law perpetuall from time to time, &c.

3. For ruling and governing of the same.

4. For correction and punishment of [a] offenders thither to be committed. These two also are lawes perpetuall, ut supra.

[a] Note the generality of this word.

5. For the better effecting whereof, they may make such orders as they shal from time to time thinke convenient, &c. and from time to time to reforme, take, and set downe the same.

6. Which orders shall be of force (being warranted by authority of Parliament) and be duly performed, and put in execution.

The life of this businesse consisteth in framing of these orders, & in due execution of the same.

We passe over all the former lawes before this Act of 39. Elis. for punishment of Rogues, Vagabonds, and sturdy Beggars, many whereof were repealed by 1. E. 6. cap. 3. and all the rest are repealed by this Act of 39. Elis. and will come to the aboveſaid Act of 7 Jac. This law consisteth upon a short Preamble, and the body of the Act, which is divided into nine branches.

The Preamble.

Whereas heretofore divers good and necessarie lawes *and statutes* have been made and provided for the erection of Houses of correction, for the suppressing and punishing of Rogues, Vagabonds, and other idle, vagrant, and disorderly persons, which lawes have not wrought so good effect as was expected, as well for that the said Houses of Correction have not been built according as was intended, as also for that the said Statutes have not been duely and severely put in execution, as by the said Statutes were appointed.

In this Preamble are rehearsed two causes wherefore the former law and statute took not so good effect as was expected: First, for that Houses of Correction were not built according as was intended, wherein no deficiencie was in the law, but in the Justices of Peace, which should have ordered the same to be erected. For seeing education of youth, and setting of worke of idle and disorderly persons, are such essentiall parts of the well being of a Common-wealth; and the onely meane to compell them to worke (as the law now standeth) is by Houses of Correction, seeing there hath been a default in the Justices of the Peace heretofore, and the mischiefe so daily increasing, we hope that the Justices of Peace, having yet power, will erect more Houses of Correction (which are also called Work-

See the third part of the Institutes, cap. *Rogues*.

Work-houſes) ſo as we ſhall have neither Beggar (as the law of God commandeth) nor idle perſon in the Common-wealth.

The ſecond cauſe (which is the cauſe of cauſes) is, for that the ſtatutes in that caſe made and provided were not put in execution, as by the ſaid ſtatutes was appointed.

And this excellent work is without queſtion feaſible: For upon the making of the ſtatute of 39. Eliſ. and a good ſpace after, whileſt Juſtices of Peace and other Officers were diligent and induſtrious, there was not a Rogue to be ſeen in any part of England; but when Juſtices * and other Officers became tepidi, or trepidi, Rogues, &c. ſwarmed againe.

* 39. Eliſ. cap. 4.

For remedy whereof, Be it enacted and eſtabliſhed by our Soveraign Lord the Kings Majeſtie, and by the Lords Spirituall and Temporall, and by the Commons in this preſent Parliament aſſembled, and by the authoritie of the ſame, That all Lawes and Statutes now in force, made for erecting and building of Houſes of Correction, and for puniſhing of Rogues, Vagabonds, and other wandring and idle perſons, ſhall be put in due execution.

The 1. branch.

The firſt branch of the body of this Act conſiſteth on two parts: Firſt, that all lawes and ſtatutes made for erecting and building of Houſes of Correction now in force ſhould be put in due execution; which is ſo enacted, for the incitation and incouragement of Juſtices of Peace to do their duties in this ſo important a cauſe.

2. For puniſhing of Rogues, Vagabonds, and ſturdy Beggars (for thoſe are the words of the former ſtatute now in force) ſhall be likewiſe put in due execution. Execution is the end and life of the law.

39. Eliſ. ubi ſup.

And be it further enacted and eſtabliſhed by the authority aforeſaid, That before the Feaſt of Saint *Michael* the Archangel, which ſhall be in the yeare of our Lord God one thouſand ſixe hundred and eleven, there ſhall be erected, built, or otherwiſe provided, within every Countie of this Realm of England and Wales, where there is not one Houſe of Correction already built, purchaſed, provided or continued, one or more fit and convenient Houſe or Houſes of Correction, with convenient Backſide thereunto adjoyning, together with Mills, Turns, Cards, and ſuch like neceſſarie Implements, to ſet the ſaid Rogues, or ſuch other idle perſons on worke: The ſame houſes to be built, erected or provided in ſome convenient place or Towne in every County: Which houſes ſhall be purchaſed, conveyed, or aſſured unto ſuch perſon or perſons, as by the Juſtices of Peace, or the more part of them, in their Quarter Seſſions of the Peace, to be holden within every Countie of this Realme of England and Wales, upon truſt, to the intent the ſame ſhall be uſed and employed for the keeping, correcting, and ſetting to worke of the ſaid Rogues, Vagabonds, or ſturdy Beggars, and other idle and diſorderly perſons.

The 2. branch.

¶ That before the Feaſt of Saint *Michael*, &c.] This clauſe was to haſten, and upon penalty to inforce Juſtices of Peace to ſo neceſſary and charitable a worke. * But this clauſe being in the affirmative, taketh not away the perpetuity of the Act of 39. Eliſ. for the erection of Houſes of Correction and Work-houſes, from time to time, and at any time hereafter by Juſtices of Peace.

* Nota.

¶ Shall be erected, built, or otherwiſe provided.] The ſtatute of 39. El.

uſed onely the words [erected,] but that included both the other words of this Act, viz. [built and provided.] For if they caused a house already builded, to be purchased, and converted the same to a House of Correction, this is an erection of a House of Correction within the statute of 39. Eliz. because as to the House of Correction it was newly erected.

Cicero ad Brutum. Erectior Senatus erat noſtris cohortationibus excitatus.

¶ With convenient backside thereunto adjoyning, together with Mills, Turnes, Cards, &c.] These particulars, and all other necessary things appertaining thereunto, are included within the generall words of 39. Eliz. viz. [for the providing of stockes, and all other things necessary for the same, &c.] which are generall and large words, and doe include all particulars necessary whatsoever.

¶ Which Houses shall be purchased, and conveyed, or assured, &c.] This may be done by authority of this Act, without licence or offence of any former law. And these may be incorporated by the statute of 39. Eliz. cap. 5. as in the exposition of that statute appeareth.

The house to be imployed to three purposes: 1. for the keeping, 2. for the correcting, 3. for the setting to worke: So as it is not a House of Correction alone, but of safe keeping, and setting on worke.

¶ The said Rogues, Vagabonds, or sturdy Beggars, and other idle and disorderly persons.] The statute of 39. Eliz. by particular words did not extend to Rogues, Vagabonds, and sturdy Beggars, but in generall words, for the punishment of offenders thereunto committed. Which generall words are both by the first branch of this Act explained to be wandring or idle persons: and many other branches of this Act, to idle or disorderly persons, and specially by the branch, whereby the authority of the Justices to commit to the House of Correction is warranted. All idle or disorderly persons may be committed by them to the House of Correction and Work-house.

And where all the Judges of England did for the good of the Commonwealth, and the better instruction and direction of Justices of Peace, and for the due execution of the said Act of 39. Eliz. amongst other things resolve, that such persons as be of any Parish, and have able bodies to worke, and be no wanderers abroad out of the Parish, though they refuse to worke at such wages as is taxed (or commonly given) in those parts, are notwithstanding not to be sent to their place of birth, or last dwelling, by the space of a yeare, but to the House of Correction, upon consideration had of both the Statutes of the Poor and Rogues. But if they that have any lawfull meanes to live by, though they be of able bodies, and refuse to worke, yet are they not to be sent to the House of Correction.

But by this statute of 7. Jac. enacted long after the resolution of the Judges, though they have lawfull meanes to live by, yet if they be idle or disorderly persons, the Justices of Peace have power to commit them to the House of Correction, a generall and large power given to them, without exception of any person. And their Mittimus to the House of Correction may be more safely upon this statute, Quia otiosa & inordinata persona: for that he is an * idle and disorderly person, or that he is an idle person, or that he is a disorderly person, according to the words of this Act, then upon the statute of 39. Eliz.

* The words in the 5. branch are in the disjunctive.

The 3. branch. And be it further enacted by the authoritie aforesaid, That if the said house to be erected, purchased, or provided, shall not be erected, built, or otherwise provided, before the Feast of S. *Michael* the Archangel, which shall be in the yeare, one thousand six hundred and eleven, next ensuing the last day of this present Session of Parliament, That then every Justice of Peace within every Countie of this Realme of England

England and Wales, where ſuch houſe and backſide ſhall not be erected or provided, ſhall forfeit for his ſaid neglect five pounds of lawfull Engliſh money, the one moitie thereof to be unto him or them that will ſue for the ſame by action of debt, bill, plaint, or information: In which ſuit, no protection, eſſoine, or wager of law ſhall be admitted: And the other moity thereof to be employed and beſtowed towards the erecting, building, procuring or providing the ſaid houſe and backſide, and ſuch neceſſary implements, as aforeſaid.

The penalty of five pounds of every Juſtice of Peace, if the Houſe of Correction be not provided within the time of this Act of 7. Jac. And how the ſame penalty ſhall be recovered and imployed.

The 4. branch. And be it further enacted and eſtabliſhed by the authoritie aforeſaid, That the Juſtices of Peace of every Countie within the Realme of England and Wales, at their Quarter Seſſions of the Peace, to be holden for their ſeverall Counties (next after the erecting, providing or building of the ſaid houſe or houſes, and ſo from time to time) or the moſt part of them ſhall elect, nominate and appoint, at their will and pleaſure, one or more honeſt fit perſon or perſons, to be Governour or Maſter of the ſaid houſe or houſes ſo to be purchaſed, erected, built or provided: which perſon and perſons ſo choſen by vertue of this preſent Act, ſhall have power and authoritie, to ſet ſuch Rogues, Vagabonds, idle and diſorderly perſons, as ſhall be brought or ſent unto the ſaid houſe to worke and labour (being able) from time to time, for ſuch time, as they ſhall continue and be remaining in the ſaid Houſe of Correction, and to puniſh the ſaid Rogues, Vagabonds, idle and diſorderly perſons, by putting Fetters or Gives upon them, and by moderate whipping of them, and that the ſaid Rogues, Vagabonds, and idle perſons, during ſuch time as they ſhall continue and remaine in the ſaid Houſe of Correction, ſhall in no ſort bee chargeable to the Countrie for any allowance, either at their bringing in, or going forth, or during the time of their abode there, but ſhall have ſuch and ſo much allowance, as they ſhall deſerve by their owne labour and work.

By this branch it is enacted, that the Juſtices of Peace, &c. ſhall elect, &c. one or more fit perſon or perſons, to be Governour or Maſter of the ſaid Houſe or Houſes.

Herein alſo are added idle and diſorderly perſons, and power given to the Governour or Maſter to puniſh them, by putting Fetters or Gives upon them, and by moderate whipping of them.

Theſe idle and diſorderly perſons ſhall be in no ſort chargeable to the Countrie, &c. but ſhall have ſuch allowance as they ſhall deſerve by their owne labour and worke. Nota.

The 5. branch. And be it further enacted by the authoritie aforeſaid, That the ſaid Juſtices of Peace of every Countie within every of their ſeverall Diviſions, twice in every yeare at the leaſt, and oftner, if there be occaſion, ſhall aſſemble and meet together for the better execution of this Statute, and that ſome foure or five daies before their aſſembly and meeting, the ſaid Juſtices or the more part of them, ſhall by their Warrant command the Conſtables and Tithingmen of every Hundred, Towne,

Pariſh, Village, and Hamlet within their ſaid ſeverall Diviſions, which ſhall be aſſiſted with ſufficient men of the ſame places, to make a generall privie ſearch in one night within their ſaid Hundreds, Townes, Villages, and Hamlets, for the finding out and apprehending of the ſaid Rogues, Vagabonds, wandring and idle perſons, and that ſuch Rogues, Vagabonds, wandring and idle perſons, as they ſhall then find and apprehend in the ſaid ſearch, ſhall by them be brought before the ſaid Juſtices, at their ſaid aſſembly or meeting, there to be examined of their idle and wandring life, there to be puniſhed, or otherwiſe by their Warrant to be ſent or conveyed unto the ſaid Houſe or Houſes of Correction within the ſaid Countie, appointed and prefixed, there to be delivered unto the Maſter or Governour of the ſaid Houſe, or to his deputie or aſſignee, to be ſet to labour and worke; at which daies and times of aſſembly or meeting, ſo to be held by the ſaid Juſtices of Peace, the Conſtables and Tythingmen of every Hundred, Pariſh, Towne, Village and Hamlet, ſhall then appeare in every their ſeverall Diviſions, before the ſaid Juſtices of Peace, at the ſaid aſſemblies or meetings, and there ſhall give account and reckoning, upon oath in writing, and under the hand of the Miniſter of every Pariſh, what Rogues, Vagabonds, and wandring and diſorderly perſons they have apprehended both in the ſame ſearch, and alſo between every ſuch aſſemblies and meetings, and how many have been by them puniſhed, or otherwiſe ſent unto the Houſes of Correction: which if the ſaid Conſtables or Tythingmen ſhall neglect to performe, as alſo to convey ſafely all ſuch Rogues, with all other idle or diſorderly perſons at the charge of the Hundred, as by the Juſtices of Peace Warrants ſhall be ſent unto the Houſes of Correction in the ſame County, that then they ſhall forfeit ſuch further fines, paines, and penalties, as by the ſaid Juſtices of Peace, or the moſt part of them, ſhall be thought fit and convenient, not exceeding the ſumme of forty ſhillings for every offence.

The Juſtices of Peace within their ſeverall Diviſions, twice every yeare at the leaſt, and oftener, if there be occaſion, ſhall aſſemble and meet together, &c.
Generall and priviе ſearch ſhall be made in every Hundred, Towne, &c.
The Conſtables account of idle or diſorderly perſons, &c. apprehended.

Note this. **In this branch theſe words are ſpecially to be obſerved,** viz. With all other idle or diſorderly perſons, at the charge of the Hundred, as by the Juſtices of Peace Warrants ſhall be ſent to the Houſes of Correction.

The 6. branch. And for that it is convenient, that the Maſters or Governours of the ſaid Houſes of Correction ſhould have ſome fit allowance and maintenance for their travell and care to be had in the ſaid ſervice, as alſo for the relieving of ſuch as ſhall happen to be weake and ſicke in their cuſtodie, and that the Subjects of this Realme ſhould in no ſort be overcharged, to raiſe up money for ſtockes to ſet ſuch on worke as ſhall be committed to their cuſtody: Be it therefore enacted and eſtabliſhed by the authoritie of this preſent Parliament, That the Maſters or Governours of the ſaid Houſes of Correction, ſhall have ſuch ſumme of money yearly, as ſhall be thought meet, by the moſt part of the Juſtices of Peace within the ſaid Countie, at the Quarter Seſſions of the Peace, the ſame to be paid quarterly before-hand by the Treaſurers, appointed by one

one Act made in the three and fortieth yeare of the late Queene *Eliſabeth*, intituled, *An Act for the reliefe of the poore*, during the time they the ſaid Maſters or Governours ſhall be imployed in the ſaid ſervice, (the ſaid Maſter or Governour giving ſufficient ſecuritie, for the continuance and performance of the ſaid ſervice) which if the ſaid Treaſurer ſhall neglect or refuſe to performe, that then the ſaid Maſter or Governour of the Houſe of Correction, ſhall have authoritie by this preſent Act, to levie the ſame, or ſo much thereof as ſhall be unpaid, upon the ſaid Treaſurers account, in ſuch manner and forme as by the ſaid Statute they the ſaid Treaſurers are appointed and authorized to levie the weekly ſumme or payment, being to them unpaid.

This branch provideth for fit allowance and maintenance to be made to the Maſters or Governours of the ſaid Houſes, &c. Dignus operarius mercede.

Treaſurers appointed by one Act made anno 43. Eliſ. cap. 2. **intituled,** For the reliefe of the poor, (**and falſly intituled in the laſt printed book of ſtatutes,** Who ſhall be Overſeers for the poore, their office, duty and account) **which Act of** 43. Eliſ. **by the right title being but a probationer, hath been, and yet is continued, as it appeareth by the ſtatute of** 4. Car. Regis, cap. 4. 1. Jac. cap. 25. 21. Jac. cap. 28.

See 1. Jac. cap. 25. **an addition thereunto.**

And becauſe great charge ariſeth upon many places within this Realme, by reaſon of Baſtardy, beſides the great diſhonour of Almighty God, Be it therefore enacted by the authoritie aforeſaid, That every lewd woman, which after this preſent Seſſion of Parliament, ſhall have any Baſtard, which may be chargeable to the Pariſh, the Juſtices of Peace ſhall commit ſuch lewd woman unto the Houſe of Correction, there to be puniſhed, and ſet on worke during the terme of one whole yeare: And if ſhe ſhall eftſoones offend againe, That then to be committed to the ſaid Houſe of Correction as aforeſaid, and there to remaine untill ſhe can put in good ſureties for her good behaviour, not to offend ſo againe. The 7. branch.

The puniſhment of lewd women having Baſtards, &c. That every lewd woman, which ſhall have any Baſtard, which may be chargeable to the Pariſh, the Juſtices of Peace may commit her to the Houſe of Correction, &c. **So as if ſhe will diſcharge the Pariſh of the keeping of the Baſtard, ſhe cannot be puniſhed by this ſtatute, but by that of** 18. Eliſ. cap. 3. See 18. Eliſ. ca. 3. and continued to this day, 3. Jac. cap. 4.

And for that many wilfull people, finding that they having children, have ſome hope to have reliefe from the Pariſh wherein they dwell, and being able to labour, and thereby to relieve themſelves and their families, doe nevertheleſſe run away out of their Pariſhes, and leave their families upon the Pariſh: For remedy whereof, Be it further enacted by this preſent Parliament, and the authoritie of the ſame, That all ſuch perſons ſo running away, ſhall be taken and deemed to be incorrigible Rogues, and endure the pains of incorrigible Rogues: And if either ſuch man or woman being able to work, and ſhall threaten to run away, & leave their families as aforeſaid, the ſame being proved by two ſufficient witneſſes upon oath before two Juſtices of Peace in that Diviſion, That then the ſaid perſon ſo threatning, ſhall by the ſaid Juſtices The 8. branch.

Justices of Peace be sent to the Houses of Correction, (unlesse he or she can put in sufficient sureties for the discharge of the Parish) there to be dealt with and detained as a sturdy and wandring Rogue, and to be delivered at the said assembly or meeting, or at the Quarter Sessions, and not otherwise.

This branch consisteth upon two parts: First, if any man or woman having children, being able to labour, and thereby to relieve their families, doe run away out of the Parishes, and leave their families upon the Parish, he or she is taken and deemed by authority of this Parliament an incorrigible Rogue.

2. If any such man or woman, being able to worke, shall threaten to run away, and leave their families, as aforesaid, the same being proved by two sufficient witnesses before two Justices of Peace in that Division, the same person so threatning, &c. shall be sent to the House of Correction as a sturdy and wandring Rogue, &c. unlesse sufficient surety be found for the discharge of the Parish.

The 9. branch.

And because there shall be the more care taken by all such Masters of the Houses of Correction, that when the Country hath been at trouble and charge, to bring all such disorderly persons as aforesaid to their safe keeping, that then they shall performe their duties in that behalfe, Be it therefore enacted by the authoritie aforesaid, That if they shall not every Quarter Sessions yeeld a true and lawfull account unto the Justices of Peace, of all such persons as have been committed to their custody: Or if the said persons committed to their custody, or any of them, shall be troublesome unto the Country, by going abroad, or otherwise, shall escape away from the said House of Correction, before they shall be from thence lawfully delivered, That then the said Justices shall set downe such Fines and Penalties upon the said Master or Governours, as the most part of them in their Quarter Sessions shall thinke fit and convenient, and all Fines and Penalties not herein before limited, shall be paid unto the Treasurer, and accounted for by the Treasurer aforesaid: This Act to have continuance for the space of seven yeares, and from thence to the end of the next Session of Parliament after the said seven yeares. 3. *Car.* 4. *Continued untill the end of the first Session of the next Parliament.*

The Masters of the Houses of Correction shall yeeld a true and lawfull account at every Quarter Sessions of all such disorderly persons as have been committed to their custody.

This Act was but a probationer for a certaine time, but it hath been continued: and lastly, by the said statute of 4. Car. cap. 4.

Thus much have we written for the better and more speedy execution of these excellent Statutes; and the rather, for that few or none are committed to the common Gaole amongst so many malefactors, but they come out worse then they went in. And few are committed to the House of Correction, or Working House, but they come out better.

* Morem fecerat usus, *Ovid.* Ars fit quæ à teneris primum conjungitur annis, *Ovid.*

And where some are of opinion, that in particular Townes a discreet and expert workman may set the young and idle people as voluntaries on worke: Certainly, the youth on both sexes hath (in the time of this great negligence) gotten such a * trade of picking cheeverey, stealing of wood, and the like, through idleneſse, as they will be never brought to worke, unlesse they be thereunto compelled (and the rather, for that some of their Parents and Masters have benefit by

by them) but compelled they may be, and this great worke happily effected, if by the order of the Iuſtices of Peace theſe ſtatutes be put in due execution. See the ſtatute of 43. Eliſ. cap. 2.

We haue not gone about to ſpeake of the ſtatute of 39. Eliſ. or other ſtatutes concerning Rogues, &c. or the Poore, &c. which all the Iudges of England haue vpon due conſideration explained, and which are truly rehearſed and imprinted, and ought to be obſerued, other then ſuch as later Acts of Parliament haue altered, whereof ſomewhat hath been ſaid.

Lamb. Iuſtice of Peace, lib. 2. pag. 207.

An Expoſition upon the Statute of 31. *Eliſ. Cap.* 7. concerning Cottages and Inmates.

The 1. branch.

FOr the avoiding of the great inconveniences which are found by experience to grow by the erecting & building of great numbers and multitude of Cottages, which are daily more & more increaſed *in* many parts of this Realme: Be it enacted by the Queenes moſt excellent Majeſty, and the Lords Spirituall and Temporall, and the Commons *in* this preſent Parliament aſſembled, and by the authority of the ſame, That after the end of this Seſſion of Parliament, no perſon ſhall within this Realme of England, make, build, or erect, or cauſe to be made, builded, or erected any manner of Cottage for habitation or dwelling, nor convert or ordaine any building or houſing, made, or hereafter to be made, to be uſed as a Cottage for habitation or dwelling, unleſſe the ſame perſon doe aſſigne and lay to the ſame Cottage or Building foure acres of ground at the leaſt, to be accounted according to the Statute or Ordinance *de terris menſurandis*, being his or her owne free-hold and inheritance, lying neere to the ſaid Cottage, to be continually occupied and manured therewith, ſo long as the ſame Cottage ſhall be inhabited, upon paine that every ſuch offendor ſhall forfeit to our Soveraigne Lady the Queens Majeſty, her heires and ſucceſſors, ten pounds of lawfull mony of England, for every ſuch offence.

1. part Vet. Mag. Chart. 128.

¶ Cottage] Is derived from the Saxon word Cote, unde Coterelli for Cottagers, and Cottagium for a Cottage. Vide the firſt part of the Inſtitutes, ſect. 1. fol. 5. out of Domeſday. And the ſtatute entituled, Extenta manerii, anno 4. E. 1. Item inquirendum eſt de Coterellis, viz. qui Cottagia & Curtilagia teneant. And this ſignification it had by the common Law.

¶ No perſon, &c.] This extends as well to perſons politicke and incorporate, as to naturall perſons whatſoever.

If an ancient Cottage had been wholly decayed before this Act, it is not lawfull newly to erect the ſame after the end of our Act.

This firſt branch prohibiteth foure things: Firſt, the new erecting or building of any Cottage after the end of this Parliament, which was 29. Martii, anno 31. Eliſ. anno Dom. 1589.

2. It prohibiteth the converſion or ordaining of any houſing or building, made, or hereafter to be made, to be uſed as a Cottage.

3. Albeit the houſe or building were made before this Act, yet if the converſion were after the 29. day of March 1589. it is prohibited by this ſtatute; for in point of converſion the words be (made, or hereafter to be made.)

4. Theſe things are prohibited in this branch, upon paine of forfeiture of ten pounds to the King for every ſuch offence.

The 2. branch.

And be it further enacted by the authority aforeſaid, that every perſon, which after the end of this Seſſion of Parliament, ſhall willingly uphold, maintaine, and continue any ſuch Cottage hereafter to be erected, converted, or ordained for habitation or dwelling, whereunto foure acres of ground, as is aforeſaid, ſhall not be aſſigned and laid to be uſed and occupied with the ſame, ſhall forfeit to our ſaid Soveraigne Lady

Lady the Queenes Majeſty, her heires and ſucceſſors, forty ſhillings for every moneth that any ſuch Cottage ſhall be by him or them upholden, maintained, and continued.

This branch inflicteth puniſhment upon ſuch as ſhall willingly uphold, maintaine, and continue any * ſuch Cottage after the end of this Parliament, either erected, or converted, or ordained, as is aforeſaid, for habitation, &c. upon the penalty of forty ſhillings to the King for every moneth that any ſuch Cottage ſhall be maintained.

Nota, this word [*ſuch*] referreth to the Cottages deſcribed to be erected or converted after the end of our Parliament.

So as a Cottage is twofold, either newly erected, or builded after our ſtatute, or of a houſe built before or after our ſtatute, and converted after our ſtatute to a Cottage.

But out of theſe two branches are five exceptions.

By the firſt branch of this Act any perſon may either erect a new Cottage, or convert an old or a new houſe to a Cottage, if he lay to it foure acres of ground at the leaſt, which muſt have theſe foure incidents: Firſt, theſe acres muſt be accounted according to the ſtatute or ordinance de admenſuratione terræ, anno 35. E. 1. which is after ſixteen foot and an halfe to the pole. 2. Theſe foure acres muſt be his or her freehold and inheritance (for neither grounds holden by copy, or for life or lives, or for any number of yeares will ſerve.) and it muſt be freehold either in fee-ſimple, or fee-taile. 3. They muſt lye neere the ſaid Cottage. 4. They muſt be continually occupied therewith, ſo long as the Cottage ſhall be inhabited.

The 1. exception.

This ſtatute is named in our Act, The ſtatute or ordinance *de terris admenſurandis.* Vid. 35. El. ca. 6.

This Act extends not to Cottages erected, or houſes converted to Cottages before the 29. day of March 1589. The ſecond branch maketh this cleare.

The 2. exception.

This Act ſhall not extend to any Cottage, which ſhall be ordained (that is, converted) or erected to or for habitation or dwelling in any Citie, Towne corporate, ancient Borough, or Market towne.

The 3. exception.

Nor to any Cottages or Buildings erected or converted for the neceſſary habitation of any labourers in any Mineralł workes, Cole-mines, Quarries, or Delfes of ſtone or ſlate, or about making of brick, tile, lime, or coles; ſo as the ſame Cottages or Buildings be not above one mile diſtant from the Mineralł or other workes.

The 4. exception.

Nor to any Cottage to be made in three places, viz. 1. within a mile of the ſea, 2. upon the ſide of ſuch part of a navigable river, where the * Admirall ought to have juriſdiction, ſo long as a ſailer ſhall dwell therein, or ſome perſon of manuell occupation, for the making, furniſhing, or victualling of any ſhip, &c. 3. In any Foreſt, Chaſe, Warren, or Parke, ſo long as the under Keeper or Warrener dwell therein, &c.

The 5. exception.

* See for this the fourth part of the Inſtitutes, cap. of the Court of the Admiralty.

4. Nor to any Cottage * heretofore made, 1. for a common herdman, 2. for a common ſhepherd, &c. (of whom his cottage is called a ſheepcote) ſo long as a common herdman or ſhepherd ſhall therein dwell. 3. for a poore, lame, ſick, aged, or impotent perſon.

* This fourth part needed not: for the body of the Act extended to Cottages hereafter; but *abundans cautela non nocet.*

Note, this exception extendeth onely to Cottages erected or made before this Act, by reaſon of theſe words [heretofore made] but none of theſe three can be erected after this ſtatute, for any of theſe three purpoſes, unleſſe there be laid to it foure acres of ground with the foure incidents aforeſaid. Lambert Juſtice of Peace, pag. 476. miſtaketh this part, and for heretofore, ſaith hereafter. But by the ſtatute of 43. Eliz. cap. 2. either the Church-wardens and Over-ſeers, or the greateſt part of them, by the leave of the Lord of the Mannor, &c. in writing, under the hand and ſeale of the Lord, or by order of the Juſtices of Peace at their generall Quarter-Seſſions, by the leave of the Lord, as is aforeſaid, may erect convenient houſes of habitation for poore impotent people, and alſo to place Inmates, or more families then one in one Cottage or Houſe. Firſt, note that this extendeth only to ſuch as be poore and impotent. 2. It extendeth not to any common herdman or ſhepherd, as hath been likewiſe miſtaken.

Nor doth our Act extend to any Cottage to be made and decreed upon complaint made to Iuſtices of Aſſiſe, or Iuſtices of Peace in open Aſſiſes, or Quarter Seſſions of the peace to continue for habitation during the time only of ſuch decree. This laſt branch extendeth only to Cottages made after our ſtatute.

The 3. branch.

Provided alſo, and be it enacted, that from and after the Feaſt of All Saints next coming, there ſhall not be any Inmate, or more families or houſholds then one, dwelling or inhabiting in any one Cottage, made, or to be made or erected, upon paine that every owner or occupier of any ſuch Cottage, placing, or willingly ſuffering any ſuch Inmate, or other family then one, ſhall forfeit and loſe to the Lord of the Leet, within which ſuch Cottage ſhall be, the ſumme of ten ſhillings of lawfull mony of England, for every moneth that any ſuch Inmate, or other family then one, ſhall dwell or inhabit in any one Cottage, as aforeſaid. And that all and every Lord and Lords of Leet and Leets, and their Stewards within the precinct of his and their Leet and Leets, ſhall have full power and authority within their ſeverall Leets, to enquire, and to take preſentment by the oath of Jurors of all and every offence and offences in this behalfe, and upon ſuch preſentment had or made to levie by diſtreſſe to the uſe of the Lord of the Leet, all ſuch ſummes of mony as ſo ſhall be forfeited: And moreover, that it ſhall be lawfull for the Lord of every ſuch Leet where ſuch preſentment ſhall be made, to recover to his owne uſe any ſuch forfeiture, by action of debt in any of the Queenes Majeſties Courts of Record, wherein no eſſoine, protection, or wager of law ſhall be allowed.

¶ There ſhall not be any Inmate or more families or houſholds then one, dwelling or inhabiting in any one Cottage, &c.] Inmate. In the ſtatute of 35. Eliz. cap. 6. it is ſaid Inmate, or Under-ſitter. It is here well explained by theſe words (or more families in any one Cottage.)

See the ſtatute of 43. Eliz. cap. 2. ut ſup. concerning Inmates.

Inquilinus (derived of *in & colo*, to dwell within) is the proper word for an Inmate, or Under-ſitter.

* Coke lib. Int. 165. b.

There ſeven things are to be obſerved:

1. That no Inmate or Under-ſitter can be within this ſtatute, but in a Cottage.

2. This branch concerning Inmates extendeth to Cottages as well made before this ſtatute, as after.

3. And as well to Cottages having foure acres of ground or more laid to them, as to thoſeſaid, as others that have no ground at all.

4. Upon paine that every owner or occupier of any ſuch Cottage, placing, or willingly ſuffering any ſuch Inmate, or other family then one ſhall forfeit and loſe to the Lord of the Leet, within which ſuch Cottage ſhall be, the ſumme of ten ſhillings for every moneth, &c. This moneth is to be accounted according to the computation of 28 dates.

3. H. 7. 4.

5 And upon ſuch preſentment had or made, to levie by diſtreſſe, &c. that is, to ſell the diſtreſſe which he ſhall take within the precinct of the Leet for ſuch forfeiture; and if there be a ſurplufage over the value of the forfeiture, to deliver it to the owner.

6. This Act extendeth as well to Inmates in Cottages in any City, Towne corporate, ancient Borough, or Market townes in any other Cottage whatſoever. Vide Hill. 8. Jacobi in communi banco, Rot. 2193. between John Paſe Plaintife, and Robert Peat Defendant in Treſpaſſe, Salop. A juſtification upon this ſtatute for the penalty for keeping an Inmate.

7. Hereby the Act giveth election to the Lord to take his remedy by action of debt in any of the Kings Courts of Record.

Be

Be it further enacted by the authoritie aforeſaid, that all Juſtices of Aſſiſes, and Juſtices of Peace in their open Seſſions, and every Lord within the precinct of his Leet, and none others, ſhall have full power and authority within their ſeverall limits and juriſdictions, to enquire of, heare and determine all offences contrary to this preſent Act, as well by Indictment, as otherwiſe by preſentment or information, and to award execution for the levying of the ſeverall forfeitures aforeſaid, by *Fieri facias*, *Elegit*, *Capias*, or otherwiſe, as the cauſe ſhall require. The 4. branch.

In this branch theſe foure things are to be obſerved:

1. That theſe 3. viz. Juſtices of Aſſiſes, Juſtices of Peace, and Lords of Leets and no other Judges or Juſtices can enquire, &c. any of the offences againſt this ſtatute. And therefore the Sheriffe in his Turn cannot enquire, &c. of any offence againſt this ſtatute committed within the Leet of any Lord thereof.

2. That they may enquire, heare, and determine all offences, &c. ſo as there is a concurrent power in every of theſe three, and the judgement, &c. of ſuch one of them, as doe firſt enquire, heare, and determine the ſame, ſhall ſtand; and each of them may enquire of all and every of the offences againſt this Act.

3. As well by Inditement, or otherwiſe by Preſentment or Information. The difference between an Inditement and Preſentment is this, that the Inditement is drawne and ingroſſed in parchment in forme of Law, and delivered to the Jurors to be enquired of, &c. And a preſentment is properly that which the Jurors find and preſent to the Court, without any former Inditement delivered to them, which afterward is reduced to a formed Inditement. Every Inditement which is found by the Jurors is preſented by them to the Court: for the Record ſaith, Juratores præſentant, &c. **when they find an Inditement. And therefore every Inditement is a Preſentment, but every Preſentment is not an Inditement.**

Offences found in Leets, Court Barons, &c. are commonly called Preſentments; which was the reaſon that this Act, giving juriſdiction to a Leet, doth uſe this word (Preſentment) **in this and the third branch.**

4. To award execution by * Fieri facias, Elegit, Capias, **or otherwiſe: Hereby is greater juriſdiction given to the Leet, then it had at the common Law; So as the Lord of the Leet hath by the third branch power to levie the forfeiture due to him by diſtreſſe, or by action of debt by the common Law; and by this fourth branch, by** Fieri facias, Elegit, **or** Capias. Co. li. Intrat' 665, 666.

Provided alwaies, that this Statute, or any thing therein contained, ſhall not in any wiſe be extended to any Cottage, which ſhall be ordained or erected to, or for habitation or dwelling in any City, Towne corporate, or ancient Borough, or Market towne within this Realme, nor to any Cottages or Buildings, which ſhall be erected, ordained, or converted to, and for the neceſſary and convenient habitation or dwelling of any workmen, or labourers in any minerall workes, cole mines, quarries, or delfes of ſtone, or ſlate, or in or about the making of brick, tile, lime, or coles within this Realme: So as the ſame Cottages or Buildings be not above one mile diſtant from the place of the ſame minerall or other workes, and ſhall be uſed onely for the habitation and dwelling of the ſaid workmen, nor ſhall in any ſort prejudice, charge, or impeach any perſon or perſons, for the erecting, maintaining, or continuing of any ſuch Cottages, as are before in this Proviſo mentioned and ſpecified.

Provided alwaies, that this Act ſhall not extend to any Cottage to

be made within a mile of the ſea, or upon the ſide of ſuch part of any navigable river, where the Admirall ought to have juriſdiction, ſo long as no other perſon ſhall therein inhabit, but a Sailer, or man of manuall occupation, to or for making, furniſhing, or victualling of any Ship or Veſſell, uſed to ſerve on the ſea; nor to any Cottage to be made in any Forreſt, Chaſe, Warren, or Parke, ſo long as no other perſon ſhall therein inhabit, but an Under-keeper or Warrener, for the good keeping of the Deere, or other game of Warren, nor to any Cottage heretofore made, ſo long as no other perſon ſhall therein inhabit, but a common Herdman or Shepherd, for keeping the cattell or ſheep of the Towne, or a poore lame, ſicke, aged, or impotent perſon, nor to any Cottage to be made, which for any juſt reſpect upon complaint to the Juſtice of Aſſiſe at the Aſſiſes, or to the Juſtices of Peace at the Quarter Seſſions, ſhall by their order entered in open Aſſiſes or Quarter Seſſions, be decreed to continue for habitation, for and during ſo long time onely, as by ſuch decree ſhall be tolerated and limited. *Stat.* 35. *Eliſ.* 6. 43. *Eliſ.* 2.

Of theſe Proviſo's ſufficient hath been ſpoken before in the ſecond branch of this ſtatute.

The inconveniences that grow by unlawfull Cottages, and Inmates in Cottages againſt this ſtatute, as appeare by the Preamble, are great, being nefts to hatch wickedneſſe, the mother of pickings, theeveries, ſtealing of wood, &c. tending alſo to the prejudice of lawfull Commoners; for that new erected Cottages within the memory of man, though they have foure acres of ground, or more laid to them, according to this Act, ought not to common in the waſtes of the Lord; but the greateſt inconvenience of all is, the ill breeding and educating of youth, which inconveniences may be eaſily helped and remedied by the prohibitions of this excellent law, if Lords of Leets and their ſtewards would looke to the execution of this Act, which we hold the readieſt meanes: for albeit the Cottage erected, or converted, cannot by any proviſion in this ſtatute be demoliſhed, or pulled downe; yet the execution of the penalty of this Act will make it inhabitable, and worke the deſired effect. And they may alſo be amerced for wrongfull commoning in the Court Baron.

Caſa à caſu (id eſt) ruina, quia ruinæ eſt obnoxia.
Domuncula, tugurium à tegendo.

Virg. 2. Eglog. Pauperis & tuguri congeſtum cæſpite culmen.

A Col-

A Collection and Expoſition upon the Statutes of Imployments. *viz.* 14.*R.*2. cap.1.&2. 2.*H.*4.cap.5. 4.*H.* 4.cap.15. 5.*H.*4.cap.9. 6.*H.*4.cap.4. 11. *H.*4.cap.8. 9.*H.*5. cap.9. Stat. 2. 8.*H.*6. cap.24. 27.*H.*6. cap.3. 17. *E.*4 .cap.1. 1.*H.*7.cap.2. 3.*H.*7.cap.8.

With their ſeverall alterations and repeales, and expirations of ſome of them; our principall aime ever being to ſet down how the Law ſtandeth at this day.

Before the making of any of theſe ſtatutes, we find that merchant-ſtrangers found ſureties that they ſhould not carry out the merchandizes which they brought in. Rot. Vaſcon. 18. E.2. m.21.

It was ever the policie of this realme to entertaine merchant-ſtrangers fairly and freely, having reſpect how our merchants were demeaned abroad. See Mag. Charta c.30. 5.H.4.c.7.

In the 18. yeare of E.1. in the Parliament roll it is conteined thus: Cives London petunt quod alienigenæ mercatores expellantur à Civitate, quia ditantur ad depauperationem civium, &c. Rot. Parliament. 18.E.1.fol.4.nu. 55.

Reſponſio. Rex intendit quod mercatores extranei ſunt idonei & utiles magnatibus, &c. & non habet conſilium eos expellendi.

There be two kinds of Statutes concerning imployments, the one where merchandizes &c. are brought in, the other upon exchange. And firſt of the firſt.

The ſtatutes of 14.R.2.cap.1. **and** 2.H.4.cap.5. **are altered by the ſtatute of** 4.H.4.cap.15. **And therefore we will begin with it.**

It is ordained and eſtabliſhed that all merchant *Aliens, ſtrangers, and denizens, which bring merchandizes into the Realme of England, and the ſame do ſell within the Realme, and receive Engliſh money for the ſame, ſhall beſtow the ſame money upon other merchandizes of England, without carrying of any gold or ſilver, in coine, plate, or maſſe out of the ſaid Realme, upon paine of forfeiture of the ſame, ſaving alwaies their reaſonable coſts.

* The Parliament Roll hath aliens, which of late hath beene omitted. Vid. 17. E. 4. cap. 1. This act extendeth to the whole merchandizes, and to the whole money, whereas the two former extended but to the halfe: 27.H.6.cap.3. further proviſion was added, but that ſtatute is expired. This act is confirmed by the ſtatute of 5. H 4.cap.9. vid. 17. E.4. cap.1. & 3.H.7.cap.8.

There were two notable cauſes of the making of this act, as it is declared by the ſtatute of 5.H.4.ca.9.viz. **Firſt, for the better keeping of gold and ſilver within this realme. Secondly, for the increaſe of the commodities of the ſame.**

¶ *Denizens.] **Here denizens are taken for merchant-aliens, ſtrangers which have obtained letters patents of denizations; And in this caſe, they are derived from** donaiſon, id eſt, donatio, **becauſe his freedome is given to him by the King, and were inconvenient if it ſhould extend to naturall borne ſubjects; and the ſtranger made denizen is in equall †miſchiefe (if not in greater) with the meere ſtranger, and this ſtatute ſtandeth yet in force.**

* The former two ſtatutes extended to ſtrangers onely.

Nota, the Originall is Merchant-aliens, ſtrangers and denizens, which doth cleare it.

See the firſt part of the Inſtitutes. S, 198. f. 129. for this word *denizen.*

†So reſolved 7. Eliz. by the Barons.

This act of 17. E.4. is confirmed by 3.H.7.cap.8.

But the ſtatute of 17. E. 4.cap.1. extends not to ſtrangers which are made denizens: and therefore ſuch as are ſo made denizens, are out of the penalty of that ſtatute, but within the penalty of this of 4. Hen. 4. And that act of 17. E. 4. hath altered this act in another point, viz. that either hee may imploy the money upon the merchandizes whereunto 4.H.4 only extended, or other commodities of the realme, or hee may put the ſame in payment to the Kings * liege people within this realme.

* Nota, [leige people,] ſo as he cannot pay it to a ſtranger, or he that is made *denizen*, for leige is as much as ſubject borne.

Such as are made denizens † by letters patents, or by Parliament, or otherwiſe, ſhall pay for his merchandize like cuſtome and ſubſidie, as they ought or ſhould pay afore they were made denizens. See 11.H.7.cap.14. and 22.H.8. cap.8. See the ſtatute of 1.Eliz.cap.11.

† 1. H. 7. cap. 2. 11.H.7. cap. 14.

¶ Engliſh money.] This is intended of all money of gold or ſilver current within the realme of England, although it bee not coined within England. By this act he might have received Engliſh money either in ſilver or gold, but by the ſtatute of 8.H.6. cap.24. he cannot receive any gold, nor ought to refuſe the payment in ſilver.

8.H.6.cap.24.

See a caſe upon this Stat. in an information, &c. 10.H.7.a.b. 9.H.6.cap.2.

By the ſaid act of 8.H.6. no Engliſh man ſhould ſell within this realme &c. to any merchant alien, &c. any manner of merchandizes but onely for ready payment in hand, or elſe in merchandizes for merchandizes, to be paid and contented in hand, upon pain of forfeiture of the ſame; but by the ſtatute of 9.H.6.ca.2. at the next parliament libertie was given for Clothes onely from ſix moneths to ſix moneths next enſuing after ſuch buyings made, without giving any further day of payment, upon paine of forfeiture of the ſame. This ordinance to endure as long as it ſhal pleaſe the King, but for all other merchandizes the ſtatute of 8.H.6. ſtandeth in force.

¶ As long as it ſhall pleaſe the King.] This Statute ſtandeth until the King or ſome of his ſucceſſors (for ſucceſſors are included under the name of King) ſhall annull or make the ſame voide by Proclamation under the great ſeale, which is the meane to make this act voide, and all others of like nature. Like acts are in 6. Hen.6. cap.1. 8.Hen. 6.cap.8. 18.Hen.6. cap. 13. 5.Ed.6. cap. 7. &c.

10.H. 7. 7. b. Sr William Capels caſe. 5.E.6.cap.7.

The ſaid act of 4.H.4.cap.15. preſcribed no time for the imploying of the money, but the ſtatute of 5.H.4.cap.9. doth bind them to implopment within a quarter of a year after their comming into this realme: But at the next Parliament holden the next yeare, that branch onely for the limitation to a quarter of the yeare is made voide and annulled: but the two other branches, viz., for the taking of * ſureties by cuſtomers and controllers in all the ports of England for due implopment; And concerning money taken by exchange in this realme (wherof more ſhall be ſaid hereafter) are not repealed by 6.H.4.

6.H.4.cap.4.

* A neceſſary branch to be put in execution.

See the reſolution of the Barons of the Exchequer Anno 7. Eliz. and entred in the Cuſtome-houſe concerning the ſtatutes of implopments.

The Juſtices of peace have power to heare and determine, all defaults and forfeitures purviewed or inflicted by the ſtatute of 17.E.4.cap.1.

The ſecond part.

The other kind of ſtatutes concerning implopments upon exchange.

14.R.2. cap.2. It was altered by the Statute of 9.H.5. cap. 9. Stat. 2. but that Statute is expired, and 14.R.2. ſtandeth in force.

That for every exchange that ſhall bee made by merchants to the court of Rome, or elſewhere (beyond the Seas) that the ſaid merchants bee firmly and ſurely bound in the Chancery, to buy within three moneths after the exchange made merchandizes of the ſtaple, as wooll, leather, woolfells, lead or tinne, butter or cheeſe, cloths or other commodities of the land, to the value of the ſum ſo exchanged, upon paine of forfeiture of the ſame.

This ſtatute extendeth to exchanges made by any merchant alien, denizen, or borne ſubject to forreine parts.

And

And alſo that the money delivered by exchange in England be imploped upon the commodities of this realme within the ſame realme, upon paine of forfeiture of the ſame money. 5.H.4. cap.9.

This act extendeth to money delivered by way of exchange within the realme; and this branch is not repealed by the ſtatute of 6.H.4.cap.4.

Anno 23.H.8. a Proclamation was made for obſervation of the ſtatutes of imployments. Holl.Chron. an. 23.H.8.pag.297

An uſuall thing when neceſſary ſtatutes have beene (moſt commonly for private ends) for a time diſcontinued, to give all men notice thereof by Proclamation, that ſuch ſtatutes for the time to come ſhould bee put in due execution,

This have wee done upon conſideration of all the ſaid ſeverall ſtatutes for advancement of trade and traffick, eſpecially of our native commodities, the life of every kingdome, and principally of Iſles.

The Statute of 25. *Hen.* 8. *Cap.* 15. concerning Printers, and Binders of Bookes.

BE it enacted, &c. that no perſon or perſons reſiant or inhabitant within this Realme, &c. ſhall buy to ſell againe any printed bookes, brought from any parts out of the Kings obeyſance, ready bound in boords, leather, or parchment, upon paine to loſe and forfeit for every book bound out of the Kings obeyſance, and brought into this Realme, and bought by any perſon or perſons within the ſame to ſell again contrary to this Act, ſix ſhillings eight pence.

And be it further enacted by the authority aforeſaid, that no perſon or perſons inhabitant or reſiant within this Realme, &c. ſhall buy within this Realm, of any ſtranger born out of the Kings obedience, other then of Denizens, any maner of printed books brought from any the parties beyond the Sea, except only by engroſſe, and not by retaile: upon pain of forfeiture of 6.s.8.d. for every book ſo bought by retaile, contrary to the form and effect of this eſtatute, the ſaid forfeitures to be alwaies levied of the buyers of any ſuch bookes, contrary to this Act: The one halfe of all the ſaid forfeitures to be to the uſe of our Soveraigne Lord the King, and the other moitie to be to the party that will ſeiſe or ſue for the ſame in any of the Kings Courts, be it by bill, plaint, or information, wherein the Defendant ſhall not be admitted to wage his law, nor no protection, ne eſſoin ſhall be unto him allowed.

Provided alway, and be it enacted by the authority before ſaid, that if any of the ſaid Printers, or Sellers of printed books, inhabited within this Realme, at any time hereafter happen in ſuch wiſe to enhance and encreaſe the prices of any ſuch printed books in ſale or binding, at too high and unreaſonable prices, in ſuch wiſe as complaint be made thereof unto the Kings Highneſſe, or unto the Lord Chancellor, Lord Treaſurer, or any of the chief Juſtices of the one Bench or of the other: that then the ſame Lord Chancellor, Lord Treaſurer, and two chiefe Juſtices, or any two of them, ſhall have power and authority to enquire thereof, as well by the oaths of twelve honeſt and diſcreet perſons, as otherwiſe by due examination by their diſcretions. And after the ſame enhaunſing and encreaſing of the ſaid prices of the ſaid books and binding ſhall be ſo found by the ſaid twelve men, or otherwiſe by examination of the ſaid Lord Chancellor, Lord Treaſurer, and Juſtices, or two of them: that then the ſame Lord Chancellor, Lord Treaſurer, and Juſtices, or two of them at the leaſt, from time to time, ſhall have power and authoritie to reform, and redreſſe ſuch enhaunſing of the prices of printed books, from time to time, by their diſcretions, and to limit prices as well of the bookes, as for the binding of them: and over that the offendor or offendors thereof, being convict by the examination of the ſame Lord Chancellor, Lord Treaſurer, and two Juſtices, or two of them, or otherwiſe, ſhall loſe and forfeit for every booke by them ſold, whereof the price ſhall be enhaunſed, for the booke or binding thereof

thereof three ſhillings foure pence, the one halfe thereof ſhall be to the Kings Highneſſe, and the other halfe unto the parties grieved, that will complaine upon the ſame, in manner and forme before rehearſed.

To the end, that not onely this ſecond part of the Inſtitutes, but all other bookes of what argument ſoeuer, may be ſold at reaſonable prices, and that the ſubiects of this Realme, being Painters, and Binders of bookes, may be ſet on worke, we haue thought good in this Treatiſe of Statutes to conclude with the Statute of 25. H. 8. cap. 15. which conſiſteth on theſe three parts: 25. H. 8. cap. 15.

1. That no inhabitant or reſiant within this Realme ſhall buy to ſell agayne any printed bookes brought from any parts out of the Kings obeyſance vnbound in boords, leather, or parchment.

2. Nor ſhall buy within this Realme of any ſtranger borne out of the Kings obeyſance, other then of Denizens, any manner of printed bookes brought from beyond the Seas, except only by ingroſſe, and not by retaile.

3. That the Lord Chancellor, Lord Treaſurer, and the two chiefe Iuſtices, or any two of them ſhall haue power to enquire as well by the oath of twelue men, as otherwiſe by due examination by their diſcretion, of the enhaunſing and encreaſing of the prices of bookes, or binding of the ſame, and the ſame ſo found, they, or any two of them, from time to time haue power to limit prices as well of the bookes, as for the binding of them, as by the ſaid Act appeareth.

Which we haue thought good to adde, to the end it might be knowne vnto the law is in theſe caſes; and that if any enhaunſing or encreaſing of prices be cheer of the bookes, or the binding of them, that it may be knowne who may and ought to redreſſe the ſame.

The Epilogue.

THus haue we, by the mercifull goodneſſe of Almighty God, brought this ſecond part of the *Inſtitutes* (a large and laborious Volume) containing an Expoſition of *Magna Charta*, and many other ancient and later Statutes, to an end; wherein we could not follow or be guided by any other, for that never any (that we haue ſeen or heard of) haue enterpriſed to publiſh the like in this kind; And therefore if the piercing eyes of the learned ſhall find out errors herein, we are not without ſome kind of excuſe. And we deſire them to amend and correct thoſe errors, according to the true ſenſe of Law, for the which we ſhall not onely give them thankes, but ſubſcribe to the truth, and take it as ſome recompence for thoſe our manifold and painfull labours herein, which we from the beginning haue undertaken for the generall good and profit of the whole Realme.

Poſt varios caſus, poſt tot diſcrimina rerum.

Nunc ſequitur concluſio.

DEO *gloria & gratia.*

Iucunda eſt præteritorum laborum memoria. Cic. lib. 2. fin.

Die Mercurii 12°. Maii, 1641.

UPon debate this day had in the Commons House of Parliament, the said House did then desire and held it fit, that the Heire of Si Edward Coke *should publish in print the Commentary upon* Magna Charta, *the* Plees of the Crowne, *and the* Jurisdiction of Courts, *according to the intention of the said Sir* Edward Coke. *And that none but the Heire of the said Sir* Edward Coke, *or hee that shd be authorised by him, do presume to publish in print any of the foresaid Bookes, or any Copy thereof.*

H. Elsynge Cler. Domus Com.

Die Veneris 3°. Junii, 1642.

WHereas by an Order dated the 12th. of May, 1641. this House desired and held fit, That the Heire of Sir *Edward Coke* should publish in print the Commentaries of *Magna Charta*, the *Plees of the Crowne*, and the *Jurisdiction of Courts:* And that none but the said Heire, or his Assignes should presume to print the same: And where by another Order of this House, dated the seventh of March last, It was ordered, that a Bill should be drawn, for the preventing the re-printing of the said Bookes for a time certaine to be assigned in the said Bill, as by the said severall Orders may appeare: According to which last mentioned Order a Bill was drawne and preferred to this House, and hath been once read; but in respect of the many great and weighty affaires of the Kingdome, no further proceedings have been, or as yet can be had therein. It is this day ordered, that, forasmuch as one of the said Books (*viz.*) the Comment upon *Magna Charta* is already printed, and ready to be published, and the other two also ready for the Presse, That none but the said Heire of Sir *Edward Coke*, or he or they that shall be authorised by him, doe print or re-print, or cause to be printed or re-printed any of the said Books, or any part of them, or any of them, before a full yeare after the publishing, and putting to sale of the same respectively: And that the Master and Wardens of the Company of Stationers be required to take a speciall care for the due performance of this Order; and if any shall notwithstanding presume to print or re-print, within the time aforesaid, any of the said Books, or any part thereof (other then the said Heire or his Assignes) that then they certifie their names, to the intent some course may be taken for the punishing of the offendors, as to this House shall seem meet.

H. Elsynge Cler. Parl. D. Com.

LONDON,
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are ſold by *Ephraim Dawſon*, *R. Meighen*, *William Lee*, and
Daniel Pakeman in Fleetſtreet, 1642.