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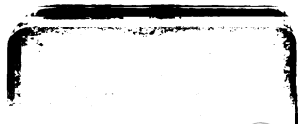
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February 27/49
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Magna Charta,

Made in the Ninth Year of

K. Henry the Third,

And Confirmed by

K. Edward the First,

IN THE

Twenty-Eighth Year of his REIGN.

With some Short, but Necessary

OBSERVATIONS

FROM THE

L. Chief Just. Coke's

COMMENTS upon it.

Faithfully Translated for the Benefit of those
that do not understand the *Latine*,
By **Edw. Cooke**, of the Middle-Temple, Esq;

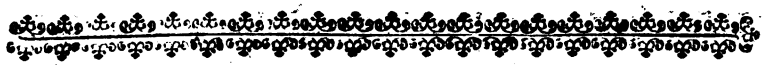
L O N D O N,

Printed by the Assignees of *Richard and Edward Atkins*, Esquires, for *Thomas Simmons*, at the *Prince's-Arms*, in *Ludgate-Street*, 1680.

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A P R E F A C E

To all the Common People of England.

PRefaces of late, are grown so Ridiculous and Impertinent for the most part, that they rather trouble, and *Shagrin* the Reader, than any ways benefit, or please him: But I will indeavour, (because some particular Reasons oblige me to present You with One) to make this as Reasonable, and easy to You as I can; and therefore shall only touch upon the Merits of this *GREAT CHARTER*.

It is a Maxime, that the (a) *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 Realm. There

(a) *Plow'd. Comment. 236. Wil- lion v. Berkly.*

A Preface.

is also another, no less indisputable than this, and that is, *Nil tam proprium est Imperii, quàm legibus vivere;* There is nothing more conducing to the good Weal of a State, than to live under the Oecomony of just and wholesome Laws.

Now because the *Common-Law* was not absolutely perfect of it self, it was requisite and necessary that what was wanting, should be made up by *Statutes*, which had the common consent of the Realm, by Authority of *Parliament*: And though this was but a *CHARTER*, bearing Date the Tenth Day of *February*, in the Ninth Year of King *Henry* the Third: Yet it was afterwards *Established* by Authority of *Parliament*, in the 28th. Year of King *Edward* the First; and so Entred into the *Parliament-Roll*.

My Lord *Coke* sayes, It had not its Name of *GREAT CHARTER*,
from

A Preface.

from the *Greatness of it in Quantity*; for there were several *Voluminous Charters*, longer than this: But it was so called, in respect of the *Great Importance*, and *Weightyness of the Matter*; as *Cbarta de Foresta*, is called, *Magna Cbarta de Foresta*, for the same Cause; and both of them are called, *Magnæ Chartæ Libertatum Angliæ*; i. e. *The Great Charters of the Liberties of England*; and upon great Reason too, *Quia liberos faciunt*, because they make us Free.

The Ends of making this **GREAT CHARTER** are, what ought to be the true Ends of all Acts of *Parliaments*; to wit, 1. *The Honor of God*. 2. *The Health of the King's Soul*. 3. *The Exaltation of Holy-Church*. And, 4. *The Amendment of the Kingdom*.

As for the *Quality of it*; It is, for the most part, *Declaratory of the Principal Grounds of the Fundamental Laws of England*: And for the Residue, it is
Addi-

A Preface.

Additional, to supply some Defects of the Common-Law; and it was no New Declaration: For King *John*, in the 17th. Year of his Reign, had granted the like; as you may see in *Mat. Paris*, 246, 247, 248. Which was also called, *Magna Charta*:

In the 25. *Ed. 1. c. 1.* called, *Confirmatio- nes Chartarum*, the Confirmations of Charters; it was adjudged in *Parliament*, that this GREAT CHARTER, and the *Charter of the Forests*, are to be holden for the Common-Law; that is, the Law common to all: And that both the said *Charters* are in Amendment of the Realm; that is, to amend the great Mischiefs, and Inconveniencies, which oppressed the whole Realm, before the Making of them. And it is there said likewise, (a Clause worthy to be written in Golden Letters, as my Lord *Coke* sayes) *That our Justices, Sheriffs, Mayors, and other Ministers, who under Us,*
have

A Preface.

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 *Judgment*.

It was one of the *Principal Causes* of the *Summoning* of that *Parliament*, at *Marlebridge*, in the 52. of *H. 3.* to *Establish* these two *Charters*. Says the *Statute*, c. 5. *Magna Charta in singulis suis Articulis teneatur, tam in his quæ ad Regem pertinent, quam quæ ad alios. Similiter Charta de Foresta, & contravenientes per Dominum Regem, cum convicti fuerint, graviter puniantur.* The *Great CHARTER* shall be kept and observed in every one of its *Articles*; as well in those which respect the *KING*, as those which respect others: and so likewise, the *Charter of the Forest*, and all *Opposers* of them, as soon as ever they shall be *Convicted*, shall be grievously punished by our *Lord*, the *King*. And therefore, *Writs* against the *Breakers* of them,

A Preface.

them, shall be freely granted, to encourage all such as would prosecute them.

I hope then, we need have no cause to fear, that this our **Magna Charta**, can be any ways infringed, and so our Liberties and Properties weakned, and in-croached upon: For, as you may see in the immediate Superior Paragraph, all imaginable Pretence of *Prerogative* against **Magna Charta**, is taken away.

I was the rather induced to this **Work**, because I find it so generally and mainly insisted on by all Degrees of Persons: And, I am confident, scarce one of a hundred of the Common People, know what it is; it being never yet presented to them, after this Manner: Therefore, I cannot imagine, but that particularly all such (for to such only, I chiefly design this) would be well pleased, to see that *Englished*, and thus *explained* to them, which they have ever had so great a Deference and Value for.

Farewell.



Magna Charta,


Made in the

Ninth Year

O F

K. Henry the Third.

With some short, but necessary Observations on
this *CHARTER*, taken out of my Lord *Coke's*
2d. Institutes.

(a)  **HENRY**, by the Grace of *God*,
King of *England*, Lord of *Ire-*
land, Duke of *Normandy* and *A-*
quitane, & Earl of *Anjou*; (b) To
all Arch-Bishops, Bishops, Ab-
bots, Priors, Earls, Barons,
Sheriffs, Provofts, Officers; and to all Bayliffs,
and other our Faithful Subjects, which shall
B see

Magna Charta,

see this present *CHARTER*, Greeting.

KNOW YE, that We, (c) unto the Honour of *God*, and for the Salvation of our Soul, &c. and to the Advancement of *Holy Church*, and the Amendment of our Realm, (d) of our free and meer Will, have Given and Granted to all Arch-Bishops, Bishops, Abbots, Priors, Earls, Barons, and to all Free-Men of our Realm, these Liberties following, to be kept in our Kingdom of *England* for ever.

(a) Concerning the Styles of the Kings of *England*, both before and after this King, and of their Alterations; see *1. Institutes*, §. 1.

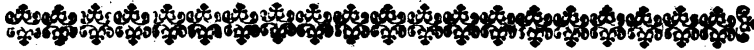
(b) This, or the like Direction, was used by this King, and his Progenitors; so did *E. 1. E. 2. E. 3. K. R. 2.* in his Letters Patents, used a more general one, viz. *To all Persons, to whom these present Letters shall come, &c.* which is used to this Day, saving in *Charters of Creation of Dignities*: And then the Directions to this Day are, *To all Arch-Bishops, Bishops, Dukes, Marquesses, &c.* and with *his Testibus* in the End.

(c) Four Causes of making this Great Charter: 1. The Honor of *God*. 2. The Health of the King's Soul. 3. The Exaltation of *Holy Church*. 4. Amendment of the Kingdom.

(d) The adding of these Words, was because King *John* made the like Charter in Effect, *Anno 17.* And thinking afterwards to avoid it, pretended it was made by *Durefs*.

This Great Charter is divided into *Thirty-Eight* Chapters.

CHAP.



C H A P. I.

I*mprimis*, (a) We have granted to *God*, and by this our present *Charter*, have confirm'd for Us, and (b) our Heirs for ever, That (c) the Church of *England* shall be free, and shall have all Her (d) whole Rights and (e) Liberties inviolable. We have granted also, and given to (f) all the Free-Men of our Kingdom, for Us, and our Heirs for ever, these (g) following Liberties; to have, and to hold, to them and their (h) Heirs, of (i) Us, and our Heirs for ever.

(a) When a Thing is granted for *God*, the Law sayes, It is granted to *God*; and what is granted to his *Church*, for his Honor, &c. is granted for and to *God*. *Quod datum est Ecclesie, datum est Deo*.

(b) These Words were added, because that this Great *Parliamentary-Charter* might Live, and take Effect in all Successions of Ages, for ever.

By the Law of *Poynings*, made by the Authority of *Parliament* in *Ireland*, Anno II. H 7. *Magna Charta*, as indeed, all the the Laws and Statutes of *England* before that time, does extend into *Ireland*.

B 2

(c) That

Magna Charta,

(c) That is, That all Ecclesiastical Persons within the Realm, their Possessions and Goods shall be freed from all unjust Exactions and Oppressions; but yet, should yield all Lawful Duties, either to the King, or any of his Subjects.

(d) *i. e.* That all Ecclesiastical Persons shall Enjoy all their Lawful Jurisdictions, and other their Rights wholly, without any Diminution or Subtraction whatsoever.

(e) Liberties here are taken in Two Senses: 1. For the Laws of *England*; so called, because they make Free. 2. For Priviledges held by *Parliamentary - Charter*, or Prescription, more than ordinary.

(f) These Words do include all Persons, Ecclesiastical and Temporal, Incorporate, Politick, or Natural; nay, they extend to Villains: For they are accounted Free against all Men, saving against their Lords.

(g) This word [*Following*] restrains Liberties to the *Thirty-Eighth* Chapter of this *Charter*.

(h) At this time [*Heirs*] were taken for Successors, and Successors for Heirs.

(i) To intimate, that all Liberties, at the first, were derived from the Crown.

CHAP.



C H A P. II.

IF any of our (*a*) Earls or (*b*) Barons, or any other, who (*c*) hold of Us in Chief (*d*) by Knights-Service, Dye; and at the Time of his Death, his Heir shall be (*e*) of full Age, and oweth to Us (*f*) Relief, he shall have his Inheritance by the Old Relief: That is to say, (*g*) the Heir or Heirs of an Earl, for a whole Earldom, by One hundred Pound; the Heir or Heirs of a Baron, for a whole Barony, by One hundred Marks; the Heir or Heirs of a Knight, for one whole Knights-Fee, One hundred Shillings, at the utmost: And he that hath less, shall give less; according to the old Custom of the Fees.

See *Old. Nat. Brev. fo. 94.*

3. *Bulstrode. 325.*

Doctor and Student. 14.

Fitz. Nat. Brev. fo. 254. B. 263. B.

Hobart. 46.

Alt. Stat. 12. Car. 2. cap. 24.

(*a*) At this time there was never a Duke, Marquess, or Vicount in *England*: The first Duke, created since the Conquest, was *Edward the Black Prince*, in 11. *E. 3.* The first Marquess was *Robert de Vere*, Earl of *Oxford*, in 8. *An. R. 2.*

B. 3

and

and he created Marquess of *Dublin* in *Ireland*. The first Vicount on Record, and that Sate in *Parliament* by that Name, was *John Beaumont*, in the 18. *An. H. 6.* created Vicount *Beaumont*.

(b) *Barons*. It is to be understood, that if the King give Land to one, and his Heirs, to hold of the King, *per servitium Baronie*; he is no Lord of *Parliament*, until called by Writ to the *Parliament*.

These Earls and Barons have Offices and Duties annexed to their Dignities, of great Trust, for two ends: 1. *To Consult, in time of Peace.* 2. *To defend the King and Country, in time of War.* And therefore, they wear two Ensigns, to put them in mind of their Duties: 1. An Honourable and Long-Robe of Scarlet, to resemble Council; in respect whereof, they are counted in Law, *The King's great Council.* 2. They are girt with a Sword, ever to be ready to defend their King and Country.

(c) It appears in the Books, that he that holds of the King in Chief, must not only hold of the Person of the King: But the Tenure must be created by the King, or some of his Predecessors, Kings of this Realm, to defend his Person and Crown; otherwise, he shall have no Prerogative, by reason of it: For no Prerogative can be annexed to a Tenure created by a Subject. See the first *Instit.* §. 103. 47. *E.* 3. 21. *Fitz. Nat. Brev.* §.

(d) By Knights-Service: See for this, the first *Instit.* §. 103. 112. 154. 157. 126, 127.

(e) Of full Age, *i. e.* of the Age of 21. 1 *Instit.* §. 104.

(f) *i. e.* The *Ancient Relief*, which was certain at the Common-Law, [*Relief* is derived from the Latine *Relevare*, which is to ease, by Abatement, &c.] the Fourth Part of the Yearly Value.

(g) See the first *Instit.* §. 1.

Note, That of ancient Time, every Earldom and Barony were holden of the King in Chief; which proves, that both the Dignities of the Earl and Baron, and the Earldom and Barony, were derived from the Crown.

And

And the Fourth Part of the Yearly Value of an Earldom, a Barony, and the Living of a Knight, was the Antient Relief here spoken of; as a Knights-Living was esteem'd at Twenty Pound *per Annum*: and therefore, to pay Five Pound, and so upwards.

This Chapter of *Magna Charta*, is but a Declaration and Restitution of the antient Common-Law.



C H A P. III.

BUT if the (*a*) Heir of any such be within Age, his Lord shall not have the Ward of him, nor of his Land, before he hath taken of him (*b*) Homage. And after such an Heir hath been in Ward, when he is come to full Age; that is to say, the Age of one and twenty Years, he shall have his Inheritance without Relief, and without Fine: So that, if such an Heir being within Age, (*c*) be made a Knight; yet notwithstanding, his Land shall (*d*) remain in the Custody of his Lords, unto the afore-said Term.

Fitz. Nat. Brev. fol. 269.

Alt. 12. Car. 2. cap. 24.

(*a*) *Heir*: This Statute is only to be intended of an Heir-Male; whereof *Heres* is derived: And who is an Heir, see *1. Instit. §. 1, 2, 3. Customier de Normandy, 99.* and the Exposition on the same.

(*b*) See

(b) See 1. *Instit.* §. 85.

The Statute means, that the Homage should be taken of the Heir himself, for his Benefit; as by the old Books; which see 2d. *Instit.* fol. 11. lit. a. *Et contemporanea Expressio est fortissima in lege.* Homage is of an higher Nature than Escuage, to divers Purposes. 1. For Homage binds to Warranty, Escuage not. 2. Homage is so Solemn, that it cannot be done again, as long as the Tenant that made it Lives: But Escuage may be given every other Year. 3. One within Age may do Homage, but he cannot do Fealty; because that is to be done upon Oath. *Quod nota. Brac.* l. 2. fol. 79. 1. *Instit.* l. 2. c. *Homage and Fealty.*

(c) If the King create the Heir within Age, a Duke, Marquess, Earl, Vicount, or Baron; yet he shall remain in Ward for his Body: But if the Heir of a Duke, &c. be made a Knight, he shall be out of Ward for his Body. If the Heir in Ward be Created *Knight of the Garter, of the Bath, Banneret, or Batchelor*, he shall be out of Ward for his Body; for he is a Knight, and some-what more; and the Statute speaks generally: And therefore, within the Words and Meaning of this Law, and the Sovereign of *Chivalry* hath adjudged him able to do Knights-Service.

Be Made: This proves, that Knight-hood ought to be by Creation, or Making, and cannot be by Descent.

(d) [*Remain in the Custody of his Lords*] implies, that this Statute is only to be understood, where the Heir, after he be in Ward is made Knight within Age: For when the Heir apparent is made Knight within Age, in the Life of the Ancestor, and the Ancestor dyes, his Heir within Age, he shall be out of Ward both for Body and Land.

CHAP.



C H A P. IV.

THe (*a*) Keeper of the Land of such an Heir, being within Age, shall not take of the Lands of the Heir, but (*b*) Reasonable Issues, (*c*) Reasonable Customs, and Reasonable Services; and that (*d*) without Destruction, and Waste of his Men, and his Goods. And if we (*e*) commit the Custody of any such Land to the Sheriff, or to any other, which is answerable to us for the Issues of the same Land, and he make Destruction or Waste of those Things that he hath in Custody, we (*f*) will take of him Amends and Recompence therefore; and the Land shall be committed to two lawful and discreet Men of that Fee, who shall answer unto us for the Issues of the same Land, or unto him whom we will Assigne. And if (*g*) we shall give or sell to any Man, the Custody of any such Land, and he therein do make Destruction or Waste, he shall (*h*) lose the same Custody. And it shall be assigned to

B

two

two lawful and discreet Men of that Fee; who shall also in like manner be answerable to us, as afore is said.

Vid. Gloces. cap. 5.

Westmin. 1. cap. 21.

(a) He is not only 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, See 1. *Instit. §. 103.* 4. *Instit. Cap. Court of Wards and Liveries.*

(b) The Rents and Profits issuing out of the Lands or Tenements of the Ward; which must be taken by the Guardian or Keeper, in Reasonable manner: And therefore, *Reasonable* is added, for nothing *Unreasonable* is allowed by Law.

(c) Things due by Custom or Prescription, and Appendent or Appurtenant to the Lands or Tenements in Ward; also, the Reasonable Customs, Fines, &c. of Tenents in Villenage, or by Copy of Court-Roll, where Fines be incertain.

How and by whom this said *Reasonableness* in the Cases afore-said, may be Tryed, see 1. *Instit. §. 69.*

(d) For Destruction and Wast, see 1. *Instit. §. 67.* and *Stat. Gloces. c. 5.*

(e) Here the Committee of the King, is taken for him, to whom the King committed the Custody of the Land to one, or more.

(f) This may be upon an Office found, or by Writ directed to the Sheriff, to this Effect: *Quia datum est nobis intelligi, &c.*

(g) In this Case, the King granteth or selleth the very Custody it self; so as the Grantee or Vendee, becomes Guardian

with Notes upon it.

dian in Fact: And this Distinction between the Committee and Grantee, was by the Common - Law. See *Glanvil. lib. 7. cap. 10.*

If the Committee or Grantee do waste, and the King during the Minority takes no Amends, the Heir shall have an Action of Waste, by order of Common-Law; and seeing the Wardship cannot be lost, and the Waste being to the Heirs Disherison, ought not to be unpunished: Therefore, the Heir shall recover Treble Damages; for that Penalty is annexed to the Action of Waste. But if the King do take Amends, then the Heir at full Age, shall have no Action of Waste.

(b) That is understood of the Land, and not of the Body.

But Note; Since this Great Charter, divers other Statutes against Waste and Destructions, in the Lands of Wards, have been made.

At the Making of this Statute, the King had not any Prerogative in the Custody of the Lands of *Idiotz*, during the Life of the *Idiot*; but the Guardianship of *Idiotz*, was to the Lords, and others, according to the Course of the Common-Law: And this Prerogative was given to K. E. 1. before *Britton* wrote, by some Act of Parliament, not now Extant. And it appears by the *Mirror of Justices*, agreeing with *Fleta*, that this Prerogative was granted by Common-Assent. *Bevverley's Case. lib. 4. fo. 126.*



C H A P. V.

THe Keeper, so long as he hath the Custody of the Land of such an *Heir*, shall keep up the Houses, Parks, Warrens, Ponds, Mills; and other Things pertaining to the same Land; with the Issues of the said Land: And he shall deliver to the *Heir*, when he cometh to his full Age, all his Land stored with Plows, and all other Things, at the least, as he receiv'd it. All these Things shall be observed in the (a) Custodies of Arch-Bishopricks, Bishopricks, Abbeys, Priories, Churches, and Dignities, vacant, which appertain to us; except this, that such Custody (b) shall not be Sold.

Stat. 3. E. 1. 21.

Stat. 36. E. 3. 13.

Old Nat. Brev. 37.

(a) The Custody of the Temporalties of every Arch-Bishop, and Bishop, within the Realm, of such Abbeys and Priories, as were of the King's Foundation, after the same became voyd, belong'd to the King, during the Vacation thereof, by his Prerogative, as Founder: And this belongs to the King, being *Patronus & Protector Ecclesie*, in so high a Prerogative incident

incident to his Crown, as no Subject can claim the Temporalities of an Arch-Bishop or Bishop, when they fall, by Grant or Prescription.

(b) *Shall not be Sold.* *Fleta, lib. 1. cap. 11. faves, Vendi non debent, nec legari:* Yet the King may commit the Temporalities of them, during the Vacation; as by the *Statute of 14. E. 3.* appeareth.



C H A P. VI.

HEirs shall be Married without Disparagement.

This is an Antient Maxime of the Common-Law: See more hereof in 1. *Instit. §. 107, 108, 109.*



C H A P. VII.

A Widow, after the Death of her Husband; incontinent, and without any difficulty; shall (a) have her Marriage, and her (b) Inheritance; and shall give nothing for her Dowry, her Marriage, or her Inheritance, which her Husband, or She, held the Day of the Death of her Husband: And she shall (c) tarry

ry in the Chief-house of her Husband, by Forty Dayes after the Death of her Husband; (d) within which Dayes, her Dower shall be assign'd her, (if it were not assigned her before) or that the House be a (e) Castle. And if she depart from the Castle, then a (f) Competent House shall be forth-with provided for her; in the which, she may honestly dwell, until her Dower be to her assigned, as afore-said: And she shall, in the mean-time, have her (g) reasonable Estovers of the Common. And for her Dower, shall be assigned unto her, the Third Part of all the Lands of her Husband, which were his, during Coverture; except she were Endowed of less, at the Church-Door. (h) No Widdow shall be distrained to Marry her self, so long as she shall have a mind to Live without a Husband: But yet she shall find Surety, that she shall not Marry without our License and Assent, if she hold of Us; nor without the Assent of the Lord, (i) if she hold of another.

Prerogativa Regis, cap. 4.

Stat. 20. H. 3. l.

(a) That is, To Marry where they will, without any License, or Assent of their Lords.

(b) Without any thing to be given to them.

(c) This

(c) This is called her Quarentine: and if the Widdow be with-held from her Quarentine, she shall have her Writ *De Quarentena habenda*, to the Sheriff; which reciting this Statute, is in Nature a Commission to him. By Force of which Writ, the Sheriff may make Proceſs againſt the Defendant, returnable within two or three Dayes, &c. And may, and ought (if no juſt Cauſe be ſhew'd againſt it) ſpeedily to put her in Poſſeſſion, becauſe her Quarentine is but for Forty Dayes.

Widow, &c. Tarry, &c.] Therefore, if ſhe Marry within the Forty Dayes, ſhe loſes her Quarentine: For her Widowhood is paſt, and ſhe has provided for her ſelf; and her Quarentine is appropriated to her Widows-Eſtate.

(d) This ſhews, how ſpeedily Dower ought to be aſſigned; that ſo the Widow might not be without Lively-hood. *Britton, cap. 103.*

The Day whereon the Husband dyeth, ſhall be the firſt Day; ſo that, there is but Thirty-Nine after.

(e) This is intended of a Warlike-Caſtle, maintained for the neceſſary Defence of the Realm: For, as for that maintained for Habitation of the Owner, ſhe is not to have her Quarentine.

(f) This muſt be a Houſe, whereof ſhe is Dowable.

(g) That is, Suſtenance: Some ſay, ſhe can't kill the Oxen of her Husband, whiles ſhe remains in the Houſe: But the Register ſayes, *Quod interim habeant rationabilia Eſtoveria de bonis eorundum maritorum*; which ſeems to Expound this Branch. *Reg. 175.*

When *Eſtovers* are Reſtrained to *Woods*, it ſignifies *Houſe-boot, Hedg-boot, and Plow-boot.*

(h) This is meant of Widows-Tenents, in Dower of Lands holden of the King, by Knights-Service in Chief; and there-upon, ſhe is called the *King's-Widow*. And if ſhe Marry without License, ſhe ſhall pay a Fine of the Value of her Dower, by one Year.

The Reaſon is, *Ne fortè capitalibus inimicis Domini Regis maritentur*: Old Readers ſay this, Left marrying Strangers, the Treafure of the Realm might be carried out: Others; That becauſe

because upon the Assignment of her Dower, she is sworn in Chancery, *That she shall not Marry without License; and therefore, if she doth, contrary to her Oath, she shall pay a Fine.* Others, That it is a Contempt, to Marry without the King's License, and against this Statute. And therefore, &c.

If the Queen, being the Widow of the King, be Endowed, and Marry without the King's License; because she is Endowed of the Seisin of the King himself, she is out of this Statute. But by the Parliament, in *Anno 6. H. 6.* 'tis Enacted by King, Lords Temporal, and Commons, That no Man should Contract with, or Marry himself to any Queen of *England*, without the Special License or Assent of the King, on pain to lose all his Goods and Lands. To which Act, the Bishops, and other Lords Spiritual, gave their Consent; as far forth, as the same swerv'd not from the Law of *God*, and of the *Church*; and so, as the same imported no deadly Sin.

(*z*) This is meant, where such a License of Marriage, in case of a Common-Person, was due by Custom, Prescription, or Special Tenure: And this Exposition is approved by constant and continual Use and Experience. 1. *Instit. 9.* 174.

CHAP.

C H A P. VIII.

BUt (a) We, or our (b) Bayliffs, shall not (c) seize any Land or (d) Rent for any Debt, so long as the present Goods and Chattels of the Debtor, shall be sufficient to pay the Debt, and the Debtor himself be ready to satisfy therefore. Neither shall the (e) Pledges of the Debtor be distrained, so long as the Principal Debtor be sufficient for the Payment of the Debt: And if the Principal Debtor fail in the Payment of the Debt, not having wherewithal to pay, or (f) will not pay where he is able, the Pledges shall answer for the Debt; and if they (g) will, they shall have the Lands, and Rents of the Debtor, untill they be satisfied of that Debt, which they before paid for him: Unless the Principal Debtor can shew himself acquitted against the said Sureties.

See *CHAP.* 18. 33. *H.* 8. c. 39.

(a) This, being spoken in the Politick Capacity, extends to the Successors; for so *Rex nunquam moritur.*

(b) The Sheriff, and his Under-Bayliffs: And to this Day,
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the Sheriff uses this, in his Returns, *Infra balivam meam, for Infra comitat, &c.*

(c) By Order of 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 restrains the Power the King had before.

(d) For Rents, see the first *Instit. lit. lib. 2. cap. 12.* To which add; 1. Rents of Assize, which are the certain Rents of Free-holders, and antient Copy-Holders; because they be assized and certain, and distinguished from Farm-Rents for Life, Years: or at Will, variable, and incertain. 2. White Rents, or commonly called Quit-Rents, because paid in Silver. 3. Black Mail, or Black-Rents, to distinguish them from White Rents. 4. *Redditus Resoluti*, Rents issuing out of the Mannors, &c. to other Lords, &c. Fee-Farm. For this kind of Rent, see *Gloss. cap. 8.*

(e) As Pledges, or Sureties to keep the Peace. Pledges for a Fine to the King, upon a Contempt, &c. are within this Branch: But otherwise, of Mainpernors; as appears by *Glanvil*, to be Common-Law, before this Act.

(f) This must be understood, when the Principal is able, and yet his Ability cannot be made to appear, being in Money, Treasure, or the like; or in Debts owing him, which he conceals, and will not pay.

(g) Some have said, That upon these Words, the Writ *de Plegiis Acquietandis* is grounded: and seeing in this Statute, no mention is of a Deed, the Pledges shall have that Writ without any Deed. And if they have any Deed, Covenant, or other Assurance, for their Indemnity, their Remedy is at Common-Law. But it appeared by *Glanvil*, that this was the Common-Law. *Lib. 10. cap. 4. & 5.*



C H A P. I X.

THE City of *LONDON* shall have all the Old Liberties and Customs, which it hath been used to have. More-over, we will, and grant, that all other Cities, Boroughs, Towns, and the Barons of the Cinque-Ports, and all other Ports, shall have all their Liberties, and Free-Customs.

Articuli super Chartas, c. 7.

3. *Bulstrode. 2.*

Cro. Car. 251.

The *Mirror* sayes, c. 5. §. 2. This Chapter is thus interpretable; viz. That the Citizens have their Franchises, of which they are Inherited by a Lawful Title, from the Gifts and Confirmations of Kings; and which they have never Forfeited by any Abuse: And that they have their Franchises and Customs, which are sufferable by Right, and not contrary to Law. And this Interpretation of London, is to be understood of the Cinque-Ports, and other Places. This agrees with our latter Books.

Maxim. A Man cannot claim any thing by Custom or Prescription, against a Statute, unless the Custom or Prescription be saved by another Statute. For example: They of *London*, claim by Custom, to give Lands without License, to Mortmain; because this Custom is saved and preserved, not only by this Chapter of *Magna-Charta*, but by divers other Statutes: And so of the rest. See more of *London* in the Fourth *Instit. c. Of the Courts of the City of London.*



C H A P. X.

NO (a) Man shall be distrained to do
(b) more Service for a Knight's-Fee, nor
for any Free-hold, than therefore is due.

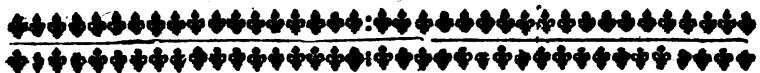
This was the Antient Law of England: *Glanvil. lib. 12. cap. 9, 10.* Nor was the Writ of *Nè Injustè vexes*, grounded upon this Act, as appears by him. And another Antient Author, who wrote of the Antient Laws long before this Statute; mentions this Writ.

(a) If the Lord incroach more Rent of the same Nature, by the Voluntary Payment of the Tenant; he shall not avoid this Incroachment in any Avowry; but in an Assize *Cessavit*; or *Nè Injustè vexes*, the Tenant shall avoid the Incroachment. — In case of a Successor, or of Issue in Tail, this Rule holds not; for they shall avoid it in an Avowry: If the Service incroached be of another Nature, the Tenant shall avoid that in an Avowry.

(b) *More Service*] implies a greater Exaction of the same Nature: If the Incroachment of the same Nature be got by Cohertion of Distress, there the Tenant shall avoid that in an Avowry.

If Incroachment be made upon a Tenant in Tail, or for Life, or any other, who cannot maintain a Writ of *Nè Injustè vexes*, nor a *Contra formam Collationis*, nor other Remedy; he shall have an Action upon this Statute: For it intended to Relieve those; that had no Remedy by the Common-Law.

CHAP.



C H A P. XI.

(a) **C**ommon-Pleas shall (b) not follow (c) our Court; but shall be holden in some Place certain.

Articuli super Chartas, c. 7.

Reg. fo. 187. V. N. B. 137. St. 28. E. 1. 4.

Co. Instit. 4. Part. 99. Mirror. 311. 11. Co.

75. 2. Bulstrode. 123.

Before this Statute, Common-Pleas might be held in the King's-Bench; and all Original Writs returnable into the same Bench: And because the Court was held *Coram Rege*, and follow'd the King's Court, and remov'd at the King's Will; the Returns were *Ubicumq; fuerimus*, &c. Whereupon many Discontinuances ensued, great Trouble of Jurors, Charges of Parties, and Delay of Justice: Wherefore this Statute was made.

There are Pleas of the Crown, which are called otherwise, and aptly, Criminal and Mortal Pleas; and (a) Common-Pleas, aptly called Civil. These Latter are divided into Real, Personal, and Mixt: They are not called Common-Pleas, because held by Common Persons; for the King may be Party to a Common Plea, as to a *Quare Impedit*, or the like.

(b) Divers special Cases are out of this Statute, too long to be here Inserted: and therefore, I refer you to the Book it self, upon those Words. *Fol. 23.*

(c) *Our Court*] are Words collective; and not only extend to the King's-Bench, but into the Court of Exchequer. See *Articuli super Chartas, c. 4.*

CHAP.



C H A P. XII.

(a) **A**ffizes of Novel-Disseisin, and of Mortdancestor, shall not be taken, but (b) in the Shires, and after this manner: If we be out of this Realm, (c) our Chief Justicers shall send our Justicers through every County, once in the Year; who, with the Knights of the Shires, shall take the said Affizes in those Counties: And those Things, that at the Coming of our afore-said Justicers, being sent to take those Affizes in the Counties, cannot be determined, shall be ended by them in (c) some other Place, in their Circuit. And those Things, which for the Difficulty of some Articles, cannot be determined by them, shall be referred to the Justicers of the Bench, and there shall be ended.

Reg. fol. 197. Stat. 13. E. 1. 30.

(a) Before this Statute, these Writs of, &c. were returnable either *Coram Rege*, or into the Court of Common-Pleas; and to be taken there. *Glanvil. lib. 13. c. 3. & 33. Coram me, vel coram Justiciar: meis.* But since, they are returnable,
Coram

Coram Justiciariis nostris ad assisas, cum in partes illas venerint.

(b) This greatly eases the Jurors, and saves the Charges of Parties and Time, so that they might follow their proper Occasions. It is a great Benefit to the Subject, to have Justice done him at Home, in his own Country.

For these Writs, see i. *Instit.* §. 234.

If an Assize be taken *in proprio comitatu*, and the Tenant plead, and after the Assize is discontinued by the *non Venit* of the Justices; this Act extends to the Assize, but not to a Re-attachment thereupon; for that the Assize was first arraign'd, and examined in the proper County.

This Act extends not to a Writ of Attaint, brought upon the Verdict of the Recognitors of the Assize. And with this *Briton* agrees, c. 97. f. 240.

An Assize is brought in the King's-Bench, then being in the County of *Suffolk*, of Lands in that County, the Tenant plead in Barr, the Plaintiff-reply, and pray the Assize; the King's-Bench is removed to *Westminster*, and there the Plaintiff pray'd the Assize. This Statute is, That the Assize shall not be taken, but in the County: And now the King's Bench is in another; and the Original cannot go out of this Place: For, when a Record is once in this Court, here it must remain. Wherefore, by the Advice of all the Judges, the Assize was awarded at large, *Quia nihil dicit*; and a *Nisi prius* granted in the County of *Suffolk*, that there the Assize might be taken: A Case worthy of our Observation. But as it is said in an Old Book, *Quamvis prohibetur quod Communia placita non sequantur curiam nostram, non sequitur propter hoc, quin aliqua placita singularia sequantur Dominum Regem*: As you may see an Excellent Case there, *Fol.* 25.

(c) This Chief Justicer, when the King is out of the Realm, is thus described by *Ockham*, *Rege extra Regnum agente, brevibus dirigebantur sub nomine presidentis Justitiariorum, & Testimonio ejusdem*. He is Constituted by Letters-Patents, to be *Custos sive Gardianus Regni*; and for his Time, is *Prorex*: Such as was *Edward*, Duke of *Cornwal*, 13. E. 3. &c. And this Statute is intended of such a Lieutenant, or Keeper of the Kingdom: For it is said, They shall name, and send Justices by Authority:

Authority under the Great-Seal, under their own *Teste*; which none can do but the King himself, if he be present, or his Keeper, &c. if, as this Act says, he be *Extra Regnum*. And this Lieutenant, or Keeper of the Kingdom, was called *Capitalis Justiciarius*, before this Act. *Glanv. l. 12. c. 25.*

(d) This is taken largely and beneficially; for they may not only make Adjournment before the same Justices, in their Circuit; but also to *Westminster*, or *Serjeants-Inn*, or any other Place out of their Circuit, by the Equity of this Statute.

Though the Statute only speaks of an Adjournment in an Affize of *Novel Disseisin*, &c. yet a Certificate of an Affize is within this Statute.

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CHAP. XIII.

Affizes of *Darreine Presentment* shall be always taken before our Justicers of the Bench, and there shall be determined.

Reg. fol. 30. Sta. 13. E. 1. 30.

✓ It appears by *Glanvil. l. 13. c. 16, 18, 19.* before this Statute, this Writ was returnable, *Coram me, vel Justiciar: meis.* The Reason of this Act was for Expedition, for doubt of the Laps.

By *W. 2.* 'tis provided, that Justices of *Nisi prius*, may give Judgment in an Affize of *Darreign Presentment*, and *Quare Impedit.*

CHAP.



C H A P. XIV.

(a) **A** Free-Man shall not be (b) Amerced for a small Fault, but after the manner of the Fault; and for a great Fault, according to the Greatness of the Fault, (c) saving to him his Contenement; and a Merchant likewise, saving to him his (d) Merchandize: and any other (e) Villein than ours, shall be in like manner Amerced, saving his (f) Wainage, if he fall into our Mercy. And none of the aforesaid Amercements shall be assessed, but by the Oath of Honest and Lawful Men, of the Vicinage. (g) Earls and Barons shall not be Amerced, but by their (h) Peers, and according to the manner of their Offence. No (i) Ecclesiastical Person shall be Amerced after the Quantity of his Ecclesiastical (k) Benefice; but after his Lay-Tenement, and after the Quantity of his Offence.

(a) Here he is taken for a Free-holder, as it is in the *Venire Fac.* where *Duodecim Liberos, &c. Homines*, are taken for Free-holders; as appears by this Act, which says, *Salvo contenemento suo.* — This *Liber homo* extends as well to Sole

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Corpora.

Corporations, as Bishops, &c. as to Lay-Men: but not to Corporations aggregate of many; as Mayor, and Commonalty, and the like: For they can't come under these Words, *Liber homo*, &c.

(b) This Act extends not to Fines imposed by any *Court of Justice*: What Amerciaments are, and whereof the Word comes, see *Co. 8. Rept. fol. 39. 40. Gressies cā.* This Statute in some Cases of Amerciaments, is to be intended of private Men, and not of Amerciaments of Officers, or Ministers of Justice.

Glanvil says, This Act was made in Affirmance of the Common-Law. But the Writ, *De Moderata Misericordia*, is grounded on this Statute; for it recites the Statute, &c.

(c) For the Word *Contenement*, you shall read it in *Glanvil*, *Ne quid de suo honorabili Contenemento amittet*, l. 9. c. 11. and *Bracton*, *Salvo Contenemento suo*, lib. 3. f. 116.

For the Signification, *Contenement* signifies his *Countenance*; which he hath together with, and by reason of his Free-hold: And in this Sense, the Statute of 1. E. 3. c. 4. *Stat. 2.* and *Old. Nat. Brev.* use it. Where *Countenance* is used for *Contentement*, the Armour of a Souldier, and the Books of a Scholar, are their *Countenances*.

(d) For Trade and Traffick is his *Livelihood*, and the Life of the Common-Wealth; wherein the King, and every Subject hath Interest.

(e) *Villein* here is taken for a Bond-Man, *Nativus de Sanguine*, or *Servus*. A *Villein* is free to Sue, or be Sued, by, and against all Men, saving his Lord.

(f) *Wainage* is the *Countenance* of a *Villein*; but yet the Lord may take it at his Pleasure.

(g) Though this Act be in the Negative, yet long Usage has prevailed against it: For the Amercement of the Nobility is reduced to Certainty; viz. a Duke, Ten Pound; an Earl, Five Pound; a Bishop, who hath a Barony, Five Pound. In the *Mirror* 'tis said, The Amercement of an Earl was an Hundred Pound, and of a Baron, a Hundred Marks.

'Tis said, a Bishop shall be Amerced for an Escape, an Hundred Pound; a Jaylor, for the negligent Escape of a Felon-attaint,

attaint, an Hundred Pound; and of a Felon Indicted only, Five Pound.

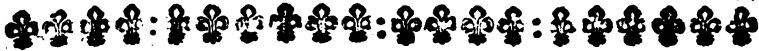
If a Noble-Man, and a Common Man joine in an Action, and be Non-suit, they shall be severally Amerced; the Former, at an Hundred Shillings; and the Common Person, according to the Statute: Therefore, when the Noble-Man is Plaintiff, 'tis policy rather to discontinue the Action, than be Non-suit.

(b) That is, by their Equals.

(i) For Ecclesiastical Persons, and their Diversities, and Degrees, see 1. *Instit.* 93. B.

(k) *Benefice*] is a large Word, and taken for any Ecclesiastical Promotion, or Spiritual Living whatsoever.

Here's a great Priviledge of the *Church*, That if an Ecclesiastical Person be amerced, (though Amercements belong to the King) yet he shall not be amerced, but only in respect of his Lay - Fee; not of his Spiritual Promotion, or Benefice.

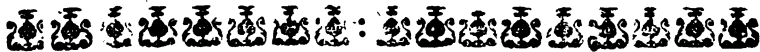


C H A P. XV.

NO Town, nor Free-Man, shall be distrain'd to make Bridges, nor (a) Banks; but such as of Old Time, and of Right have been accustomed to make them in the Time of King *Henry*, our Grand-Father.

(a) *Bank* is here the *Extrema & eminentior. terra ora, quam fluvius utrinque alluit.*

The making of Bulwarks, Fortresses, and such Things, was not forbid by this Act; because they could not be Erected, but either by the King himself, or by Act of Parliament.



C H A P. XVI.

NO Banks shall be defended from henceforth, but such as were in Defence, in the Time of King *Henry*, our Grand-Father, by the same Places; and the same Bounds, as they were wont to be in his Time.

That is, no Owner of the Banks of Rivers shall so appropriate, or keep the Rivers several to him, to defend or bar others,

others, either to have Passage, or Fish there; otherwise than they were used in the Reign of *H. 2.*

This Statute the *Mirror* sayes, *cap. 5. §. 2.* is now out of use.



C H A P. XVII.

NO ^Δ Sheriff, † Constable, Escheator, * Coroner, nor (b) any other our Bayliffs, shall hold Pleas of our Crown.

Mirror, 313.

One Mischief before this Act, was, That none of them here named, could command the Bishop of the Diocess, to give the Delinquent his Clergy, where he ought to have it: For as *Bracton* sayes, *Nullus alius prater Regem possit Episcopo demandare*, &c. And here-with agreeth our other old and later Books.

(b) By these Words is comprehended all Judges, or Justices of any Courts of Justice. And though it be provided by the Ninth Chapter; *That the Barons of the Cinque-Ports, and all other Ports, shall have all their Liberties, and Free-Customs*: yet it is understood of such Liberties and Customs only, as are not afterwards in the same Statute, by express Words taken away, and resumed to the Crown. And therefore, if the Mayor and Barons of the Five Ports, had Power before this Act, to hold Pleas of the Crown; yet by this Act, and this Chapter, they are abrogated and resumed.

Δ For Sheriff, see 1. *Instit.* §. 234. 248.

† Is here taken for Constable of a Castle, from the word *Castellanus*; and *Castellani* were Men in antient Times, of Account and Authority; and for Pleas of the Crown, &c. had

had the like Authority within their Precincts, as the Sheriff had within his Bailwick, before this Act: and they commonly sealed with their Portraiture on Horse-back. Regularly every Castle contains a Mannor, so that every Constable of a Castle, is Constable of a Mannor.

See for the word *Constable*, 1. *Instit.* §. 379.

* He is called so, because he is an Officer of the Crown, and hath Connusance of some Pleas; which are called *Placita Corona*.

By the ancient Law, he ought to be a Knight; Honest, Loyal, and Sage: *Et qui melius sciat, & possit officio illi intendere.*

If you ask, What Authority he had? The same he hath now, in case when any Man come to violent or untimely Death: *Super visum corporis*, &c. Abjurations and Out-laws, &c. Appeals of Death by Bill, &c. This Authority of the Coroner, viz. the Coroner solely to take an Indictment, *Super visum corporis*; and to take an Appeal, and to enter the Appeal: and the Count remaineth to this Day. But he can proceed no further, either upon the Indictment, or the Appeal; but to deliver them over to the Justices. And for the further Authority of the Coroner in High-Treason, see 19. *H.* 6. *fo.* 47. and consider well thereof.

CHAP.

C H A P. XVIII.

IF any that holds of us Lay-Fee, do Dye, and our Sheriff, or Bayliff, do shew our Letters - Patents of our Summons for Debt, which the Defunct did owe to us: It shall be Lawful to our Sheriff, or Bayliff, to attach and inroll all the Goods and Chattels of the Defunct, being found in the said Fee, to the Value of the same Debt, by the Sight and Testimony of Lawful Men; so that nothing thereof shall be taken away, untill we be clearly paid off the Debt. And the Residue shall remain to the Executors, to perform the Testament of the Defunct. And if Nothing be owing to us, all the Chattels shall go to the use of the Defunct; || saving to his Wife, and Children, their Reasonable Parts.

Stat. 33. H. 8. c. 39.

Three Things here are observable: . 1. The King by his Prerogative shall be preferred, in satisfaction of his Debt, by the Executors, to any other. 2. If the Executors have sufficient to pay the King's Debt, the Heir that is to bear the Countenance,

tenance, and sit in the Seat of his Ancestor, or any Purchaser of his Lands, shall not be charged. 3. If nothing be owing to the King, or any other, all the Chattels shall go to the use of the Dead; that is, to his Executors, or Administrators; saving to his Wife, and Children, their Reasonable Parts.

|| The Nature of a Saving regularly, is to save a former Right; and not to give, and create a New: And therefore, where such a Custom is, that the Wife and Children shall have the Writ, *De Rationab: parte Bonorum*, this Act saveth it. And this Writ lyes not without a particular Custom; for it is grounded upon a Custom.

The Administrators of a Man that dyes Intestate, or Executors of any that make no Disposal of his whole Personal Estate, Goods, Debts, and Chattels; the Administrators, or Executors, after the Debts paid, and Will performed, ought not to take any thing to his or their own Use; but ought, though there be no particular Custom, to divide them, according to this Act: For this Right doth this Statute save by these words, *Saving to his Wife and Children their Reasonable Parts*. And the Administrators shall be allow'd of this Distribution, according to the Statute upon this account, before the Ordinary.

CHAP.



C H A P. XIX.

NO Constable, nor his Bayliff, shall take Corn, or other Chattels, of any Man, if the Man be not of the Town where the Castle is; but he shall forth-with pay for the same, unless the will of the Seller was to respite the Payment: And if he be of the same Town, the Price shall be paid to him within Forty Dayes.

Stat. 3. E. 1. 7. Alt. 13. Car. c. 8.

Here also, *Constable* is taken for *Castellanus*; as before; and this taking by *Castelleins*, though the Castle was kept for the Defence of the Realm, was an unjust Oppression of the Subject, as appears by the *Mirror*, c. 5. §. 2. No Purveyance shall be taken, but only for the King's and Queen's Houses; and for no other: So that, this Grievance is by this Act taken away.

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CHAP.



C H A P. XX.

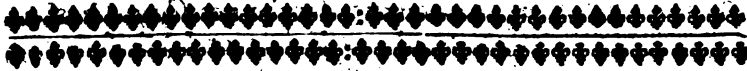
NO Constable shall distrain any Knight, for to give Money for keeping of his Castle, if he himself will do it in his proper Person, or cause it to be done by another sufficient Man, if he may not do it himself for a reasonable Cause. And if we do lead, or send him in an Army, he shall be free from Castle-Guard, for the time that he shall be with us, in Fee in our Host; for the which he hath done Service in our Wars.

Here *Constable* is in the former Sense. See 1. *Instit.* §. 96.

This Act is Declaratory of the Common-Law: For, first, That he that held by Castle-Gard, that is, to keep a Tower, or a Gate, or such like of a Castle; in Time of War, might do it either by himself, or by any other sufficient Person for him, and in his Place. Some hold by such Services, that they cannot do it in Person, as Mayor and Commonalty, Dean and Chapter, &c. Infants being Purchasers, &c. Therefore, they might make a Deputy, by Order of the Common-Law.

Secondly, If such a Tenant be, by the King, led, or sent to his Host, in Time of War, the Tenant is excused, and quit of his Service for keeping the Castle, either by himself or another, during the Time that he so serve the King in his Host; For, when the King commands his Service in the Host, he dispences with that, by reason of his Tenure; for one Man cannot serve in Person, in two Places.

CHAP.



C H A P. XXI.

NO Sheriff, nor Bayliff of ours, or any other, shall take the Horses or Carts of any Man, to make Carriage, unless he pay the old Price limited; that is to say, for Carriage with two Horses, Ten Pence a day; for three Horses, Fourteen Pence a day. No Demesne Cart of any Ecclesiastical Person, or Knight, or any Lord, shall be taken by our Bayliffs: Nor We, nor our Bayliffs, nor any other, shall take any Man's Wood for our Castles, or other our Necessaries to be done; but by the License of him, whose the Wood is.

Stat. 14. E. 3. 19.

Stat. 25. E. 3. 6.

Stat. 13. Ca. 2. 8.

This *Chapter* has Three Branches. 1. Here is set down the antient Hire, for the Carriage of the King. 2. Who are exempted from that Carriage. 3. Concerning Purveyance of Wood.

The Carriage must be for the King and Queen only, and no other. The Hire is certainly expressed, as antiently due; and so declaratory of the Old Law: And it ought to be paid

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in Hand; for the Words are, *None shall take, &c. unless he pay, &c.* and that by the Day.

2. No demean, or proper Cart, for the necessary Use of any Ecclesiastical Person, or of any Knight or Lord, for or about the demean Lands of any of them, ought to be taken for the King's Carriage; but they are exempted by the ancient Law, from such Carriage;

Also, it extends to all Degrees and Orders, of the lesser and greater Nobility.

3. Neither the King, nor any of his Baylies or Ministers, shall take the Wood of any other, for the King's Castles, or other Necessaries to be done; but by the License of the Owner of the Wood. And

This Branch, among others, hath been confirmed, and commanded to be put in Execution at Thirty-two Sessions of Parliament.

The Common-Law hath so admeasured the Prerogative of the King, as he cannot take, nor prejudice the Inheritance of any Man; and a Man hath an Inheritance in his Woods.

CHAP.



C H A P. XXII.

(a) WE will not hold the Lands of them that be (b) Convict of Felony, but one Year, and one Day; and then those Lands shall be delivered to the Lords of the Fee.

O. N. B. f. 99. *Mirror*, 313.

This appears by *Glanvil*, lib. 7. cap. 17. fol. 59. to be due to the King, by his Antient Prerogative.

This Chapter expresses that which belongs to the King, viz. the Year and the Day: and omits the waste, as not belonging to him.

(a) If there be Lord, Mesne, and Tenent, and the Mesne is attainted of Felony, the Lord *Paramount*, shall have the Mesnalty presently. For this Prerogative belonging to the King, extends only to the Land which might be wasted, in lieu whereof the Year and Day was granted.

This is to be understood, when a Tenent in Fee-simple is attainted; for where Tenent in Tail, or for Life, is attainted, there the King shall have the Profits of the Land, during the Life of Tenent in Tail, or of the Tenent for Life.

(b) Here *convict* is taken for *attainted*; for the nature and true sence of both these words, see 1. *Instit.* §. 745. and likewise for the word Felony there.

CHAP.



C H A P. XXIII.

All (a) Weares from hence - forth, shall be utterly put down by *Thames* and *Medway*, throughout all *England*, but only by the Sea-Coasts.

Stat. 12. E. 4. 7.

The Latin word is *Kidelli*, *Kidells*, which is a proper word for open (a) Weares whereby Fish are Caught.

It was especially given in charge by the Justices in *Eire*, that all Juries should inquire, *de his qui piscantur cum Kidellis & Skarkellis*.

And *Glanvil* sayes, this pourpresture was forbidden by the Common Law.

Every publick River or Stream is the King's High Way. *Glanvil. lib. 9. cap. 11.*

Pourpresture signifies a Close or Inclosure; that is, when one incroaches or makes that feveral to himself, which ought to be common to many.

CHAP.



CHAP. XXIV.

THe Writ that is called *Præcipe in Capite*, shall be from hence-forth granted to no Person of any Free-hold, whereby any Free-Man may lose his Court.

O. N. B. fol. 12.

Mag. N. B. f. 5. f. 39. h.

This is for Reformation of an abuse, and wrong offered to the Lord, of whom the Land was holden.

Since this Act, no Man ought to have this Writ out of the Chancery, upon a suggestion, but Oath must be made, before it be granted, that the Land is holden of the King
In capite.

There is a great Diversity between a Writ, and an Action, although by some they are often confounded. This will appear by their Definitions.

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

Bract. lib. 3. fol. 98. and with him agrees *Fleta.* *Actio nihil aliud est, quam jus prosequendi in judicio quod alicui debetur, & quod nascitur ex maleficio, vel quod provenit ex delicto, vel injuria.* lib. 1. cap. 16.

The *Mirror* sayeth, that an Action is nothing but a lawful demand of one's Right. *Actors* are those who Sue for their Right by plaint. *Mirror.* cap. 2. 9. 1.

So the first Diversity is, an Action is the Right of a Suit,
the

the Writ is grounded thereupon, and the mean to bring the Defendant or Plaintiff to his Right.

2. A Writ grounded upon Right of Action, is ever *in foro contentioso*; but so are not all Writs.

Of Writs grounded upon Right of Action, some are Criminal, and some Civil or Common.

Of Criminal, some are *in personam*, to have Judgment of Death; as Writs of Appeal, of Death, Robbery, Rape, &c. some for Judgment of Dammage to the Party, Fine to the King, and Imprisonment, as Writs of Appeal of *Mayhem*, &c.

Of Writs Civil or Common, some be real, some personal, and some mixt: And of these some be *Original*, which go out of *Chancery*, and some judicial; and they Issue out of the Court where the Plea Depended. Some Conditional, as Writs of *Errours*, &c. Some without Condition: Some returnable, some not. And all these either warranted by the Common Law, or grounded on some Act of Parliament: See more hereof in this Chapter, pag. 40.

CHAP.



C H A P. XXV.

ONE Measure of Wine shall be through our Realm, and one Measure of Ale, and one Measure of Corn; that is to say, the *Quarter of London*: and one Breadth of Dyed-Cloath, Russets, and Haberjects; that is to say, Two Yards within the Lifts. And it shall be of Weights, as it is of Measures.

Stat. 14. E. 3. 12.

Stat. 27. E. 3. 10.

Stat. 8. H. 6. 5.

11. H. 7. 4. 1.

Stat. 17. Car. 1. c. 19.

This, that there should be one Measure, and one Weight through *England*, is grounded upon the Law of God, *Deut.* 25. 13, 14. And this by Parliament hath often been Enacted, but could never be Effected, so forcive is Custome concerning Multitudes, when it hath gotten an Head.

Cloath is the Worthiest and Richest Commodity of this Kingdom; for, divide our Native Commodities Exported into Ten Parts; and that which comes from the Sheeps Backs, is Nine Parts in Value of the Ten, and sets great Numbers of People on Work. For the Breadth and Length of Cloath, See many Statutes made after this Act.

G

CHAP.



C H A P. XXVI.

NOthing from hence-forth shall be given for a Writ of Inquisition, nor taken of him that prayeth Inquisition of Life, or of Member; but it shall be granted freely, and not deny'd.

Stat. 3. E. 1. 11.

Stat. 13. E. 1. 29.

Reg. fol. 133, 134.

Mirror, 314.

This is the Writ *de Odio & atia*, Antiently called *breve de Bono & Malo*, and here of Life and Member, which the Common Law gave to a Man Imprisoned, though for the most odious Cause, for the Death of a Man, for the which without the King's Writ he could not be Bailed; yet the Law favouring the Liberty of a Man from Imprisonment, and that he should not be kept in Prison, till the Justices in Eire should come, at which time he was to be Tryed, he might Sue out this Writ of Inquisition directed to the Sheriff. In this, Four things are to be Observed.

1. Though the Offence, whereof he was Accused, be such, as that he was notailable by Law, yet the Law did so greatly hate any Man's long Imprisonment, though Accused of a grievous and heinous Crime, that it gave him this Writ for his Relief.

2. If

2. If he were Indicted or Appealed thereof, before the Justices in Eire, he could not have this Writ, because it was grounded upon a Surmise, which could not be Received against a matter of Record.

3. Upon this Writ, though he was found Accused *de Odio & atia*, and that he was not Guilty, or that he did the Act, *Se defendendo, vel per infortunium*, yet the Sheriff by this Writ, had no Authority to Bail him, &c.

4. There was a Mean by the Common Law before Inditement or Appeal, to Protect the Innocent against false Accusation; and to Deliver him out of Prison.

Atia signifies Malice, because Malice is *Acida*, Eager, Sharp, and Cruel.

And for further Benefit, and in favour of the Prisoner, this Branch further Enacts, that he shall have it *gratis*, without Fee, and without Delay, or Denial.

Some say, this Statute extends to all other Judges, and Justices for two Reasons. 1. This is but Declarative of the Common Law. 2. *Ubi lex est specialis, & ratio ejus generalis, generaliter accipienda est.*



C H A P. XXVII.

IF any do hold of Us by (a) Fee-Farm, or by (b) Soccage, or (c) Burgage, and he holdeth Lands of another by Knights Service; we will not have the Custody of his Heir, nor of his Land, which is holden of the Fee of another, by reason of that Fee-Farm, or Soccage, or Burgage. Neither will we have the Custody of such Fee-Farm, Soccage, or Burgage, except Knights-Service be due unto us out of the same Fee-Farm. We will not have the Custody of the Heir, or of any Land, which he holdeth of another by Knight's-Service, by occasion of any *Petit-Serjeanty*, that any Man holdeth of us by Service, to pay a Rent, an Arrow, or the like.

Rep. 12. Car. 2. c. 24.

(a) *Fee-Farm* properly is, when the Lord, upon the Creation of the Tenancy, reserve to himself, and his Heirs, either the Rent, for which it was let before to Farm, or, at least, a Fourth Part of that Farm-Rent. But

Britton sayes, that *Fee-Farms* are Lands held in Fee, to render for them Yearly the true Value, either more, or less: and

is

is called a Fee-Farm, because a Farm-Rent is reserved upon a Grant in Fee. And Regularly, as it appears by this Act, Lands granted in Fee-farm are holden in Soccage, unless an exprefs Tenure by Knights-Service be Reserved.

(b) *Soccage* is the Service of the Plough and Cart. *Co. Lit. 9. 117.*

(c) *Burgage*, signifieth the Service whereby the Burrough is holden. *Co. Lit. 6. 162.*

This Act, as well concerning Tenures in Fee-Farm, Soccage, and Burgage, as by petit-Serjeanty, is Declaratory of the Common Law, and in constant use to this Day. *Glanvil, lib. 7. cap. 9.*



C H A P. XXVIII.

NO (a) Bayliff from hence-forth shall put a-ny Man to his open Law, nor to an Oath, upon his own (b) bare saying, without Faithful witnessses brought in for the same.

(a) By this it appears, that under this word *Bailiff*, in this Act, is comprehended every Justice, Minister of the King, Steward, and Bailiff.

(b) *Simplici loquela sua.* For *Bracton* sayes, *Vox simplex nec probationem facit, nec presumptionem Inducit.*

Every Wager of Law Countervails a Jury, for the Defendant shall make his Law *De duodecima manu*, viz. an Eleven, and himself. How much, and for what cause the Law respects the Number of Twelve. See first *Instit. 9. 234.*

The party himself, when he maketh his Law, shall be Sworn *de fidelitate*, that is directly, or absolutely, and the others,
de

ed Credulitate, that they believe, that he saith true.

To make his Law, is as much as to say, to take his Oath, &c. and it is so called, because the Law gives him that means by his own Oath to free himself.



C H A P. XXIX.

NO (a) Free-Man shall be (b) taken, or imprisoned, or (c) disseised of his Freehold, or (d) Liberties, or (e) Free-Customs; or be * Out-Lawed, or † Exiled, or any otherwise || Destroyed: Neither will we pass upon him, nor put him into Prison, nor Condemn him, but by (f) Lawful Judgement of his Peers, or by the (g) Law of the Land. (b) We will sell to no Man, We will not deny, or defer to any Man, either Justice or Right.

Stat. 2. E. 3. and

Stat. 5. E. 3, & 9.

Stat. 14. E. 3. 14. 28. E. 3. 3.

Stat. 11. R. 2. 10. 17. Car. 1. 10.

Stat. 37. E. 3. 18.

Stat. 4. H. 7. 12. In fine.

(a) This extends to Villeins, saving against their Lord.

Albeit *homo* extends to both Sexes, yet by Act of Parliament it is Enacted and Declared, that this Chapter should extend

extend to Dutcheſſes, Counteſſes, and Baroneſſes; but Marchioneſſes, and Vicounteſſes are Omitted; but, however are comprehended.

(b) *Taken or Impriſoned.*] Attached and Arreſted are comprehended herein. — *Taken*: That is Reſtrained of Liberty, by Petition, or Suggeltion to the King, or his Council, unleſs by Indictment, or Preſentment of Good and Lawful Men, where ſuch Deeds be done.

(c) *Diſſeiſed.* i. e. Lands, Tenements, Goods, and Chattels ſhall not be Seized into the King's Hands, contrary to this great Charter, and the Law of the Land; nor any Diſſeiſed of his Lands or Tenements, or Diſpoſſeſt of his Goods or Chattels, contrary to the Law of the Land.

* *Out-Lawed.*] i. e. Barred to have the Benefit of the Law.

(d) *Liberties* hath Three Significations.

1. The Laws of the Realm, in which Reſpect, this Charter is called *Charta Libertatum*.

2. The Freedoms that the Subjects of *England* have.

3. Signify, the Franchiſes and Priviledges, which the Subjects have from the Gift of the King; as the Goods and Chattels of Felons, Out-Laws, and the like; or which the Subject Claims by Preſcription, as Wreck, Waif, Stray, and the like.

Generally, all Monopolies are againſt this Great Charter, becauſe againſt the Liberty and Freedom of the Subject, and againſt the Law of the Land.

(e) Of *Customes*, ſome are General, and ſome Particular: which See in 1. *Inſtit.* and *Free* is added, for that the Customes of *England* bring a Freedom with them.

By the Law, &c. none can be † *Exiled*, or Banished out of his Native Country, but either by Parliament, or in Caſe of Abjuration for Felony, by the Common Law.

This Beneficial Law, is conſtrued Benignly; and therefore, the King cannot ſend any Subject of *England*, againſt his will, to Serve him out of this Realm; for that he ſhould be an Exile, and he ſhould *Perdere Patriam*; no, not into *Ireland* againſt his will, to Serve him as his Deputy.

|| *Destroy*

[*Destroyed*] i. e. Fore-judged of Life, or Limb, Dishonoured, or put to Torture, or Death.

Every Oppression against Law, by Colour of any usurped Authority, is a kind of Destruction; and it is the worst Oppression, that is done by Colour of Justice

[*Any otherwise Destroyed.*] Therefore all things, by any manner of means, tending to Destruction, are Prohibited.

(f) Only a Lord of Parliament of *England*, shall be Tried by his Peers, being Lords of Parliament; and neither Noble-Men of any other Country, nor others that are called Lords, and are no Lords of Parliament, are accounted Peers, within this Statute.

[*Peers, or Equals.*] This is to be understood of the King's Suit.

If a Noble-Man be Indicted for Murther, he shall be Tried by his Peers: But if an Appeal be brought against him, which is the Suit of the Party, there he shall be Tried by an ordinary Jury of Twelve Men, for Two Reasons. 1. Because the Appeal can't be brought before the Lord High-Steward of *England*, who is the only Judge of Noble-Men, in case of Treason, or Felony. 2. This Statute extends only to the King's Suit; and that in case of Treason or Felony, or of Misprision of either; or being accessory to Felony before, or after, and not to any other Inferior Offence: It extends to the Tryal it self, whereby he is to be Convicted. A Peer of the Realm may be Indicted of Treason, or Felony, before Commissioners of Oyer and Terminer; or in the *King's-Bench*, if the Treason or Felony be committed in the County, where the *King's-Bench* sits. He may be also Indicted of Murther, or Man-slaughter, before the Coroner, &c.

If a Noble-Man be Indicted, and can't be found, Process of Out-Lawry shall be awarded against him, *per Legem Terra*; and he shall be Out-Law'd, *per Judicium Coronatorum*? but Tried, *per Judicium parium suorum*, when he appears, and pleads to Issue.

[*By Lawful Judgment.*] Here Three things are implied.

First, This manner of Tryal was by Law, before this Statute.

Secondly,

Secondly, That their Verdict must be Legally given: As,

1. The Lords ought to hear no Evidence, but in the Presence and Hearing of the Prisoner.

2. When they are gone together to consider of the Evidence, they can't send to the High-Steward, to ask the Judges any Questions of Law, but in the Prisoners Hearing: Neither can they, 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 Prisoner's Hearing.

Thirdly, When all the Evidence is given by the King's Council, the High - Steward cannot Collect the Evidence against the Prisoner, or in any sort confer with the Lords, touching their Evidence, in the Prisoner's absence; but he ought to be called to it.

It is called the *Judgment*, and not *Verdict*, of his *Peers*; because the Noble-Men, Returned and Charged, are not Sworn, but give their Judgment upon their Honor and Ligeance to the King.

(g) *The Law of the Land.*] For the true Sense of these Words, see the *Stat. 37. E. 3. c. 8.* where they are rendered, *Without due Process of Law.* This Chapter is but Declaratory of the Old Law of *England.*

By the Law of the Land;] That is, the Law of *England*: Neither *Lex Regis Anglia*, lest it might be thought to bind the King only; nor *Lex Populi Anglia*, lest to bind them only: But that it might extend to all, it is said, *Lex Anglia.*

The Process of Law is two-fold; *viz.* by the King's Writ, or by due Proceeding and Warrant, either in Deed, or in Law, without Writ.

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. see the Book fol. 51, 52. and seeing none can be taken, &c. but by due process of Law according to the Law of the Land, these Conclusions hereupon do follow.

1. That a Commitment by Warrant, either in Deed, or in Law, is accounted due process of Law, and by the Law of the Land, as well as by process by force of the Kings Writ.

H

2. That

2. That He, or They, which do Commit, have lawful Authority.

3. That his Warrant, or Mittimus be lawful, in writing, under his Hand and Seal.

4. The Cause must be contained in the Warrant, as for Treason, Felony, &c. otherwise if no cause be, and the Prisoner escape, it is no offence at all: whereas if it be contained, the escape were Treason or Felony, though he were not guilty of the Offence.

5. It ought to have a lawful conclusion, viz. and him safely to keep until he be delivered by Law &c. and not until the party committing doth further Order.

Imprisonment does not only extend to false Imprisonment and unjust; but for detaining the Prisoner longer than he ought, where at first he was lawfully Imprisoned.

All Commissions consonant to this Act, are said to be *secundum legem & Consuetudinem Angliae*.

No man is to be Arrested or Imprisoned contrary to the form of this great Charter.

If a man be Imprisoned contrary to the Law of the Land, he hath these remedies.

1. Every Act of Parliament made against Injuries, &c. doth either expressly, or impliedly, give a remedy to the party wronged, as in many of the *Chap.* of this Great Charter appears, and therefore he may have an Account grounded upon this great Charter.

2. He may cause him to be Indicted upon this Statute at the Kings suit.

3. He may have an *Habeas Corpus* out of the *Kings-Bench* or *Chancery*, though there be no Priviledge, &c. or in the *Common-Pleas*, or *Exchequer*, for any Officer or priviledged Prisoner there.

4. He may have an action of false Imprisonment.

5. He may have a Writ *de homine replegiando*.

6. He might by the Common Law have had a Writ *de odio & atia*, as you may see in *cap. 26.* but that was taken away by Statute, but now is revived again by Statute. 42. E. 3. Cap. 1.

(h) *We will sell to none.*] This is spoke in the Person of the King, who

who in judgment of Law, in all his Courts of justice is present, and repeating these words, *Nulli vendemus, &c.*

And therefore every Subject of this Realm, for injury done to him *in bonis, terris, vel persona*, by another subject whomsoever, may take his remedy by course of Law, and may have justice for the injury done to him, freely without sale, fully without any denial, and speedily without delay; these Three qualities make it Justice and Right.

We will not deny, or defer to any man, &c.] by no means must Common-Right, or Common-Law, be disturbed or delayed; no, though commanded under the great Seal, or privy Seal, Order, Writ, Letters, Message, or Command whatsoever, either from the King, or any other.

For the Law is the surest Sanctuary a man can take, and the strongest Fortress to protect the weakest of all. But the King may stay His own Suit, as a *capias pro fine*, for he may respite His Fine, or the like.

All Protections not Legal, that appear not in the Register, nor warranted by our Books, are expressly against this branch, *we will not defer to any man.*

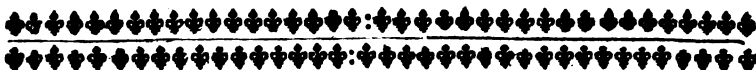
Justice or Right.] Neither the end, which is justice, nor the mean, whereby we may attain to the end, and that is the Law. *Right* is taken here for Law, as *Jus* is often so called.

1. Because it is the right line, whereby justice distributive is guided and directed; and therefore all Commissions of *Oyer and Terminer*, of Goal-delivery, of the Peace, &c. have this Clause, *facturi quod ad justitiam pertinet secundum legem & Consuetudinem Anglia*, you shall do Justice and Right, according to the Rule of the Law, and Custome of *England*.

2. Because the Law discovers that which is crooked, or wrong. *Recta linea est Index sui, & obliqui.*

3. It is called Right, because it is the best Birth-Right the Subject hath; for thereby his Goods, Lands, Wife, Children, Body, Life, Honors and Estimation, are Protected from Injury and Wrong.

4. It is taken for Right it self, that a man hath by Law to Land, as in a *breve de-recto*.



C H A P. XXX.

ALI Merchants, unless they were openly prohibited before, shall have their safe and sure Conduct, to depart out of, and to come into *England*; and to tarry in, and go thorow *England*, as well by Land, as by Water; to Buy and Sell, without any manner of (a) Evil Tolls, by the Old and Rightful Customs, unless in Time of War. And if they be of a Land making War against us, and be found in our Realm at the Beginning of the Wars, they shall be attached without Harm of their Bodies or Goods; until it be known unto us, or our Chief Justice, how our Merchants be Treated there, in the Land making War against us. And if Ours be safe There, Theirs shall be so with Us.

Stat. 9. E. 3. 1. 14. E. 3. 22. Sess. 25. E.
3. 2. 2. R. 2. 1. 11. R. 2. 7.

This Chapter concerns Merchant-Strangers. And,
1. Before this Statute, they might be publickly prohibited. And this Prohibition is intendable of Merchant-Strangers in

in Amity; for this Act afterwards provides for them being Enemies.

This Prohibition must be by the Common Council of the Realm, the Parliament.

2. That all such in Amity (unless so publickly prohibited,) shall have safe Conduct:

1. To go out of.
2. To come into.
3. To tarry in.
4. To go in, and through *England*, both by Land and VVar.
5. To buy and sell.
6. VVithout any manner of evil Tolls.
7. By the old and rightful Customes.

For Merchant-Strangers, whose Sovereign is in VVar with the King of *England*, for those found in the Realm when the VVar begins, shall be attached with a priviledge and limitation not to have harm, &c. until known to us, or, &c. i. e. our Guardian or Keeper of the Realm in our absence, how ours there in the Land, in VVar with us are dealt with: if ours are well, theirs shall be so here; for this is *ius belli*.

But for those that come after the VVar is begun, they may be treated as open Enemies.

The end of this Chapter, was for promoting Trade and Traffick.

(*) *Tolls*.] Signify any manner of Custome, Subsidy, Prestation, Imposition, or sum of money demanded for exporting or importing of any VVares, or Merchandizes to be taken of the buyer.

Evil Tolls.] When the thing demanded for VVares, do so burthen the Commonalty, as the Merchant can't have a convenient gain by trading therewith, and thereby the Trade itself is lost or hindered.

By the Old and rightful Customes.] i. e. by antient and right Duties, due by antient and lawful Custome, they have a speedy recovery, for their Debts and other Duties, &c. *Per legem mercat.* which is a part of the Common Law.

Customs

Custom hath all these Significations, 1. the Common-Law. 2d. Statute-Law. 3d. particular Customes, as Gavel-kind, &c. 4th. Rents, Services, &c. due to the Lord. 5th. Customes, Tributes, or Impositions. 6th. Subsidies, or Customes granted by common Consent. *i.e.* Authority of Parliament, *pro bono publico*; and these are *antient and rightful Customes* intended by this Act.

It hereby appears, that the King can't set a new Impost on the Merchant: and herewith agreeth the Act commonly called *Confirmaciones Chartarum* (which is but explanatory of this branch of *Magna Charta*) wherein 'tis enacted, That for no occasion, any aid, tasks, or takings, shall be taken by the King or his Heirs, but by the common Consent of the Realm, saving the antient Aids and Takings due and accustomed.

The Statute, *de tallagio non concedendo* is explanatory of this Branch, Anno. 34. E. 1.

No charge shall be Levied on the People, if not granted in Parliament.

The Lords and Commons cannot be charged with any thing for the defence of the Realm, safeguard of the Sea, &c. unless by their will in Parliament; *that is, in grant of a Subsidy, whereunto the King assented.*

CHAP.



C H A P. XXXI.

IF any Man hold of any Escheat, as of the Honor of *Wallingford*, *Nottingham*, *Boloin*; or of any other Escheats, which be in our Hands, and are Baronies, and Dye; his Heir shall give no other Relief, nor do no other Service to us, than he should to the Baron, if it were in the Baron's Hands. And We, in the same manner, shall hold it, as the Baron held it: Neither shall we have, by occasion of any Barony or Escheat, any Escheat, or Keeping of any of our Men, unless he that held the Barony, or Escheat, otherwise held of us in Chief.

Register, fol. 184.

Stat. 1. E. 3. 13.

Stat. 1. E. 6. 4.

All this is merely Declaratory of the Common Law; and here it appears, that he that holds of the *King*, must hold of the Person of the *King*, and not of any Honour, Barony, Mannors, or Seignory: and he that holdeth of the *King* in chief, must not only hold of his Person, but the Tenure must be Created by the *King*, or some one of his Predecessors, *Kings* of this Realm, to defend his Person and Crown.

Bracton, who wrote soon after the Statute, expounds this *great Charter* to extend to Forfeiture of *Baronies* for Treason, as of the *Normans*, *Bract. l. 2. f. 87. b.*

By this Chapter it appears, that a Subject may have an Honour.

CHAP.



C H A P. XXXII.

NO Free-Man from hence-forth, shall give or sell any more of his Land, than that of the Residue of the Lands, the Lord of the Fee may have the Services due to him, which belongeth to the Fee.

Stat. 18. E. 1. *Quis Emptores terrarum.*

Mirror, 316.

At the Common-Law, the Tenant might have made a Feofment, of the whole Tenancy to be holden of the Lord; for that was no prejudice at all to the Lord.

But in the *Kings* Case it was doubted, whether his Tenant might have given part of the Tenancy to hold of himself; because the Land, and the profit that might come to the King thereby, was removed farther off from him, and the Mensality was ever of less value than the Land, and for that cause the Tenancy was called Paravail.

Where Lands are holden of the King as King *in Capite*, be it by Knights-service, or in Soccage *in Capite*, and aliened without Licence, I think the Land is not forfeited to the King, but it should be seized in the Name of a Distress, and a Fine paid for the trespass: for by the 1. E. 3. c. 12. it is Enacted, that the King shall not hold them as forfeit in such case, but that of Lands so aliened, there should be from thence-forth a reasonable fine taken in the Chancery, by due process: which act was but an Exposition of this Chapter, as to Lands holden of the King *in Capite*, aliened without Licence;

cence, and extends to Lands holden of the King, by grand-Serjeanty aliened *Sans License*.

The Fine to be paid by the Alienee, or by those that Claimed by or under him; and if the Fine be not paid, the Land to be Seized into the King's Hands.



C H A P. XXXIII.

ALl Patrons of Abbies, who have the King's *Charters of England* of Advowson, or have Old Tenure or Possession of the same, shall have the Custody of them, when they shall fall Voyd; as they were wont to have, and as it is afore-declared, in the *Fifth Chapter*.

This is where the Patron, or Founder of Abbeys, or Priories by special Reservation, Tenure, or Custome, ought to have the Custody of the Temporalties of the same, during the Vacation; as many of them formerly had. But if the King be Founder, he ought to have the Temporalties, during the Vacation of common Right, by his Prerogative.

If the King, and a Common Person, join in a Foundation, the King is the Founder, because it is an entire Thing.

If a Common Person found an Abbey, &c. with Possessions of small Value, and the King after Endow it with great Possessions; yet the Common Person is the Founder.



C H A P. XXIV.

NO Man shall be taken or imprisoned upon the Appeal of a Woman, for the Death of any other, than her Husband.

Raft. Pla. fol. 43.

For the word *Appeal*: It signifies an Accufation; and in legal Signification, is peculiarly applyed to Appeals of three forts. 1. Of Wrong to his Ancestor, whose Heir-Male he is; and that is only of Death. 2. Of Wrong to the Husband; and is by the Wife, only of the Death of her Husband, to be Prosecuted. 3. Of Wrongs done to the Appellants themselves; as Robbery, Rape, and Maihem.

At the Common Law, before this Statute, a Woman as well as a Man, might have had an Appeal of Death, of any of her Ancestors; and therefore the Son of a Woman shall have an Appeal at this Day, if he be Heir at the Death of the Ancestor; for the Son is not Disabled, but the Mother only.

Fleta sayes, lib. 1. cap. 33. Fœmina autem de morte viri sui inter brachia sua interfecti, & non aliter poterit appellare. And so the *Mirror. cap. 5. §. 2. and cap. 2. §. 7. Britton,* and *Bracton.*

By *Inter Brachia* is understood, the Wife whom the Dead had Lawfully in Possession at his Death; for she must be his Wife, both of Right, and in Possession.

A Woman at this Day, may have an Appeal of Robbery, because not Restrained.

This Writ of Appeal of the Death, &c. is Annexed to her Widdow-hood, as her Quarentine is.

If

wife at the Feast of St. *Michael*, without occasion. So that, every Man may have his Liberties, which he had, or used to have, in the Time of King *Henry*, our Grand-Father; or which he hath Purchas'd since. (e) The View of Franck - Pledge shall be so done, that our Peace may be kept; and that the Tything be kept entire, as it hath been accustomed; and that the (f) Sheriff seek no Occasions; and that he be (g) content with that, which the Sheriff was wont to have, for the making of his View, in the Time of King *Henry*, our Grand-Father.

See *Marlebridg.* chap. 10.

Reg. fol. 175. 187.

Fitz. Nat. Brev. f. 161.

Stat. 31. *E.* 3. 15.

Curia comitatus is twofold. 1. The County-Court, the other the Sheriff's Turn, Antiently called *Folkmore*; here it is taken in the Common Sense for the County-Court.

This is an Affirmance of the Common-Law, and Custome of the Realm.

(b) *Where greater time.*] This is altered by the Statute. 2. *E.* 6. c. 25. Whereby it is provided, that no County-Court shall be longer deferred but one Month, from Court to Court.

By which Act, every County of *England*, concerning the Time of keeping of the County-Court, is governed by one and the same Law.

Twenty-

Twenty-Eight Dayes is to be accounted to a legal Month, in this Case; and not the Kalendar-Month.

(c) Where this sayes, *Once after Easter, &c.* the Statute, 31. E. 3. 15. explains it; viz. one time, within the Month after *Easter*; and another time, within the Month after *St. Michael*: And if they hold them in any other manner, then to lose their Tourn for that time, *i. e.* The Court so holden, for that time, shall be utterly voyd, and the Sheriff lose the Profits of it.

(d) Antiently, the Sheriff had two great Courts; the *Tourn*, and the *County-Court*. Afterwards, for the Ease of the People, and especially, the Husbandmen, the *View of Franck-Pledge*, or *Leet*, was by the King divided, and derived from the *Tourn*; and granted to the Lords, to have the *View* of the Tenants and Resiants, which in their Mannors, &c. So that, the Tenants, &c. should have the same Justice at their own Doors, without Charge, or Loss of Time, that they had before in the *Tourn*.

So were Huddreds, and Hundred-Courts, divided and derived from the County-Courts: and this the King might do; for the *Tourn*, and the *Leet*, both are the King's Courts of Record. And as the *County-Court*, and *Hundred-Court*, are of one Jurisdiction; so the *Tourn*, and *Leet*, be also of one and the same Jurisdiction: For *Derivativa potestas est ejusdem Jurisdictionis cum Primitiva*.

The Style of the *Tourn*, is *Curia Franc. Plegii Dom. Regis Tent: apud L. coram Vicecomite in Turno suo tali die, &c.* And therefore, in some Books, it is called the *Leet* of the *Tourn*.

He that claims a *Leet* by Charter, must hold it at the same Dayes, which are contained in the Charter: And he that claims it by Prescription, may claim to hold it once or twice every Year, at any such Days, as shall upon reasonable Warning be appointed; if the Usage has been so, to have been kept at uncertain Times, or otherwise, at such certain Dayes and Times, as by Prescription hath been certainly used.

(e) The *View of Franck-Pledge*, was for two Ends:

1. That our Peace might be kept.
2. That the Trything be kept entire.

That

That so the Peace might be kept, every Free-Man, at Twelve Years of Age, should in the *Leet*, (if he were in any) or in the *Tourn*, (if not in any *Leet*) take the Oath of Allegiance to the King; and that Pledges, or Sureties, should be found in manner here-after expressed, for his Truth to the King, and to all his People; or else, to be kept in Prison.

This *Frank-pledge* consisted most commonly of Ten Households, which are here called *Trithinga*. i. e. *Decemvirale Collegium*, whereof the Masters of the Nine Families, who by the Saxons were called *Freoborgh*, i. e. free surety, or Frank-pledge, and the Master of the Ten House-hold *Theothungmon*; and in the West at this Day *Tythingman*, i. e. *Capitalis Plegius*, Chief-pledge; and these Ten Masters were bound one for another's Family, that each Man of their several Families should stand to the Law; or, if not forth coming, that they should Answer for the Injury by him Committed.

The Precinct of this *Frank-pledge* was called *Decenna*, and every Man of the several House-holds, *Decennarii*.

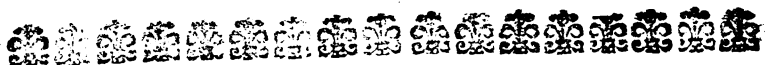
The *Tything kept intire*; that is, That every particular Person in the Kingdom, be within some *Decenna* or other, so as he may be brought forth to stand to Right if he shall Offend.

(f) By the Common Law, to avoid all Extortion and Grievances of the Subject; No *Sheriff*, *Coroner*, *Gaoler*, or other of the King's Ministers, ought to take any Reward for doing of his Office, but only of the King. This appears by our Books; and by *Stat. W. I. c. 26.* and a penalty added to the Prohibition of the Common Law, by that Act.

(g) This is to be understood of the Profits of the Court of the *Tourne*, and such only as were accustomed in *H. the Second's Time*.

Note, if any be Grieved contrary to the Purview of this Act, he may, for his Relief therein, have an Action upon this Statute, though no Action be expressly given.

CHAP.



C H A P. XXXVI.

Neither shall it be Lawful, from hence-forth, for any, to give his Lands to any Religious-House; and to take the same Lands again, to hold of the same House. Nor shall it be Lawful, for any Religious House to take the Lands of any, and to let it to him to hold, of whom he Received it. If any from hence-forth, shall so give his Land to any Religious House, and upon this shall be Convict, his Gift shall be utterly void, and the Land shall fall to the Lord of the Fee.

Vide Stat. de Religiosis. Anno 3. E. 1.

It appears by this Chapter, that a Gift of Lands to any Religious House was Prohibited, though the House gave not the same back again to hold of the same House; but kept the Lands so given to themselves in their own Hands. And in that Case, that the Land should incurr to the Lord of the Fee.

There were two Causes of putting in this Chapter.

1. The Services due out of such Fees, and which at first were Created for the Defence of the Realm, were unduely with drawn.
2. The chief Lords, did lose their Escheats, Wardships, Reliefs, and the like.

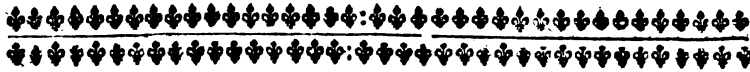
It

It is Wonderful to see how the good Ecclesiastical Fathers, trickt upon this Statute; but yet so they did, by getting Ecclesiastical Persons Regular, to purchase Lands holden of themselves, or take Leases for long Term of Years, and many other ways; and Bishops, Parsons, and other Ecclesiastical Persons Secular, took themselves to be out of this Statute.

Well, to remedy this, the Statute *de Religiosis*, 7. E. 1. was made, with as strong words as they could than imagine to Frame: *Quod nullus Religiosus, &c. aut alio quovis modo arte vel ingenio sibi appropriare presumat, sub foris-factura Eorundem*; But they also found out a Loop-hole here, for this Statute extended but to Gifts, Alienations, and other conveyances made between them and others; and they pretended a Title to the Land, (that they meant to get) and so brought a *Præcipe quod reddat* against the Tenant, and he by consent and collusion should make Default, and so thereupon they to Recover the Land, and enter by Judgment of Law. *Et sic fieret fraus Statuto.*

When this Invention was taken away by *W. 2. c. 33.* they found out another Evasion; for now they would cause the Land to be conveyed by Feoffment, or in any other manner to divers persons and their Heirs, to the use of them and their Successors, by Reason whereof they took the Profits; but this was by the *15. R. 2. c. 5.* Enacted to be *Mortmain*, within the Forfeiture of the said Statute of 7. E. 1.

CHAP.



C H A P. XXXVII.

Escuage from hence-forth, shall be taken, as it was wont to be in the Time of King Henry, our Grand-Father.

Escuage signifieth the Service of the Shield. Homage and Knight-Service are incident to Escuage; and by the Grant of Services, Escuage passeth with the rest. Every Tenure by Escuage, is a Tenure by Knights-Service.



C H A P. XXXVIII.

(a) **S**Aving to all Arch-Bishops, Bishops, Abbots, Priors, Templars, Hospitallers, Earls, Barons, and all others, as well Ecclesiastical, as Secular Persons; all their Liberties, and Free-Customes, which they had before:

(b) And all these Customes, and Liberties aforesaid, which we have granted to be holden

K in

in this our Realm, (as much as appertaineth to us) we shall observe towards our Self, and our Heirs. (c) And all Men of this our Realm, as well Spiritual as Temporal, (as much as appertains to their Part) shall observe the same, towards Themselves and Theirs. And for this our Gift, and Grant of these Liberties, and of others contained in our Charter, of the Liberties of our Forest; the Arch-Bishops, Bishops, Abbots, Priors, Earls, Barons, Knights, Free-Holders, and all others of our Realm, have given unto Us, the (d) Fifteenth Part of all their Moveables. (*Vid. Stat. 7. Anno 25. E. 3.*) We have also granted to them, for Us, and our Heirs, that neither (e) We, nor our Heirs, will procure or do any thing, whereby the Liberties contained in this Charter, shall be infringed or weakened. And if any thing be procured by any Person contrary to this, it shall be of no value, and holden for nought. These being Witnesses, Boniface, Arch-Bishop of *Canterbury*, E. Bishop of *London*, and others. Given at *Westminster*, the Tenth Day of *February*, in the Ninth Year of our Reign.

(a) That is, that the said Liberties, should be whole without Prejudice unto them: This is an Act that they should enjoy them.

Regularly.

Regularly, a *Saving* in an Act of Parliament enlarges not nor extends to any new thing; but preserves a Right or Interest, that is prior to things contained in the Act; which by the words of the Act, might have been given away. But this Clause doth enlarge, and extends to all other Liberties, &c. which any Subject whosoever ought to have.

But principally observe, that here is no Saving at all for the King, his Heirs and Successors; to shew that the King, his, &c. against all pretences of Evasions, should be bound by all the Branches of both this, and the other mentioned CHARTER of Forests.

(b) The King has obliged himself, and his Heirs, and Successors, as much as Appertained to him or them, to observe, and keep all these Liberties and Customes.

(c) All the Subjects of the Realm have obliged themselves, as much as respects them or theirs, to observe and keep them.

(d) This proves, as the Fifteenth was granted by Parliament, so was this Great CHARTER granted by Authority of the same.

(e) The King granted for him, and his Heirs, never to seek out any thing whereby these Liberties might be broken or weakened. And if by any Man, against this CHARTER, any thing should be sought out, it should be of no value.

And all these Grants are concluded with *His Testibus*. Those that had *His Testibus*, were called *Charta*, as was this; and *Charta de Foresta*, &c. those that had *Teste me ipso*, are called Letters-Patents.

Here be Witnesses to this Great CHARTER, a great Number of Reverend and Honourable Persons; in all, Sixty-three

three: of the Clergy, *Thirty-one*, whereof *Twelve* were Bishops, and *Nineteen* Abbots. And *Hugh de Burgo*, Chief Justice; and *Thirty-one* Earls and Barons.

Besides is was Established by Authority of Parliament holden at *Westminster*, in Form of a CHARTER: of Acts of Parliaments, in Form of a CHARTER, See the Prince's case. *Lib. 8. Fol. 19.*

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