



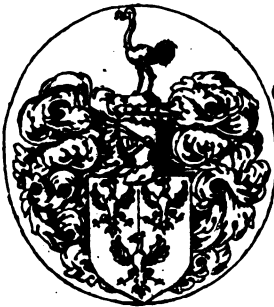
**THE LAWRENCE S. FLETCHER
MEMORIAL FUND**

STANFORD SCHOOL OF LAW

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Vera Effigies Viri
Equitis aurati nuper
ad Placita coram



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Capitalis Iusticiarij
Rege tenenda assignati

R. White sculpsit

THE
THIRD PART
OF THE
INSTITUTES
OF THE
Laws of England:

Concerning High Treason, and other Pleas of the
Crown, and Criminal Causes.

The Fourth Edition.

ECCLES. 8. II.

*Quia non profertur cito contra malos sententia, absque timore ullo filii
hominum perpetrant mala.*

Inertis est nescire quod sibi liceat.

Authore EDW. COKE. Milite.

Hec ego grandævus posui tibi, candide Lector.

L O N D O N ,

Printed for A. Crooke, W. Leake, A. Roper, F. Tyton, T. Dring, T. Collins,
J. Place, W. Place, J. Starkey, T. Bassett, R. Pawlett, S. Heyrick,
and G. Dawes, Bookellers in Fleetstreet and Holborn. 1669.

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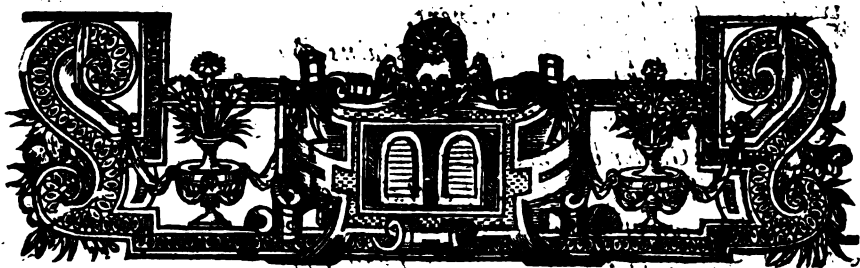
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A
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Several Chapters of the Third part of the Institutes,
of the Pleas of the Crown.

Multi multa, nemo omnia norvit.

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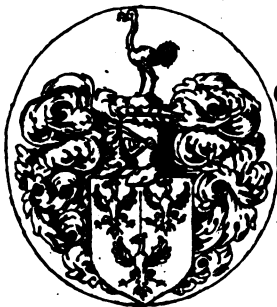
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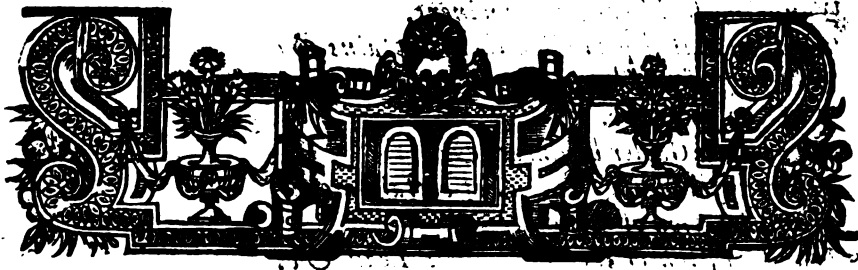
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DEO



D E O,
P A T R I Æ,
T I B I.

A Proeme to the third part of the Institutes.



IN the Second part of the *Institutes* we have spoken only of Acts of Parliament, (*viz.*) of *Magna Charta*, and many ancient and other Acts of Parliament, which we have explained, and therein observed which of them are declaratory of the ancient Laws of this Realm, which are introductory of new, and which mixt: All of them (excepting a very few) concerning *Common Pleas*, and these two great Pronouns, *Meum* and *Tuum*.

In this Third part of the *Institutes* we are to treat *De malo*, *viz.* of *High Treason*, and other *Pleas of the Crown*, and Criminal Causes, most of them by Act of Parliament, and some by the Common Law: in which Cases the Law of all other is most necessary to be known, because it concerneth the safety of his Majesty, the quiet of the Commonwealth, and the life, honour, fame, liberty, blood, wife and posterity of the party accused, besides the forfeiture of his lands, goods, and all that he hath: for it is truly said of these Laws, *Reliquæ leges privatorum hominum commodis prospiciunt, hæc regie majestati, subditorum vitæ, ac publicæ tranquillitati consulunt.* And that in these Cases the ancient Maxim of the Law principally holdeth, *Misera servitus est, ubi jus est vagum, aut incognitum.* And where some do object against the Laws of England, that they are dark and hard to be understood, we have specially in these and other parts of the *Institutes* opened such windows, and made them so lightsome and easie to be understood, as he that hath but the light of nature, (which *Solomon* calleth the candle of Almighty God, *Prov. 20. 27.*) adding industry and diligence thereunto, may easily discern the same. And that may be verified of these Laws, that *Lex est lux, Prov. 6. 23.* the Law it self is a light. See *Rom. 2. 14.* And when we consider how many Acts of Parliament (published in print) that have made new treasons and other capital offences, are either repealed by general or express words, or expired; how many Indictments, attainders of treasons, felonies and other crimes which are not warrantable by Law at this day; and how few Book-cases there have been published of treasons, (though a subject of greatest importance) and those very slenderly reported: We in respect of the places which we have holden, and of our own observation, and by often conferences with the Sages of the law in former times concerning criminal causes or *Pleas of the Crown*, have thought good to publish this Third part of the *Institutes*, wherein we follow that old and sure rule, *Quod judicandum est legibus, et non exemplis.* A work

See the first part of the *Institutes*, Sect. 500.

Malum non habet efficientem, sed deficientem causam. Evil hath not an efficient, but a deficient cause, by reason of the want of some vertue, or notable good.

Stamford.

A Proeme.

arduous and full of such difficulty, as none can either feel or believe but he only which maketh trial for it. And albeit it did often terrifie me, yet could it not in the end make me desist from my purpose; (especially in this work) so far hath the love and honour of my Countrey, to pass through all labours, doubts and difficulties, prevailed with me.

Bal. cont. 3. fol. 148.

35 E. 3. cap. 25.

This, as other parts of the *Institutes*, we have set forth in our English tongue, not only for the reasons in the Preface to the first Part of the *Institutes* alledged, which we presume may satisfie any indifferent and prudent Reader: but specially this Treatise of the *Pleas of the Crown*, because, as it appeareth by that which hath been said, it concerneth all the subjects of the Realm more nearly by many degrees than any of the other. Hereunto you may add that which *Robert Holcote* an Englishman, surnamed *Theologus magnus*, upon the second Chapter of the book of *Wisdom*, in or about the 20 year of King *E. 3.* wrote to this effect. *Narrant historie quod cum Willielmus dux Normannorum regnum Angliæ conquestuisset, deliberavit quomodo linguam Saxoniam posset destruere, & Angliam & Normanniam in idiomate accordari, & ideo ordinavit quod nullus in curia regia placitaret nisi in Gallico, et iterum quod puer quilibet ponendus ad literas addiscere Gallicum, et per Gallicum Latinum, que duo usque hodie observantur. Hac ille.* But the statute of 35 *E. 3. c. 15.* made not long after *Holcote* wrote, hath taken these edicts of a Conqueror away, and given due honour to our English language, which is as copious and significant, and as able to exprels any thing in as few and apt words; as any other native language that is spoken at this day. And (to speak what we think) we would derive from the conqueror as little as we could.

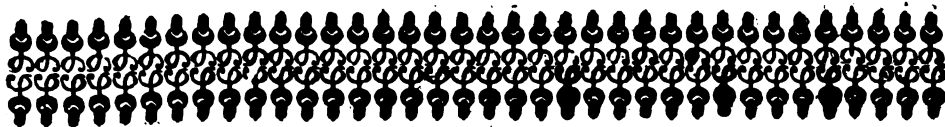
When *Henry* the first died, all the issue male of the Conqueror and of his Sons were dead without issue male.

The wife of King *H. 1.* was *Mawde* daughter of *Malcolm* King of *Scotland* surnamed *Canmor*, and of *Margaret* his wife, who was the grandchild of *Edmond Ironside* King of *England*, viz. The said King *Edmond* had issue *Edward* surnamed the *Outlaw*, because he lived a long time beyond Sea with *Salamon* King of *Hungary* out of the extent of the laws of this Realm. *Edward* had issue the said *Margaret* his eldest daughter, famous for her piety and vertue: she had issue *Mawde* wife of King *H. 1.* who by her had issue *Mawde*, of whose English blood by *Geffery Plantagenet* Earl of *Anjou* all the Kings of *England* are lineally descended.

We have in this Third part of the *Institutes* cited our ancient Authors and Books of the Law, viz. *Bracton*, *Britton*, the *Mirror of Justices*, *Fleta*, and many ancient Records, never (that we know) before published, to this end, that seeing the *Pleas of the Crown* are for the most part grounded upon, or declared by statute Laws, the studious Reader may be instructed what the Common Law was before the making of those statutes, whereby he shall know whether the statutes were introductory of a new law, declaratory of the old, or mixt, and thereby perceive what was the reason and cause of the making of the same, which will greatly conduce to the true understanding thereof.

We shall first treat of the highest and most hainous crime of *High Treason*, *Crimen lese Majestatis*; and of the rest in order, as they are greater and more odious than others.

CPA.



CAP. I.

Of High Treason.



D the Statute of 25 E. 3. De proditionibus, is declared in certain particular Cases, what offences shall be taken to be Treason, with this restriction, That if any other case supposed to be Treason should happen befoze any Iustices, the Iustices should tarry without going to judgement of the Treason, till the case be shewed befoze the King and his Parliament, whether it ought to be adjudged treason or other felony: therefore we will lay our foundation upon, and begin with that Act of Parliament, the Letter whereof in proprio idiomate ensueth.

25 E. 3. cap. 2.

Auxint par ceo que divers opinions ont estre eins ceux heures que case doit estre dit treason, & en quel case nemi, le roy a le request des seignours & commons ad fait declarisment que ensuist. Cestassavoir, quant home fait compasser ou imaginer la mort nostre seignior le roy, madame sa compaigne, ou de leur fitz eigne & heire. Ou si home violast la compaigne le roy, ou leigne file le roy nient marie, ou la compaigne leigne fitz & heire le roy. Ou si home leve guerre enconter nostre seignior le roy en son realme, ou soit aidant as enemies nostre dit seignior le roy en son realme, donnant a eux aid ou confort en son roialme, ou per aylours, & de ceo provablement soit atteint de overt fact per gents de leur condition. Et si home counterface le grand ou privie Seal le roy, ou sa mony. Et si home apport faux money en cest roialme counterfait al mony danglittere, si come la mony appelle * Lusheburgh, ou auter semblable a la dit mony danglittere, sachant le money estre faux, par merchander ou payment faire en disceite nostre dit seignior le roy & de son people. Et si home tuast Chancellor, Treasurer, ou Justices nostre seignior le roy del un Banke ou del auter, Justices in Eire & dissises, & tous auters Justices assignes de Oier & Terminer * esteaunts en leur places en sefants leur offices. Et soit a entendre que les cases suisnomes doit estre adjudge treason, que se extent a nostre seignior le roy & sa royall Majestie. Et de tiel manner de treason la forfeiture des escheates appartenont a nostre seignior le roy, cibien des terres & tenements tenus des auters, come de luy mesme.

Divers opinions. Ad fait Declarisment.

Nota, This is a Law for the most part Declaratory, but addeth also divers things to the ancient Laws.

* Lusheburghs, alias Luxeburghs, were a kind of base Coin to the likeness of our English money, so called, because they were coined in Lusheburgh, which sometime was an Earldom, and after a Dukedom.

See Chaucer in the Prologue to the Monks Tale, the Host speaking to a lusty Monk, saith, God wot, no Lusheburghs paye, that is (upon the coherence of the Verse) No payment make ye that is not full and currant.

* Injuria illata iudici seu locum tenenti regis videtur ipsi Regi illata, maxime si fiat in exercitate officium.

(b)

Item,

Item, **W**Hereas divers opinions have been before this time, in what Case Treason shall be said, and in what not; the King, at the request of the Lords and of the Commons, hath made a Declaration in the manner as hereafter followeth. That is to say, When a man doth compass or imagine the death of our Lord the King, of my Lady his Queen, or of their eldest Son and Heir: Or if a man do violate the Kings Compagnion, or the Kings eldest Daughter unmarried, or the wife of the Kings eldest Son and Heir: or if a man do levy war against our Lord the King in his Realm, or be adherent to the Kings enemies in his Realm, giving to them aid and comfort in the Realm or elsewhere, and thereof be probably attainted of open deed by people of their condition. And if a man counterfeit the Kings Great or Privy Seal, or his Money: and if a man bring false money into this Realm counterfeit to the money of *England*, as the money called *Lusheburgh*, or other like to the said money of *England*, knowing the money to be false, to merchandize or make payment, in deceit of our said Lord the King and of his people: And if a man slay the Chancellor, Treasurer, or the Kings Justices of the one Bench or the other, Justices in Eire, or Justices of Assize, and all other Justices assigned to hear and determine, being in their place doing their offices. And it is to be understood, that in the cases above rehearsed, it ought to be judged Treason, which extend to our Lord the King and his Royal Majesty: And of such Treason the forfeiture of the escheats pertaineth to our Lord the King, as well of the Lands and Tenements holden of others, as of himself.

And albeit nothing can concern the King, his Crown and Dignity, more then *Crimen læzæ Majestatis*, High Treason: yet at the request of his Lords and Commons, the blessed King by authority of Parliament made the Declaration, as is above said: and therefore, and for other excellent laws made at this Parliament, this was called *Benedictum Parliamentum*, as it well deserved. For except it be *Magna Charta*, no other Act of Parliament hath had more honour given unto it by the King, Lords spiritual and temporal, and the Commons of the Realm for the time being in full Parliament, then this Act concerning Treason hath had. For by the Statute of 1 H. 4. c. 10. reciting that where at a Parliament holden 21 R. 2. divers pains of Treason were ordained by Statute, in as much as there was no man did know how to behave himself, to do, speak, or say, for doubt of such pains: It is enacted by the King, the Lords and Commons, that in no time to come any Treason be judged otherwise, then it was ordained by this Statute of 25 E. 3. The like honour is given to it by the Statute of 1 E. 6. ca. 12. and by the Statute of 1 Ma. ca. 1. Sect. 1. different times; but all agreeing in the magnifying and extolling of this blessed Act of 25 E. 3. Of this Act of 1 Maria we shall speak more hereafter. But to proceed to give a light touch how other Acts of Parliament have been called.

The Parliament holden at *Wyke* Anno 42 H. 3. was called *Insanum Parliamentum*. 12 E. 2. the Parliament of *Whitebands*, *Albarum Fibularum* or *Mellicharum*. 5 E. 3. *Parliamentum bonum*. 10 R. 2. *Parliamentum quod fecit mirabilia*, that wrought wonders. 21 R. 2. *Magnum Parliamentum*. 6 H. 4. *Parliamentum indoctum*, Lack-learning Parliament. 4 H. 6. *Parliamentum Fustum*, the Parliament of *Wats*. The Session of Parliament in An. 14 H. 8. called the *Black-Parliament*, The Act of 1 E. 6. was called *Parliamentum pium*, the *Pious Parliament*. And the said Act of 1 Mar. *Parliamentum propitium*, the *Mercifull Parliament*. The Parliaments of *Queen Elizabeth* styled *Pia*, *justa*, & *provida*. The Parliament holden An. 21. of King James, called *Felix Parliamentum*, the happy Parliament,

1 H. 4. cap. 10.

1 E. 6. cap. 12.

1 Mar. cap. 1. Sect. 1.

ment, and the Parliament holden in the third year of our Sovereign Lord King Charles, Benedictum Parliamentum, the blessed Parliament. The severall reasons of these former Appellations appear of Record and in History, and the latter are yet fresh in memory. At the making of the Statute of 25 E. 3. the High Courts of Justice were furnished with excellent men, viz. Sir William Shardshill Knight, (hoztly written in Books, Shard) Lord Chief Justice of the Kings Bench, and his Compagnions Justices of that Court; Sir John Stoner Knight, commonly written in books Stone, Lord Chief Justice of the Court of Common Pleas, and his Compagnions Justices of that Court; and Gervahus de Wilford, Lord Chief Baron of the Exchequer; men famous in their profession, and excellent in the knowledge of the Lawes. At the making of the Statute of 1 H. 4. were Sir Walter Clopton Knight, Lord Chief Justice of the Kings Bench, and his Compagnions Justices of that Court; and Sir William Therning Knight, Lord Chief Justice of the Court of Common Pleas, and his Compagnions Justices of that Court; and Sir John Caslie Knight, Lord Chief Baron of the Exchequer; men equal to any of their Predecessors in the knowledge of the Lawes. At the making of the Statute of 1 E. 6. were Sir Richard Litter Knight, Lord Chief Justice of the Kings Bench, and his Compagnions Justices of that Court; and Sir Edward Monrague Knight, Lord Chief Justice of the Court of Common Pleas; and his Compagnions Justices of that Court; and Sir Roger Cholmely Knight, Lord Chief Baron of the Exchequer; men of that excellency, as they were worthy of the name of the Worthies of the Law. At the making of the Statute of 1 Mar. were Sir Thomas Bromley Knight, Lord Chief Justice of the Kings Bench, and his Compagnions Justices of that Court; and Sir Richard Morgan Knight, Lord Chief Justice of the Court of Common Pleas, and his Compagnions Justices of that Court; and Sir D. Brook Knight, Lord Chief Baron of the Exchequer; men renowned for their great knowledge and judgement in their profession. All these we have named in the honour of them, and of their Families and Posterities, for that they in their severall times were great furtherers of these excellent Lawes concerning Treason. In memoria eterna erit justus. And all this was done in severall ages, that the said Littles and Notes of the Crown might flourish, and not be stained by severe and sanguinary Statutes. But let us come to the Act it self; and for the better understanding thereof, and of the Book Cases, and other Records grounded upon the same, let us divide this Act concerning High Treason into severall Classes or Heads, and then prosecute the same in order.

By compassing or imagin- } King, } and declaring the same
 ing the death of the } Queen, } by some overt deed.
 } Prince: }

The first concerneth Death,

By killing and murdering of the }
 } Chancellor. } In their places
 } Treasurer. } doing their offices.
 } Justices of the one }
 } Bench or other. }
 } Justices in Eyre. }
 } Justices of Assize. }
 } Justices of Oyer and }
 } Terminer, &c. }

The second concerneth Violation, that is, To Violate, or Carnally to know. } The Kings Consort, or Queen.
 } The Kings Eldest Daughter unmarried.
 } The Princes Wife.

The third is Leaping war against the King.

(b 2)

The

The fourth is adhering to the Kings enemies within the Realm or without, and declaring the same by some overt act.

The fifth is counterfeiting of { The Great Seal.
The Privy Seal.
The Kings Coin.

The fifth and last, by bringing into this Realm counterfeit money to the likeness of the Kings Coin, &c.

So as Treason is Membrum divisum, and these several Classes or Heads are Membra dividenda. And if the offence be not within one of these Classes or Heads, it is no Treason.

[Treason] is derived from [trahir] which is treacherously to betray. Trahuc, Betrayed; and Trahison, per contractionem, Treason, is the betraying it self.

Detegit imbelles animos nil fortiter audens.
Proditio.

Inter leges Canuti fo. 118. cap. 61. Proditiones hlaporspice numerabantur inter scelera jure humano inexpiabilia. Treason is divided into two parts, viz. High Treason, Alta proditio, and into Petit Treason, Proditio parva. The Latin word used in Law is Proditio (a Prodere) and thereof cometh Proditoric, which of necessity must be used in every Indictment of Treason, and cannot be expressed by any other word, Periphrasis, or Circumlocution.

[Ad fait Declarisment.] This Law is for the most part Declaratory of the ancient Law, and therefore this word [Declarisment] is used. But yet the studious Reader shall observe, that in divers Clauses it addeth to the former Law, whereunto this word [Declarisment] will sufficiently extend.

[Quant home, &c.] This extendeth to both Sexes, Homo including both Man and Woman. This Act is general, and therefore extendeth to some persons which claimed a privilege to be exempted from Secular Jurisdiction. (For example) a Adam de Orleton Bishop of Hereford was indicted of High Treason for aiding the Mortimers, &c. with Men and Armour against King E. 2, &c. Whereupon he was arraigned, and alledged, Sc absque offensa Dei & Sanctæ Ecclesiæ, & absque licentia Domini summi Pontificis, non posse nec debere respondere in hac parte. And thereupon the Archbishops of Canterbury, York and Dublin, and their Suffragans came to the Bar, claimed his privilege, and took him away; and he was so far from punishment, as he was after translated to Worcester, and after to Winchester. But this Statute (to clear all doubts) extendeth to all persons, * as well Ecclesiastical as Temporal, and so hath it ever since ben put in execution, as hereafter in divers Cases it appeareth. &c. hereafter Cap. Murdre & Larceny.

A man that is non compos mentis, as shall be said more fully hereafter in the next Section, or an Infant within the age of discretion, is not (un home) within this Statute; for the principal end of punishment is, That others by his example may fear to offend, Ut poena ad paucos, metus ad omnes perveniat: But such punishment can be no example to Mad-men, or Infants that are not of the age of Discretion. And God forbid that in Cases so penal, the Law should not be certain; and if it be certain in case of Murder and Felony, a fortiori, it ought to be certain in case of Treason.

If a man commit Treason or Felony, and confesseth the same, or be thereof otherwise convicted, if afterward he become De non sane memorie (qui patitur exilium mentis) he shall not be called to answer: Or if after judgement he become De non sane memorie, he shall not be executed, For it cannot be an example to others.

And all Aliens that are within the Realm of England, and whose Sovereigns

Rot. Romana.

17 E. 2. m. 6.

Rot. Claus. 1 E. 3. part 1. memb. 13.

Artic. Cleri, 9 E. 3. cap. 15, 16.

Dr. 21 E. 3. coram Rege, Rot. 173

Privilegium seculare non competit scismatico equitanti cum armis, &c. secundum leges ecclesie.

25 E. 3. stat. 1.

cap. 4. which was before this Act.

Mich. 31 E. 3. coram Rege Rot. 55.

Buck. Abbot de Miffeny.

See in the Chap. of Clergy in what cases the privilege of Clergy is taken away.

* To persons Ecclesiastical and Temporal.

Bract. lib. 3. 120,

121, 134, 135.

Britton 5. 18.

Fleta cap. 23. 30.

Mirror cap. 1. §.

cap. 2. §. 11. de appeale de homi-

cide. 3 E. 3. cor.

383. 25 E. 3. 42.

Cor. 139. 26 Aff. 27.

3 H. 7. cap. 1.

3 H. 7. 1. 12.

21 H. 7. 31. 1 Mar.

Dier 140. Tr. 32 E.

1. Coram Rege 15.

8 E. 2. Coron. 369,

395. Custum. de Norm. cap. 79. fo.

94. 95. 33 H. 8.

cap. 20.

1 & 2 Mar. c. 10.

To Aliens.

raigns are in amity with the King of England, are within the protection of the King, and do owe a local obedience to the King, (are homes within this Act) and if they commit High Treason against the King, they shall be punished as Traitors; but otherwise it is of an Enemy, whereof you may read at large, Lib. 7. Calvin Case, fol. 6, &c. & 17, &c.

[Fait Compasser.] Let us see first what the compassing or imagining the death of a Subject was before, and at the time of the making of this Statute, *et tunc Voluntas reputatur pro facto.* And *b* Bracton saith, that *Spiciatur voluntas & non exitus, & nihil interest utrum quis occidat, aut causam mortis præberet.* So as when the Law was so holden, he must causam mortis præbere, that is, declare the same by some open deed tending to the execution of his intent, or which might be cause of death, as Justice *c* Spigurnel reporteth a Case adjudged: That a mans wife went away with her Abolweter, and they compassed the death of the Husband, and as he was riding towards the Sessions of Dier and Terminer and Gaol-delibery, they assaulted him and stroke him with weapons, that he fell down as dead, whereupon they fled: the Husband recovered and made Hue and Cry, and came to the Sessions and shewed all this matter to the Justices, and upon the warrant of the Justices they were taken, enquired and arraigned; and all this special matter was found by Verdict, and it was adjudged that the man should be hanged, and the woman burnt. And Sir William Becestord Chief Justice of the Common Pleas said, that before him and his Companions, Justices of Dier and Terminer and Gaol-delibery, a Pouth was arraigned, for that he would have stoln the goods of his Master, and came to his Masters bed, where he lay asleep, and with a knife attempted with all his force to have cut his throat; and thinking that he had indeed cut it, he fled: whereupon the Master cried out, and his neighbours apprehended the Pouth: and all this matter being found by special Verdict, in the end he was adjudged to be hanged, &c. *Quia voluntas reputatur pro facto.* So as it was not a bare compassing or plotting of the death of a man, either by words or writing, by such an overt deed, as is aforesaid, to manifest the same. So as if a man had compassed the death of another, and had uttered the same by words or writing, yet he should not have died for it, for there wanted an overt deed tending to the execution of his compassing. But if a man had imagined to murder or rob another, and to that intent had become insidiator viarum, and assaulted him, though he killed him not, nor took any thing from him, yet was it felony, for there was an overt deed. But in these daies, in the Case of the King, if a man had compassed or imagined the death of the King (who is the Head of the Common-wealth) and had declared his compassing, or imagination by words or writing, this had been High Treason, and a sufficient overtture by the ancient Law. And herewith agre all our ancient Books. Glanvil saith, *Cum quis de morte Regis, &c. infamatur, &c.*

Bracton in the title *De criminibus læsæ majestatis, Ipse accusatus præloquutus fuit mortem regis.* And Britton fol. 16. Grand treason est a compasser nostre mort, and fo. 39. b. Cysace lencufor son appeal, &c. que il oya mesme cèi John pur parlar tiel mort, ou tiel treason, &c. And Fleta saith in his title *De crimine læsæ majestatis, Si quis mortem regis ausu temerario machinatus fuerit, &c. quamvis voluntatem non perduxit ad effectum.* And the Mirror saith, *Crime de majestie est un peche horrible fait al roy, &c. p ceux q occirent le roy, ou compassant a faire.* And it will delight you (in respect of reherend antiquity) to hear a president of an appeal (which then & after was in use) of High Treason, en pleine pliamm, &c. en temps roy Edmond en cestes parolx. Rocelyn icy dit vers Waligrot illoq q a tiel jour tiel anne del raigne de tiel roy, entiel lieu vient celuy Waligrot a cèi Rocelyn, & luy trova destre en company, & en aide ensemblement que Atheling, Thurkild, Ballard, & autres de faire prisoner, ou en tache pur occire nre seignor le roy Edmond, ou en autre maner p coupe feloniousment, & a ceo fair: fuer entreinres a ceo council celer, & a ceo felony illint fornir solong lour poier. By all which it is manifest,

a See hereafter cap. 73.
Where and how *Voluntas reputatur pro facto* by the ancient law, and the change thereof.
b Bracton, fol. 15 E. 2. tit. Cor. 383.
c Note this word [compassed.]
d See *hec voluntas non intellexit a fuit de voluntate mdis verbis aut scriptis: propalata sed modo manifeste fuit per apertum factum, id est, cum quis dederat operam, quantum in ipso fuit, ad occidendum, &c. sic de similibus.*
e *Insidiator viarum.* See hereafter, ca. 5. De Hæresis, 25 E. 3. 42. 27 aff. p. 38. 4 H. A. ca. 2. 13 H. 4. 7. per Galfriga.
But see 9 E. 4. fol. 26. *Insidiator viarum* without taking of somewhat, resolved to be no felony. V. lib. 11. fol. 29. b. Al. Poultern Case. Vid. postea cap. 16. Robbery in fine. Glanvil lib. 14. cap. 14. lib. 1. c. 2. Bract. lib. 3. f. 119. Britton fol. 16. & 39. b. Note the word *Compas*, Fleta lib. 1. c. 21. Mir. cap. 1. §. 5. cap. 2. §. 11. Note this word *Compas*, Mirror. c. 2. §. 11. De l'appeal de Majestie. Rot. par. 25 E 3. part 1. m. 16. Vide Mic. 4. H. 4. Coram Rege. Rot. 22. See hereof more in the 57 Cha. of Appeals. Bracton, Britton, Fleta, &c.

that compassing, machinating, counselling, &c. to kill the King, though he hath
no order declaration thereof but by words, was High treason by the Common
law. And he hereafter, viz. per overt fait, & de ceo provablement, &c.

¶ **Fait compasser ou imaginer.** So as there must be a compassing

of imagination; for an act done per infortunium, without compassing, intent, or
imagination, is not within this Act, as it appeareth by the express words there-
of. *Et si quis non facit reum, nisi mens sit rea.* And if it be not within the words
of this Act, then by force of a clause hereafter, viz. & pur ceo que plours autres, &c.
it cannot be adjudged treason, until it be declared Treason by Parliament,
which is the remedy in that case, which the makers of the Law provided in
that case. This compassing, intent of imagination, though secret, is to be proved
by the Deeds, and to be discovered by circumstances precedent, subsequent,
and subsequent, with all endeavour evermore for the safety of the King. This
was the case of Sir Walter Tirrel a French Knight, who the first day of Au-
gust. Anno. 13. Williel. 2. Anno dom. 1109. being a hunting with the King in the
New Forest, was commanded by the King to shoot at a Hart. *Exire ergo colum-
volatile, & obitante arbore in obliquum flexum faciens, per fessum cecidit regem
fauciavit, qui subito mortuus corruit.*

It appeareth also by the Custom of Normandy treating of treason; and the
exposition of the same; that this act was not treason. To calculate or mark to
know by setting of a figure or watchstaff, how long the King shall reign or live,
is no Treason, for it is no compassing or imagination of the death of the King,
within this statute of 25 E. 3. And this appeareth by the judgement of the Par-
liament in 23 Eliz. whereby this offence was made felony during the life of
Queen Eliz. which before was punishable by fine and imprisonment.

The ancient law was, that if a mad-man had killed or offered to kill the King,
it was holden for treason; and so it appeareth by King Alfred's laws before the
Conquest, and in lib. 4. in Beverlies case. But now by this statute, and by force
of these words, *Fait compasser ou imaginer la mort, de that is non compos mentis,*
and totally deprived of all compassings and imaginations, cannot commit
High Treason by compassing or imagining the death of the King: for *furius
suo furore puniatur*: But it must be an absolute mad-man, and a total depriva-
tion of memory. And this appeareth by the statute of 33 H. 8. for thereby it is
provided, that if a man being Compos mentis commit High Treason, and after
accusation, or fall to madness, that he might be tried in his absence, &c. and
suffer death, as if he were of perfect memory: for by this statute of 25 E. 3. a
mad man could not commit High Treason. It was further provided by the said
Act of 33 H. 8. that if a man attainted of treason became mad, that notwithstanding
it he should be executed. Which cruel and inhumane law lived not long, but
was repealed, for in that point also it was against the Common Law, because by
intendment of law the execution of the offender is for example, *ut pena ad pau-
cos, metus ad omnes perveniat*, as before is said; but so it is not when a mad man
is executed, but should be a miserable spectacle, both against law, and of extreme
inhumanity and cruelty, and can be no example to others.

¶ **MORT.** He that declareth by overt act to depose the King, both a suffi-
cient overt act to prove that he compasseth and imagineth the death of the King.
And so it is to imprison the King, or to take the King into his power, and ma-
nifest the same by some overt act, this is also a sufficient overt act for the intent
aforesaid. But peruse advisedly the statutes of 13 Eliz. cap. 1, 2. & 14 Eliz. c. 1.

¶ **Nre seignior le Roy.** These words extend to all his successors;
as it hath been alwayes taken.

¶ **Le Roy.** Is to be understood of a King regnant, and not of one that
hath but the name of a King, or a nominative King, as it was resolved in the case
of

Stat. in fine
W. Malmesbury.
Mat. Par. pag. 51.
Holling. p. 26. b. 20.
Mat. Westm.
W. Malmesbury.
Custum. de Nor.
cap. 14.
Vide inter Indi-
camenta de 17 E.
4. de Th. Burdita-
sed judicandum est
legibus, & non
exemplis.
23 Eliz. cap. 2.
* Inter leges Atherid,
cap. 4. lib. 4. fo. 124.
Beverlies Case.
Ovid. Scilicet in su-
peris; etiam fortuna lu-
cida est: Nec veniam
leso numine casus ha-
bit.
33 H. 8. cap. 20.
* 1 & 2 Ph. & Mar.
cap. 10.
a Bra. l. 3. fo. 118.
Britton cap. 8.
a disseiter.
Glanv. lib. 1. c. 2.
Fleta lib. 1. cap. 21.
Mirror c. 1. §. 5.
Vers Roy de la t^re.
a 13 Eliz. cap. 1.
nota de laird.
Brook tit. treason, 24.
b 1 H. 4. 1. 19 H.
6. 47. 13 H. 8. 12.
Vide infra verb.
¶ Per overt fait.
3 Mar. Dies. 131.
pl. 7.

of King Philip, who married Queen Mary, and was but a nominative King, for Queen Mary had the office and dignity of a King, so as she, that wanted the name of a King, but had the office and dignity, was within this Act of 25 E. 3. And he that had the name, and not the office and dignity of the King, was not within it. And therefore, an Act was made, that to compass or imagine the death of King Philip, &c. during his marriage with the Queen, was Treason. And Queen regnant is within these words, [af seignior le Roy] for she hath the office of a King.

1 & 2 Ph. & Mar. cap. 10.

This Act is to be understood, of a King in possession of the Crown and Kingdom: for if there be a King regnant in possession, although he be Rex de facto, & non de jure, yet is he seignior le Roy within the Purview of this statute. And the other that hath right, and is out of possession, is not within this Act. Nay if treason be committed against a King de facto, & non de jure, and after the King de jure cometh to the Crown, he shall punish the treason done to the King de facto: and a pardon granted by a King de jure, that is not also de facto, is void. After the Crown descend to the rightful heir, he is Rex before Coronation: for by the Law of England there is no interregnum: and Coronation is but an ornament or solemnity of honour. And so it was resolved by all the Judges Hil. 1 Ja. in the case of Watson and Clark Seminary Priests: for by the law there is no escape a King, in whose name the laws are to be maintained and executed, otherwise Justice should fail. Rebels Kings before the Conquest voluntarily renounced their Kingly office: And so did King H. 2. in the 16. year of his reign, and Henry his son was created and crowned.

Vide 11 H. 7. c. 1.

4 E. 4. 1.
9 E. 4. 3. 2.

Hil. 1 Ja. in the case of Watson and Clark Seminary Priests.
9 E. 4. 1. b.

It appeareth by Britton, that to compass the death of the father of the King, is treason, and so was the law holden long after that: For after King E. 2. had dismissed himself of his kingly office and duty, and his son by the name of E. 3. was crowned, and King regnant, those cursed Carriffs, Thomas Gourney and William Ocle and others, were attainted of High Treason for murdering the Kings father, who had been King by the name of E. 2. and had judgement to be drawn, hanged, and quartered.

See the preamble: *Anxius pro teo que divers opinions omne esse eius crux deuras, que que case doit estre dit treason, & in quel case est.*

Rox. parliam.
4 E. 3. num. 5.
* Bodem Rox. num. 3, & 4.

The like judgement was given against Sir John Matrevers Knight and others, as being guilty of the death of the Kings uncle, Edmond Earl of Kent, which at that time (being so near of the blood royal) was by some holden also treason. But now this Act of 25 E. 3. hath restrained High treason in case of death, al nre seignior le Roy, sa compaigne, & al eigne fitz, & heir le Roy.

Nicholas de Segrave was charged in open Parliament in presentia dñi Reg, comitum, baronum, & aliorum de consilio Regis tunc ibi existent, that the King in the warr of Scotland being amongst his enemies, Nicholas Segrave his liege man, and holding of the King by homage and fealty, served him for his aid in that warr, did maliciously move contention and discord without cause, with John de Crombwell, charging him with many enormous crimes, and offered to prove it upon his body. To whom the said John answered, that he would answer him in the Kings Court, as the Court should consider, &c. and thereupon gave him his faith. After Nich. withdrew himself from the Kings Court, and from the Kings aid, leaving the King amongst his enemies, in periculo hostium suorum, and adjourned the said John to defend himself in the Court of the King of France, and pressed him a certain day. *Et sic quantum in requisit, subiciens & submittens dominium regis & regni subiectioni dñi regis Francie, ad hoc faciendum iter suum arripuit usque Dovoriam, ad transfratandum, &c.* All which the said Nich. confessed, & voluntarij dñi regis de alto & basso inde se submisit. *Et super hoc dñs Rex volens habere avilamentum Comitum, Baronum, Magnatum, & aliorum de consilio suo, injunxit eisdem in homagio, fidelitate, & ligentia quibus ei tenentur, quod ipsam fideliter considerent, qualis poena pro tali facto sic cognito fuerit infligenda: qui omnes, habito super hoc diligenti tractatu & avilamento, consideratis & intellectis omnibus in predicto facto contentis, &c. dicunt quod hujusmodi factum meretur amissionem vite & membrorum, &c.* So as this offence was then solemnly in Parliament adjudged High treason. But this is taken

Plac. in Parliam.
E. 1. anno regni sui
33. North. Rot. 17.
& 22.

taken away by this Act of 25 E. 3. being not under any of the classes or heads specified in this Act.

20 Aff. 25.

So praty by any of the Kings subjects upon another, was taken to be treason before this Act, for so is the book to be intended, because a pirat is Hostis humani generis. But by this Act it is not now to be judged treason. See hereafter in the chapter of Piracy.

Britton cap. 8. and other ancient Authors, ubi supra.

One doth marry a Queen regnant, if the husband compass the death of the Queen, and declare the same by overt act, he is guilty of treason, and punishable by this Act, for to this and many other purposes she is a distinct person by the Common Law. And so if a Queen wife of a King regnant compass the death of the King, and declare the same by overt act, she is guilty of treason, and punishable by this act. So as (that we may speak it once for all) by these and many others that might be cited, some whereof shall hereafter be touched (the preamble of this Act appeareth to be true, that divers opinions had been before the making of this act, what offences should be judged High treason, and what not.

Rot. parlia. 3 R. 2. num. 178. See placita coram rege Hill an. 3 R. 2. (Cavendish) rot. 8. London Holl. chron. 3. R. 2. pa. 422. 60. b. &c. Monopoly. his end.

This statute having restrained the compassing, &c. of death to the King, Queen, and Prince, it came to pass after the making of this Act, that in 3 R. 2. two Citizens of London, John Kerby Mercer, and John Albert Grocer, concealing malice against John Imperial Janevois of S. Mary in Genoa that came as Ambassadour from the state of Genoa to the King, (under the Kings Letters of safe conduct, for assistance to be had between the King and the Duke and Commonwealth of Genoa aforesaid) for that the said John Imperial had obtained a monopoly to furnish this land (keeping his staple at Southampton) of all such wares as came from the Levant, so plentifully as was to be had in all the best parts of Christendome, the said John Imperial was killed by them, as more at large appears by the record.

2 Regum cap. 10. 4. 22. 37. The killing of a foreign Ambassadour. Honor legati, honor missis est, proregis dedecus rotundat. in regem.

And albeit the said John Imperial was an Ambassadour under the Kings safe conduct, and the killing of him was just belli causa, yet the killing of him was no treason, because it was not under any of the said classes or heads, until it was at that time declared by Parliament in these words, Quel case examine & dispute inter les seigniors & commons, & puis mfc al Roy en pleine Parliament, estoit ilonques devant nre seignior le Roy declares, decernimus, & assentus, que tiel fait, & coupe est treason, & crime de royall majestie blemye, en quel case il ne doit allower a nulluy privilege del clergie: and accordingly the said Kerby and Algore were attainted of High treason in the Kings Bench, Hil. 3 R. 2. ubi supra. But this Declaration is taken away by the statute of 1 Maria, as hereafter shall be said, and yet of this Declaration we shall make much use hereafter.

22 Aff. p. 49. Mort dus Ambassad. le roy.

In the 22 year of E. 3. which was about 3 years before the making of this Act, one John at Hill had murdered A. de Walton the Kings Ambassadour, nunciu dñi regis missi ad mandatum regis exequendum: this was adjudged High treason, for which he was hanged, and beheaded, &c. For true it is, quod legatus ejus vice fungitur a quo designatur, & honorandus est sicut ille cujus vicem gerit, & legatos violare contra jus gentium est. But by this Act of 25 E. 3. it is restrained to the death de nre seignior le Roy, and therefore prorex is not within this statute.

¶ **Sa Compaigne.** This word compaigne, (which is all one word consort or wife) was used, that compassing, &c. must be during the marriage with the King, for after the Kings death she is not sa compaigne, and therefore it extendeth not to a Queen dowager, and for this cause this word compaigne was used in this Act.

Britton, ubi supra.

¶ **Leitzaigne & heir le Roy.** The eldest son and heir of a Queen regnant is within this Law. Before this statute some did hold, that to compass the death of any of the Kings Children, was treason. But by this Act it is restrained to the Prince, the Kings son, being heir apparent to the Crown for the time being: and he need not be the first begotten son, for the

the second after the decease of the first heaton, without issue, is his issue within this Statute, & so de ceteris. If the heir apparent to the Crown be collateral heir apparent, he is not within this Statute, until it be declared in Parliament, as it was in the Duke of York's case. (1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100.)

¶ Si homo violast la compaigne le Roy.] The Statute saith, Crime de Majestic vers le Roy, p ceux Avowterors q spergissent la semé le Roy. Whereby it appeareth that this was High Treason by the Common Law.

Violare is here taken for carnaliter cognoscere, and it is no treason, unless it be done during the marriage with the King, and extendeth not to a Queen Dowager as hath been said. And if the wife of the King doth yield and consent to him that committeth this treason, it is treason in her.

¶ Ou la compaigne de Jour Fitz & heir.] This also extendeth to the wife of the Prince, during the coverture between them, and not to a Dowager: and if the wife yield and consent to him that committeth this treason, it is treason in her.

¶ Heir.] Heir here is taken as supra, for heir apparent.

¶ Ou leigne file nient marie,] That is eldest daughter not married at the time of the violation, albeit there had been an elder daughter then living who is dead without issue. The Statute, Avowterors q spergissent le fic le Roy eignes legitime, avint q q chort marie.

And the reason that the eldest only is here mentioned is, for that for default of issue male, she only is inheritable to the Crown.

¶ Ou si home leva guerre enconter nostre seignior le Roy.] This was High treason by the common law, for no subject can levy war within the Realm, without authority from the King, for to him it only belongeth: *F. N. B. 1. 1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100.*

a. A compassing or conspiracy to levy war, is no Treason, for there must be a levying of war in fact. But if many conspire to levy war, and some of them do levy the same according to the conspiracy, this is High Treason in all, for in Treason all be principals, and war is levied.

If any levy war to cruell strangers, to deliver men out of prisons, to remove Counsellors, or against any statute, or to any other end, pretending Reformation of their own heads, without warrant, this is levying of war against the King: because they take upon them Royal Authority, which is against the King. There is a difference between levying of war, and committing of a great Riot, a Rout, or an unlawful assembly. For example, as if three, or four, or more, do file to burn, or pull down an inclosure in Dale, which the Lord of the Mannor of Dale hath made there in that particular place, this by the law is a Riot, a Rout, or an unlawful Assembly, and no Treason. But if they had risen of purpose to alter Religion established within the Realm, or Laws, or to go from Town to Town generally, and to cast down Inclosures, this is a levying of war, though there be no great number of the Conspirators: within the Purview of this Statute, because the pretence is public and general, and not private.

Mirror ca. 1. 5. 5.
Brit. c. 23. fol. 43. a.
33 H. 8. cap. 21.

Mirror ca. 1. 5. 5.
Brit. c. 23. fol. 43. a.
33 H. 8. cap. 21.

Falch. 28 H. 8. in
Spilmans Reports in
Case of Queen Ann

33 H. 8. ubi supra
in case of Queen
Katherine

Mir. cap. 1. 5. 5.
See Brit. cap. 23. 1.
fol. 43. 44. 50. cap.
29. fol. 71.

1 Mar. Parl. 2. c. 12.
4 Glanvil lib. 1. c. 1.
cap. 21. 14. c. 1.
Bracton lib. 3. fol.
218.

Britton f. 16. &c.
Fleta lib. 1. ca. 21.
Mir. ca. 1. 5. 5.
1 Mar. 98. b.

Dier in Sir N.
Throgmorton Case.
See 21 E. 3. 23.
21 R. 2. cap. Res.
peal. 5.
1 H. 4. cap. 3.
8 E. 3. 20.
See hereafter, ca. 93.
against going or ri-
ding armed.

See Rot. Parl. in
Cro. Epiphani.
20 E. 1. Rot. 23.
Humphrey de Bohun:
Case. 4 Eliz. 210.
b. Dier.

See the Statute of
1 Mar. ca. 2. by
which, Grand Ri-
ots in some Cases
be made felony.

Pasch. 39. Eliz. by all the Judges of England, I being Attorney-General, and present.

...to be resolved in the case of Richard Drachon ... Robert Barton ... they conspired and agreed to assemble ... could procure at Enslowe Hill in the said County ... to go from Gentlemans house to Gentlemans house, and to call dole ... they agreed to get Armoir and ... Lord Dions ... and ... and ... And it was resolved in this case ...

And this diversity is proved by a letter Branch of this Act. (The said letter Branch ... And it was resolved in this case ...

ni. 8. H. 4. ... Rot. Parl. 11. H. 4. ... 10. E. 4. ... Ter. Mich. 8. H. 8. ... Coram Rege. ... Here Rot. 20. ... 4 Rot. Parl. ... 20. E. 1. num. 2. ... John de Bistaines ... Rot. Parl. 33. E. 1. ... Rot. 6. Rob. de Ros ... 2. E. 3. 20. ... 38 E. 3. 31. ... Parl. 4. R. 2. num. 17, 18, &c. ... 5 R. 2. Triall 54. ... Hil. 18. E. 3. ... 145. Eborum. ... 43. Aff. 28. 42. Aff. 29. ... Gilbert de M. was a Scot. ... Rot. Parl. 7. R. 2. ... num. 15. 17. 24. ... 7. H. 4. 47. ... de Norm. cap. 93. ... b Vid. 23. Eliz. ... Dier 298.

... by the said Statute of 13 Eliz. cap. 1. ... should compass, imagine, invent, devise, or intend to levy war against her Majesty, within this Realm or without, and the same declare by writing, or word, &c. that it should be High Treason. ... to levy war was High Treason, though no war were levied; and upon the ... 1361, Bradshaw, Barton and others were attainted of High Treason, for conspi- ... raty and to levy war. ... was resolved by all the Justices, that it was in Treason within the Statute of 25 E. 3. as hath been said. ... An actual Rebellion or Insurrection is a leaping of war within this Act, and by the name of leaping war is to be expressed in the In- ... dictment. If any with strength and weapons shall be and defende, doth hold and defend a Castle or Fort against the King and his power, this is leaping of war against the King within this Statute of 25 E. 3. ... was resolved by all the Judges of England in the reign of King H. 8. the ... in insurrection against the Statute of Labourers, for the inbanding of salaries and wages, was a leaping of war against the King, because it was generally against the Kings Laws, and the offenders took upon them the reformation there of, which is proved by gathering of power might not to do. It was specially found that divers of the Kings Subjects did minister and please vittuals to Sir John Oldcastle Knight and others, being in open war against the King, and that they were in company with them in open war; but all this was found to be pro- ... fitorie mortis, & quod recesserunt quam eis potuerunt: and it was adjudged to be no Treason, because it was for fear of death. Et actus non facit reum, nisi mens sit rea. And therefore this in them was no leaping of war against the King within this Act.

¶ Ou soit adherent as enemies nostre seigniour le roy, a eux donant aide & comfort en son roialm & aylors.] ¶ Adherent,] a This is here explained, viz. in giving aid and com- fort to the Kings enemies within the Realm or without: Delibery or surren- der of the Kings Castles or Forts by the Kings Captain thereof to the Kings enemy within the Realm or without for reward, &c. is an adbering to the Kings enemy, and consequently Treason declared by this Act. b A. is out of the

the Realm at the time of a Rebellion within England, and one of the Rebels
 flee out of the Realm, to whom it is known his treason doth aid or succour, **this**
 is no treason in him by this branch of 25 H. 8. because the treason is now done
 as hereafter shall be said; and this statute is taken strictly.

See hereafter,
 35 H. 8. cap. 2.

As enemies, In your legal understanding is holdis, for the sub-
 jects of the King, though they be in open war or rebellion against the King,
 rather they be the Kings enemies, but traitors; for enemies be those that be
 out of the allegiance of the King. If a subject join with a foreign Enemy,
 and come into England with him, he shall not be taken prisoner here, and ran-
 somed, or proceeded with as an enemy shall, but he shall be taken as a traitor
 to the King.

43 Aff. 28, 29,
 33 H. 6. 1,
 29 E. 4. 6. 2. & b.
 4 Mar. Treason,
 Br. 32.
 1 Mar. 1012. 24.
 21 E. 3. 23.
 22 Aff. p. 49.
 13 El. Dier 208.
 Ex libro de Cris-
 tin. de Perkin.
 Werbeck.
 2 Dier 4. Mar.
 fol. 145. 2.
 Lib. 7. fol. 6. b.
 Calvins Cafe.
 2 Fleta lib. 1. c. 16.
 Mich. 13. & 14.
 Eliz. per Justice.
 19 E. 4. 6. b.
 18 H. 6. cap. 4.
 20 H. 6. cap. 1.
 27 E. 3. cap. 13.
 31 H. 6. cap. 4.
 7 E. 4. 14. 13 E. 4.
 9. 21 E. 3. 16, 17.
 Regill. 129. Fitz
 N. B. 114.
 4 Aff. pag. 15.
 3 R. 2. ubi supra.
 19 E. 4. 6. b. 1.
 Dier 3 Mar. 132.
 Pasch. 2. H. 4. coram
 rege.
 Rot. 2. Walki.
 35 H. 8. cap. 2.
 3 Mar. ubi supra.
 13 Eliz. Dier 298.
 Stanford Pl. Cor.
 fo. 90. 2. & b. See
 the first part of the
 Institutes, 440.
 * Hil. 36 Eliz. in
 the Case of Patrick
 O Cullen, for a
 Treason at Brussels in
 partibus transmaris.
 33 El. in Ormicks
 case lib. 7. f. 23.
 Calvins cafe.
 Vid. Dier Mich.
 19. & 20. Eliz. fol.
 360. l. 111. fol. 63.
 in Doc. Populi Cafe.
 28 H. 8. cap. 15.
 This Act concerning
 Treasons is not tak-
 en away by the Sta-
 tute of 35 H. 8. cap. 1.
 Vide infra cap. 49.
 fol. 181. of Pira-
 cy, &c.
 Vid. 5. Eliz. 5. c. 91

An Enemy coming in open hostility into England, and taken, shall be
 either executed by Martial Law, or ransomed; for he cannot be indicted of
 treason, for that he never was within the protection or ligeance of the King,
 and the Indictment of Treason saith, Contra ligeantium suam debitam.

David Prince of Wales leaved war against E. 1. This was Treason, for
 that he was within the homage and ligeance of the King, and had judgement
 given against him as a Traitor, and not as an enemy. And albeit in many pre-
 sidents of Judgments, Subjects that be Rebels and Traitors, &c. be called
 proditores & inimici; yet within this Statute they are not inimici.

In the Duke of Norfolk's Case the question was, a league being between
 the Queen of England and the King of Scots, whether the Lord Herise and
 other Scots were prebudding and making divers Troupes in England
 without the assent of the King, were enemies in law within this Statute, and
 resolved that they were. See more hereafter in this third part of the Insti-
 tutes, cap. 49. of Pirates, and upon the Statute of 28 H. 8. cap. 15.

Quo per aillors. That is to say, out of the Realm of England. But
 then it may be demanded, how should at this time this foreign treason be tried?
 And some of our Books do answer, that the offender shall be indicted and tried
 in this Realm where his land lieth, and so it was adjudged in 2 H. 4. But now
 by the Statute of 35 H. 8. cap. 2. (which yet remains in force) All offences
 made or declared, or hereafter made or declared, treasons, misprisions of treason,
 and concealments of treason, committed out of the realm of England, shall be
 inquired of, heard and determined, either in the Kings Bench, or before Com-
 missioners in such Shire as shall be assigned by the King. If it be before Com-
 missioners, it hath been commonly used, that the King doth write his name in
 the upper part of the Commission. But in the Case of Patrick O Cullen an
 Irish-man, the Queen did put her signature to the Warrant to the Lord Re-
 per, and not to the Commission: and it was holden by the Justices, that the
 one way and the other was a sufficient assignment by the King within the Sta-
 tute of 35 H. 8.

It was resolved by all the Judges of England, that for a treason done in
 Ireland the offender may be tried by the statute of 35 H. 8. in England, because
 the words of the statute be, All Treasons committed out of the Realm of England,
 and Ireland is out of the Realm of England. And so it was resolved in Sir John
 Parrots Case. And our word here [per aillors] is as much as out of the
 Realm of England. See Pasch. 2 H. 4. coram Rege Rot. 8. Salop. Treason in
 Wales.

All treasons done upon the Sea shall be inquired, heard and determined in
 such Shires and places of the Realm as shall be limited by the Kings Commis-
 sion, in like form and condition as if the same had been done upon the land, &c.
 after the common course of the laws of this land. And by the preamble it ap-
 peareth, that it could not be tried by the Common Law, but by the Civil law
 before the Lord Admiral. See hereafter in the exposition of the Statute of
 28 H. 8. cap. 15. & infra, cap. 49.

¶ Et

¶ Et de ceo provablement soit attainé per overt fait per gents de lour condition.] In this branch four things are to be observed.

* See 1 E. 6. ca. 12. the last clause.
5 E. 6. cap. 11.
2 & 2 Ph. & Mar. cap. 16. & r.p.
1 Eliz. cap. 6.
13 Eliz. cap. 1.
Stanf. pl. Cor. 89. & 164.
Br. coron. 4 Mar. 220.
Dier 2 Mar. fo. 99.

1. First this word [provablement] probably, that is, upon direct and manifest proof, not upon conjectural presumptions, or inferences, or strains of wit, but upon good and sufficient proof. And herein the adverb [provablement] probably hath a great force, and signifies a direct and plain proof; which word the King, the Lords and Commons in Parliament did use, for that the offence was so heinous, and was so heathily and severely punished, as none other the like; and therefore the offender must probably be attained, which words are as forcible as upon direct and manifest proof. Note, the word is not [probably] for then commune argumentum might have served, but the word is [provably] he attained.

* Rot. parl. an. 33. E. 1. Rot. 6. Jo. Salvyins case.
b 43. Aff. 28.
8 E. 3. 20.
7 H. 4. 27. 34 E. 3. cap. 12. Lib. 4. fo. 57. the Sadlers case.

2. This word [attainé] necessarily implieth that he be proceeded with and attained according to the due course and proceedings of law, and not by absolute power, or by other means, as in former times had been used. And therefore if a man doth adhere to the enemies of the King, or be slain in open war against the King, or otherwise dye before the attainder of treason, he forfeiteth nothing, because (as this Act saith) he is not attained: wherein this Act hath altered that which before this Act, in case of Treason, was taken for Law. And the statute of 34 E. 3. cap. 12. takes nothing to the King, but that which was in esse, and pertaining to the King at the making of that Act. And this appeareth by a judgement in Parliament in Anno 29 H. 6. cap. 1. That

* 29 H. 6. cap. 1.

Jack Cade being slain in open rebellion could no way be punished, or forfeit any thing, and therefore was attained by that Act of High treason.

Vide supra verbo ¶ Mort. fo. 6.

3. ¶ Per overt fait,] per apertum factum. This doth also strengthen the

Vide 21 R. 2. cap. 36 but it is repealed by 1 H. 4. ca. 3.
* Hill. 36 Eliz.
Doctor Lopes case. 13. Eliz. c. 1.
Brook Treason 24.
Hill. 1. Ja. R. Lo. Cobhams Case.

former exposition of the word [provablement] that it must be probably, by an open act, which must be manifestly proved. As if others do conspire the death of the King, and the manner how, and thereupon provide weapons, powder, poison, assay harness, send letters, &c. or the like, for execution of the conspiracy. Also preparation by some overt act, to depose the King, or take the King by force and strong hand, and to imprison him, until he hath yielded to certain demands, this is a sufficient overt act to prove the compassing and imagination of the death of the King: for this upon the matter is to make the King a subject, and to despoil him of his kingly office of royal government. And so it was resolved by all the Judges of England, Hil. 1. Jac. Regis, in the case of the Lo. Cobham, Lord Gray, and Watson and Clark Seminary Priests: And so had it been resolved by the Justices, Hil. 43 Eliz. in the case of the Carls of E. and of S. who intended to go to the Court where the Queen was, and to have taken her into their power, and to have removed others of her Counsel, and for that end did assemble a multitude of people; this being raised to the end aforesaid, was a sufficient overt act for compassing the death of the Queen. And so by woeful experience in former times it hath fallen out, in the cases of King E. 2. R. 2. H. 6. & E. 5. that were taken and imprisoned by their subjects. And this is made more plain by the legal form of an indictment of treason. For first it is alledged according to this Act, Quod proditorie compassavit & imaginatus fuit mortem & destructionem dñi regis & ipsum dom. regem interficere, &c. In the second part of the indictment is alledged the overt act, & ad illam nephandam & proditoriam compassationem, imaginacionem, & propositum suum perficiend & perimplend, and then certainly to set down the overt fact for preparation to take and imprison the King, or any other sufficient overt act, which of necessity must be set down in the Indictment. Hereby it appeareth how insufficient many indictments were of High treason, where in it was generally alledged, that per apertum factum compassavit & imaginatus fuit mortem dom. regis, &c. For example, Termo Mic. anno 5 E. 6. Edward Duke of Somerset was indicted before Commissioners of Oyer and Terminer in London, quod ipse dum præ oculis suis, non habens, sed instigatione diaboli-

* In ancient time tradition & felonice, parl. 33. E. 1. rot. 6: Robert de Ros his case, but now proditorie is necessarily required.
Vide Britton fo. 16. and 19. 1 Mar. Br. treason 24.
* Ter. Mic. 5. E. 6. Lib. Intr. Coke fol. 482.
Surginis O maledicti sit, &c.

lica seductus, apud Holborn in parochia Sancti Andreae infra civitatem London, vii. 20 die Aprilis anno regni domini Regis Edw. sexti quinto, & diversis diebus & vicibus antea & postea false, maliciose, & proditorie * per apertum factum circumvit, compassavit, & imaginavit cum diversis aliis personis prædictum dominum Regem de statu suo regali deponere & deprivare, &c. Which Indictment, and all others of like form were against Law, as hath been said: and of the matter of this Indictment that noble Duke was by his Peers found not guilty. But then it may be demanded, for what offence he had judgement of death, and 2. what Law made it an offence. The offence appeareth in his Indictment, for the former part thereof contained High treason, whereof he was acquitted, and the latter part contained one only offence of felony (whereof he was found guilty) in these words, Et ulterius Juratores præd. præsentant, quod præfatus Edwardus dux Somersæti Deum præ oculis suis non habens, sed instigatione diabolica seductus, 20 Maii An. regni dicti Dom. Regis Edwardi sexti quinto supradicto, ac diversis aliis diebus & vicibus antea & postea, apud Holborn in præd. paroch. Sancti Andreae in civitate London. & apud diversa alia loca infra civitatem London præd. felonice ut tejo dicti Dom. Regis per aperta verba & facta procuravit, movit & instigavit complurimos subditos ipsius domini Regis ad insurgendum, & apertam rebellionem & insurrectionem infra hoc regnum Angliæ movend' contra ipsum dominum Regem, & ad tunc & ibid. felonice ad capiendum & imprisonandum prænobilem Johannem comitem Warwick de privato consilio domini Regis ad tunc existen', contra pacem dicti domini Regis, coronam & dignitatem suam, & contra formam statuti in hujusmodi casu edicti & provis. The statute whereupon this Indictment was intended to be grounded, was the branch of the statute of 3 & 4 E. 6. by which it is provided, [That if any person or persons by ringing of any Bell, &c. or by malicious speaking, or uttering of any words, or making any Dutcry, &c. or by any other deed or act, shall raise or cause to be raised or assembled, any persons to the number of 12 or above, to the intent that the same persons should do, commit, and put in ure any of the acts or things above mentioned (whereof to take and imprison any of the Kings most honourable Privy Councell was one) and the persons to the number of 12 or above to raised and assembled after request and commandment (in such sort as in that Act is prescribed) shall make their abode and continue together, as is aforesaid (in the Act) or unlawfully perpetrate, do commit, or put in ure any of the acts or things abovesaid, that then all and singular persons, by whose speaking, deed, act, or any other the means abovespecified, any persons to the number of 12 or above shall be raised or assembled for the doing, committing, or putting in ure any of the acts or things abovespecified, shall be adjudged for his so speaking or doing a felon, and suffer execution of death as in case of felony, and shall lose his benefit of Sanctuary and Clergy.] Hereby it doth manifestly appear, that the truth concerning this Noble-mans attainder and execution in divers things is contrary to the vulgar opinion, and some of our Chronicles, and in some points contrary to law. First, that for the felony made by the said branch of the said Act he could not have had his Clergy, for Clergy in that Case is expressly ousted by the said Act. 2. That he was not indicted for going about, or, the death of the Earl of Warwick, then of the Kings Privy Councell, but only for his raising or imprisonment, and therefore could not be indicted upon the statute of 3 H. 7. as some have imagined. 3. That the Indictment is altogether insufficient, for it pursueth not the words or matter of the said branch of the said Act, as by comparing of them it manifestly appeareth; which (we being desirous that truth may appear in all things) we have thought good upon this occasion to add for advancement of truth. 4. That being but attained of felony, he could not by law be beheaded, as elsewhere we have shewed. And this Act that created the felony saith, that such a felon shall suffer execution of death, as in case of felony. 5. Lastly, this whole Act was justly holden to be a doubtfull and dangerous statute, and therefore was deservedly repealed. And after the fall of this Duke, the preamble of the statute of Subsidie of 7 E. 6.

* Per apertum factum. Vid. hereafter cap. 5. de Heresie, general Indictments against Lollards, &c.

The residue of the Indictment of the Duke of Somerset.

To take and imprison one of the Privy Councell, Contra formam statut. 3 & 4 E. 6. cap. 5.

3 H. 7. cap. 14.

Lib. 9. fo. 114. in Seignior Sanchars case.

1 Mar. cap. 12. 1 Eliz. cap. 16. 7 E. 6. cap. 12.

And now to return to cases of High Treason. If a man be arraigned upon an Indictment of High Treason, and stand mute, he shall have such judgement, and incur such forfeiture, as if he had been convicted by Verdict, or if he had confessed it. For this standeth well with this word provablement, for *tacetur facinus qui judicium fugit*: but otherwise it is in case of Petit Treason, Murder, or other Felony.

83 Eliz. Dier. 298.
13 Eliz. cap. 1.
Nota bene. Vide supra verbo Mort.
* Inter leges Alverdis, cap. 4.

If a subject conspire with a foreign Prince beyond the Seas to invade the Realm by open hostility, and prepare for the same by some overt act, this is a sufficient overt act for the death of the King, for by this Act of Parliament in that Case there must be an overt act. *Qui capiti aut saluti Regis perfidiose sine solus, sine servis aut licariis mercede conductis stipatus, inidiabitur, vita & fortunis ejus omnibus privator.* So as thereby an overt act was required.

* So resolved by the Justices Paich. 35 Eliz. which we heard and observed.

The composition and connexion of the words are to be observed, viz. [thereof be attainted by overt deed.] This relateth to the several and distinct treasons before expressed, (and specially to the compassing and imagination of the death of the King, &c. for that it is secret in the heart) and therefore one of them cannot be an overt act for another. As for example; a conspiracy is had to levy war: this (as hath been said, and so resolved) is no treason by this Act until it be levied, therefore it is no overt act or manifest proof of the compassing of the death of the King within this Act; for the words be (*de ceo, &c.*) that is, of the compassing of the death. For this were to confound the several Classes, or membra dividenda, & sic de cæteris, &c.

26 H. 8. cap. 13.
1 E. 6. cap. 13.
1 & 2 Phil. & Mar. cap. 9, 10.
1 Eliz. cap. 6.
13 Eliz. cap. 1, &c.
14 Eliz. cap. 1.
b See the fourth part of the Institutes, cap. 26.

Several latter Acts of Parliament have ordained, that compassing by bare words or sayings should be High Treason: but all they are either repealed or expired. And it is commonly said, that bare words may make an Heretick, but not a Traytor, without an overt act. And the wisdom of the makers of this law would not make words only to be treason, seeing such variety amongst the witnesses are about the same, as few of them agree together. But if the same be set down in writing by the Delinquent himself, this is a sufficient overt act within this statute.

Brook treason 24. writing of Letters.
1 Mar. cess. 1. c. 1.
See the statute of 3 H. 7. hereafter, cap. 4. directly in the point by the judgement of the Parliament.
Nota this Act of 25 E. 3. saith, *per overt fact, per apertum factum*, and not *per apertum dictum*, by word or confession.

b Cardinal Pool, albeit he was a subject to H. 8. and of the Kings blood, (being descended from George Duke of Clarence, Brother to King E. 4.) yet he in his Book of the Supremacy of the Pope, written about 27 H. 8. incited Charles the Emperour, then preparing against the Turk, to bend his force against his natural Sovereign Lord and Countrey; the writing of which Book was a sufficient overt act within this statute: and to move the Emperour the rather in that Book, he made H. 8. almost as ill as the Turk, in these words, *In Anglia sparsum nunc est hoc semen, ut vix a Turco internosci queat, idque autoritate unius coaluit.*

See 25 H. 8. c. 12. Eliz. Barton, Edw. Locking, and others attainted by Parliament for divers words and conspiracies, which being not within this Act, without an overt act they could not be attainted by the Common Law.

c In the preamble of the statute of 1 Mar. concerning the repeal of certain Treasons, &c. it is agreed by the whole Parliament, that laws justly made for the preservation of the Common wealth without extreme punishment, are more often obeyed and kept, then laws and statutes made with great and extreme punishments; and in special, such laws and statutes so made, whereby not only the ignorant and rude unlearned people, but also learned and expert people minding honesty, are oftentimes trapped and snared, yea, many times for words only, without other fact or deed done or perpetrated: therefore this Act of 25 E. 3. doth provide, that there must be an overt deed. But words without an overt deed, are to be punished in another degree, as an high misprision:

* *Nota.*
d See in the chapter of Misprision.
e Mag. Char. c. 29.

[Per gens de leur condition.] That is, per partes, their equals, whereof we have spoken before in the exposition of the c. 29 Chapter of Magna Charta, *Verb. per judicium parium suorum*, and more shall be said hereafter. This Branch (*per gens de leur condition*) extendeth only to a conviction by Verdict, whereof the statute particularly speaketh; but yet where the party indicted confesseth the offence, or standeth mute, he shall have judgement as in case of High Treason, for this branch being affirmative, is taken cumulative and

and not privative. And therefore seeing upon confession, or standing mute, the judgement in case of High treason was given at the Common law, this Act being, as it hath been said, affirmative, taketh not away the same: And (to say once for all) the clause hereafter of restraint of like cases, &c. extends only to offences, and not to trials, judgements, or executions.

¶ Si home counterface le grand Seal. All our ancient Authoꝝ agree that this was High treason by the Common law, and for this offence, his judgement was to be drawn, hanged and quartered, at the Common law, as in other cases of High treason, (the counterfeiting of the Kings money excepted.) See The second part of the Institutes. W. 1. cap. 5.

Bract. l. 3. fo. 118.
Brit. fo. 10, &c.
Bract. l. 5. fo. 414.
Fleta l. 1. ca. 21.
Mirror ca. 1. §. 6.
de fauonerie.
29 Ass. pa. 49.
* 1 E. 3. tit. Chfe
F. 13. 22 Ass. PL 49.

In ancient time every treason was comprehended under the name of felony, but not e contra. And therefore a pardon of all felonies was sometime allowed in case of High treason. But the Law is, and of long time hath been otherwise holden: and if the indictment were felonice, and not proditorie, (for the King may lessen the offence, if it please him) then the pardon of felonies is good at this day, for no Indictment can be of High treason without this word [proditorie:] and in qualibet prodicione implicatur felonis, quia in quolibet brevi de exigendo super quolibet indictamento de prodicione proclamator facit sic, I.B. An estigent on thy head of treason and felony.

2 R. 3. 9.
3 H. 7. 10. 2.

A compassing, intent, or going about to counterfeit the great Seal is no treason, but there must be an actual counterfeiting, also it must be to the likeness of the Kings great Seal; the words be, Counterface le grand seal le Roy.

Now it is to be seen what shall be said a forging or counterfeiting of the great Seal. If the Lord Chancellor, or Lord Keeper put the great Seal to a Charter, &c. without warrant, this is no treason, because the great Seal is not counterfeited. But it seemeth by Britton, fol. 10. b. that it was treason at the Common law: and of that opinion is Fleta, fol. 29. a. but it is no treason now (without question) by the negative clause of this Act.

If a man take way lawfully imprinted with the great Seal from one patent, and fix it to a writing purporting a grant from the King, there have been divers opinions in this case what the offence is, which we will rehearse.

In 40 Ass. which was about 15 years after the making of this Act, it was not holden High treason, but a great misprision, for that it is no counterfeiting of a new, but an abuse of the true great Seal.

40 Ass. p. 33.
Rot. Claus.
42 E. 3. nu. 8. in
Coro.

In 42. E. 3. The Abbot of Bzuer caused Rob. Rigge his Commoigne to raise a Charter of R. 1. and put out the manors of Fisetrada, and in place thereof put in Eloghe. And this offence was heard, and sentenced before the King and his Council in the Star-chamber as a great offence and misprision: for if it had been High treason, it should have had another trial, and yet this was a great abuse of the great Seal.

2 H. 4. The taking of the great Seal from one Patent, and fixing it to a Commission to gather money, &c. was adjudged to be such an offence, as the offender had judgement to be drawn and hanged. The record of which case we have perused, & the effect thereof is this. The party is indicted generally for counterfeiting of the great Seal, whereunto he pleaded not guilty: and the Jury found him not guilty of the counterfeiting of the great Seal, as was supposed by the indictment, & found further specially, that he took the great Seal from one patent, & put it to the Commission, & that the party put the same in execution, and there judgement was given, that he should be drawn and hanged: which judgment the Jurie was thought not to have been given upon this behalf, the Jury finding him not guilty of the offence alleged in the indictment: And besides the judgement, it is to be seen as is given in case of Petty treason, and not of High treason. Whereby it appeareth how dangerous it is for any to report a case by the ear, specially concerning treason, unless he had advisedly read the Record: for as I take it) the misreport of this case hath hatched errors, and he mistook the judgement, if it had been High treason, for then it should have been drawn, hanged and quartered.

2 H. 4. fo. 25.
Errors ad sua prima
pia referre, est resellere.
To bring errors to
their beginning, is
to see their fall.

37 H. 8. Br. Treason.
Staff. Pl. Coron.
fo. 3. .
Bracton agreeth
with it, *ubi supra*.
Leaks Cafe. Hill.
4. Ja. R.

40 All. 33.
42 E. 3. Rot. Cl.
ubi supra.
37 H. 8. Br. dev.

4 Fleta l. 1. ca. 22.
Britton fo. 10. b.
See before, fo. 15.
b Rot. Parl. Hil.
18 E. 1. fo. 92. m. 125.
c 1 Mar. cap. 6.
1 & 2 Ph. & Mar.
c. 11.
* 19 H. 6. 47.
3 H. 7. 10. Stanf.
Pl. Coron. 3. vide
postea ca. 64.
principall & access.
See Mich. 13 & 14.
Eliz. Dier 196.
Coniers Cafe.
d See Mat. Par.
Anno 34 H. 3. p. 753.
de pecunia approbata
& reprobata.
Et Wallingham
28 E. 1. Anno Dom.
1300. stat.
31 E. 1. de *weigots*
and *Measures*.
Rast. 7.
e Vet. Magna
Chart. ca. Itin.
fo. 151. a.
22 All. p. 49.
3 H. 7. 10. 25 E. 3.
42 b. Coro. 130.
f 6 H. 7. 13.
1 R. 3. 1.
g Wall. Hyp. Neu-
striz pag. 69.
1278. 6. E. 1.
h 3 H. 7. 10. a. b.

37 H. 8. Br. tit. Treason. A Chaplain had fixed such a great Seal to a Patent of dispensation with non-residence; and this was holden a misprision, and not High treason, for it was an abuse of the great Seal, and no counterfeiting of it. Stanford saith that it was adjudged in his time according to the books of 2 H. 4. Et sic ex errore sequitur error.

G. Leak a clerk of the Chancery joyned two clean parchments fit for letters patents so close together with mouth-glew, as they were taken for one, the uppermost being very thin, and did put one labell through them both, then upon the uttermost he wrote a true patent, and got the great Seal put to the labell, so the labell and the seal were annexed to both the parchments, the one written, and the other blank: he cut off the glewed shirts round about, and took off the uppermost thin parchment (which was written, and was a true and perfect patent) from the labell, which with the great Seal did still hang to the parchments then he wrote another patent on the blank parchment, and did publish it as a good patent. Hereupon two questions were moved, 1. Whether this offence be High treason or no. 2. If it be High treason, then whether he may be indicted generally for the counterfeiting of the great Seal, or else the special fact must be expressed. And upon conference had between the Judges, upon great advisement and consideration it was in the end, concerning the first point, resolved by the Justices (saying a very few) upon the authorities aforesaid, and for that it was no counterfeiting of the great Seal within this statute, that this offence was neither High treason, nor Petit treason, because it is not within either of the branches of this statute, but it is a very great misprision: and the party delinquent lieth at this day. As to the 2. point it was resolved, that if the special matter had amounted to counterfeiting of the great Seal in law within this Act, then he might have been generally indicted of High treason for counterfeiting the great Seal. As if a man in an affray kill a Constable that comes to keep the Kings peace without any express malice prepensed, this is murder in law, and yet the delinquent may be generally indicted of murder by malice prepensed.

And a Fleta, who wrote before this Act, telleth us, that *Crimen falsi dicitur, cum quis illicitus (cui non fuerit ad hoc data autoritas) de sigillo regis rapto vel invento, & brevia chartasque consignaverit.* But whatsoever offence it was before the making of this statute, it is after this statute no High treason, because it is no counterfeiture of the great Seal, but a misdoer thereof.

Qui b convictus fuerit pro falsatione sigilli dom. regis, quod tradatur Episcopo Sarum, qui cum petiit ut clericum suum sub poena & in forma qua decet, quia videtur concilio quod in tali casu non admittenda est purgatio, &c. Whereby it should appear that in those daies a man might have had his Clergy for this offence; and therefore, as some hold, it was not then holden to be High treason, & herein also in the preamble of this Act, concerning divers opinions in case of treason, verified.

This statute naming the great Seal and privy Seal, the forging and the counterfeiting of the privy signet, or of the sign manuel, was not within this statute. But by the statute of 1 Mar. it is made High treason in both cases. Albeit that in this Act there is no mention made of aiders and consenters to this counterfeiting, yet they are within the purview of this statute, for there be no accessories in High treason.

[*Quo facta monye.*] This was treason by the Common law, as it appeareth by all the said ancient authors, *ubi supra* (verbo, Si homo counterface lo grand scale) and therefore the opinion in 3 H. 7. is holden for no law, that it was but felony before this Act. The forging of the Kings coin is High treason, without utterance of it, for by this Act the counterfeiting is made High treason. See the second part of the Institutes, W. 1. cap. 15. g. & Thoms. Wallingham, Hypodigme Neustria, An. Dom. 1078. *Judæi pro consura monetæ in magna multitudine ubique per Angliam suspenduntur, &c.*

b Si ipse qui facit monetam autoritate regis, &c. illam facit minus in pondere vel

vel alliana, viz. Alcumino vel alio falso metallo contra ordinationem, &c. This is there holden to be High Treason, and by that Book taken for a counterfeit of the Kings money within the Purbien of this statute. And herewith agreeth Britton, who saith, Desfauceres q' ont noire monye counterfeit, ou plus de al-laye mise in noire monye q' nulter, ne serroit solongy, le forme & usage de nostre Realm.

See Inter leges Athelstani, cap. 14. Canuti, cap. 61. Britton cap. 5. fol. 10. b.

b Ordeine suit q' nul roy de cest realme ne puit changer sa monye, ne impairer, ne amender, ne auter monye faire q' de bre & argent, sans lassent de tous les Counties. It was ordained, that no King of this Realm might not change his money, nor impair nor amend the same, nor other money make then of Gold or Silver, without assent of Parliament.

See the Mirror, cap. 1. §. 6. De la mony falsifie acc' with 3 H. 7. and cap. 5. §. 1. and Fleta cap. 22. acc' Mir. cap. 1. §. 3. inter Artic. per vias royes ord. 19 E. 3. nu. 15. Vide hic postea, cap. 31. 45 E. 3. cap. 13. 9 H. 5. cap. 11. Stat. 1.

c Clipping, washing, and filing of the money of this Realm, was no counterfeiting of it within this Act. And therefore being a like Case, it was declared by Parliament in Anno 3. H. 5. cap. 6. to be High Treason; but that Act being repealed by 1 Maria, the statute of 5 Eliz. cap. 11. hath declared, that clipping, washing, rounding, or filing, for wicked lucre and gain, &c. to be High Treason. And by the statute of 1. 8 Eliz. it is declared, That if any person for wicked lucre or gains sake, shall by any art, wapes, or means whatsoever, impair, diminish, falsifie, scale, or lighten the Kings money, &c. it is High Treason, for being a like case, it was to be declared by Parliament.

See the second part of the Institutes, cap. 20. Artic. super Cart. and the exposition upon the same.

Forging of counterfeit money, which is not currant within the Realm, is misprision of Treason, and the offender shall forfeit as for concealment of High Treason.

3 H. 5. cap. 6. E. 6. cap. 12. Eliz. cap. 11. Nota, for wicked lucre and gain. 18 Eliz. cap. 1. 14 Eliz. cap. 3. See hereafter, cap. Principal and Accessory.

¶ Sa monye.

This extendeth only to the Kings money coined within this Realm; and therefore after this statute, if a man had counterfeited the money of another Kingdom, though it were currant within this Realm, it was no treason, untill it was so declared by Parliament in An. 1 Maria, and in An. 1 & 2 Ph. & M. and the said Acts of 5 Eliz. & 10 Eliz. do extend to foreign coin currant within this Realm. And it is holden, that at the making of this statute of 25 E. 3. there was no money currant within this Realm, but the Kings own coin. In the statute called Statutum de moneta magnum, & statutum de moneta parvum. And it is to be known, that if any do counterfeit the Kings coin contrary to this statute of 25 E. 3. he shall have the punishment of his body but as in case of Petit Treason, that is, to be drawn and hanged till he be dead, but the forfeiture of his lands is as in other cases of High Treason: for this statute is but a declaration of the Common Law, and the reason of his corporal punishment is, for that in this case he was only drawn and hanged at the Common law, but a woman in that case was to be burnt.

1 Mar. cap. 6. & 2 Ph. & Mar. cap. 11. Ver. Mag. Charta, part. 2. fol. 38, 39, 40. Fleta lib. 1. c. 22. who wrote before this statute, which is about a law declaratory, as it appeareth before.

The Abbot of Spilmeiden in the County of Buckingham, for counterfeiting and refecting of the Kings money, was adjudged to be drawn and hanged, and not quartered. The want of observation of the said distinction hath made some to err in their judgement. Now, this Act of 25 E. 3. maketh no expression of the judgement, therefore such judgement as was at the Common law either in case of High Treason or Petit Treason must be given.

23 All. p. 2. Dier 6 Eliz. Term. Tr. M. S. pro consura mortis habeat & prad. Dr. 24. H. 8. in Justice Spilmans Reports, accord.

But if one be attainted for diminishing of the Kings money upon any of the statutes made in Queen Maries time, or in the time of Queen Elizabeth, because it is High Treason newly made, the offender shall have judgement as in case of High Treason, which judgement you may see in the first part of the statutes, Sect. 747.

11 Mich. 31 E. 3. coram roge. Rot. 55. B. 1. which in 6 years after the making of our statute.

And when a woman committeth High Treason, and is quick with child, she cannot upon her arraignment plead it, but she must either plead not guilty, or confess it: and if upon her plea she be found guilty, or confesses it, she cannot allege it in arrest of judgement, but judgement shall be given against her: and if it be found by an inquest of Parons, that she is quick with child, for private judgement entent will not serve, it shall stand and receive execution till she be delivered; but she shall have the benefit of that law once, though she be again quick with

m 25 E. 3. 45. b. Cor. 130. 23. All. p. 2. 22. All. p. 74. 12 E. 3. Cor. 255. 12 All. p. 14. 5. E. 2. Cor. 4. 10.

Stanford & ult. b.

with child: so as this respit of execution for this cause is not to be granted only in case of felony, whereof Justice Stanford speaketh, but in case of High Treason and Petit Treason also.

1 Ed. Hexafter, cap. 30. Rot. Parl. 17. E. 3. nu. 15.

¶ Si home port faux money en cest roialme, counterfeit au money dangleterre, & sachant le money estre faux, &c.]

7 H. 7. 10.

By this branch six things are to be observed. First, that the bringing in of counterfeit money, and not the counterfeiting, is expressed in this word [apport] Secondly, that it must be brought from a foreign Nation, and not from Ireland, or other place belonging to, or being a member of the Crown of England: and so it hath been resolved; so wary are Judges to expound this statute concerning Treason, and that in most benigne sense. For albeit Ireland be a distinct Kingdom, and out of the Realm of England to some purposes, as to Protection and Fines levied, &c. as hath been said: yet to some intent it is accounted as a member of, or belonging to the Crown of this Realm. And therefore a writ of Error is maintainable here in the Kings Bench of a judgement given in the Kings Bench in Ireland, so as the Judges did construe this statute not to extend to false money brought out of Ireland. Thirdly, it must be to the similitude of the money of England. Fourthly, that the bringer of it into this Realm must know it to be counterfeit. Fifthly, uttering of false money in England, though he know it to be false and counterfeit to the likeness of the coin of England, is no treason within this statute, unless he brought it from a foreign Nation, for the words be, si home apport faux money en cest roialme. But if money false or clipped be found in the hands of any that is suspicious, he may be imprisoned untill he hath found his warrant, per Statutum de moneta magni vet. Mag. Chart. fol. 38. 2 parte. Lastly, he must merchandise therewith, or make payment thereof, expressed in these words, Pur marchandizer: ou paiement fait in descript nostre seignior le roy & son people, &c. De moneta regis, and of the deprivation thereof, in The second part of the Institutes, in Artic. super cartas, cap. 20.

Lib. 7. Calvinus case, nu. 149.

3 H. 7. 10.

¶ Si home trait Chancelour, Tresorer, ou Justice nostre seignior le roy del un bank ou del auler Justice in Esche, ou d'assises, & tous autres Justices assignes doier & terminer eleant en leur place seasant leur office.

In this case, albeit one, suffice to kill any of these here named in their place and doing their office, and thereupon strike or wound any of them, this is no treason: For our statute saith, Si home trait Chancelour, &c. If a man kill the Chancelour, &c. For if it be treason, death must ensue. And the reason wherefore it is treason in these cases, is because sitting judicially in their places, (that is, in the Kings Courts) and doing their office in administration of justice, they represent the Kings person, who by his Oath is bound that the same be done. And this Act extends only to the persons here particularly named, and to no other: and therefore extendeth not to the Court of the Lord Steward, or of the Constable and Marshall, nor to the Court of the Admiralty, or any other, nor to any Ecclesiastical Court; For, it extends not to the High Court of Parliament, if any Member of the Lords House or House of Commons be slain in his place, and doing his office, because it is *casus omissus*, and not mentioned in this Act. But in all these cases it is lawful murder, for the Law implieith malice.

4 Rot. Parliam. 10. E. 1. nu. 2.

John de Britains Case.

3 Reg. 21. 15.

See inter leges Alex. di, cap. 4. ubi supra.

Vita et fortuna omnibus precatur.

Cult. de Norm.

cap. 2. lib. Ass. pl. 49.

¶ Et soit assavoir q in les cases susnommes doit en adjudge treason q se extend a nostre seignior le roy & la royal Majestie: & de tiel treason le forfeiture des Escheats appartient a nostre seignior le roy, cibus des asces & tenements venus des autres come de luy mesme.

¶ Des tres & tenements tenus des autres, come de luy mesme.

This is an affirmation of the Common Law; and the reason thereof is, for that the offence is committed against the Sovereign Lord the King, who is the light and the life of the Common-Wealth: and therefore the Law doth

doth give to the King in satisfaction of his offence, all the lands, &c. which the offender hath, and that no subject should be partaker of any part of the forfeiture for this offence.

And where the words be [Lands and Tenements holden, &c.] yet the forfeiture extends to rents charges, rents seck, Commons, Cozrodies, and other hereditaments which are not holden, for in case of High Treason the tenure is not material.

This clause hath 7 limitations. First, this Act extends not to lands in taylor, (saving only for the life of tenant in taylor) but the forfeiture of escheats is to be understood of such Lands and Tenements as he might lawfully forfeit. And these general words take not away the statute of donis conditionally but latter statutes give the forfeiture of estates in tail. 2. For doth this Act extend to uses: but latter statutes do name uses. 3. For to rights of actions, where the entry is taken away: and so is the law clearly holden at this day. 4. For to any conditions: but by a latter statute conditions, unless they be inseparably knit to the person, be given to the King. 5. For to right of entry, where any was in the lands before the treason committed: but such a right of entry is since given by latter statutes. 6. For to lands or tenements, or rights given in autre droit, as in the right of the Church, nor to lands in the right of a wife, but only during the coverture, and it extendeth to land which the offender hath for life, for the forfeiture of the profits during his life. 7. It extendeth not to a foundership of an house of Religion in Free almoign, for that is annexed to the blood of the Founder. Here goods and chattels be not named, but the forfeiture of them is implied in the judgement.

Nota-Letter, the said Acts of 26 H. 8. 33 H. 8. 5. and 6 E. 6. do yet remain in force, notwithstanding the said statute of 1 Mar. as it hath been often adjudged and resolved, and namely Mich. 21 Ja. in the Exchequer Chamber in a writ of Error, upon a judgement given in the Exchequer, between Karcliffe and the Lord Sheffield, by all the Judges of England, and is agreeable to common experience.

See more of High Treason in the next Chapter following, cap. 2. verbo, Et pur ceo que plusieurs autres cales, &c.

Dier 289. lib. 3. fol. 10. 15. lib. 7. fol. 33, 34. lib. 8. 72. 106. lib. 9. fol. 140. Stanf. Pl.

Brook Esch. 9.
See hereafter,
Verbo, Et de tiel manner de treason, &c.
Otherwise it is in case of Petit Treason and Felony.
b 7 H. 4. 27. See hereafter in the title of Premunire, Verbo. [des tres, &c.] Vid. 26 H. 8. cap. 13. c 26 H. 8. cap. 13. in fine. 33 H. 8. cap. 20. 5 & 6 E. 6. cap. 11.
Lib. 7. fo. 12, 13.
* 33 H. 8. cap. 20.
5 E. 6. cap. 11.
d Lib. 3. fol. 210.
7 H. 4. 6, &c.
e 33 H. 8. cap. 20.
lib. 7. fol. 11. Englefields case.
f Englefields case, ubi supra.
g 5 E. 6. ubi supra.
1 Mar. Dier. 125.
Dier 12 El. 289.
Temps H. 8. Br. Coron. 5.
h 1 Mar. Dier. 108.
* 24 E. 3. 33. 72.
Corody Br. 5.
Temps H. 8. Elcheat 239. f 12 El. Coron. 187. a.

CAP. II.

Of Petit Treason.

ET ovesque ceo iby ad un autre manner de treason, cest assavoir, quant un servaunt tua son maister, ou un feme tua son baron, ou quant homme seculer ou de religion, tua son prelate a que il doit foye & obedience. Et de tiel manner de treason la forfeiture des Escheats appartenont a chescun seignior de son fee proper, &c.

Britton capi 8. & cap. 22.

And moreover there is another manner of Treason, that is to say, when a Servant slayeth his Master, or a Wife her Husband, or when a man secular or religious slayeth his Prelate to whom he oweth faith

faith and obedience. And of such treason the Escheats ought to pertain to every Lord of his own fee, &c.

It was called High or Grand treason in respect of the royal Majesty against whom it is committed; and comparatibely it is called Petit Treason (whereof now this statute speaketh) in respect it is committed against Subjects and inferior persons, whereof this Act doth enumerate three kinds.

21 Aff. p. 30.
21 E. 3. 17.
F. coron. 447.
Statham tit. cor.
21 E. 3. 22 Aff. p. 49.
b 19 H. 6. 47. Pl. Com. 86. b.
Dier 3. Mar. 128.
7 El. 235.
c Exodus, cap. 21. v. 15, 17.
Lew. 20. v. 9.
1 Mar. per Bromley & Portman of the report of Justice Dailifou. vid. 1 R. 3. 4.
In culco parricide cum simia, cane, gallo & serpente inclusi mari olim mergebantur: sed nos non habemus talem consuetudinem.
* 22 E. 1. Marth.
Par. 874.
d 33 Aff. p. 7.
Li. 1. f. 99. Shellys case. 10 H. 6. 47.
Pl. com. 260.
e 15 E. 2. Coron. 383. 19 H. 6. 47.
See 6 Pr. & Acc. Dier 34 H. 8. 50.
Dier 16 El. 332.
Standers case. Pasch. 32 E. 3.
Rot. 62. coram rege. Ph. Cliftons case.
* 40 Aff. p. 15.

¶ Quant un seruant tua son Maister.] This was Petit Treason by the Common Law, for so it appeareth by the a book of 12. Aff. that a woman servant killed her Mistress, wherefore she had judgement to be burnt, which is the judgement at this day of a woman for Petit Treason. And herewith agreeth 21 E. 3. where the Reader must know, that instead of Merc in that case you must read Maister.

b And upon this Act, if the servant kill the wife of his Master, it is Petit Treason; for he is servant both to the husband and wife.

c If the child commit Parricide in killing of his Father or Mother (which the Law-makers never imagined any Child would do) this case is out of this statute, unless the child served the Father or Mother for wages, or meat, or drink or apparel; for that it is none of these three kinds specified in this Law. And yet the offence is far more heinous and impious in a child than in a servant, for Peccata contra naturam sunt gravissima: but the Judges are restrained by this Act to interpret this Act, a simili, or a minore ad majus, as hereafter shall be said. And some say that Parricide was Petit treason by the Common Law.

d A servant of malice intended to kill his Master, and lay in wait to do it whilst he was his servant, and did it not tell a year after he was out of service; and it was adjudged Petit Treason within this Act.

¶ Un fenge tua son baron.] This was Petit treason by the Common Law, as it appeareth in our books. If the wife procure one to murder her husband, and he doth it accordingly, in this case the wife being absent is but accessory, and shall be hanged and not burnt, because the accessory cannot be guilty of Petit treason, where the principal is not guilty but of murder, and the accessory must follow the nature of the principal. But if he that did the murder had been a servant of the husband, it had been treason in them both, and the wife should have been burnt. And so it is in the case before of a servant, and in the case hereafter of a Clerk.

If the wife and a stranger kill the husband, it is Petit treason in the wife, and murder in the stranger: and so it is in the case of the servant next before, and of the Clerk next after.

Before this statute it was Petit treason, si quis fallaverit sigillum domini sui de cujus familia fuit. Britton agreeth herewith. But these are taken away by this Act, and all other statutes that are here expressed.

Fleta lib. 1. cap. 22.
Britton fo. 16.
19 H. 6. 47.

¶ Quant home seculer ou de religion tua son prelate a que il doit foy & obedience.] This clause soundeth only of an Ecclesiastical person, be he secular or regular, if he kill his Prelate or Superiour, to whom he oweth faith and obedience, it is Petit Treason, and so it was at the Common Law. And Petit Treason doth presuppose a trust and obedience in the offender, either Civil, as in the wife and servant, or Ecclesiastical, as in the Ecclesiastical person.

40 Aff. ubi supra.
& 26 El. ubi sup.

Alders, abettors, and procurers of any of these Petit Treasons, are within this Law.

If the servant kill his Mistress, viz. his Masters wife, this is treason (as hath been said) not by equity, for that is denied as well in Petit Treason as High Treason, but it is within the letter of this statute, for she is a Master.

19 H. 6. 47. by all the Judges.

In High Treason there are no accessories, but all be principals, and there-

foze whatsoever act or consent will make a man accessary to a felony before the act done, the same will make him a principal in case of High Treason. But in case of Petit Treason there may be accessaries, either before or after the act done, as in case of Murder or Homicide.

Here it appeareth that Acts of Parliament may bind men of the Church, Secular or Regular, and no benefit of Clergy allowed unto them in case of treason: but a heretofore you shall read at large in the exposition of the 15 chapter of Articuli cleri.

* See the second part of the Institutes, Artic. cleri, cap. 15. Hil. 3. R. 2. coram rege Rot. 8. London.

John Imperials case. For Escheats see the 1 part of the Institut. Sect. 1. fol. 13. a.

b See before, cap. 1. verbo. Des terres & tenements, &c.

* See the first part of the Institutes fol. 13. verb. Avera la terre per escheat.

Mic. 4. H. 4. coram rege. Rot. 23. Anglia. 40 Ass. 24. Vide H. 5. cap. 6.

¶ Et de tiel manner de treason forfeiture des Escheats appertinent a chescun seignior de son fee proper.] Se hereof hereafter in the chapter of Forfeiture. b If a man seised in fee of a Fair, Market, Common, reit-charge, rent-seck, Warren, Cozrody, or any other inheritance that is not holden, and is attainted of felony, the King shall have the profits of them during his life: but after his decease, seeing the blood is corrupted, they cannot descend to the heir, nor can they escheat, because they be not holden, they perish and are extinct by Act in Law: For in Escheats for Petit Treason or Felony a tenure is requisite, as well in the case of the King as of the Subject.

An Appozer in case of felony refusing the combat with the Appelle, shall have like judgement that is for Petit Treason; Probator recusans duellum ad-judicatur suspendi & trahi, in odium talis accusationis: but yet it is not Petit Treason, because it is none of the thre specified in this Act.

The case which Shard reciteth in 40 Ass. that a Rozman being leader of an English Ship, who had English-men with him, and robbed divers upon the Sea, and were taken and found guilty: and as to the Rozman it was but felony (because Rozmandy was lost by King John, and was out of the ligeance of E. 3.) and as to the English it was adjudged treason, and the offenders hanged, which was the judgement of Petit Treason: but this must be intended to fall out before this statute of 25 E. 3. for it is none of the Petit Treasons mentioned in this Act.

¶ Et pur ceo que plusors autres cases] de semblable treason purront escheer en temps a venir, queux horne ne purra penser, ne declarer en present: Assent est, que si autre case suppose treason, que nest especifie paramount, aveigne de novel devant aucun Justice, demoege le Justice sans alter a judgement de treason, tanque per devant nostre seignior le roy en son Parliament soit le case meise & declare, le que le ceo doit estre adjudge treason, ou autre felony.

Rerum progressus ostendunt multa que iuris praevideri non possunt.

And because that many other like cases of Treason may happen in time to come, which a man cannot think nor declare at this present time: It is accorded, that if any other case supposed treason, which is not above specified, doth happen before any Justice, the Justice shall tarry without going to judgement of the treason, till the cause be setted and declared before the King and his Parliament, whether it ought to be judged treason or other felony.

¶ Semblable treason.] In this case the Judges shall not judge a simili, or by equity, argument, or inference of any treason, High or Petit, for no like case shall be adjudged treason, &c. And note this branch extendeth (as hath been said) to the offence, viz. treason, and not to trial, judgement, or execution.

¶ Si autre case suppose treason.] No other case, though of as high or higher nature, &c. shall be adjudged treason, High or Petit, as before it appeareth in the case of Parricide, Anno f. Maria, ubi supra.

¶ Treason.] Either High Treason or Petit Treason; in as this branch extendeth as hath been said to the offence of Treason only.

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See the exposition upon the statute De fraud. prisonam. 1 H. 6. 5. 9 E. 4. 26, &c. See 1 Mar. of Justice Dalisons Report, ubi supra.

1 Mar. cap. 1.

Rot. Parl. 5 H. 4. nu. 11, 12. Sec nu. 15. Ibid.

27 Ass. p. 63.

¶ Que nest specific paramount. This word [specific] is to be specially observed, for it is as much to say as particularized, or set down particularly: so as nothing is left to the construction of the Judge, if it be not specified and particularized before by this Act. A happy sanctuary or place of refuge for Judges to fly unto, that no mans blood and ruins of his family do lie upon their consciences against law. And if that the construction by arguments a simili or a minori ad majus had been left to Judges, the mischief before this statute would have remained, viz diversity of opinions what ought to be adjudged treason, which this statute hath taken away by express words: and the statute of 1 Mar. doth repeal all treasons, &c. but only such as be declared and expressed in this Act of 25 E. 3. wherein this word [expressed] is to be observed.

In the Parliament holden Anno 5 H. 4. the Earl of Northumberland came before the King and Lords in Parliament, and by his Petition to the King acknowledged to have done against his allegiance; and namely, for gathering of Power and giving of Liberties, whereof he prayeth pardon: and the rather, that upon the Kings Letters he yielded himself, and came to the King unto York, where he might have kept himself away. The which Petition the King delivered to the Justices, by them to be considered. Whereupon the Lords made protestation, that the order thereof belonged to them as Peers of the Parliament, to whom such judgement belonged in weighing of this statute of 25 E. 3, &c. and they judged the same to be no treason, nor felony, but only trespasss finable at the Kings will. And the opinion in 27 Ass. is denied, that if one of the Justices discover the counsell of the King, that it should be treason; because it is not specified before in this Act, and therefore neither High Treason, nor Petit Treason.

¶ Tanque per devant le Roy & son Parliament.]

By this it is apparent, that any fine or other case ought to be declared by the whole Parliament, (and not by the King and Lords of the Upper house only, or by the King and the Commons, or by the Lords and Commons.) And so was it done by the whole Court of Parliament in 3 R. 2. ubi supra, 5 Eliz. 18 Eliz. ubi supra, and many other Acts of Parliament.

Rot. Parl. 17 R. 2. nu. 20.

John Duke of Guyen and of Lancaster, Steward of England, and Thomas Duke of Glocestre, Constable of England, the Kings Uncles, complained to the King, that Thomas Talbot Knight, with other his adherents, conspired the death of the said Dukes in divers parts of Cheshire, as the same was confessed and well known, and prayed that the Parliament might judge of the fault; (which Petition was just, and according to this branch of the statute of 25 E. 3.) But the Record saith further; whereupon the King, and Lords in the Parliament adjudged the same fact to be open and High Treason; which judgement wanting the assent of the Commons, was no declaration within the Act of 25 E. 3. because it was not by the King and his Parliament according to this Act, but by the King and Lords only.

19 El. cap. 1, 2. 14 El. cap. 1, 2, &c. Anno 21. R. 2. in Latin.

¶ Soit le case monstre & declare, &c.] This Declaration may be absolute, or sub modo, for a time.

By this which hath been said it manifestly appeareth, that honorable and damned opinions those were concerning High Treason, of Treasurers Chief Justice of the Kings Bench, Sir Robert Belknap Chief Justice of the Common Bench, Sir John Holt, Sir Roger Fulthorpe, and Sir William Burgh, Knights, fellows of the said Sir Robert Belknap, and of John Lockton one of the Kings Serjeants, that were given to King R. the 2. at Northampton, in the Eleventh year of his reign. But more detestable were the opinions of the Justices in 21 R. 2. and of Hanckford and Brinchley the Kings Serjeants, (and the rather, because they took no example by the punishment of the former) which affirmed the said opinions to be good and lawfull, saying Sir William Tresham Chief

1 R. 2. ca. 1. & 4.

Chief Justice of the Common Bench gave this answer, That declaration of Treason not declared belongeth to the Parliament, but to please, he said, that if he had been a Lord, or a Peer of Parliament, if it had been demanded of him, he would have made the like answers. These Justices and Serjeants being called in question in the Parliament holden, Anno 1. H. 4. for their said opinions, answered (as divers Lords Spiritual and Temporal did) that they durst no otherwise do for fear of death. It was thereupon enacted, that the Lords Spiritual and Temporal, or Justices, be not from thenceforth received to say, that they durst not for fear of death to say the truth. Which opinions being so manifestly against our said Act of 25 E. 3. afterwards in the Parliament holden 1 H. 4. it is affirmed by authority of Parliament, that in the said Parliament of 2 R. 2. divers Statutes, Judgements, Ordinances and Establishments were made, ordained and given erroneously, and dolefully in great dissension and final destruction and undoing of many honourable Lords, and other liege people of this Realm, and of their heirs for ever. And therefore not only that Parliament of 2 R. 2. and the circumstances, and dependances thereupon are wholly reberbed, reboked, voided, undone, repealed and annulled forever, but also the Parliament holden in 11 R. 2. by authority of which Parliament, Treilian, Belknap, and the rest of those false Justices and Serjeants foresaid were attained, is confirmed, for that it was (as there the Parliament affirmeth) for the great honour and common profit of the Realm.

Rot. Parl. 1 H. 4. nu. 97. *Melius est omnia mala pati quam male consentire.*

1 H. 4. ca. 3.

See the consequence of erroneous opinions in case of High Treason.

1 H. 4. ca. 4.

Et super case ascun home de cest roialme chivache armeer, &c.] And if perchance any man of this Realm ride armed, &c. For exposition hereof, see the Chapter hereafter against riding or going armed.

For the better instruction of the Reader to discern what offences be High Treason or Petit Treason at this day, it shall be necessary to add hereunto the Statute of 1 Mar. whereby it is enacted, [That no Act, Word or Offence, being by Act of Parliament or Statute made Treason, Petit Treason, or misprision of Treason, by words, writing, ciphering, deeds, or otherwise whatsoever, shall be taken, had, deemed, or adjudged to be High Treason, Petit Treason, or misprision of Treason, but only such as be declared and expressed to be Treason, Petit Treason, or misprision of Treason, in or by the Act of Parliament or Statute made in the 25 year of the reign of the most noble King of famous memory, King Edward the third, touching or concerning Treason, or the Declaration of Treason, and none other, &c. any Act or Acts of Parliament, Statute or Statutes, had or made at any time heretofore or after the said 25 year of King E. 3. or any other declaration or matter to the contrary in any wise notwithstanding.]

1 Mar. ca. 1. *Session prima.*
The like statute was made Anno 1 E. 6. ca. 12.
See the statute of 1 H. 4. ca. 10. to the like effect.

Inter leges Canonicas cap. 7. In primis juste leges in esse a tunc, in juste deprimuntur.
Aliter in Antiquo M. S.
In primis ut juste leges erigantur, in juste subvertantur.

Before this Act so many Treasons had been made and declared by Act of Parliament since this Act of 25 E. 3. some in particular, and some in general, and in such sort penned, as not only the ignorant and unlearned people but also learned & expert men were many times trapped and snared; and sometimes treasons made or declared in one Kings time, were abrogated in another Kings time, either by special or general words: so as the mischief before 25 E. 3. of the uncertainty what was treason and what not, became to be so frequent & dangerous, as the safest and surest remedy was, by this excellent Act of 1 Mar. to abrogate and repeal all, but only such as are specified & expressed in this statute of 25 E. 3. By which law the safety both of the King and of the Subject, and the preservation of the Common-weal is wisely and sufficiently provided for, in such certainty, as nihil relictum est arbitrio Judicis. And certainly the two Rules recited in the Preamble of the said Act of 1 Maria are assuredly true. The first [That the State of a King standeth and consisteth more assured by the love and favour of the Subject toward their Sovereign, then in the dread and fear of Lawes made with rigorous pains and extreme punishment for not obeying their Sovereign.] And the other, [That Lawes justly made for the preservation of the Common-weal without extreme punishment or penalty, are more often, and for the most part better obeyed and kept, then lawes and statutes made

a That is, of such treason, high or petit, & is expressed in the Act of 25 E. 3. and of no other treason. *b* 1 Mar. ca. 6. 1 & 2 Ph. & Mar. cap. 11. *c* Eliz. ca. 1. 30 & 17. 18 Eliz. cap. 1. 25. *d* Eliz. cap. 2. 27. 23 Eliz. cap. 1. 27. 27 Eliz. cap. 2. 3. 3 Jac. cap. 4. 1. *e* Bracton lib. 3. fol. 118. b. *d* 13 Eliz. cap. 1. 14 Eliz. cap. 1. 8. *f* 1 & 2 Phil. & Mar. cap. 10. *g* See the second part of the Institutes. *h* Mag. Chart. cap. 29. Verbo (per iudicium parium.) 35 H. 8. ca. 2. 3 Mar. Der. 132. lib. 7. fo. 73. in Calvins case. *i* Palch. 33 Eliz. Orurks case. * 32 H. 8. cap. 4. *b* 1 E. 6. ca. 12. *5* E. 6. ca. 11. Both which are mentioned in the next Section. Hil. 14 Eliz. Dier M. S. *Nota*, This is the last resolution of the Judges in this point. At this time *Cathia* and *Dier* were Chief Justices, and *Sanders* Chief Baron, &c.

with great and extreme punishment. *Mitius imperanti melius paretur.* To the intent that the notable things are to be observed. First, extendeth (without exception) to all High Treasons made by any Act of Parliament since the said Act of 25 E. 3. Secondly, to all declarations of High Treasons by any Act of Parliament since the said Act of 25 E. 3. (As by the said Declaration in 3 R. 2. of setting an Ambassador and the like.) Thirdly, to all Petit Treasons made by declared by any Act of Parliament since the said Act of 25 E. 3. Fourthly, albeit misprision of Treason is not mentioned in the Act of 25 E. 3. yet their misprision of any Treason made & declared since that Act by any Act of Parliament is abolished. Fifthly, his offence to be Treason, Petit Treason, or misprision of Treason, but only such as be declared and expressed to be Treason, Petit Treason, or misprision of Treason by the said Act of 25 E. 3. Where these things are to be observed. First, that this word [expressed] exclusiveth all implications or inferences whatsoever. Secondly, here misprision of Treason is taken for concealment of High Treason or Petit Treason, and not for any High Treason or Petit Treason (as defined & expressed in the Act of 25 E. 3. Thirdly, that no former judgement, arraignment, presentment, resolution, or opinion of Judges or Justices at High Treason, Petit Treason, or misprision of Treason, other then such as are specified and expressed in the said Act of 25 E. 3. are to be followed or drawn to example for the words be direct and plain, [as has been benetot to no Act, Writ, or Sentence, &c. shall be taken, had, deemed or adjudged to be Treason, Petit Treason, or misprision of Treason, but only such as be declared and expressed in the said Act of 25 E. 3. &c. any Act of Parliament or statute after 25 E. 3. or any other declaration, or matter to the contrary notwithstanding.] So as there is no High Treason, Petit Treason, or misprision of any Treason made or declared by any Act of Parliament or otherwise since the Act of 25 E. 3. but only such as have been made since the said Act of 1 Maria, and of those, only such as were made perpetual, and not during the life of Queen Mary or of Queen Elizabeth, whereof there be divers which now are expired, which you may read, being all in print. But there wanted nothing to the perfection of the statute of 25 E. 3. but a limitation of some certain time wherein the offender should be accused. *c* Post intervallum temporis accusator non erit audiendus, nisi docere possit se ipse justis rationibus impeditum.

Or the declaration of Treason, &c. d Declarations made during the natural life of Queen Elizabeth created by her death: for Declarations may have limitations as well as statutes Introductory of new laws. There is another excellent branch of a Statute made *e* in 1 & 2 Ph. & Mar. in these words. [And be it further enacted by the authority aforesaid, that all tryals hereafter to be had, awarded or made for any treason, shall be had and used only according to the due order and course of the Common Law.]

¶ All Tryals.] Upon these words many things have been observed by others. First, that the Letter of this Act extendeth only to tryal of High treasons, or Petit treasons, and not to misprision. Secondly, forain Treasons are to be tryed by the Statute of 35 H. 8. cap. 2. and so it was resolved by all the Justices of England in *Orurks Case*, and had been so resolved before. But tryals of Treasons to be had in Wales, or where the Kings writ runneth not, in such Shires as the King shall assign by his Commission by the Statute of 32 H. 8. cap. 4. are abrogated by this Act, because they are tryable by the law. *h* It hath been holden, that upon the tryal of misprision of treason there must be two lawful witnesses, as well upon the tryal as upon the Indictment, as it was resolved by the Justices in the Lord Lumleys Case, Hil. 14. Eliz. reported by the Lord Dier under his own hand, which we have seen, but left out of the print, which for other purposes is cited hereafter. Thirdly, it hath been holden, that this Act extendeth not to the Indictment of any treason, but to the tryal by Peers, if the offender be noble; or by Freeholders, if the offender be under the degree of nobility: and therefore upon the Indictment which is in

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manner of an accusation, by the statutes of 1 E. 6. and 5 E. 6. two lawfull witnesses are requisite. The words of the statute of 1 E. 6. in the last branch be, [That none shall be indicted, arraigned, condemned, or convicted for any Treason, Petit Treason, misprision of Treason, or for any words before, or after to be spoken, after the said first day of February, for which the same offender or offender shall in any wise suffer pains of death, imprisonment, loss, or forfeiture of his goods, chattels, lands or tenements, unless he be accused by two sufficient and lawfull witnesses, or shall willingly, without violence, confess the same.]

1 E. 6. cap. 12.
5 E. 6. cap. 11 b
See 13 El. cap. 1.
See before Herb.
[De coo. pravalement
sist. attain.]

Nota, that [before specified] do refer to the words mentioned before in the Act. 1. It is manifest by the connexion of the words, viz. [for any words before specified to be spoken, &c.] 2. The Treasons in 25 E. 3. were mentioned before. 3. The first words be [for any Treason, Petit Treason, misprision of Treason, &c.]

And by 5 E. 6. c. 11. it is provided by the last clause save one [That none shall be indicted, arraigned, condemned, convicted, or attainted for any of the Treasons or offences aforesaid, or for any other treasons that now be, or hereafter shall be, which shall hereafter be perpetrated, committed or done, unless the same offender be thereof accused by two lawfull accusers, &c. unless the said party arraigned shall willingly, without violence, confess the same.] Here two things are to be observed, 1. The particular penning of both these Acts, viz. indicted, arraigned, convicted, &c. and the words of 1 & 2 of Ph. & Mar. extend to trials only, and not to the indictment. 2. Two lawfull accusers in the Act of 5 E. 6. are taken for two lawfull witnesses, for by two lawfull accusers, and accused by two lawfull witnesses (as is said, 1 E. 6.) is all one: which word [accusers] was used, because two witnesses ought directly to accuse, that is, charge the prisoner, for other accusers have no name in the Common Law, and therefore lawfull accusers must be such accusers as Law allows. And so was it resolved in the Lo. Lumleys case by the Justices. For if accusers should not be so taken, then there must be two accusers by 5 E. 6. and two witnesses by 1 E. 6. And the strange opinion in 2 Mar. that one may be an accuser by hearsay, was utterly denied by the Justices in the Lo. Lumleys case. And this word [awarded] in the statute of 1 & 2 Ph. & Mar. extendeth to the trial upon the arraignment, and not to the indictment, for that is not said to be awarded.

See 1 El. ca. 6.
Stanf. Pl. Coron.
89, & 164.
4 Mar. Coron.
Br. 220. Dir
2 Mar. 99. &
3 Mar. 132.
Nota the generalty of these words.
Regula. Fabagenralia generatim sunt intelligenda.
See hereafter, c. 49. of Piracy, &c.
Hil. 14 El. Lo.
Lumleys case, ubi supra.
2 Mar. Dier 99. 199.
Thomas Case.

And it was resolved by all the Justices in a Rollsons case, upon the rebellion in the North, that these words [shall willingly without violence confess the same] are to be understood where the party accused upon his examination before his arraignment, willingly confessed the same without violence, that is, willingly without any torture: and is not meant of a confession before the Judge, for he is never present at any torture. neither upon his arraignment was ever any torture offered. And here cometh another statute made in 1 & 2 Mar. to be considered, by which it is provided, that treason for the counterfeiting and impairing of the coin current in this Realm, &c. the offender therein, &c. shall be indicted, arraigned, tried, convicted or attainted by such like evidence, and in such manner and form, as hath been used and accustomed within this Realm at any time before the first year of King E. 6. &c. wherein the special penning of this Act is to be observed, which in case of treason concerning the counterfeiting or impairing of coin, &c. hath by particular words restored the evidence requisite by the Common Law, before the state of 1 E. 6. as well upon the indictment as the trial. But the Act of 1 & 2 Ph. & Mar. cap. 10. extends to trials only in other cases of High Treason, and therefore that Act extendeth not to the indictment of other High Treasons. Also it is most necessary (as many do hold) that there should be two lawfull accusers, that is, two lawfull witnesses at the time of the indictment, for that it is commonly found in the absence of the party accused, and it may be when the party suspected is beyond Sea, or in remote parts, and may be outlawed thereupon; and therefore being the indictment is the foundation of all, it is most necessary to have substantial

4 Mich. 13 &
14 El. Rollsons case.
b 1 & 2 Ph. & Mar.
cap. 10. supra.
1 & 2 Ph. & Mar.
cap. 10.

proof

See Magna Chart. c. 29. and the exposition thereupon.
 a Part. 27 E. 3.
 part. 8. m. n. 16.
 Rot. Parl. 21 R. 2. nu. 19. 21 [the D. of Norf. case.
 Rot. Pat. 3 H. 4. Ballehuils case.
 Rot. Vascon. 9 H. 4. nu. 14.
 John Bolemers case.
 Rot. Parl. 2 H. 6. num. 9. the Earl of Ormonds case.
 Rot. Pat. 8 H. 6. part. 2. m. 7. between Ulpron and Dowy. Vide the 4. part of the Institutes, ca. the Court of Chivalry &c.
 See Braet. lib. 3. fo. 119. 2.
 b 13 R. 2. ca. 2.
 c Mirror ca. 3. §. ordinance de artain. Braet. l. 5. f. 354. 48 E. 3. 30.
 37 H. 6. 46. Fort. ca. 32. 15 E. 4. f. 1.
 Pl. Com. fo. 8.
 d Deut. 17. 6. 19. 15. Mat. 28. 16. John. 18. 23. 2 Cor. 13. 1. Heb. 10. 28.
 e And so I hold the statute of 1 E. 6. ca. 12. to be a general Law, and to extend to all High Treasons, &c.
 f Not, as well upon the indictment as the arraignment of Treason there ought to be two accusers. See Dier 2 & 3 Ph. & Mar. 132.
 g 1 E. 6. c. 12. the last clause.
 h El. ca. 1. 1 & 2. Ph. & Mar. ca. 11. Braet. li. 3. f. 118.
 Qui accusat integre fame fit, & non criminofus.
 i Stat. de Kenelw. secunda parte. Vet. Mag. Chart. cap. 16.
 k See the first part of the Institutes, Sect. 194. See Fortescue, ca. 26, 27. Juries ought to be informed by evidences and witnesses.

proof in a cause so criminal, where probationes oportent esse luce clarioris. Lastly, if the indictment were part of the tryal, then ought he that is noble, and a Lord of Parliament be indicted of High Treason, &c. by his Peers, for the tryal of him (without question) must be by his Peers: but the indictment of Peers of the Realm is allowed by Free-holders, and not by their Peers, as hereafter shall appear. We have seen the longer herein, in respect of some variety of opinion (for want of the due and intire consideration had of all and every part of that which hath been said) upon serious study touching this point, without respect of a common wandring opinion.

And it seemeth that by the ancient Common Law, one accuser or witness was not sufficient to convict any person of High Treason: as for in that case, where is but one accuser, it shall be tried before the Constable and Marshal by Combat, as by many records appeareth. But the Constable and Marshal have no jurisdiction to hold plea of any thing which may be determined or discussed by the Common Law. And that two witnesses be required, appeareth by our books, and I remember no authority in our books to the contrary: and the Common Law herein is grounded upon the Laws of God, expressed both in the Old and New Testament; *in prope duorum aut trium rectum peribit qui interficietur; Nemo occidatur uno contra se dicente testimonium.*

And this seemeth to be the more clear in the tryal by the Peers or Nobles of the Realm, because they come not de aliquo vicinio, whereby they might take notice of the fact in respect of vicinitie, as other Jurors may do.

Having now rehearsed what others have said and holden, we upon due consideration had of the whole matter, will set down our own opinion and reasons, in these four points following. First, that the statute of 5 E. 6. cap. 11. is a general Law, and extends to all High Treasons, as well by the Common Law declared by the statute of 2 E. 3. as to any other statute made or to be made; the negative words of which statute be, [No person shall be indicted, arraigned, convicted, condemned or sentenced for any Treason that now is, or hereafter shall be, &c.] which words without all question are general, and so to be taken. The words of that statute be further, [Unless the same offender be accused by two lawful accusers.] These two lawfull accusers are in judgement of Law taken for two lawfull witnesses, and that for two causes. First, they must be lawfull, that is, allowed by the Laws of the Realm: and by the Law, upon the arraignment of the Prisoner upon the indictment of Treason, no other accuser can be heard but witnesses only. Secondly, the words of the statute are [which said accusers at the time of the arraignment of the party accused, if they be then living, shall be brought in person before the party so accused, and above, and maintain that which they have to say to prove him guilty of the treason, unless the party arraigned shall willingly without violence confess the same,] as by that Act it appeareth. Now to above and maintain that which they have to say to prove him guilty of the Treason, is the proper office and duty of witnesses, and so it is said in the statute of 5 E. 6. c. 12 in the last clause (by two lawfull witnesses.) See the statute of 5 El. c. 1. where it is said [accused by good and sufficient testimony:] and to the same intent, the statute of 1 & 2 Ph. & Maria, ca. 11. for the word [accused.]

Puniantur accusatores penes dominum regem, quod amodo Rex eis de facili non credat: & talis poena fiat eis, qualis debeat fieri illis qui injuste fideles dñi regis exheredari & destrui fecerunt, &c.

2. That this Act of 5 E. 6. extends as well to Petit Treason, as High Treason, for the words be [any treason:] and so doth the statute of 1 E. 6. cap. 12.

3. That the statute of 1 & 2 Ph. & Mar. cap. 10. doth not abrogate the said Act of 1 E. 6. or of 5 E. 6. For that Act of 1 & 2 Ph. & Mar. extends only to tryals by the verdict of twelve men de vicinio, of the place where the offence is alleged, and the indictment is no part of the tryal, but an information or declaration for the King; and the evidence of witnesses to the Jury is the part of the tryal, for by law the tryal in that case is not by witnesses, but by the verdict

men, and so a manifest diversity between the evidence to a Jury, and a trial by Jury. And the word [awarded] in that statute doth prove that that Act extended only to the Venue facias for trial, for neither the indictment nor the evidence can be said to be awarded. Veritas que minime defensatur, opprimitur, & qui non improbat, approbat. Et sic libere animam meam liberavi.

a The trial against an Alien, that lived here under the protection of the King, and amity being between both Kings, for High Treason, shall by force of this Act of 1 & 2 Ph. & Mar. be tried according to the due course of the Common Law, and therefore in that case he shall not be tried per mediatorum linguas, as he shall be in case of Petit Treason, murder, and felony, if he prayeth it.

4. b That a trial in a foreign County upon examination before three of the Council, &c. by the statute of 33 H. 8. c. 23. is abrogated by this Act of 1 & 2 Ph & Mar. being a trial contrary to the due course of the Common Law, which is to have it tried by Jurors of the proper County: c but the indictment being found in the proper County, it may be by special commission heard and determined before Commissioners in any foreign County, but the trial must be by Jurors of the proper County; and this is warranted by the force of the Common Law. And albeit when the Term begins, all Commissioners of Oyer and Terminer in the County where the Kings Bench sit be suspended during the Term, yet if an Indictment be found before such Commissioners before the Term, there may be a special Commission made to Commissioners in the same County, sitting the Kings Bench in that County, to hear and determine the same during the Term: for the Kings Bench hath no power to proceed thereupon, till the indictment be before them. And it is the better, if the special Commission bear Teste after the beginning of the Term. Note a diversity between general Commissions of Oyer and Terminer, and such a special Commission; and the Court of Kings Bench may be adjourned; and in the mean time the Commissioners may sit there.

d And where it is provided by the statute of 33 H. 8. cap. 23. that peremptory challenge should not from thenceforth be admitted or allowed in cases of High Treason or misprision of treason: e This branch is abrogated by the said Act of 1 Mar. For the end of challenge is to have an indifferent trial, and which is required by Law, and to bar the party indicted of his lawful challenge, and to bar him of a principal matter concerning his trial: and all Acts of Parliament concerning incidents to trials contrary to the course of the Common Law, are abrogated by the said words, [and thereafter, &c.]. But all this is to be understood of persons under the degree of Nobility: for in case of a trial of a Noble man, Lord of Parliament, he cannot challenge at all any of his Peers.

f Henry Garnet Superior of the Jesuites in England, upon his arraignment for the Petitioner Treason, did challenge Bucknall Citizens of London peremptorily, and it was allowed unto him by the resolution of all the Judges &c. as in case of High Treason, or misprision of High Treason, a man may challenge as peremptorily, which formerly he could not. g hally alterations made before the Statute of 1 & 2 Ph. & Mar. for trial of High Treason, Petit Treason, or misprision of Treason, contrary to the due course of the Common Law, are abrogated by the said Act of 1 & 2 Ph. & Mar. and trials by the due course of the Common Law with challenges incident to these cases are restored.

i If a man be indicted of High Treason, he may at this day plead a foreign plea, as he might in the Common Law, and shall be tried in the foreign Country, but otherwise in the cases of Petit Treason, murder, or felony, for there he shall be tried in the County where the indictment is taken. k l And forasmuch as the preceding statutes are repealed. For of the Realm, being a Head of Parliament, in some points agrees, and in other points differs from the preceding against a party under the degree of Nobility: m shall be necessary to know wherein they agree, and wherein they differ.

4 27 E. 3. cap. 8.
28 E. 3. ca. 18.
8 H. 6. ca. 29.
1 Mar. fo. 144.
Shirleys case, and so it was resolved by all the Judges;
Hil. 36 El. in the case of Doctor Lopez, Emanuel Loyse, and Stephen Ferreira de Gama.
b 33 H. 8. c. 23.
3 Mar. Dier 132.
Dier 12 El. 286. b. li. 51. fo. 63. a. in Doctor Fosters case.
c 27 Ass. p. 1.
21 Ass. p. 12.
W. 1. c. 3, &c.
Mich. 25 & 26 EL. per les Justices in Somerviles and Ardens case.
Dier 12 El. 286. b. All this was resolved Mic. 1 Ja. in Sir Walter Raleighs case. Pl. Com. 388. Count de Leicesters case.

d 33 H. 8. c. 23.
e And so it was resolved, An. 1 Ja. in Sir Walter Raleighs case, by all the Judges, and had been resolved so before, Stan. Pl. Cor. 157.
f Ja. R. in Garnets case.
And so was it resolved M. 25 & 26 L. in Somerviles and Ardens case.
g Br. tit. Challenge 27.
h 22 H. 8. c. 14.
i 32 H. 8. c. 3. See 4 H. 1. c. 2. and 22 H. 8. c. 2. pleading, &c. for being taken out of Sanctuary in a foreign County in case of murder or felony. See hereafter, ca. Sanctuary, all Sanctuaries taken away: and note that the stat. of 22 H. 8. &c. extend only to Indictments, and not to Appeals.

1. The

1 H. 4. 1.

1. The Noble Peer of the Realm must be indicted before Commissioners of Oyer and Terminer, or in the Kings Bench, if the treason, misprision of treason, felony, or misprision thereof be committed in that County where the Kings Bench sits, as it was resolved in the case of Tho. D. of N. in An. 13 Eliz. And this is common to both degrees to be indicted by Jurores of that County where the offence was committed.

1 H. 4. 1.

10 E. 4. 6. b.

12 H. 8. 12.

2. When he is indicted, then the King by his Commission under The Great Seal constitutes some Peer of the Realm to be his Vice Steward of England: For his title in the Commission is, [Seneschallus Angliæ] who is Judge in this case of the treason or felony, or of the misprision of the same committed by any Peer of the Realm. This Commission reciteth the Indictment generally as it is found: and power given to the Lord Steward to receive the Indictment, &c. and to proceed Secundum legem & consuetudinem Angliæ. And a commandment is given thereby to the Peers of the Realm, to be attendant and obedient to him: and a commandment to the Lieutenant of the Tower to bring the prisoner before him.

3. A Certioraris awarded out of the Chancery to remove the indictment itself before the Steward of England indulate, which may either bear date the same day of the Stewards Commission, or any day after.

4. The Steward directs his precept under his seal to the Commissioners, &c. to certify the indictment such a day and place.

5. Another Writ goeth out of the Chancery directed to the Lieutenant of the Tower, to bring the body of the prisoner before the Steward at such a day and place as he shall appoint.

6. The Lord Steward maketh a precept under his seal to the Lieutenant of the Tower, &c. and therein expresseth a day and place when he shall bring the prisoner before him.

7. The Steward maketh another precept under his seal to a Serjeant at Arms, to summon Tpe & cales dominos, magnates & proceres hujus regni Angliæ predicti R. Comitis E. pares, per quos rei veritas melius sciri poterit, quod ipsi personaliter compareant coram predicto Seneschallo apud Westm. tali die & hora, ad faciend. ea quæ ex parte domini Regis forent faciendæ, &c. Wherein Four things are to be observed. First, that all these precepts most commonly bear date all in one day: Secondly, that no number of Peers are named in the precept, and yet there must be Twelve or above: Thirdly, that the precept is awarded for the return of the Peers before any arraignment or plea pleaded by the prisoner. Fourthly, that in this case the Lords are not de viâ, and therefore the sitting and trial may be in any County of England. And herein are great differences between a case of a Peer of the Realm, and of one under the degree of Nobility.

1 H. 4. 1.

8. At the day, the Steward with six Serjeants at Arms before him takes his place under a Cloth of Gold, and then the Clerk of the Crown delibereth unto him his Commission, who delibereth the same unto him. And the Clerk of the Crown causeth a Serjeant at Arms to make three Oyes, and commandment is given in the name of the Lord High Steward of England to keep silence: and then the Commission read. And then the Clerk delibereth to the Steward a White Rod, who delibereth the same to the Serjeant, who holdeth it before the Steward. Then another Oye is made, and commandment given in the name of the High Steward of England to all Justices and Commissioners to certify all Indictments and Writs, &c. which being delibered into Court, the Clerk of the Crown readeth the return. Another Oye is made, that the Lieutenant of the Tower, &c. return his Warrant & Precept, and do bring the prisoner to the Bar: which being done, the Clerk reads the return. Another Oye is made, that the Serjeant at Arms return his precept with the names of the Barons and Peers by him summoned, and do return of that to be read. Another Oye is made, that all Clerks, Barons, and Peers, which by the commandment of the High Steward be summoned, answer to their names, and then they take their places

1 H. 4. 1.

places and sit down, and their names are recorded: and the entry of the Record is, that they appear, Ad faciendum ea quae ex parte Domini Regis eis injunguntur. And when they be all in their places, and the prisoner at the Bar, the High Steward declares to the prisoner the cause of their assembly, and persuades him to answer without fear, that he shall be heard with patience, and that justice should be done. Then the Clerk of the Crown reads the Indictment, and proceeds to the arraignment of the prisoner; and if he plead not guilty, the entry is, Et de hoc de bono & malo ponit se super Pares suos, &c. Then the High Steward giveth a charge to the Piers, exhorting them to try the prisoner indifferently according to their evidence.

1 H. 4. 1.

9. The Piers are not sworn, but are charged Super fidelitibus & ligantiis Domino Regi debitis: soz to the Record speaketh.

10. When the Kings learned Council give evidence, and produce their proofs for the King against the prisoner.

11. But the prisoner when he pleadeth not guilty, to where he denieth the fact, he needs have no advice of Council to that plea. But if he hath any matter of law to plead, as Humfrey Stafford in 1 H. 7. had, viz. the privilege of Sanctuary, he shall have Council assigned him to plead the same, or any other matter in Law: as to plead the general pardon, or a particular pardon, or the like. And after the plea of not guilty, the prisoner can have no Council learned assigned to him to answer the Kings Council learned, nor to defend him. And the reason thereof is, not because it concerneth matter of fact, for Ex factis jus oritur: but the true reasons of the law in this case are, First, that the testimonies and the proofs of the offence ought to be so clear and manifest, as there can be no defence of it. * Secondly, the Court ought to be in stead of Council for the prisoner, to see that nothing be urged against him contrary to law and right: nay, any learned man that is present may inform the Court for the benefit of the prisoner, of any thing that may make the proceedings erroneous. And herein there is no diversity between the Pier and another Subject. And to the end that the tryal may be the more indifferent, seeing that the safety of the prisoner consisteth in the indifferency of the Court, the Judges ought not to deliberate their opinions before-hand of any criminal case that may come before them judicially. And we read, that in the case of Humfrey Stafford that arch-traytor, Husley Chief Justice besought King Henry the Seventh, that he would not desire to know their opinions before-hand for Humfrey Stafford, for they thought it should come before them in the Kings Bench judicially, and then they would do that which of right they ought; and the King accepted of it. And therefore the Judges ought not to deliberate their opinions before-hand upon a case put, and proofs urged of one side in absence of the party accused: especially in cases of high nature, and which deserve so fatal and extreme punishment. For how can they be indifferent who have delibered their opinions before-hand without hearing of the party, when a small addition or subtraction may alter the case? And how doth it stand with their Oath, who are sworn, That they should well and lawfully serve our Lord the King and his people in the office of a Justice? and they should do equall law, and execution of right to all his subjects, &c. See more of this matter in the 13 Section here following.

In Scotland in criminal cases, yea in cases of High Treason, Pares may have Council learned. Vide hereafter upon the statute of 31 Eli. concerning witnesses.

* See more hereof cap. 63. Council learned in Pleas of the Crown.

1 H. 7. fol. 16.

12. There be always either all or some of the Judges ever attendant upon the High Steward, and sit at the feet of the Piers, or about a Table in the midst, or in some other convenient place.

13. After all the evidence given for the King, and the prisoners answers, and proofs at large, and with patience heard, then is the prisoner withdrawn from the Bar to some private place under the custody of the Lieutenant, &c. And after that he is withdrawn, the Lords that are tryers of the prisoner go to some place to consider of their evidence: and if upon debate thereof, they shall doubt of any matter, and thereupon send to the High Steward to have conference with the Judges or with the High Steward, they ought to have no conference either with the Judges or the High Steward, but openly in Court, and in the presence

18 E. 3.

since

Pasch. 26. H. 8. in the case of the Lord Dacres of the North, reported by Justice Spilman, which we have seen.

and hearing of the Prisoner, as it was resolved by all the Justices of England in the reign of King H. 8. in the case of the Lord Dacres of the North. And this was a just resolution: for when the Lords should put a case, and ask advice thereupon, the prisoner ought by Law to be present, so that the case or question be rightly put; and therefore that nothing be done in his absence, until they be agreed on their verdict. Whereupon it followeth, that if the Peers of the Realm, who are intended to be indifferent, can have no conference with the Judges, or with the High Steward in open Court in the absence of the prisoner; a fortiori, the Kings learned Council should not in the absence of the party accused, upon any case put, or matter debated by them, privately, preoccupate the opinion of the Judges; and upon to such a resolution the case succeeded well, for the Peers found the Lord Dacres not guilty.

14. A Noble-man cannot have his trial by his Peers, and put himself upon the trial of the Country, that is, of twelve Free-holders: for the statute of Magna Charta is, that he must be tried per Peers. And so it was resolved in the Lord Dacres case, Ubi supra.

Mag. Chart. ca. 29.

* Resolved by all the Judges Mich. 17. & 14. El. in the case of Tho. Duke of Norff: I H. 4. fol. 1. 10 E. 4. 6. b. 13 H. 8. fol. 12. Tr. 26. H. 8. Spilman's Report.

15. The Peers ought to continue together (as Jurors in case of other Subjects ought to do) until they be agreed of their Verdict: and when they are agreed, they all come again into the Court, and take their places: and then the Lord High Steward publicly in open Court, beginning with the chief Lord, (who in the case of the Lord Dacre was the Lord Mordant,) said unto him, My Lord Mordant, Is William Lord Dacre guilty of the Treasons whereof he hath been indicted or arraigned, or of any of them? And the Lord standing up said, Not guilty: and so upward of all the other Lords scintill, who all gave the same Verdict. In which case the entry is, Super quo W. Coines E. & ceteri antedicti Pares instanter super fidelitibus & dignitatibus dicto Domino Regi debitis, per prefatum Seneschallum ab inferiore Parte usque ad supremum Reparatum publice examinati, dicunt, quod W. Dominus Dacre non est culp. &c.

16. The Peers give their Verdict in the absence of the Prisoner, and then the Prisoner brought to the Bar again: and then doth the Lord Steward acquit the Prisoner with the Verdict of his Peers, and give judgement accordingly, either of condemnation or acquittal. But it is not so in the case of another Subject: for there the verdict is given in his presence.

Rot. Roman. 17 E. 2. m. 6. Adam Orleton B. of Hereford. 2 H. 4. Marks B. of Carlisle. Stanf. Pl. Coron. li. 3. ca. 62. fo. 153. in Temp. H. 8.

17. Every Lord of Parliament, and that hath voice in Parliament, and called thereunto by the Kings writ, shall not be tried by his Peers, but only such as sit there ratione Nobilitatis, as Dukes, Marquisses, Counts, Viscounts, or Barons, and not such as are Lords of Parliament ratione Baroniarum, quas tenent in jure Ecclesie, by reason of their Baronies which they hold in the right of the Church, as Archbishops and Bishops, and in time past some Abbots and Priors; but they shall be tried by the Country, that is, by Free-holders, so that they are not of the degree of Nobility.

10 E. 4. 6. b. Mag. Chart. c. 29.

18. a No Noble-man shall be tried by his Peers, but only at the suit of the King upon an indictment of High Treason, or misprision of the same, Petit Treason, murder, or other felony, or misprision of the same. But in case of a Premunire or the like, though it be at the suit of the King, he shall not be tried by his Peers, but by Free-holders. And so in an appeal at the suit of the party for Petit treason, murder, robbery, or other felony, he shall be tried by Free-holders. See more hereof in the second part of the Institutes, Magna Charta, c. 29.

11 E. 3. bre 473. R. 2. procc. pl. ultimo. 20 E. 4. 6. 20 El. Dier 360. 38 H. 8. Br. treason. Seignior Sancars case. Lib. 9. fo. 117.

19. b And albeit a man be Noble, and yet no Lord of the Parliament of this Realm, (as if he be a Noble-man of Scotland, of Ireland, or France, &c.) he shall be tried by Knights, Esquires, or others of the Commons. And so it is of the Son of a Duke, Marquiss, Earl, &c. he is Noble, and called Lord: and yet because he is no Lord of Parliament, he shall be tried as one under the degree of a Peer, and Lord of Parliament.

20. No Peer of the Realm or any other Subject shall be convicted by Verdict, but the said offences must be found by above four and twenty, viz. by twelve or above at his indictment, or by twelve Peers or above, if he be Noble, and by twelve

twelve, and not above, if he be under the degree of Nobility.

21. A Peer of the Realm being indicted of Treason, or Felony, or of mis-
prision, as is aforesaid, and duly transmitted to the Lords may be arraigned
thereof in the upper House of Parliament, as frequently in Parliament Rolls
it doth appear: but then there must be appointed a Steward of England, who
shall put him to answer: and if he plead not guilty, he shall be tried per Pares
mos, and then the Lords Spiritual must withdraw, and make their protest:
but no Appeal of Treason can be in Parliament, & but is suited by the statute
of 1 H. 4. cap. 14.

22. b And as the beginning (viz. the finding of the indictment by the Jury) is
is equal to them both: so the most extreme and heavy judgement, if they be
found guilty, is equal to both; &c. which you may read in the first part of the
Institutes, Sect. 147.

23. c And though the Commission of the Lord Steward be only in these late
times hac vice, yet may the same be adjourned, as other Commissions
hac vice may. And so it was holden in the Lord Dacres Case. And so it was
done by the Steward of England in the case of R. Earl of Sandwich of F. his wife,
who adjourned his Commission until the next day.

24. If execution be not done according to the judgement, then the High
Steward in the case of a Peer of the Realm, or the Court of Commissioners in
case of another subject, may by their precepts under their seals command execu-
tion to be done according to the judgement: but in case of High Treason, if all
the ten of the judgement (saking the beheading, which is part of the judgement)
be pardoned, this ought to be under the Great Seal of England.

25. And when the service is performed, then is an O pes made for the dissolu-
ting of the Commission; and then is the White Rod, which hath been born, and
holden before the Steward, by him taken in both his hands, and broken over his
head.

Lastly, the Indictments, together with the Writs of the arraignment, trial
and judgement, shall be delivered into the Kings Bench, there to be kept and
inrolled.

Hitherto we have spoken when a Noble-man doth appear, and plead not
guilty, and put himself upon his Peers: Now let us see what shall be had
against him when he is indicted, and appears not, and cannot be taken: and ge-
nerally he shall be outlawed per judicium Coronatorum. But how doth that stand
with Magna Charta, Nec super eum mittemus, nisi per legale
judicium parium suorum? What is to be intended, when he appears and pleads
not guilty, and puts himself upon his Peers: but when he absents himself, and
will not yield himself to the due trial of his Peers; then he shall be outlawed per
judicium Coronatorum, or else he should take advantage of his own contumacy
and flying from judgement. & For process to be awarded upon the indictment or
appeal of treason, felony or trespass, either against a Noble-man by any other, by
the statute of 6 H. 6. and 8 H. 6. and if the process and order prescribed by those
statutes be not pursued, the outlatory may be reversed by writ of error, which
writ ought to be granted to him ex merito Justitiae, as it was adjudged in Nunian
Menvils case: and those statutes do extend as well to the Kings Bench, as to
other Courts having by commission power to hear and determine the same, and
they also outlatories of treason or felony are of force and validity in law, so
that these Acts are not pursued.

And these Acts are well expounded by our Books, and therefore they shall
not need to be recited at large. There is necessary to be added, that the opinion
of Stanf. Pl. Cor. 182. l. upon the statute of 31 H. 8. c. 20. is, where the attainder
is not erroneous, but lawful by the course of the law: and so it was resolved,
Tr. 28. Eliz. and thereupon the statute of 28 Eliz. c. 2. was made, that no attain-
der that then was for any High Treason should be reversed for error where the
party was executed. But that Act extendeth only to attainders before that Act,
and where the party attainted suffered pains of death, as hath been said.

10 E. 4. 6.
Rot. Par. 21. R. 2.
Countee de
Arundels case.
Rot. Parliam.
5 H. 4. nu. 119. 12.
31 H. 6. num. 49.
Countee de Devon
case.
28 H. 6. nu. 19.
Duke of Suff.
41 H. 4. cap. 14.
1 H. 4. 2.
Stanf. Pl. Coron.
182. E. K.
See hereafter cap.
Judgement and ex-
ecution.
2 Palch. 26. H. 2.
ubi supra.
L. 5. E. 4. 33.
12 H. 4. 20.

Mag. Chart. ca. 29.
See hereafter in
the chapter of
Judgement and exe-
cution concerning
reversing of Out-
lawries.
6 H. 6. cap. 1.
8 H. 6. ca. 10.
Mich. 26. & 27.
Eliz. in bse de
error coram Rege in
Nunian Menvils case:
Ultry de haut trea-
son reverse in Bank
je Roy.
19 H. 6. fo. 1, 2.
11 H. 6. 54.
1 E. 4. 1. 30 H. 6.
proces 192.
31 H. 8. 11.
Vide F. N. B. 115. l.
Li. Intr. R. f. 122.
Stanf. Pl. cor. 68. l.
69. 182. l.
28 Eliz. cap. 2.

But admitting the process be awarded according to these Statutes, and the truth is, that the party indicted of High Treason (be he noble or other) at the time of the outlawry pronounced, is out of the realm, &c. whether may be abold the same by writ of error? The answer is, that he might take abold the same by writ of error at the common law: but now, in case of High Treason he is barred of his writ of error by the Statutes of 26 H. 8. and 5 E. 6. which Statutes are expounded to extend generally to all Treasons, but those Statutes extend not to any other offence than High Treason only, and therefore all other offences remain as they did at the common law for that point.

See the first part of the Intit. Dech. 20 Ed. 3. cap. 13. 5 E. 6. cap. 11. 12 Ed. Dier 287. Artic. sup. cart. cap. 9. 28 Ed. 3. 30 E. 3. cap. 6. 34 E. 3. cap. 4. 42 E. 3. c. 11. Reg. 178. Rat. pl. 117. * 11 H. 4. c. 9. a Stat. pl. cor. 87. c. b Rot. Par. 11 H. 4. num. 15. in the Kings Bench. c Vid. 11. H. 4. fol. 41. 21 H. 6. 30. 9 E. 4. 16. 3 H. 6. 55. 26 Aff. 28. d 11 H. 4. 41. e 14 H. 4. 19. f 21 E. 3. 5. 15 E. 3. chal. 113. 28 Aff. p. 65. 21 Aff. 24. 22. 49 E. 3. 1. 49 Aff. 1. 28. 43 E. 3. chal. 94. 6 R. 2. chal. 102. 7 H. 4. 10. 21 E. 4. 74. 19 H. 6. 9. 21 H. 6. 28. 14 H. 7. 1. g Nora.

Notwith that all indictments for any offence whatsoever, as well of Noblemen as of any under the degree of Nobility, ought by the common law of the Realm to be by persons duly returned, and by lawful liege people, indifferent as they stand unsworn, and without any denomination of any: a good and profitable law was made in that behalf at the Parliament holden in 11 H. 4. in these words. Item because that now of late Inquests were taken at Westminster to the Justices, without due return of the Sheriff, of which persons some were outlawed before the said Justices of record, and some fled to Sanctuary for Treason, and some for Felony, there to have refuge; by whom as well many offenders were indicted, as other lawful liege people of our Lord the King, not guilty, by conspiracy, abetment, and false imagination of other persons for their special advantage and singular lucre, against the course of the common law used and accustomed before this time: Our said Lord the King for the greater ease and quietness of his people, will and granteth, that the same indictment to make with all the dependance thereof be revoked, annulled, void, and holden for none for ever; and that from henceforth no indictment be made by any such persons, but by inquest of the Kings lawful liege people, in the manner as was used in the time of his Noble Progenitors; returned by the Sheriffs or Bayliffs of franchises, without any denomination to the Sheriffs or Bayliffs of franchises before made by any person of the names which by him should be impannelled, except it be by the Officers of the said Sheriffs or Bayliffs of franchises sworn and known to make the same, and other Officers to whom it pertaineth to make the same according to the law of England. And if any indictment be made hereafter in any point to the contrary, that the same indictment be also void, revoked, and for ever holden for none.

The body of this Act consisteth upon two distinct Purposes or Branches, the one to remedy a mischief past, the other to provide for the time to come. The first branch consisteth of a preamble and a purbien: and the preamble containeth these eight parts. First, it sheweth others inquests had been taken at Westminster by persons named the Justices, secondly, without due return of the Sheriff. Thirdly, of which some were outlawed before the said Justices of record. Fourthly, some fled to Sanctuary for Treason, and some for Felony. Fifthly, by whom many offenders were indicted. Sixthly, some not guilty. Seventhly, by conspiracy, &c. Eighthly, that all this was against the course of the common Law. By the body of the Act, it is enacted, that the same indictment with all the dependance thereof, be revoked and made void. Then followeth the second branch or purbien for the time to come, and this purbien consisteth of divers parts: First, in describing by what persons indictments ought to be found, and therein a privative, that is, not by any such persons, having reference to the preamble, which persons we have before particularly distinguished, a positive, that all indictments must be found by persons of these qualities. 1. They must be the Kings lawfull liege people. 2. Returned by Sheriffs, or Bayliffs of franchises, and other officers to whom it pertaineth. 3. Without any denomination to the Sheriffs, Bayliffs or other officers: and this purbien is in affirmance, and declaratory of the Common Law.

The second part of the purbien is introductory of a new law, viz. that if any indictment be made hereafter in any point to the contrary, that the same indictment be void, revoked, and holden for none. Wherein these two things are to

be observed: 1. That this is a general Act, and extendeth to all indictments for any crime, default, or offence whatsoever: for the words be [if any indictment] generally, without naming of any Court, or before whom. 2. If the indictment be found by any persons that are outlawed, or not the Kings lawful liege people, or not lawfully returned or denominated by any, viz. by all or any of these, that then the indictment is void, for the words be, [if any indictment be made hereafter in any point to the contrary, &c.] Upon this Statute in the case of Robert Scarlet before the Justices of Assize at Wyke in the County of Suffolke, in Summer Assize, 10 J. R. these points were resolved and adjudged. First, where at the Sessions of the Peace holden at Northwiche in the said County of Suffolke, Robert Scarlet by confederacy between him and the Clerk, had made to read the panel of the grand Jury returned by the Sheriff (whereof he was none, albeit he laboured the Sheriff to have returned him) that the Clerk should read him some of the Pannel, which was done accordingly, & he sworn: It was resolved and adjudged that this case was within this Statute, for that he was not returned by the Sheriff, secondly, that where the rest of the great inquest giving faith to him indicted seventeen honest and good men upon divers penal statutes, which were done by the said Robert Scarlet maliciously: It was resolved and adjudged, that albeit he alone was sworn without the return of the Sheriff, and all the rest duly returned, yet that this case was within this Statute, and all the indictments found by him, and the rest were void by this Statute: by whereby it appeared what mischief such a one might do. Thirdly, that Robert Scarlet upon this case had offered against the said Act, and might be indicted thereupon: and accordingly he was upon sufficient proof of the fact, as is aforesaid, indicted upon the said Act, and pleaded not guilty, and was found guilty. Fourthly, that this Act extended not only to indictments of Treason and Felony; but of all other offences and defaults whatsoever, according to the generality of the words. Fifthly, consideration was had of the Act of 3 H. 8. c. 12, and resolved clearly that this Statute had not altered the Act of 11 H. 4. in any thing concerning the offences of Scarlet, as upon that which shall be said of the Act of 3 H. 8. shall appear. And upon hearing of Council learned, what they could say in arrest of judgement, at last judgement was given, that he should be fined and imprisoned, and ordered by the Court that no process should go out upon the said indictments found by the said great inquest, whereof Scarlet was one.

But notwithstanding this good law, through the subtilty and untrue demeanour of Sheriffs and their Ministers, great extorsions and oppressions be and have been committed and done to many of the Kings Subjects, by means of returning at Sessions holden within Counties and Shires for the body of the Shires, the names of such persons as for the singular advantage, &c. of the said Sheriffs and their Ministers, will be wilfully forsworn and perjured by the sinister labour of the said Sheriffs and their Ministers, by reason whereof many substantial persons, the Kings true Subjects, have been wrongfully indicted of murders, felonies, and misdemeanours; and sometimes by labour of the said Sheriffs and their Ministers, divers great felonies and murders have been concealed, &c. For remedy of which mischiefs it is enacted by the said Statute of 3 H. 8. c. 12, That the Justices of Goal-Delivery, or Justices of Peace, whereof one to be of the Quorum, in their open Sessions may reform the panel returned by the Sheriff to enquire for the King, by putting to, and taking out the names of the persons so impanelled by the discretion of the said Justices, &c. and that the Sheriff shall return the panel so reformed. This Act extendeth only to Justices of Goal-Delivery, and of the Peace: The body of the Act for offences is general and indifferent. Vide 11 H. 7. cap. 24.

Nota Lector, that the aforesaid Parliament of 11 H. 4. begun in Quindena Martiani, Anno 11 H. 4. and the same term, viz. Hil. 11 H. 4. to 41. it was according to the said Act of 11 H. 4. resolved by Galfridus Chief Justice, and all the rest of the Justices, that an indictment of felony found by an inquest before 30th October of a man outlawed of felony, and another was acquitted by the general

47 E. 3. 1.
7 H. 4. 10.
21 E. 4. 70.

3 H. 8. cap. 12.

Vide 11 H. 7. c. 24.

Hil. 11 H. 4. 41.

general pardon, so as they were not probi & legales homines to enquire as the law biddeth, and after the party had pleaded not guilty to the felony, it was awarded, that all the indictments by them found were admitted and made hold. Herewith agreth Stanford in his Pleas of the Crown, fo. 87, & 88. Vide F. tit. Indictment 25. & Coron. 89. and Brook tit. indictment 2. Note the Act saith, that they were satisfied before themselves, so as the Court may take knowledge thereof of themselves, or of any other, as amicus curie; but the safest way for the party indicted is to plead, upon his arraignment, the special matter given unto him by the Statute of 11 H. 4. for the shortness of the indictment, with such averments as by law are required, (agreeable to the opinion of the Lord Brook, ubi supra) and to plead other to the felony, and to require counsel learned for the pleading thereof, which ought to be granted; and also to require a copy of so much of the indictment as shall be necessary for the framing of his plea, which also ought to be granted. And these Lawes made for indifferency of Indicters, ought to be construed favourably, for that the indictment is commonly found in the absence of the party, and yet it is the foundation of all the rest of the proceeding.

To draw to an end concerning Trials: It is regularly true, that by the Common Law the trial shall be in the County where the indictment is taken; and by the aforesaid Act of 35 H. 8. treasons and misdemeanors of treasons committed or done out of the Realm, &c. shall be enquired of, heard and determined before the Justices of the Kings Bench, &c. Now the case fell out upon this Statute to be this: One was indicted before the Justices of the Kings Bench, at the Term holden at Hertford, by a Jury of the County of Hertford, for divers high treasons committed out of this Realm, & after the Term was adjourned to Westminster in the County of Midd. The question was, by which of the Counties the party indicted should be tried: And it was resolved, that he should be tried by men of the County where the indictment was taken. But otherwise it is upon the Statute of 5 El. c. 1. the case being, that Thom Bishop of Winch. returned to Edmond Bonner, late Bishop of London, in the County of Surrey, within his Diocese, the oath of Supremacy according to the Act of 1 Eliz. which Bonner refused, and this was certified by the Bishop of Winch. into the Kings Bench, then sitting at Westminster in the County of Midd. Now by the Statute of 5 El. he that refuseth the oath, is to be indicted &c. &c. &c. by a Jury of Midd. as a Jury of that County might do for any offence done in that County, and extendeth only to the indictment, where the words of the Act of 35 H. 8. be, [shall be enquired of, heard and determined,] the question upon the Statute of 5 El. was, if Bonner should appear and plead not guilty, by what County he should be tried, whether by a Jury of Midd. where the indictment was, or by a Jury of Surrey, where the offence was committed; and resolved that he should be tried by a Jury of Surrey; for the Statute of 5 El. extendeth to the indictment only, and leaveth the trial to the Common Law, which appointeth the trial to be where the offence is committed, and so a manifest diversity between the two cases: for regularly by the Common Law in all Pleas of the Crown, Debet quis iuri subjacere, ubi deliquit.

It is now necessary to be shewn, how Prisoners (to speak once for all) committed for treason or any other offence ought to be demeaned in Prison. Bracton saith, Solent prides in carcere continentos dimittere, ut in vinculis continentur: sed huiusmodi interdita sunt a lege, quia carcer ad continentos, non ad puniendos haberi debeat. And in another place he saith, Cuius ad rem taliter captus coram Jure est producendus, produci non debet huiusmodi, siquamvis interdum gestans compedes propter eversionis periculum, & hoc ideo, ne videatur coactus ad aliquam purgationem suscipiendam.

If felons come in judgement to answer, &c. they shall be out of Irons, and all manner of Bonds, so that their party shall not take away any manner of reason, nor them constrain to answer, but at their own will. And in another place he saith, And of prisoners we will that none shall be put in Irons, but those which

Stanf. Pl. Cor. 87, 88. F. tit. Indictment 25. & Coron. 89. Br. tit. indict. 2.

Vid. le statutes de 1 R. 3. cap. 4. 33 H. 6. c. 2. W. 2. cap. 13. 1 E. 3. stat. 2. ca. 17. All tending that indictments may be duly had.

Dier 3 Mar. 131, 132. Stanf. pl. cor. 90. 35 H. 8. cap. 2. Mich. 35 & 36 El. in the case of Francis Dacres,

5 El. cap. 1.

Mich. 6 & 7 El. Dier fo. 134. Bonner's case.

Bract. lib. 3. fo. 154. b. Vincula qui ferunt, dicitur succurrere vicibus.

Bract. lib. 3. fo. 105. r. Stanford 78.

Bract. lib. 3. fo. 137. Note, Shackles about the feet ought not to be, but for fear of escape. Mirr. c. 2. §. 9. a Brit. c. 5. fo. 14. b Cap. 11. fo. 17.

which shall be taken for felony, or trespass in Parks or Warrens, or which be found in arrears upon account, and we desire that otherwise they shall not be punished nor tormented. c Omnes autem attachabiles licet vicecomiti in prisona custodire, &c. non tamen ad puniend, sed ad custodiend, &c. d It is an abuse that Prisoners be charged with Trous, or put to any pain befoze they be arraigned.

W. 1. c. 1. after judgement. Lib. 3. fol. 44. Lib. 8. fol. 100. 24 H. 8. Dier 249. Pl. Com. 360. a. c Flea lib. 2. ca. 6. d Mirror c. 5. s. 1. e 8 E. 2. cor. 432.

Quidam sacerdos christianus de solonia posuit super patriam, & stetit ad bar- ram in ferris, sed per preceptum Justie. liberatur a ferris. And there is no diffe- rence in Law as to a Priest and a Layman, as to Trous.

Tr. 7 B. 3. coram rege Rot. 44.

Præterea quod quidam Robertus Bayhens de Tanesby captus fuit, & in prisona castri Lincoln detentus pro quodam debito Statut. mercatoris in custodia Tho. Boteler Consularii castri de Lincoln ibi præd. Tho. le Boteler posuit ipsum Robertum in profundo Gaoke inter lanones in vili prisona, contra formam Statut. &c. & eodem profundo detinuit, quousque idem Robertus fecit finem cum eo de 40. s. quos exsolvit per extorcionem suam.

* 1 E. 3. c. 7.

So as hereby it appeareth, that where the Law requireth that a Prisoner should be kept in Law & arched custodia, yet that must be without pain or tor- ment to the Prisoner.

Tortures, the rack, &c.

Hereupon two questions do arise, when and by whom the Rack or Stake in the Tower was brought in.

Rot. Pat. 26 H. 6.

To the first, John Holland Earl of Huntingdon was by King H. 6. created Duke of Exeter, and Anno 26 H. 6. the King granted to him the office of the Constableship of the Tower. He and William de la Poole Duke of Suffolk, and others, intended to have brought in the Civil Law, for a beginning whereof, the Duke of Exeter being Constable of the Tower, first brought into the Tower the Rack or Stake allowed in many places by the Civil Law: and whereupon the Rack is called the Duke of Exeters Daughter, because he first brought it thither.

Rot. Parl. 28 H. 6. num. 30.

Hollenshed, pa. 670, &c. Innocentem cogit mentiri dolor. Fortescue, ca. 22, s. 24.

To the second upon this occasion, Sir John Fortescue Chief Justice of Eng- land, wrote his Book in commendation of the Laws of England, and therein preferreth the same for the government of this Country befoze the Civil Law; and particularly that all tortures and torments of parties accused were directly against the Common Laws of England, and sheweth the inconvenience thereof by fearfull example: to whom I refer you, being worthy your reading. So as there is no Law to warrant tortures in this land, nor can they be justified by any prescription, being so lately brought in.

And the Poet in describing the iniquity of Rhadamanthus, that cruel Judge of Hell, saith,

Virgil.

Castigatque, additque dolos, subigitque fateri.

First, he punished befoze he heard, and when he had heard his denial, he com- pelled the party accused by torture to confess it. But far otherwise doth Al- mighty God proceed, postquam reus diffamatus est, 1. Vocat, 2. Interrogat, 3. Ju- dicat. To conclude this point, it is against Magna Charta, cap. 29. Nullus liber homo, &c. aliquo modo destruat, nec super eum ibimus, nec super eum mittemus, nisi per legale iudicium parium suorum, aut per legem terræ. And accordingly all the said ancient Authozs are against any pain or torment to be put or insisted upon the Prisoner befoze arrainder, nor after arrainder, but according to the judgement. And there is no one opinion in our Books, or judicial Records (that we have seen and remember) for the maintenance of tortures and torments, &c.

Luke 16. 1, 2, &c. John 7. 51. Nun- quid lex nostra ju- dicat hominem nisi prius audierit ab ipso?

Proditor illudie verbis, dum verbera cudit. a Numb. 16. 31, 32. & 27. 3. b 2 Reg. 11. 16. c Esth. 12. 2, 3. d 2 Sam. 18. 9. 14.

And now, to conclude this Chapter of Treason, It appeareth in the holy Scripture that traitors never prospered, what god soever they pretended, but were most severely and exemplarily punished. As a Corah, Dathan and Abi- ram, by miracle: Dirupta est terra sub pedibus eorum, & aperiens os suum de- voravit illos, &c. b Athalia the Daughter of Amri, interfecta est gladio. c Baga- tha and Thara against Assuerus: Appensus est uterque eorum in patibulo. d Ab- solon against David: Suspensus in arbore, & Joab infixit tres lanceas in corde ejus. e Achitophel with Absolon against David: Suspendio interit, he hanged himself.

e 2 Sam. 17. 23.

f 1 Reg. 2. 26, 27.
 g 2 Sam. 16. 5, 6.
 1 Reg. 21. 8, &c. 46.
 b 2 Reg. 15. 9, &c. 18.
 i Act. Apost. 5.
 36, 37.
 k Act. Apost. 1. 18.
 Marth. 27. 5. laqueo se suspendit.
 Qui molitur insidias in patriam, id facit quod insanus nauta perorans navem in qua ipse vehitur.
 * Felix quem faciunt aliena pericula cautum.
 Prov. 24. 21.

himself. *f* Abiathar the traitorous High Priest against Solomon: Abiathar Sacerdoti dixit Rex, &c. Et quidem vix mortis es, sed hodie te non interficiam, &c. Ejecit ergo Solomon Abiathar, ut non esset Sacerdos. *g* Shimei against David, *h* Judio interfectus. *b* Zimri against Ela, who burnt himself. *i* Theudas, qui occisus est, & circiter 400 qui credebant ei dispersi sunt & redacti ad nihilum: and Judas Galilzeus, ipse perit, & omnes quotquot consenserunt ei dispersi sunt. *k* Judas Iskariot, secundum nomen ejus, vir occisionis, the traitor of traitors; Et hic quidem possedit agrum de mercede iniquitatis suae, & suspensus crepuit medius, & diffusa sunt omnia viscera ejus.

Peruse over all our Books, Records and Histories, and you shall finde a principle in Law, a rule in reason, and a tryal in experience, That Treason doth ever produce fatal and final destruction to the offender, and never attaineth to the desired end, (two incidents inseparable thereunto.) And therefore let all men abandon it, as the most poisonous batt of the Devil of Hell, and follow the precept in holy Scripture, Fear God, honour the King, and have no company with the Seditions.

See more of Treason in the next Chapter of Conspiracy, &c. and in Principal and Accessory, in the title of Judgement and Execution: and in the Chapter of Monomachia, single combate, &c. the residue of this Act of 25 E. 3.

CAP. III.

Of Misprison of Treason.

Mispriso proditiōnis.
 See Bract. lib. 3. fo. 118. b. & 119. a.
 See hereafter ca. 65. of misprisons, &c.
 See hereafter in Theftbote, cap. 61. 1 & 2 Ph. & Mar. Ubi supra.
 See 1 E. 6. cap. 12. and 1 El. cap. 6.
 25 H. 8. cap. 12.
 * Hil. 14 El. cited by the Lo. Dier in the Ld. Lunleyses case. M. S.
 21 E. 1. cap. 2.
 13 E. 1. cap. 2.
 c 2 R. 3. fol. 9.
 Stanf. 57. c.

Mispriso cometh of the French word *Mispris*, which properly signifieth neglect or contempt: for [mes] in composition in the French signifieth mal, as mis doth in the English tongue, as mischance, for an ill chance; and so mispriso is ill apprehended or known. In legal understanding it signifieth, when one knoweth of any treason or felony, and concealeth it; this is misprison, so called, because the knowledge of it is an ill knowledge to him, in respect of the severe punishment for not revealing of it: For in case of misprison of High Treason he is to be imprisoned during his life, to forfeit all his goods, debts and duties for ever, and the profits of his lands during his life; and in case of Felony, to be fined and imprisoned. And in this sense doth the said statute of 1 & 2 Ph. & Mar. speak, when it saith, Be it declared and enacted by the authority aforesaid, that concealment or keeping secret of any High Treason be decreed and taken only misprison of Treason, and the offenders therein to forfeit and suffer as in cases of misprison of Treason hath heretofore been used. * But by the Common Law concealment of High Treason was treason, as it appeareth in the case of the Lord Scrope, An. 3 H. 5. and by Bracton lib. 3. fo. 118. b. & 119. a.

a It is misprison of High Treason, for forging of money, which neither is the money of this Realm of England, nor currant within the same.

b Misprison of High Treason in concealing of a Bull, &c. See the statute.

c It is said in 2 R. 3. that every treason or felony includeth in it a misprison of treason or felony. Therefore if any man knoweth of any High Treason, he ought within such speed as conveniently he may to reveal the same to the King, or some of his Privy Council, or any other Magistrate. And misprison in a large sense is taken for many great offences which are neither treason nor felony, whereof we shall speak more hereafter, being in this place restrained to misprison of treason.

See John Coniers Case Dier 296. That the receiving of one that hath counterfeited the Kings Coin, and comforting of him, knowing him to have counterfeited the Kings Coin, is but misprison.

See more of Misprison of Treason in the Chapters of High Treason, and of Principal and Accessory.

CAP. IV.

Felony by compassing or conspiring to kill the
King, or any Lord, or other of the Kings
Counsell.

Next heretofore we have thought good to treat of the Statute of 3 H. 7. the
letter of which hath ensue.

Forasmuch as by quarrels made to such as have been in great
authority, office, and of counsell with Kings of this Realm,
hath ensued the destruction of Kings, and the undoing of this Realm,
so as it hath appeared evidently, when compassing of the death of such
as were of the Kings true Subjects was had, the destruction of the
Prince was imagined thereby; and for the most part it hath grown
and been occasioned by envy and malice of the Kings own household-
servants, as now of late such a thing was likely to have ensued: and
for so much as by the law of this land, if actual deeds be not had, there
is no remedy for such false compassings, imaginations, and confeder-
acies had against any Lord, or any of the Kings Counsell, or any of the
Kings great Officers in his Household, as Steward, Treasurer, and Com-
ptroller; and so great inconveniences might ensue, if such ungodly
demeaning should not be straitly punished before that actual deed
were done: Therefore it is ordained by the King, the Lords Spiritual
and Temporal, and the Commons of the said Parliament assembled,
and by authority of the same, That from henceforward the Steward,
Treasurer, and Comptroller of the Kings house for the time being, or
one of them, have full authority and power to enquire by Twelve sad
men, and discreet persons of the Chequer Roll of the Kings honour-
able household, if any servant admitted to be his servant sworn, and his
name put into the Chequer Roll of his household, whatsoever he be,
serving in any manner, office, or room, reputed, had, and taken, under
the state of a Lord, make any confederacies, compassings, conspiracies,
or imaginations with any person or persons, to destroy or murder the
King, or any Lord of this Realm, or any other person sworn to the
Kings Counsell, Steward, Treasurer, or Comptroller of the Kings
house; that if it be found before the said Steward for the time being,
by the said twelve sad men, that any such of the Kings servants as is
abovesaid, hath confederated, compassed, conspired, or imagined, as is
abovesaid, that he so found by that Inquiry, be put thereupon to an-
swer. And the Steward, Treasurer, and Comptroller, or two of them,
have power to determine the same matter according to the Law. And
if he put him in tryal, that then it be tryed by other twelve sad men of
the same household: and that such misdoers have no challenge, but for
malice. And if such misdoers be found guilty by confession, or other-
wise, that the said offence be judged felony, and they to have judgement
and execution, as felons attained ought to have by the Common Law.

This Act divideth it self into two general parts, viz. the Preamble, and the body of the Act. In the Preamble These things are to be observed.

1. That by quarrels made to such as are in great Authority, office, and of Counsel with the Kings of the Realm, have ensued the destruction of the Kings, and the undoing of the Realm, as in the Records of Parliament, and Histories of King E. 2. King H. 6. &c. you may read. And as King William Rufus was slain in the new Forest by the glance of an arrow, so the overthrow of the King, &c. hath followed by glances and consequents, when the blow of destruction hath been aimed at the overthrow of those who were in great Authority near about, and dear to the King, not daring in direct manner to aim at the King himself. Therefore the first conclusion is, that when the compassing of the death of such as were of the Kings true Subjects has had the destruction of the Prince was imagined thereby.

2. That for the most part, it hath grown by envy and malice by the Kings own household servants; and the reason thereof is, for that they being of the Kings household, have greater and readier means, either by night or by day, to destroy such as be of great Authority, and near about the King; and such an attempt and conspiracy was before the Parliament made by some of this Kings household servants, and great mischief was like thereupon to have ensued, which was the cause of the making of this Act.

3. The conclusion of the Preamble is, that by the law of the Land, if such deeds be not had, there is no remedy for such false compassings, as this is a true declaration: For the bare conspiracy of the death of any Lord, or other of the Kings Council, or of the Steward, Treasurer or Comptroller, unless they had been slain, was no felony before this Act, and so referred upon the conspiracy and conspiracy adfectus.

See before in the chapt. of High treason. Verb. Overt Act.

In the body of this Act, six things are enacted: First, that whosoever shall have these qualities. 1. He must be the Kings servant, though, as his name shall be put in the Cheque Roll of the Kings household. 2. He must be under the oath of a Lord; & if he conspire with any other that is not of the Kings household, yet is the conspiracy within this Act, but he of the Kings household is only the felon within the purview of this statute, as it appeareth by the words of the Statute.

Secondly, Against what persons the offence made felony by this Act is to be committed: and in number they be four. 1. To destroy or murder the King: by this Act it expressly appeareth by the judgement of the whole Parliament, that besides the conspiracy, compassing, compassing, or imagination, there must be some other overt act or deed tending thereunto, to make it treason within the statute of 25 E. 3. And therefore the bare conspiracy, compassing, compassing, or imagination by words only, is made felony by this Act. But if the Conspirators do provide any weapon, or other thing, to accomplish their devilish intent, this and the like is an overt act to make it treason. 2. Any Lord of this Realm being sworn of the Kings Council: for by the purview of this Act, he must be sworn of the Kings Council: this is understood of the Kings Privy Council, and so throughout the Act. 3. Any other of the Kings Council (that is, the Kings Privy Council) being under the oath of a Lord. 4. The Steward, Treasurer, and Comptroller of the Kings household being great officers, though they be not of the Kings Council.

See before in the chapt. of High Treason, ubi sup.

Thirdly, The third general part expresseth the persons to whom power is given to enquire and determine this felony. The Steward, Treasurer, and Comptroller, or any one of them may enquire. And they or two of them have power by this Act to hear and determine the same and though the words be for the Inquiry, that they three or any of them, yet an indictment taken before two of them is good, because it is for advancement of Justice. And this Act is in nature of a Commission to them, for other Commission they need not to have: and this may be in divers other Acts of Parliament of like nature. If any the household servants conspire the death of the Steward, Treasurer, and Comptroller, yet by force of this Act they are Judges of the cause, & none other can be, & in that case they

18 E. 3. 1.
23 Aff. 17.
27 H. 6. 8.
27 H. 8. 13.

they will assist themselves for their direction with some grave and learned men in the lawes. But if the death of any one of them be compassed, then it is more convenient that it be heard and determined before the other two.

Fourthly, the fourth part setteth forth, first, how the Inquity, and after the tryal shall be made, that is, that the Inquity must be made by twelve sad men and discret persons of the Cheque Roll of the Kings household: and when the offender hath pleaded not guilty, the tryal shall be by the like persons. And here though this Act limiteth the inquiry to be by twelve, yet if it be inquired of by more then twelve, the presentment is good, but the tryal must be by twelve only.

Fifthly, no challenge shall be made but for malice.

Sixthly, by the context of the whole Act, the conspiracy that is to be heard and determined by this Act must be plotted to be done within the Kings household.

Vide lib. Plac. Coke fo. 482.

The offender against this Statute shall have the benefit of his Clergy: for whensoever Felony is made by any Statute, and the benefit of Clergy is not expressly taken away, the offender shall have his Clergy.

See the Statute of 3 & 4 E. 6. whereby amongst other things in some case it was High treason, and in some case felony, to intend, or go about to kill or imprison any of the Kings Privy Council, &c. from which felony the benefit of Sanctuary and Clergy was taken away: but these treasons and felonies are repealed by the Statute of 1 Mar.

3 & 4 E. 6. cap. 5.

CAP. V.

Of Heresie.

Concerning Heresy five things fall into consideration. First, who be the Judges of Heresy. Secondly, what shall be adjudged Heresy. Thirdly, what is the judgement upon a man convicted of Heresy. Fourthly, what the law alloweth him to save his life. Fifthly, what he shall forfeit by judgement against him.

Touching the First, an Heretick may be convicted as before the Archbishop and other Bishops, and other the Clergy at a general Synod or Convocation, as it appeareth both by our books and by history. See the Statute of 25 H. 8. cap. 19. revised by 1 Eliz. cap. 1.

4 Braet. l. 3. f. 122. & 124. in Conc. Oxon, Newburg. l. 2. cap. 13. 6 H. 3. Stow. Holl. 203. 2 H. 4. Rot. Parl. nu. 29. Sautries case. Fitz. N. B. 269. a. 1 El. cap. 1. 6 Vide 23 H. 8. cap. 9. F. N. B. ubi supra. 5 El. cap. 23. 10 H. 7. 17. b. Doct. & Stud. lib. 2. cap. 29. Br. 2. Mar. tit. Heresy 1.

And the Bishop of every Diocesis may convict any for Heresie, and so might he have done before the Statute of 2 H. 4. cap. 15. as it appeareth by the preamble of that Act in these words;

Whereas the Diocesans of the said Realm cannot by their jurisdiction spiritual, without aid of the said royal Majesty, sufficiently correct the said false and perverse people, (i. Hereticks, named before) because the said false and perverse people do go from Diocesis to Diocesis, and will not appear before the said Diocesans, but the same Diocesans and their Jurisdiction spiritual, and the keys of the Church, with the censures of the same, do utterly condemn and despise.

Now that Statute doth provide, that the Diocesan of the same place, such person or persons, &c. may cause to be arrested, and under safe custody in his prisons to be detained. From this Act and other Acts and Authorities quoted in the margin, these two conclusions are to be gathered. First, that the Dio-

cesan

Mat. Hammond
Anno 21 El.
Holl. 1579.
Stowe 1461.
Hill. 9. Ja. Regis.
Legates case.

Vide 7 E. 6. ca. 12.
1 El. c. 1.

23 H. 8. cap. 9.

1 El. cap. 7.

5 R. 2. Stat. 2.
cap. 7. repealed by
1 E. 6. cap. 12. &
1 Eliz. cap. 1.
* In diebus illis Ma-
sters of Divinity, and
Bachelors of Divi-
nity, and Doctors
of Divinity, and
Bachelors.
4 Rot. Parl. 1.
19 R. 2. m. 27. in
Dorf.
6 Exod. 20. 4.
Levit. 24. 16.
Deut. 28. 16.
Psal. 97. 7.
1 John 5. 21.
6 Rot. Parl.
6 R. 2. nu. 62.
Vide 7 H. 4. nu.
62 Rot. Parl.

cesan hath jurisdiction of Heresie, and so it hath been put in ure in all Queen Elizabeths reign: and accordingly it was resolved by Flemming Chief Justice, Tanfield Chief Baron, Williams and Crook Justices, Hil. 9. Ja. R. in the case of Legate the Hereticke, and that upon a conviction befoze the Ordinary of Heresie, the tort of De Heretico comburendo doth lie. Secondly, that without the aid of that Act of 2 H. 4. the Diocesan could imprison no person accused of Heresie, but was to proceed against him by the censures of the Church. And now seeing that not only the said Act of 2 H. 4. but 25 H. 8. cap. 14. are repealed, the Diocesan cannot imprison any person accused of Heresie, but must proceed against him, as he might have done befoze those Statutes, by the censures of the Church, as it appeareth by the said Act of 2 H. 4. cap. 15. Likewise the supposed Statute of 5 R. 2. c. 5 and the Statutes of 2 H. 5. c. 7. 25 H. 8. c. 14. 1 & 2 Ph. & Mar. c. 6. are all repealed, so as no Statute made against Hereticke standeth now in force: and at this day no person can be indicted or impeached for Heresie befoze any temporal Judge, or other that hath temporal jurisdiction, as upon perusal of the said Statutes appeareth.

Every Archbishop of this Realm may cite any person dwelling in any Bishops Diocess within his Province for causes of Heresie, if the Bishop or other Ordinary immediate thereunto consent, or if that the same Bishop, or other immediate Ordinary or Judge do not his duty in punishment of the same.

2. Touching the second point, if any person be charged with Heresie befoze the High Commissioners, they have no authority to adjudge any matter or cause to be Heresie, but only such as hath been so adjudged by the authority of the Canonical Scripture, or by the first four general Councils, or by any other general Council, wherein the same was declared Heresie by the express and plain words of the Canonical Scripture, or such as shall hereafter be determined to be Heresie by Parliament, with the assent of the Convocation: for so it is expressly provided by the said Act of 1 El. And albeit this Proviso extendeth only to the said high Commissioners, yet seeing in the high Commission there be so many Bishops, and other Wises and Learned men, it may serve for a good direction to others, especially to the Diocesan, being a sole Judge in so weighty a cause.

No manner of Order, Act or Determination for any matter of Religion or cause Ecclesiastical, had or made by the Authority of the Parliament in Anno 1 El. shall be accepted, deemed, interpreted or adjudged Heresie, Schism or Schismatical opinion, any order, decree, sentence, constitution, or law (whatsoever the same be) notwithstanding.

There was a Statute supposed to be made in 5 R. 2. that Commissions should be by the Lord Chancelor made and directed to Sheriffs and others, to arrest such as should be certified into the Chancery by the Bishops and Prelates, Masters of Divinity, to be preachers of heresies and notorious errors, their authors, maintainers and abettors, and to hold them in strong prison until they will justify themselves to the law of holy Church. By colour of this supposed Act, a certain persons that held that images were not to be worshipped, were holden in strong prison until they (to redem their vocation) miserably pleaded befoze the Masters of Divinity to take an oath, and did swear to worship images, which was against the moral and eternal law of Almighty God. We have said (by colour of the said supposed Statute, &c.) not only in respect of the said opinion, but in respect also that the said supposed Act was in truth never any Act of Parliament, though it was entered in the Rolls of the Parliament, for that the Commons never gave their consent thereunto. And therefore in the next Parliament the Commons preferred a bill reciting the said supposed Act, and constantly affirmed that they never assented thereunto, and therefore desired that the said supposed Statute might be annulled and declared to be void: for they protested that it was never their intent to be justified, and to bind themselves & their successors to the Prelates, more then their Ancestors had done in times past: & hereunto the King gave his royal assent in these words, y pleist au Roy.

Roy. And mark well the manner of the penning the Act: for seeing the Commons did not assent thereunto, the words of the Act be, It is ordained and assented in this present Parliament, that, &c. And so it was, being but by the King and the Lords.

It is to be known that of ancient time, when any Acts of Parliament were made, to the end the same might be published and understood, especially befoze the use of Printing came into England, the Acts of Parliament were ingrossed into parchment, and bundled up together with a writ in the Kings name under the great seal to the Sheriff of every County, sometime in Latin, and sometime in French, to command the Sheriff to proclaim the said Statutes within his bailiwick, as well within liberties as without. And this was the course of Parliamentary proceedings befoze Printing came in use in England, and yet it continued after we had the Print, till the reign of H. 7.

Now at the Parliament holden in 5 R. 2. John Braibrook Bishop of London being Lord Chancelor of England, caused the said Ordinance of the King and Lords to be inserted into the Parliamentary writ of Proclamation to be proclaimed amongst the Acts of Parliament: which writ I have seen; the purclose of which writ, after the recital of the Acts directed to the Sheriff of N. is in these words, Nos volentes dictas concordias sine ordinationes in omnibus & singulis suis Articulis inviolabiliter observari, tibi precipimus quod predictas concordias sine ordinationes in locis infra balivam tuam, ubi melius expedire volueris, tam infra libertates quam extra, publice proclamari & teneri facias juxta formam prenotatam. Teste Rege apud Westm. 26 Maii, Anno Regni Regis R. 2. 5. But in the Parliamentary Proclamation of the Acts passed in Anno 6 R. 2. the said Act of 6 R. 2. whereby the said supposed Act of 5 R. 2. was declared to be void, is omitted: and afterwards the said supposed Act of 5 R. 2. was continually printed, and the said Act of 6 R. 2. hath by the Prelates been ever from time to time kept from the print.

Certain men called Lollards were indicted for heresy, upon the said Statute of 2 H. 4. for these opinions, viz. Quod non est meritorium ad Sanctum Thomam, nec ad Sanctam Mariam de Wallingham peregrinari. 2. Nec imagines Crucifixi & aliorum Sanctorum adorere. 3. Nulli sacerdoti confiteri nisi soli Deo, &c. Which opinions were so far from heresy, as the makers of the Statute of 1 Eliz. had great cause to limit what heresy was.

Coram Rege
Hil. 1 H. 5.
Rot. 4 & 5.

And afterwards they thought not good to contain these opinions in an Indictment, but indicted them in general words: one of which indictments as the Lollard and Heresy followeth. Jurati dicunt super eorum Sacramentum, quod A. R. E. D. Lollardi & falsi Hæretici die Jovis post hebdomadam Pasche, Anno regni Regis H. 6. post conquestum nono, apud Abendon in Corn Berks infra virg. falso & proditorie ut communes proditores & insurrectores conspiraverunt, imaginati fuerunt, & ad invicem confederaverunt cum quamplurimis proditoribus illis associatis, & felonibus de eorum comitiva, & eorum falsa malitia præcogitata, ut communes Insidiatores altarium viarum, ad fidem catholicam destruendam, & ibidem falso & proditorie, ut communes proditores & felones dicti domini Regis, fecerunt & scripserunt diversas falsas billas & scripturas seditiosas, & nonnulla fidei & doctrine Christianæ contraria continentes, & eas populo domini Regis publicandas & credendas falso, damnabiliter in diversis locis, viz. in civitatibus London, Sarum, & villis de Coventria & Marseburgh, nequiter posuerunt, fixerunt & projecerunt, ac indies sic scribere, affigere & projicere & ponere non cessant, nec formidant, in gravissimam majestatis & coronæ dignitatis Regis nostri offensam, & Christianæ fidei ludibrium, & pacis dicti domini regis perturbationem, & omnium Christi fideium injuriam & contemptum. Which general indictment, and all other of like form, were utterly insufficient in Law: For albeit the words of the Statute be general, yet the indictment must contain certainty, whereunto the party indicted may have an answer. Also where the parties are indicted ut communes insidiatores viarum, that also is insufficient, as it appeareth by the Statute of 4 H. 4. ca. 2.

Indictment general.
Vide supra cap. 1.
Verbo, Per overt
fait.
Lollardi & falsi
Hæretici.

Communes Insidia-
tores viarum.
Vide supra c. 1. f. 5.
Ad fidem Catholi-
cam destruendam.
Diversas falsas
billas & scripturas
&c.

John

Mich. 3 E. 4. Rot. 143. Coram Rege. In-rationali parte bonorum.

John Keyser was excommunicated by the greater excommunication befoze Thomas Archbifhop of Canterbury, and Legate of the Apoftolick See, at the fuit of another, foze a reasonable part of goods, and fo remained eight months. The said Keyfer openly affirmed, that the said fentence was not to be feared, neither did he fear it. And albeit the Archbifhop oz his Commiffary hath excommunicated me, yet befoze God I am not excommunicated: and he faid that he fpake nothing but the truth. And it fo appeared; foze that he the laft harbest ftanding fo excommunicate, had as great plenty of wheat and other grain as any of his neighbours, faying to them in fcozn (as was urged againft him) that a man excommunicate fhould not have fuch plenty of wheat. The Archbifhop denying thefe words to be within the said Act of 2 H. 4. did by his warrant in writing comprehending the said caufe, by pretext of the said Act commit the body of the said Keyfer to the Gaol at Maidftone, foze that (faith he) in refpect of the publifhing of the said words, dictum Johannem non immerito habemus de hereli fufpectum. By reafon whereof the said John Keyfer was impzifoned in Maidftone Gaol, and in pzifon detained under the cuftody of the Keeper there, untill by his counfel he moved Sir John Markham then Chief Juftice of England, and other the Judges of the Kings Bench, to have an Habeas corpus, and thereupon (as it ought) an Habeas corpus was granted: Upon which writ the Gaoler returned the said caufe and fpecial matter, and writball, according to the writ, had his body there. The Court upon mature deliberation perufing the said Statute, and upon conference with Divines, refolved, that upon the said words Keyfer was not to be fufpect of Heresy within the said Statute, as the Archbifhop took it. And therefore the Court firft bailed him, and after he was delivered: foze that the Archbifhop had no power by the said Act foze thofe words to commit him to pzifon.

Mich. 11 H. 7. Rot. 327. In comuni banco.

Hillary Warner being an Inhabitant within the Parifh of S. Danftans in the weft, held opinion, and publifhed there and in divers other places, quod non tenebatur folvere aliquas decimas Curatori, five Ecclefiæ parochiali ubi inhabitabat. Whereupon Richard Bifhop of London commanded Edward Vaughan and others to arrest the said Hillary Warner: by force whereof they did arrest him, and detained him in pzifon a day and a night, and then he efaped. Hillary Warner brought his Action of falfe impzifonment againft Edward Vaughan and others: In bar whereof the Defendants pleaded the Statute of 2 H. 4. and that the Plaintiff held and publifhed the opinion afoze faid, which opinion was contra fidem Catholicam, feu Determinationem Sanctæ Ecclefiæ; and that the Defendants, as ferbants to the said Bifhop, and by his commandment, did arrest the Plaintiff, and juftified the impzifonment: whereupon Hillary Warner the Plaintiff demurred in Law, and after long and mature deliberation it was by Brian Chief Juftice, and the whole Court of Common Pleas, adjudged, that the said opinion was not within the said Statute of 2 H. 4. foze that it was an error, but no Heresy. Which I have the rather reported, foze that the Reporter of this cafe did not only mif-report the time of the bringing of the Action, but the Statute, which was the ground of the matter in Law, and leabeth out the judgement. The Record it felf is worthy the reading.

Hil. 10 H. 7. fo. 17.

... sibilat ...
... munit ...
... 7 3 1 5 11 ...
... Ambrosius ...
... 21 ...
... annu ...

Upon that which hath been faid touching the said Statute of 2 H. 4. Four concluffions do neceffarily follow. Firft, that feing that many opinions were by the Bifhops taken to be Heresy, which in troth had no fhadow of Heresy, and fo miftaken, and unjuftly extended by the Bifhops further than the Purvien and true intention thereof, as by that which hath been, and might be faid, appeared, the makers of the said Act of Parliament of 1 El. had great reafon to limit (as hath been faid) what opinions fhould be judged Heresy by authority of that commiffion grounded upon that Act. Secondly, that if any Ecclefiastical Judge oz Commiffioner fhall by pretext of any Statute, oz other caufe, commit any man to pzifon, upon motion in Court on the behalf of the party impzifoned, the Judges of the Common Law ought to grant an Habeas corpus foze him: upon the return of which writ, if it fhall appear to the Judges that the impzifonment is well warranted

See in the fecond part of the Inftitutes, the expofition upon the Statute of Artic. Clari, the refolution of all the Judges of England to the 21 and 22 articles or objections.

warranted by Law, the party shall be remanded: and if the imprisonment be without warrant of Law, then the party ought to be delivered. Thirdly, if the imprisonment be not warranted by Law, the party imprisoned may have his action of false imprisonment, and recover his damages. Fourthly, that when an Act of Parliament is made concerning matter merely spiritual, as Heresy, &c. that Act being part of the Laws of the Realm, the same shall be construed and interpreted by the Judges of the Common Law, who usually confer with those that are learned in that profession. But let us now descend to the third point.

To the third. It appeareth by Bracton, Britton, Fleta, Beauford, and our Books, that he that is duly convicted of Heresy shall be burnt to death.

To the fourth. The Ecclesiastical Judge at this day cannot commit the person that is convicted of Heresy to the stocks, albeit he be present, to be burnt; but must have the Kings Writ De hereticis comburendo, according to the Common Law. For with all Acts of Parliament (as hath been said before) against Heretics are repealed. And the reason wherfore Heresy is so extremely and fearfully punished, is, that Cravins est utrumque in corpore et in le- dere majestatem: and Hereticus est lepra anima. c The party duly convicted of Heresy may recant and shew his opinion, and thereby save his life, but a Recant is fatal. For as in case of a disease of the body, after recovery, recidivation is extremely dangerous: so in case of Heresy (a disease of the soul) a Relapse is irrecoverable. And as he that is a Leper of his body, is to be removed from the society of men, lest he should infect them, by the Kings Writ De leproso amovendo: so he that hath leprose anima, that is, is convicted of Heresy, shall be cut off, lest he should poison others, by the Kings Writ De heretico comburendo. But if the Heretic will not after conviction abjure, he may be burnt by the said Writ d De Heretico comburendo de burnt without abjuration.

To the fifth. The statute made in the 2 year of H. 5. cap. 7. whereby the forfeiture of lands in fee simple, and goods and chattels was given in case of Heresy, standeth repealed by the Act of 1 Eliz. cap. 1. The Books that speak of this forfeiture are grounded upon the said Act of 2 H. 5. which were made in force, having 5 R. 2. which was before that statute: for there, though Belknap saith, Per mafoy si home soit miscreant, la terre est forfeitable, & le seignour en ra ceo p' voy defcheat: yet was his opinion never taken for Law: for neither lands, nor goods before the making of that statute of 2 H. 5. were forfeited by the conviction of Heresy, because the proceeding therein is merely spiritual, pro salute anime, and in a Court that is no Court of Record. And therefore the conviction of Heresy worketh no forfeiture of any thing that is temporal, viz. of lands or goods. g For what cause the said Heretics were called Lollards you may read in Caudrics case, and Linwood thereto agreeth. * And it is to be observed, that in proceeding against Lollards, the Prelates, besides their opinions, did charge them with various offences: as conspiracy with multitudes of people, insurrection, rebellion, or some other treason or great crimes.

We have spoken thus much of this argument, because there be divers wandering opinions concerning some of these points, that are not agreeable to the Law as it standeth at this day. In the fourth part of the Institutes, cap. Chanbery, in the Articles against Cardinal Woolsey, Artic. 44.

a Mir. cap. 27. de de Majestae. Bracton ubi sup. Britton cap. 5. Fleta lib. 1. ca. 35. Register. E. N. B. 269. b F. N. B. 269. Rot. Par. 2 H. 4. nu. 20. Sauntyes case. Bfe de hereticis comburendo per regem & concilium in Parlamento. c 2 Mar. tit. Heresie. Br. 7.

d 2 Mar. ubi sup. e Vid. Doct. & Stud. lib. 2. cap. 22. Brit. Postulare in Stan. pl. cor. 35. 2 Mir. Br. tit. Heresie.

f Vid. hereafter in case of Piracy. g Lib. 5. Caudrics case. fol. 25. b. * 1 H. 5. fo. 6. a. Rot. Parl. 5 H. 5. nu. 11. in the case of Sir John Oldcastle, Pasch. 9 H. 6. John Shaps case, &c. Rot. Parl. 7 H. 4. nu. 67. 11 H. 4. nu. 29. 3 H. 5. nu. 39. 1 H. 6. nu. 20.

CAP.

CAP. VI.

Of Felony by Conjuratiō, Witchcraft, Sorcery or Inchantment.

The first Act of Parliament that made any of these offences Felony, was the Statute of 33 H. 8. which was repealed by the Statute of 1 E. 6. cap. 12. and of Maria. But before the Conquest it was severely punished: sometimes by death, sometimes by exile, &c. And after it was made Felony by the Statute of 5 Eliz. and again by 1 Jac. which repealeth 5 Eliz.

A Conjuror is he that by the holy and powerful names of Almighty God invokes and conjures the Devil to consult with him, or to do some act.

A Witch is a person that hath conference with the Devil, to consult with him, or to do some act.

An Inchanter, Incantator, is he or she, qui carminibus aut cantionibus Demonum adjurat. They were of ancient time called Carmina, because in those days their charms were in verse.

Carminibus Circe socios mutavit Ulyssis.

By Charms in rhyme (O cruel Fates!)

Circe transform'd Ulysses mates.

And again, Carminibus Circe socios mutavit Ulyssis.

By Rhymes they can pull down full moon

From lofty sky the wandring Moon.

A Sorcerer, Sortilegus, quia utitur sortibus in cantationibus Demonis. Thou shalt not suffer a Witch to live. Non est augurium in Jacob, nec divinatō in Israel. And the Holy Ghost hath compared the great offence of Rebellion to the sin of Witchcraft.

And here it justly may be demanded, what punishment was against these devilish and wicked offenders before these Statutes, which were made of very late time.

And it appeareth by our ancient books, that these horrible and devilish offenders, which left the ever-living God, and sacrificed to the Devil, and thereby committed Idolatry, in seeking advice and aid of him, were punished by death.

The Spirit saith, Que sorcery & devinal, sont members de Heresie. And there he describeth Heresy, Heresie est un mauvais & faux creance surdant de error en la droit foy Christian: and after saith, Le judgement de Heresie est deee arse in cendric. And herewith agreeth Britton: Sorcerers, Sorceresses, &c., and miscreants soient arses. And Fleta: Christiani autem Apostatae, sortilegi, & hujusmodi detrahari debent, & comburi. And burning then was, and yet is, the punishment for Hereticks. So as the consuance of these offences, if they be branches of heresy, (as the law was then taken) belonged (as to this day heresy doth) to Ecclesiastical Judges. In which case when they have given sentence, there lieth a Writ De haeretico comburendo.

I have seen a report of a case in an ancient Register, that in October Anno 20 H. 6. Margery Gurdman of Epe in the County of Suffolk, was for Witchcraft and consultation with the Devil, after sentence and a relapse, burnt by the Kings Writ De haeretico comburendo. And this agreeth with Antiquity, for Witches, &c. by the Lawes before the Conquest were burnt to death.

A man was taken in Southwark with a head and a face of a dead man, and with a book of Sorcery in his palle, and was brought into the Kings Bench before Sir John Knevett then Chief Justice: but seeing no indictment was against him, the Clerks did swear him, that from thenceforth he should not be a Sorcerer; & he was delivered out of prison, and the head of the dead man, and the book

a 33 H. 8. cap. 8.
1 E. 6. cap. 12.
Inter leges Alveredif. 23. Edwardi & Guthruni cap. 11. Ethelstani, cap. 6. Canuti 4, 5.
65 Eliz. cap. 16.
1 Jac. cap. 12.
A Conjuror described.
A Witch described.
An Inchanter described.

* A Sorcerer described.
Exod. cap. 22. 17.
Deut. cap. 18. 10.
11. 12.
Num. ca. 23. 23.
1 Reg. cap. 15. 23.

d Linwood de officio Archi-presb. § Igneantia.
* Mir. cap. 1. §. 5. & cap. 2. §. 12. & cap. 4. §. De Majestie.
Brit. fo. 16. b. & 71. P. N. B. 269. b.
1 Int. leges Ed. ca. 11. f. 55. & Ethelstani c. 6. fo. 60. & Canuti cap. 5. fo. 5. 45 E. 3. 17. b.
* Some think that this should be the Oath of Allegiance, Que il sera foial & loial, &c.
Vid. 25 E. 3. 42. b. corod. 131.
See hereafter ca. 74. of Perjury.
Verb. That as well the Judge, &c.

of Sorcery were burnt at Tutchill at the costs of the prisoner. So as the head and his book of Sorcery had the same punishment that the Sorcerer should have had by the ancient law, if he had by his Sorcery prayed in aid of the Devil.

The Holy History hath a most remarkable place concerning the reprobation and death of King Saul. Mortuus est ergo Saul propter iniquitates suas, eo quod prævaricatus sit mandatum Domini, & non custodierit illud, * sed insuper Pythonis-
sam consuluerit, nec speraverit in Domino; propter quod interfecit eum, & transfudit regnum ejus ad David filium Isai. So Saul died for his transgression which he committed against the Lord, even against the Word of the Lord which he kept not: And also for asking counsel of one that had a Familiar Spirit, to enquire of it, and enquired not of the Lord; therefore he slew him, and turned the Kingdom unto David the Son of Isai.

1 Chron. chap. 10.
v. 13, 14.
1 Reg. 15. 23.
* Nota.
1 Reg. 28. 8.

Therefore it had been a great defect in government, if so great an abomination had passed with impunity. And this is the cause that we have prayed both and in what manner Conjuration, Witchcraft, &c. were punished by death, &c. before the making of the said late statutes.

But now let us peruse the Statute made in the First year of King James, which only standeth in force, and divideth it self into five several branches.

1. ¶ If any person or persons shall use, practise, or exercise any Invocation or Conjuration of any evil and wicked Spirit.

Here the Devil by the holy and powerful names of Almighty God is invoked (as hath been said:) and this Invocation or conjuration of a wicked Spirit is felony without any other act or thing, save only the apparition of the Spirit. See W. 1. cap. 1. in the Oath of the Champion, &c.

2. ¶ Or shall consult, covenant with, entertain, employ, feed or reward any evil or wicked Spirit, to or for any intent or purpose.

By this branch, if any consult, &c. (howsoever the wicked spirit appeareth and cometh) these actions (here mentioned) with or to that wicked spirit, to or for any intent or purpose, are felony without any other act or thing.

3. ¶ Or take up any dead man, woman or child, out of his, her, or their grave, or any other place where the dead body resteth, or the skin, bone, or any part of a dead person, to be employed or used in any manner of Witchcraft, Sorcery, Charm, or Incantment.

Albeit the offender that commits these barbarous and inhumane dealings with the bodies of the dead, do not actually employ or use them in witchcraft; sorcery, charm or incantment: yet if he did them of purpose to use therein, it is felony, for the words of this branch be, [to be employed or used in any manner of witchcraft, &c.]

4. ¶ Or shall use, practise, or exercise any Witchcraft, Incantment, Charm or Sorcery, whereby any person shall be killed, destroyed, wasted, consumed, pined or lamed, in his or her body, or any part thereof.

By this branch no other witchcraft, incantment, charm or sorcery (then is before specified) is felony, unless by means thereof some person be killed, destroyed, wasted, consumed, pined or lamed, &c. Which words have reference only to this last general clause.

5. ¶ That then every such offender or offenders, their aiders, abettors and counsellors, being of any the said offences duly and lawfully convicted and attainted, shall suffer pains of death as a felon or felons, and shall lose the privilege and benefit of Clergy and Sanctuary.

Albeit accessories before be here specially named, yet accessories after may be of this felony, as afterwards is said upon the statute of 3 H. 7. for taking away of women, and upon the statute of 8 H. 6. for stealing of Records.

The second part of this Act concerneth Felony in a second degree; and the branches thereof are also in number five.

H

¶ 1. If

¶ 1. If any person or persons taken upon him or them, by Witchcraft, Inchantment, Charme or Sorcery, to tell or declare in what place any treasure of gold or silver should or might be found, or had in the earth or other secret places.

The mischief before this part of the Act was, That divers Impostors, Men and Women, would take upon them to tell or do these five things here specified, in great deceit of the people, and cheating and countering them of their money or other goods. Wherefore was this part of the Act made, wherein these words [take upon him or them] are very remarkable. For if they take upon them, or though in truth they do it not, nor can do it, yet are they in danger of this first branch.

¶ 2. Or where goods or other things lost or stolen should be found or become.

Herein they become offenders, if they take upon them as aforesaid. And note, the taking upon them to tell and declare, govern both these branches.

¶ 3. Or to the intent to provoke any person to unlawful love.

Herein also they become offenders, by taking upon them, as is aforesaid. Here is the change of a new Verb, viz. [to provoke.] So as the sense is, If any person or persons shall take upon him or them by witchcraft, incantment, charm or sorcery, to the intent to provoke any person to unlawful love.

¶ 4. Or whereby any cattel or goods of any person shall be destroyed.

The Letter of this branch is this: If any person shall take upon him by witchcraft, incantment, charm or sorcery, whereby any cattel or goods of any person should be destroyed. Although this be not sententious, yet the meaning thereof is to be taken, by supplying these words after sorcery [any thing] and not to turn [destroyed] into the Infinitive Word, as the rest be; for then it satisfieth not the meaning of the makers: for a taking upon them to destroy cattel, or if they be not destroyed, is not within the danger of this Act, and therefore must be supplied, as is aforesaid.

¶ 5. Or to hurt or destroy any person in his or her body, although the same be not effected or done.

As in the case of cattel or goods, the destruction must be (as is aforesaid) effected and done: so in case of the person of man, woman, or child, though the hurt be not effected or done, yet is the taking upon him, or to hurt or destroy any person, or within this branch.

¶ Being therefore lawfully convicted.

Here [convicted] is taken in a large sense for attainted, and the rather for that after in this Act the words be [lawfully convicted and attainted, as is aforesaid.]

¶ Shall for the said offence, &c.

Here are expressed the punishments inflicted upon these Impostors, Mountebanks, and cheating Quack-salvers, viz. 1. To suffer imprisonment by the space of a whole year without bail or mainprize. 2. Once every quarter of the year these Mountebanks are to mount the Pillory, and to stand thereupon in some Market-Town six hours, and there to confess his or her error and offence.

¶ And if any person being once convicted of the same offences, &c.

Here is also [convicted] taken for attainted, for he shall not be capable in question for the second offence, so make it felony, till judgement be given against him for the first; for the Indictment of felony recites the former attainder, and the second offence must be committed after the judgement. And so it is in the case of Forgery upon the statute of 5 Eliz. and in case of conveying of Shipments out of this Realm, and some others.

¶ Saving to the wife of such person as shall offend in any thing contrary to this Act, her title of dower, and also to the heir and executor

cellor

cessor of every person, his or their titles of inheritance, succession, and other rights, as though no such attainder of the Ancestor or Predecessor had been made.]

The judgement against a felon is, that he shall be hanged by the neck until he be dead; and albeit nothing else is expressed in the judgement, yet by the Common Law many things are therein implied; as the loss of his wives Dower, the loss of his inheritance, corruption of his blood, forfeiture of his goods, &c. Now a saving will serve for any thing that is implied in the judgement; as in this case for the wives Dower, and also for the heirs inheritance, and for all the rest of the things implied in the judgement. But a saving will not serve against the express judgement in case of felony, for that should be repugnant; as saving the life of the offender should be void, because it is repugnant to the express judgement, viz. that he shall be hanged by the neck until he be dead. Also where the saving is to the heir, it is well saved by the name of the heir, because notwithstanding the forfeiture implied in the judgement, his inheritance is saved, and by consequent the blood not corrupted, for if the blood were corrupted, he could not inherit as heir; but notwithstanding this saving, the lands are forfeited during his life.

See the 1. part of the Institutes. Sect. 747;

Vide lib. 1. in the case of Alton Woods fo.

The statute of 5 Eliz. for preservation of the wives Dower and the heirs inheritance, in case of felony, is penned in this form. Provided always, that such attainder of felony shall not in any wise extend to take away the Dower of the wife of any such person attaind: nor to the corruption of blood, or disinheritance of any heir or heirs of any such person attaind.

5 El. ca. 14.

The words of the statute of 8 Eliz. be, Provided always that this Act shall not extend to corruption of blood, or be prejudicial or hurtful to any woman claiming Dower by or from any such offender, &c. Wherein it is to be observed, that by the avoidance of corruption of blood the inheritance is impliedly saved. See the manner of the penning of the Act of 31 Eliz. concerning this matter, and divers others.

8 El. ca. 3.

31 El. ca. 4.

And surely it is here convenient that when new felonies be made by Act of Parliament, that such savings or provisions be made both for the wives Dower and the heirs inheritance, as were had and made in these precedents.

See the Statute of 3 Jac. ca. 4.

CAP. VII.

Of Murder.

Having a note passed High treason, Petit treason, Offences of treason, Felony by the statute of 3 H. 7. Heresie, and Conjuratton, Witchcraft, &c. are next in order to treat of Felonies in general: and of all felonies murder is the most heinous. Inter leges Canon, ca. 61. fo. 118. Cædes manifeste numerantur inter scelera nullo humano jure expiabilia. See here ca. Pardon. And of all murders, murder by poisoning is the most detestable. Therefore this of murder. Murderum is derived of the Saxon word Mord.

See the 1 part of the Instit. for the word Murder, Sect. 287. and for Felony, Sect. 509, & 745.

See the 2. part of Instit. Marib. ca. 25. Cust. de Norm. ca. 68.

The definition of murder. Vid. devant, ca. Treason. Verb. Quar. home, &c. Bract. l. 5. fol. 200; 121, 134, 135. Brit. fo. 5. 18. Fleta lib. 1.

Murder is when a man of sound memory and of the age of discretion, unlawfully killeth within any County of the Realm any reasonable creature in rerum natura under the Kings peace, with malice fore-thought, either expressed by the party, or implied by law, so as the party wounded or hurt, &c. die of the wound or hurt, &c. within a year and a day after the same.

Whereof we will speak together with some things concerning the accessories to the same, and leave the rest to others that have written thereof. Now let us examine the principal parts of this description.

Rot. 15. 25 El. 3. 28; Dier 104. b. See the

cap. 29. & 30. Mirror cap. 1. 5. cap. 3. de Appell. de homicide. Tr. 32 E. 1. Com. 287. 26 Ad. p. 27. 3 E. 2. cor. 283. 3 H. 7. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100. 101. 102. 103. 104.

Trin. 31. E. 3.
Coram Rege,
Rot. 54. Per mort.
canis.

Bract. l. 3. fo. 121.
Bri. fo. 14.
Sec lib. Inr.
Coke 25.
Lib. 4. fo. 44.
Vauces case.
Lib. 9. fo. 81.
Agnes Gores case.
Deut. 28. 24.
Curfed is he that
smiteh his neigh-
bour secretly.
22 H. 8. ca. 9.
Read the statute,
Dier 33 H. 8.
fol. 50. a. Sac-
combes case.
Anno 31 H. 8. 12

Britton fo. 14.

13 H. 4. 5. & 6.
Stanf. pl. cor. 65.
Mic. 296. & 26 El.
So resolved in
Dowries case.
13 R. 2. ca. 2.
1 H. 4. ca. 14.
Rot. Parl.
8 H. 6. nu. 38.

13 R. 2. c. 2.

30 mas 1...
Lib. 2...
Fortescue ca...
28 H. 8. ca. 2...
13 R. 2. c. 2...
13 R. 2. c. 2...
13 R. 2. c. 2...

[Killing.] As by **Popson**, Weapon Sharp or blunt, Gun, Crossbow, Crushing, Bruising, Smothering, Suffocating, Strangling, Drowning, Burning, Burping, Faming, Throwing down, Inciting a dog or bear, &c. to bite or hurt, &c. to bereof death ensueth, laying a sick man in the cold, &c.

Popson (Venenum, a venis, quia a venis permeat) is, as hath been said, the most detestable of all, because it is most horrible and fearful to the nature of man, and of all others can be least prevented, either by manhood or providence: and that made **Fleta** to say, Item nec per patriam se defendere debet quis de veneno dato, sed tantum per corpus suum, eo quod initium facti non fuit tam publicum, quod sciri poterit a patria, &c. but that is not holden for law at this day.

This offence was so odious, that by Act of Parliament it was made High Treason, and inflicted a more grievous and lingering death, then the Common law prescribed, viz. That the offender should be boiled to death in hot water. Upon which statute **Margaret Davy** a young woman was attainted of High Treason for poisoning of her mistress, and some others were hanged to death in **Smithfield** the 17 day of March in the same year. But this Act was too severe to live long, and therefore was repealed by 1 E. 6. cap. 12. and 1 Mar. cap. 1.

All the ancient Authors, ubi supra, of old time defined murder to be Occulta hominis occisio, &c. when it was done in secret, so as the offender was not known: but now it is taken in a larger sense.

Britton mentioneth another kind of murder (which is not holden for murder at this day) when he saith, Ceux auxi que fausement pur lower, ou en autre maniere ont aucune home damne ou fait damner au mort, &c. yet this is murder before God. And **David** killed **Uriah** with his pen, and these men with their tongue.

[Within any County of the Realm.] If two of the Kings Subjects go over into a foreign Realm and fight there, and the one kill the other, this murder being done out of the Realm, cannot be for want of trial heard and determined by the Common law: but it may be heard and determined before the Constable and Marshall.

If **A** give **B** a mortal wound in a foreign Country, **B** cometh into England and dieth: this cannot be tried by the Common law, because the stroke was given there where no **Writ** can come, but the same shall be heard and determined before the Constable and Marshall: for the words of the statute of 13 R. 2. be, To the Constable and Marshall to have consufance of Contracts concerning deeds of arms, or of war out of the Realm, and also of things that touch arms or war within the Realm, which cannot be determined or discussed by the Common law.

If a man be stricken upon the high sea, and dieth of the same stroke upon the land, this cannot be enquired of by the Common law, because no **Writ** can come from the place where the stroke was given, (though it were within the sea pertaining to the Realm of England, and within the allegiance of the King) because it is not within any of the Counties of the Realm. Neither can the Admiral hear and determine this murder, because though the stroke was within his jurisdiction, yet the death was *intra corpus, compitatus*, whereof he cannot inquire: neither can it be tried by the statute of 28 H. 8. because the murder was not committed on shore. But by the said Act of 13 R. 2. the Constable and Marshall may hear and determine the same. And before the making of the statute of 28 H. 8. if a man had been feloniously stricken, or poisoned in one County, and after had died in another County, no sufficient judgment could be taken in either of the said Counties, because by the law of the Realm, the Jurors of one County could not inquire of that which was done in another County. It is provided by that Act that the indictment may be taken, and the appeal brought in that County where the death doth happen, before the making

ing of this statute, the Appeal might have been brought either of the said Counties, but the trial must have been out of both: but when both Counties could not join, than both Appeal and Indictment failed at the Common Law. But here be Two things to be observed: First, that in case of treason or suspicion thereof, or of felony or suspicion of the same within the Realm, the party ought to be indicted within the same County where the fact is done, and it cannot be alleged in any other County then in truth where it was done. And therefore in the case aforesaid, neither the strobe nor poisoning, nor the death, though they be transitory, can be alleged in the Indictment or Appeal but where in truth they were done. Secondly, the statute of 2 E. 6. extendeth not where one is stricken or poisoned on the Sea, or in any foreign Kingdom, and death in England, but where one is stricken or poisoned in one County, and death in another.

19 E. 3. 32.
9 H. 6. 63.
3 H. 7. 12.
4 H. 7. 18.
6 H. 7. 10.

This Act extendeth, where the murder or felony is done in one County, and another shall be accessory in another County: as whereof you may read at large in the Lord Sanchars case.

Lib. 9. fol. 117;
118. &c.
Mich. 13 Jac. Regis.
Sir Thomas Overburies case.
See hereafter cap. 62. of Indictments more of this case.

Richard Weston being Sir Thomas Overburies Deputie in the Tower of London, did poison him in that part of the Tower which is within London. K. Earl of S. and F. his wife, James Franklin and Anne Turner were accessories before the fact in the County of Midd. and Sir George Helwys Tenant of the Tower was accessory before the fact in London. Upon this statute of 2 E. 6. cap. 24. divers questions were resolved. First, if the accessory be in Midd. where the Kings Bench sits, and the principal is attainted in another County, the Kings Bench may try the accessory, as it was resolved in the Lord Sanchars case, ubi supra: 21. If the Indictment of the accessory be taken in the Kings Bench, the Justices shall not by force of the statute of 2 E. 6. write in their own names, quia placita sunt coram Rege, & non coram Justiciariis, but remove the Record by the Kings writ of Certiorari. Divers precedents were shewn, that where accessories before the fact were in Midd. where the Kings Bench did sit, &c. and the attainer of the principal had been in another County, the Justices of the Kings Bench had removed the attainer by writs of Certiorari before them. See the Lord Sanchars case, ubi supra, and another case where the principal was attainted in the County of Devon before Justices of Oyer and Terminer, and the accessory was in Midd. where the Kings Bench sat. 4. Richard Weston being attainted as principal in the City of London, proceeding was to be had against James Franklin and Anne Turner by the Kings Bench, where they were indicted. The question was, if the Kings Bench should remove the record of the attainer of the principal by Certiorari before them; and after the said Earl and his wife should be tried by their Peers before the Lord Steward, whether the Lord Steward might write to the Kings Bench for the record of the attainer: by the words of 2 E. 6. he shall write to the Castles, Boscloren, or Keepers of the Knoll wheresuch principal shall hereafter be arraigned or convicted. And the precedent shewn, that the writ was directed according to the words of the Act: for the Commission of Oyer and Terminer, it is certified that the principal was arraigned, convicted, or acquitted; and they made a particular record of the same: and the record of the attainer remained still with the Commission of Oyer and Terminer in London. It was resolved upon consideration had by the Judges that the words of the Act being, the Justices of Oyer, Deliver or of Oyer and Terminer, or other their authorized, shall write, &c. it is resolved that the high Steward shall write, and the record shall be removed as it is resolved in the Judgment of Richard Weston, that the Die of the Kings Bench in the case of Jacob, &c. gave to Sir Thomas Overburies a copy of the record of the attainer, which Sir Thomas Overburies sent unto the Kings Bench. And the Kings Bench Weston praefatus. Thomas Overburies executor executor executor executor executor, i. Junii Anno. Jac. Regis. gave unto Sir Thomas Overburies a copy of the record of the attainer. And that Richard Weston should have the record of the attainer.

Chro. 4. Du-
Laple. Holl. 252.
Common Justice
Incor. in Com.
Kanc. 12. E. 1.
See the second part
of the Indictment
de Indictment
v. 22. E. 3. Cor. 48.
8 E. 2. Cor. 48.
2 Jac. p. Cor. 21. c.
1 E. 3. 21. c.
3 E. 4. p. 21.
4 E. 4. p. 21.
Flet. lib. 1. cap. 23.

him

law of God, which saith, Quicumque effuderit humanum sanguinem, fundetur sanguis illius; ad imaginem quippe Dei creatus est homo. If a man counsell a woman to kill the child within her womb, when it shall be bozn, and after she is delivered of the child she killeth it; the counsellor is an accessory to the murder, and yet at the time of the commandment or counsell no murder could be committed of the child in utero matris: the reason of which case probeth well the other case.

Genesis, c. 6. v. 6.
Dier 3 Eliz. fol. 186.

¶ Malice prepensed.] First let us see what this malice is.

Malice prepensed is, when one compasseth to kill, wound, or beat another, and doth it sedato animo. This is said in law to be malice forethought, prepensed, malitia precogitata. This malice is so odious in law, as though it be intended against one, it shall be extended towards another. * Si quis unum percusserit, cum alium percussurum veller, in felonia tenetur.

Dier 3 Mar. 182.
Pl. Com. 474
475, 476.
Lib. 9. fo. 81.
Agnes Gores case.
* Bract. lib. 3,
fol. 155.

Mandata recipiunt strictam interpretationem, sed illicita laram & extensivam. But herein there is a diversity between the principal and the accessary. For if A command B to kill C, and B by mistaking killeth D instead of C, this is murder in B, because he did the act, and it sprang out of the root of malice, and the law shall couple the event to the cause: but A is not accessary, because his commandment was not pursued; and his consent, which must make him accessary, cannot be drawn to it, for he never commanded the death of D. But where death ensueth upon that act which is commanded, though death it self be not commanded, there he is accessary to it, for there the commandment is the cause of death. As if A command B to beat C, and he beat him, whereof he dieth; the commandment is accessary: and therefore the diversity is apparent as to the accessary. Where death is pursuant, and followeth upon the act commanded, there the consent of the commander may well be drawn to it, for that the commandment is the meat of the death. But where death ensueth upon another distinct cause, there the consent of the accessary cannot be drawn to it, & sic de ceteris.

Another diversity there is, when the commandment extends expressly to the killing of another, and for the better accomplishment thereof prescribeth a mean, that is, to kill him by poison, and he killeth him with a Gun, he is accessary: for the commandment was to kill, which ensued, though the mean was not followed, & finis rei attendendus est. And the substance of the commandment, viz. [to kill] is pursued: and the same offence that was commanded is committed. But otherwise it is, if the same offence which is commanded be not committed. As if one command one to rob the Chitners man of Plate; as he is come to a Gentlemans chamber to his supper with wine, and he breaketh the Tabern in the night, and stealeth the Plate there; the commander is not accessary to this Burglary, for this is another offence then he commanded, and the consent of the accessary must be drawn to the murder or felony committed.

It must be malice continuing until the mortal wound of the like be given. Where there had been malice between two, and after they are pacified and made friends, and after this upon a new occasion fall out, and the one killeth the other, this is Homicide, but no murder, because the former malice continued not.

If A command B to kill C, and before the Act be done A repent and countermand his commandment, and charge B not to do it; if B after killeth him, A is not accessary to it: for the malicious mind of the accessary ought to continue to do ill until the act done.

If two fall out upon a sudden occasion, and agree to fight in such a field, and each of them go and fetch their weapon, and go into the field, and there in fight without killeth the other; here is no malice prepensed, for the fetching of the weapon and going into the field, is but a continuance of the sudden falling out, and the blood was never cooled. But if they appoint to fight the next day, that is malice prepensed.

Pl. Com. ubi sup.

¶ Malice implied is in three cases.] First, in respect of the man-

ner

Lib. 9. fo. 67. b.
in Mackallies case.
x E. 6. c. 22.

ner of the dead. As if one killeth another without any provocation on the part of him that is slain, the Law implieth malice: whereof you may read lib. 9. fol. 67. Mackallies case. Also the poisoning of any man, whereof he dieth within the year, implieth malice, and is adjudged wilfull murder of malice prepensed. One may be poisoned Four manner of waies: Gustu, by taste, that is, by eating or drinking, being infused into his meat or drink; Anhelitu, by taking in of breath, as by a poisonous perfume in a Chamber or other room; Contactu, by touching; and lastly, Suppositu, as by a clyster or the like. Now for the better finding out of this horrible offence, there be others kinds of poisons, as the powder of Diamonds, the powder of Spiders, Lapis causticus, (the chief ingredient whereof is Soap) Cantharides, Mercury sublimate, Arsenick, Koseacre, &c.

Lib. 9. fo. 68.

2. In respect of the person slain. As if a Magistrate or unknown officer, or any other that hath lawfull warrant, and in doing or offering to do his office, or to execute his warrant, is slain, this is murder by malice implied by law, as the Sheriff, Justice of Peace, Undersheriff, chief Constable, petty Constable, or any other minister of the King. If a man kill a watchman doing his office, it is murder: so it is if any that come in aid of the Kings officer, &c. do his office be slain, it is murder.

Mackallies case, ubi supra.
Lib. 4. fo. 40. b.
4 D. 2. Youngs case.
Mackallies case, ubi supra.

3. In respect of the person killing. If A assault B to rob him, and in resisting A killeth B, this is murder by malice implied, albeit he never saw or knew him before. If a prisoner by the duces of the Gaoler cometh to untimely death, this is murder in the Gaoler, and the law implieth malice in respect of the cruelty. And this is the cause, that if any man dieth in prison, the Coroner ought to sit upon his body, to the end it may be inquired of, whether he came to his death by the duces of the Gaoler or otherwise: all which appeareth in Britton: and this sitting of the Coroner continueth till this day.

Brit. cap. 11. De
prisons fo. 18. a.
See the Mirror
cap. 2. §. 11.
De Homicide.
5 H. 6. 58.
27 Ass. 41.

If the Sheriff or other officer, where he ought to hang the party attainted, according to his judgement and his charge, will against the law, of his own wrong, burn or behead him, or convert so, the law in this case implieth malice in him. Neither can the King by any warrant under the Great Seal alter the execution, or otherwise then the judgement of law doth direct: for it is a Maxim in law, Non alio modo puniatur quis quam secundum quod se habeat condemnatio.

Bracl. 1. 3. fo. 104.

And it is to be known, that in case of Treason and Felony there is an express judgement, and an implied judgement. Express, when upon appearance, &c. an express judgement is given against him, quod suspendatur per collum. Implied, when the offender makes default, and is outlawed, where the judgement is, Ideo uilagerur: or in case of abjuration, quia abjuravit regnum, and yet the like execution shall be in case of outlawry or Abjuration, as in case of an express judgement: and so it was adjudged in case of a person outlawed for felony, he ought to be hanged untill he be dead, and cannot be beheaded, and the like is in case of Abjuration. But in case of High Treason, because beheading is part of the Judgement, the King may pardon all the residue of the execution except that: for seeing the King may pardon the whole execution, he may pardon any part, or all saving part. If a Lieutenant, or other that hath commission of Partial authority, in time of peace hang or otherwise execute any man by colour of Partial law, this is murder, for this is against Magna Charta, cap. 29. and is done by such power and strength as the party cannot defend himself; and here the law implieth malice. Vide pasch. 14 E. 3. in Scaccario the Abbot of Ramspey case in a writ of Error in part abridged by Fitzh. tit. Scire fac. 122. for time of peace.

See hereafter in the
title of Sanctuary
for Abjuration.
Pasch. 20 R. 2.
Coram Rege.
Linc. Ro. 58.
* Mich. 1 R. 2.
Coram Rege.
Rot. 1. Bedf.
See hereafter, cap.
Judgement and
Execution.
4 Pasch. 39 E. 3.
Coram Rege.
Rot. 92. Wiltes.
Simile Pasch.
28 E. 3. Coram
Rege, Rot. 37.
In case of Mortimer,
who was put to
death Anno 1 E. 3.
Vide Rot. Brevium
Anno 1 E. 3. part. 1.

a Thom. Countee de Lancaster being taken in an open insurrection, was by judgement of Partial law put to death, in Anno 14 E. 4. This was adjudged to be unlawfull, eo quod non fuit arraniatus, sicut ad responsonem, potius in parte pacis, eo quod Cancellaria & alie Curie Regis fuerunt tunc in quibus se fiebat unicuique, prout fieri consuevit, quod contra chartam de libertatibus, cum dictus Thomas fuit unus Parium & Magnarum Regni, &c.

Nec

Nec dictus Rex super eum ibit, nec super eum mittet, nisi per legale iudicium Parium suorum, &c. tamen tempore pacis absque arraniamento, seu responsione, seu legali iudicio Parium suorum, &c. adjudicatus est morti.

[Within a year and a day.] How this year and day shall be accounted, is to be seen. If the stroke or poison, &c. be given the first day of January, the year shall end the first day of December; for though the stroke or poison, &c. were given in the afternoon of the first day of January, yet that shall be accounted a whole day, for regularly the law maketh no fraction of a day, and the day was added, that there might be a whole year at the least after the stroke or poison, &c. for if he dye after that time, it cannot be discerned, as the law requires, whether he dyed of the stroke or poison, &c. or of a natural death; and in case of life the rule of law ought to be certain. But long the year and day in the case of murder and homicide must be accounted apres le fait, after the deed, if a man be stricken or poisoned, &c. the first of January, and he dieth of that stroke or poison the first day of May, whether shall the year and day be accounted after the stroke or poison given, or after the death? and it shall be accounted after the death, for then the man was murdered, and not after the stroke or poison given, &c. both in the Indictment at the suit of the King, and in the Appeal at the suit of the party. And so it hath been often adjudged, contrary to the opinion of Justice Stanford. A murderer half a year after the murder is received and aided by another: this accessory may be indicted or appealed within the year after he became accessory, though it be after the year that the murder was committed, and shall be tried when the principal is attained.

See the Statute of Gloucest. 6 E. 1. ca. 9. 3 H. 7. ca. 1. 3 E. 3. Cor. 303. Lib. 5. fo. 1. in Cleytons case.

Lib. 4. fo. 41, 42. in Heydons case.

Statut. Pl. Cor. 6305. 26 Ass. P. 53.

If a murder be committed in the day-time in a town not inclosed, and the murderer not apprehended, the Township shall be amerced, &c. whether the murder be in the night or day, the Town shall be amerced. They that are present when any man is slain, and do not their best endeavour to apprehend the murderer or manslayer, shall be fined and imprisoned. What judgement a felon attained shall have, and what he shall forfeit, See the first part of the Institutes, Sect. 747. and here cap. Judgement and Execution.

3 H. 7. c. 1. stat. 1. E. 3. Cor. 299. 8 E. 2. Cor. 395. Inter leges regis Edw. cap. 6. Ethelstani cap. 1. Edw. cap. 6, &c.

Nota, that before the reign of H. 1. the judgement for felony was not always one, but King H. 1. ordained by Parliament, that the judgement for all manner of felonies should be, that the person attained should be hanged by the neck till he be dead, which continueth to this day. See more for murder in the chapter of Monomachia.

9 H. 1. Hoveden An. 1106. Simon Dun. Rad. & Floren; Wigorn. Hal- lingsh.

CAP.

CAP. VIII.

Of Homicide.

Homicidium ex vitio compendeth Petit Treason, Murder, and that which is commonly called Man-slaughter: for Homicidium est Hominis caedes, and homicidium est hominis occisio ab homine facta. Therefoze the right division of Homicides is; That of Homicides or Manslaughters, some be voluntary, and of malice foze thought, as Petit Treason, and murder of another, and murder of himself. Of the first former we have spoken; and of murder of himself we shall speak hereafter. Of Man-slaughters, some be voluntary, and not of malice foze thought: of these some be felony (as shall be shewed hereafter) and some be no felony. Of these, some be in respect of giving back inevitably in defence of himself, upon an assault of rebenge: and some without any giving back; as upon the assault of a thief or robber upon a man in his house or abroad: some upon the assault of one that is under custody, as the Sheriff or Gaoler assaulted by his prisoner: some in respect that he is an officer or minister of justice, without any assault in execution of his office, or lawful warrant. And lastly, some Homicides, that be no felony, be neither foze thought nor voluntary; as man-slaughter by misadventure, per infortunium, or calumny. And some of these that be no felony, are causes of forfeiture of a mans goods, and some be not: and of these several branches in their order. And first of murder of a mans self, which commonly is called Felo de se.

3 E. 3. Cor. 290,
289, 372.
Britton ca. 7.

Felo de se.

Felo de se is a man or woman, which being Compos mentis, of sound memory, and of the age of discretion, killeth himself, which being lawfully found by the oath of twelve men, all the goods and chattels of the party offending are forfeited.

Regina.

Now let us peruse the several branches of this description. *Majus est delictum seipsum occidere, quam alium.*

a Rot. Clauf.
1 E. 1. m. 7.
Rot. Clauf.
6 E. 1. Alma filia
Roberti de Keston.
3 E. 3. Cor. 324.
Rot. Escheat.
Anno 47 E. 3.
nu. 17. Ricus Algate.
b 8 E. 2. Cor. 412.
22 E. 3. Cor. 244.
Pl. Com. 260.

Being compos mentis. a If a man lose his memory by the rage of sickness or infirmity, or otherwise, and kill himself while he is not compos mentis, he is not Felo de se: for as he cannot commit murder upon another, so in that case he cannot commit murder upon himself. b If one during the time that he is non compos mentis gibeth himself a mortal wound, whereof he when he hath recovered his memory dyeth, he is not Felo de se; because the stroke which was the cause of his death, was given when he was not compos mentis: *Et actus non facit reum, nisi mens sit rea.* If a man give himself a wound, intending to be Felo de se, and dieth not within the year and day after the wound, he is not Felo de se.

Of the age of discretion. c Hereof we have spoken befoze treating of Murder.

644 E. 3. 44.
3 E. 3. Cor. 286.
& 297.

Kill himself. c And this is often voluntary, and sometime not voluntary. If A give B such a stroke, as he selleth him to the ground, B draweth his knife; and holds it up for his own defence: A in hast meaning to fall upon B to kill him, falleth upon the knife of B whereby he is wounded to death: he is Felo de se; for B did nothing but that which was lawful in his own defence.

d Pl. Com. 360. b.

Lawfully found. d No goods be forfeited, until it be lawfully found by the oath of twelve men that he is Felo de se: and this doth belong to the Coroner

Coroner super visum corporis, to inquire thereof: and if it be found before the Coroner super visum corporis, that he was felo de se, and the Executors or Administrators of the dead shall have no remedy thereunto. And this is the reason that no man can prescribe to have his goods; because they are not forfeited, until it be found of Record, that he is felo de se.

Stanf. pl. cor. 183. de. Hill: 37. Eliz. in the Kings Bench by the whole Court in the case of one Laughton of Cheshire. See 8 E. 2. cor. 412. 3 E. 3. cor. 312. fil. Stanf. pl. cor. 184.

If a man be Felo de se, and is cast into the sea, or otherwise so secretly hidden as the Coroner cannot have the view of the body, and by consequence cannot inquire thereof: in this case it may be inquired thereof by the Justices of Peace of that County; for they have power by their commission to inquire of all felonies. But if it be found before them, the Executors or Administrators of the dead may have a traverse thereunto, but not to the indictment taken before the Coroner super visum corporis, as before is said: and so hath it been resolved. And so in the case aforesaid may the Kings Bench enquire thereof; if the felony be committed in the County where the Kings Bench sit, and the Executors or Administrators of the dead may traverse the same.

¶ Are forfeited.]

Albeit c Bracton was of opinion, that if a man that was reus alicujus criminis captus sit pro eodem, ut pote pro morte hominis, vel cum furto manicto, vel quod ut legatus sit, & metu poenae imminens mortis mortem sibi conciverit, heredem non habebit, quia sic convincitur felonis prius facta, viz. furtum, mors hominis, vel hujusmodi, & conscientiae metus in reo pro confesso habetur. Aliud erit si non sit in crimine deprehensus, &c. non debet in aliquo casu exheredatio fieri, nisi praecedat crimen propter quod periculum mortis vel membrorum sustineri debet, &c. But the law makes no such diversity: a Felo de se, whatsoever offence he hath committed (whereof he was not in his life-time attainted) shall forfeit no lands, but his goods and chattels only. And so saith Britton, En case ou home est felon de soy mesme, soient ses chateaux judges nous comē chateaux de felon, le heritage nequident remaine as heires. For no man can forfeit his land without an attainder by course of law.

8 E. 2. cor. 426. 44 E. 3. 44. 22 E. 3. cor. 259. 3 E. 3. cor. 301. 3 E. 3. cor. 362. 5 Mar. Dier 150. 9 Eliz. Dier 26. Bract. lib. 3. f. 156. Fleta lib. 2. c. 34. d Pl. com. 261. & b. per tous les Justices. Britton, cap. 7. Cust. de Norm. cap. 21.

If a Willain gibeth himself a mortal wound, the Lord seizes his goods, the Willain after death of the wound within the year and the day, the goods are forfeit.

Pl. com. 260.

And herein there is a diversity between Chattels personals in action and in possession: for if a debt be owing to two, unless it be in case of two joint Merchants, and the one is Felo de se, he doth forfeit the whole: but otherwise it is of goods in possession, for there he forfeiteth but his part.

8 E. 4. Pl. com. 259.

A Lease is made for years to the husband and wife, the husband doth murder himself; the Lease is forfeited, as you may read at large in Plowdens Commentaries.

Pl. com. 260. Dier 2-Mar. 168.

Now let us pursue the branches into which bloody Homicide doth spend and empty it self.

Some manslaughter be voluntary, and not of malice forethought, upon some sudden falling out. Delinquens per iram provocatus puniri debet mitius. And this for distinction sake is called manslaughter. There is no difference between murder and manslaughter, but that the one is upon malice forethought, and the other upon a sudden occasion, and therefore is called Chance-medly. As if two meet together and striving for the wall the one kill the other, this is manslaughter and felony. And so it is, if they had upon that sudden occasion gone into the fields and fought, and the one had killed the other: this (as hath been said) had been but manslaughter, and no murder; because all that followed was but a continuance of the first sudden occasion, and the heat of the blood kindled by ire was never cooled till the blow was given: & sic de similibus.

Lib. 4. fol. 44. Bibiths case. 15 E. 3. Cor. 116. 15 Aff. p. 7. 43 Aff. 31. See the stat. of Gloc. cap. 9. 3 E. 3. cor. 184. 286. & 297. 304. & 301. See hereafter, c. 101. of Judgement and execution. Verb. Of death of a man se defendens.

Manslaughter is felony, and hereof there may be accessories after the fact done; but of murder there may be accessories as well before as after the fact.

Some be killed voluntary, and yet being done upon an inevitable cause, are no felony. As if A be assaulted by B, and they fight together, and before any mortal blow given A gibeth back until he cometh unto a hedge, wall, or other strait,

beyond which he cannot pass, and then in his own defence and for safeguard of his own life killeth the other: this is voluntary, and yet no felony, and the Jury that find it was done *se defendendo*, ought to find the special matter. And yet such a precious regard the laws hath of the life of man, though the cause was inevitable, that at the common law he should have suffered death: and though the statute of Gloucester save his life, yet he shall forfeit all his goods, and chattels. c Hereof there can be no accessories, either before or after the fact, because it is not done *felico animo*, but upon inevitable necessity *se defendendo*. If A assault B so fiercely and violently, and in such a place, and in such manner, as if B should give back, he should be in danger of his life, he may in this case defend himself; and if in that defence he killeth A, it is *se defendendo*, because it is not done *felico animo*: for the rule is, when he doth it in his own defence, upon any inevitable cause, *Quod quis ob tutelam corporis sui fecerit, jure id fecisse videtur*.

a 43. Aff. 31. Rot. Parl.
 3 R. 2. m. 18.
 John Imperials case.
 b 21 E. 3. 17.
 Gloc. cap. 9.
 4 H. 7. 2.
 c Lib. 4. fo. 44.
 Bibiths case.

Bracton.
 d Lib. 5. fo. 91.
 Semayns case.
 26 Aff. p. 23. 32.
 29 Aff. p. 23.
 3 E. 3. cor. 305.
 & 330.
 22 E. 3. cor. 161.
 e 1 H. 7. 39.
 f 24 H. 1. cap. 5.
 f 22 Aff. p. 55.
 g 3 E. 3. cor. 290.
 22 E. 3. Cor. 261.
 M. 22. E. coram rege Rot. 181.
 Eborum,
 Rot. libert. Anno
 1 & 2 E. 1. m. 2.
 h Pasch. 16 E. 3.
 Coram rege
 Rot. 131. Norff.

¶ Some without any giving back to a wall, or other inevitable cause. d As if a thief offer to rob or murder B either abroad or in his house, and thereupon assault him, and B defend himself without any giving back, and in his defence killeth the thief, this is no felony; for a man shall never give way to a thief, or neither shall he forfeit any thing. e And so it is declared by the statute of 24 H. 8. Likewise f if a prisoner assault the Gaoler, the Gaoler is not by law enforced to give back; but if in defence of himself he kill the prisoner, this is no felony.

g So if any Officer or Minister of justice, that hath lawfull warrant, and the party assault the Officer or Minister of Justice, he is not bound by law to give back, but to carry him away: and if in execution of his office he cannot otherwise avoid it, but in striking killing him, it is no felony. And in that case the Officer or Minister of justice shall forfeit nothing, but the party so assaulting or offering to fly away, and is killed, shall forfeit his goods and chattels.

h *Viccomes seu balivus Domini Regis, qui interficit duos latrones non permittentes se judiciari in sui defensionem, & non ex feloniam, seu malitia, acquietatur.*

i If at a Just or Turnement, or at the play with sword and buckler by the Kings commandment, one doth kill another, this is no felony. k In the reign of King H. 2. it was enacted, that if in such case one was slain, it should be no felony; for that in friendly manner they contended to try their strength, and to be able to do the King service in that kind, as occasion should be offered.

i 11 H. 7. 22.
 Vid. hereafter, cap.
 Against riding and
 going armed.
 k Mirror cap. 1. §.
 13. Des adventures.

¶ There is an Homicide, that is neither fore-thought nor voluntary. l As if a man kill another per infortunium, seu casu, that is Homicide by misadventure. *De amputatore arborum, qui cum ramum projiceret, inscius occidit transcurrentem: aut cum quis pilam percussisset, &c. ex cujus ictu occisus est: tales de homicidio non tenentur.* Homicide by misadventure, is when a man doth an act that is not unlawful, which without any evil intent tenderth to a mans death.

l Bract. lib. 3.
 fol. 136. b.
 See the stat. of Gloc.
 c. 9. Mar. cap. 25.
 Bract. lib. 3. 120.
 Brit. c. 7. fo. 15.
 Fleta lib. 1. ca. 30.
 Mir. ca. 1. §. 9.
 m Bract. lib. 3.
 120. b. Sed crit
 distinguendum
 utrum quis dede-
 rit operam rei licite
 vel illicitæ, &c.

¶ Unlawful.] m If the act be unlawful, it is murder. As if A meaning to steal a Deer in the Park of B, shooteth at the Deer, and by the glance of the arrow killeth a boy that is hidden in a bush: this is murder, for that the act was unlawful, although A had no intent to hurt the boy, nor knew not of him. But if B the owner of the Park had shot at his own Deer, and without any ill intent had killed the Boy by the glance of his arrow, this had been Homicide by misadventure, and no felony.

n 3 E. 3. cor. 354.
 2 H. 4. 18.
 11 H. 7. 23. 2.

n So if one shoot at any wild fowl upon a tree, and the arrow killeth any reasonable creature afar off, without any evil intent in him, this is per infortunium: for it was not unlawful to shoot at the wild fowl: but if he had shot at a Cock or Hen, or any tame fowl of another mans, and the arrow by mischance had killed a man, this had been murder, for the act was unlawful.

¶ Without

[Without any evil intent.] If a man knowing that many people come in the street from a sermon, throw a stone over a wall, intending only to tear them, or to give them a light hurt, and thereupon one is killed, this is murder; for he had an ill intent, though that intent extended not to death, and though he knew not the party slain. For the killing of any by misadventure, or by chance, albeit it be not felony, *Quia voluntas in delictis, non exitus spectatur*, yet he shall forfeit therefore all his goods and chattels, to the intent that men should be wary so to direct their actions, as they tend not to the effusion of mens blood.

Nec veniam effusis sanguine casus habet.

Nota, Homicide is called Chancemedley, or Chancemelle, for that it is done by chance (without premeditation) upon a sudden hazard, shuffling or contention: for meddle or melle (as some say) is an ancient French word, and signifieth hazard or contention. But I take it that the French word is melle, which signifies shuffling or contending, and by corruption we changing the S to D, do call it medle, the S being not pronounced, whereof we have made medletum. So as killing of a man by chance-medle, is killing of a man upon a sudden hazard or contention by chance. For the word [medle or melle] whereof we have made a Latin word medletum or melleum, see Glanvil. lib. 1. cap. 2. *Cognoscere de medletis, de verberibus, de plagis*, that is, of hazarding or hazarding, of battery, of wounding: the first in words, the other two in strokes, &c. in ancient time expressed by these two Saxon words, viz. Flic, a Flitan, to hazard; & Fiht, which we retain still to fight when it proceeds to blows. Unde Flicwit, Flichwite, Fightwite, &c.

De Medletis.

And thus much of Homicide committed by man. See in the next Chapter of Deodands, of another kind of killing of a man.

CAP. IX. Of Deodands.

DEodands, when any a moveable thing inanimate, or a beast animate, do move to, or cause the untimely death of any reasonable creature by mischance in any County of the Realm (and not upon the Sea, or upon any salt water) without the will, offence, or fault of himself, or of any person. They being so found by lawfull inquisition of twelve men, being *precium sanguinis*, the price of blood, are forfeited to God, that is, to the King, Gods Lieutenant on earth, to be distributed in works of charity for the appeasing of Gods wrath.

And it is to be observed, that there is a diversity as concerning the Deodand, when the party slain is within the age of discretion, viz. of 14 years, and when he is above the age of discretion. For when he is slain by fall from a cart, horse, mill, &c. and is within the age of discretion, there is no Deodand, as it is adjudged in 8 E. 2. tit. Coron. 389. But otherwise it is of an ox, horse, bull, or the like do kill any within the age of discretion, there the same are Deodands.

And this law concerning Deodands is grounded upon the Law of God, Exod. 2. vers. 28. *Si bos cornu percusserit virum aut mulierem, & mortui fuerint, lapidibus obruetur.* See Justice Standford lib. 1. cap. 12. which need not here to be recited. If A killeth a man with the sword of B, the sword shall be forfeit to

danda. 2 Mar. ibid. 207. b. Kelway. 21 H. 7. fo. 8. d Lib. 5. fo. 110. Foxleys case accord. And this is the reason they cannot be claimed by prescription. 45 E. 3. ubi supra. Fleta ubi sup. 18 E. 2. Cor. 389. f Exod. 2. 28. the

28 E. 2. Cor. 403.
8 E. 2. ibid. 189.
A mill wheel.
Fleta lib. 1. cap. 25.
quicquid mobile
sit in molendino.
Mirror cap. 1. §. 13.
12 R. 2. Cor. 20.
a mass of earth in
a mine.
b Bract. lib. 3. fo.
120. b. d bove,
cane. &c.
c Bracton lib. 3.
fo. 122. 2.
Britton fo. 6. 15.
Mirror cap. 1. §. 3.
Fleta li. 1. ca. 1. 25.
45 E. 3. 2. b.
Vide 4. E. 1. Stat.
officium coron.
6 E. 6. Dier 77. b.
61. 2. Quæ movent
ad mortem sunt Deo-

Doct. & Stud. lib. 2. 156. b. Br. Forfeur. 142.

All our ancient Authors ubi supra.

Rot. Parl. 51 E. 3. nu. 73.

* The arm of the Sea is included here.

the King as a Deadend, because movet ad mortem, and for default of safe keeping of the same by the owner.

But now that we have cited and referred you to our books already known and published; let us call our eye upon some Record of Parliament concerning Deadends of or out of ships or other vessels upon Rivers or waters, Fretts or salt, the law being clear, that in aqua dulcis there may be Deadends, but in the sea, or in aqua salta, being any arm of the sea, though it be in the body of the County, there can be no Deadend of the ship, or any part thereof, though any be drowned out of it; because, though the arm of the sea be within the body of the County, the ship or other vessel is subject to such dangers upon the raging waves in respect of the wind and tempest. And this diversity doth notably appear in the Parliament Roll. Amongst the petitions in Parliament it is desired, that if it happen any man to be drowned by a fall out of any ship, boat, or vessel, there shall be no Deadend, whereunto the King upon great advice and conference with his Judges and Council learned (as always the King doth so petitions in Parliament) made answer, that the ship, boat, or vessel being upon the sea, shall be adjudged no Deadend, but being upon a fresh river, it is a Deadend, but the King will shew favour.

See the like petitions in other Rolls of Parliament, Anno r. 2. nu. 106. 4 R. 2. nu. 33. 1 H. 5. nu. 35, &c. but never obtained more, than the Common Law gave in these cases.

CAP. X.

Of Buggery or Sodomy.

25 H. 8. ca. 6. 5 Eliz. ca. 17. 1 Mar. ubi sup.

Horrendum illud peccatum. 5 El. cap. 17.

Rot. Parl. 50 E. 3. nu. 58.

Britton ca. 9. Gen. 19. 9. Ro. ca. 1. 17. F. N. B. 269. a. Fleta li. 1. ca. 35. Mirror ca. 4. S. de Majestly, ca. 1. S. 15. & cap. 2. Sect. 11.

If any person shall commit buggery with mankind or beast, by authority of Parliament this offence is adjudged felony without benefit of Clergy. But it is to be known, (that I may observe it once for all) that the statute of 25 H. 8. was repealed by the statute of 1 Mar. whereby all offences made felony or Premunire by an Act of Parliament made since 1 H. 8. were generally repealed: but 25 H. 8. is revived by 5 Eliz.

Buggery is a detestable and abominable sin, amongst Christians not to be named, committed by carnal knowledge against the ordinance of the Creator, and order of nature, by mankind with mankind, or with brute beast, or by man with brute beast.

Buggeria is an Italian word, and signifies so much as is before described. Paderastes or Paderastes is a Greek word, Amator puerorum, which is but a Species of Buggery: and it was complained of in Parliament, that the Lombards had brought into the Realm the shameful sin of Sodomy that is not to be named, as there it is said. Our ancient authors do conclude, that it deserbeth death, ultimum supplicium, though they differ in the manner of punishment. Britton saith, that Sodomites and Miscreants shall be burnt: and so were the Sodomites by Almighty God. Fleta saith, Pecorantes & Sodomites in terra vivi confodiantur: and therewith agreeth the Mirror, pur le grand abomination; and in another place he saith, Sodomie est crime de Majestie vers le Roy celestre. But (to say it once for all) the judgement in all cases of felony, is, that the person attainted be hanged by the neck until he or she be dead. But in ancient times in that case, the man was hanged, & the woman was drowned, whereof we have many examples in the Reign of R. 1. And this is the meaning of ancient Franchises granted de Furca & Fossa, of the Gallows and the Pit, for the hanging upon the one, and drowning in the other: but Fossa is taken away, and Furca remains.

Cum

Cum masculo non commiscearis coitu foemineo, quia abominatio est. Cum omni peccatore non coibis, nec maculaberis cum eo. Mulier non succumbet iumento, nec miscbitur ei, quia scelus est, &c. Levit. 18. 22, 23. 1 Tim. 1. 10.

The Act of 25 H. 8. hath adjudged it felony, and therefore the judgement for felony doth now belong to this offence, viz. to be hanged by the neck till he be dead. He that readeth the Preamble of this Act, shall find how necessary the reading of our ancient Authors is. The statute doth take away the benefit of Clergy from the Delinquent. But now let us peruse the words of the said description of Buggery.

¶ **Detestable and abominable.** These just attributes are found in the Act of 25 H. 8.

¶ **Amongst Christians not to be named.** These words are in the usual Indictment of this offence, and are in effect in the Parliament Roll of 50 E. 3. Ubi supra, nu. 58.

¶ **By Carnal knowledge, &c.** The words of the Indictment be, Contra ordinationem Creatoris & naturae ordinem, rem habuit venereum, distinctaque pectum carnaliter cognovit, &c. So as there must be penetration, that is, res in re, either with mankind or with beast, but the least penetration maketh it carnal knowledge. As to the indictment of Sodomy, which was against the great abject, for committing Buggery with a dog, for which he was attainted and hanged.

The Sodomites came to this abomination by four means, viz. by pride, envy, sloth, idleness, and contempt of the law. Quosus nihil cogitat, nisi de ventre & venere. Both the agent and consentient are felons, and this is consistent to the Law of God, Qui dormierit cum masculo coitu fornicato, uterque operatus est nefas, & morte moriatur. And this agreeth with the ancient Rule of Law, Agentes & consentientes pari poena placentur.

Emissio seminis maketh it not Buggery, but is an evidence in case of Buggery of penetration, and so in Rape the words be also carnaliter cognovit. And therefore there must be penetration, and emissio seminis without penetration maketh no Rape. Vide in the Chapter of Rape. If the party buggered be both in the age of discretion, it is no felony in him, but in the agent only. When any offence is felony either by the Common Law, or by Statute, all Accessories both before and after are incidently included. So if any be present, abetting and aiding any to do the act, though the offence be personal, and to be done by one only, as to commit Rape, not only he that doth the act is principal, but also they that be present, abetting and aiding the misdoer, are principals also, which is a proof of the other case of Sodomy.

¶ **Or by woman.** This is within the Purview of this Act of 25 H. 8. For the words be, if any person, &c. which extend as well to a woman as to a man, and therefore if she commit Buggery with a beast, she is a person that commits Buggery with a beast, in which end this word [person] was used. And the rather, for that somewhat before the making of this Act, a great Lady had committed Buggery with a Baboon, and conceived by it.

There be four sins in holy Scripture called Clamoris peccata, crying sins; whereof this detestable sin is one, expressed in this Distichon, Sunt vox clamorum, vox sanguinis, & Sodomorum. Vox oppressorum, merces detenta laborum.

* This is grounded upon the Word of God, viz. Gen. 19. 4, 5. Judges 19. 22. Ut cognoscimus cor. 4 Coke lib. 1. 352. Mich. 5. 12. Coram rege. b Ezek. 16. 49. Gen. 18. 29. Deut. 29. 23. Esay. 13. 19. Jer. 23. 14. 49. 18. 50. 4. Luke 17. 28, 29. 2 Pet. 2. 6. Jud. vers. 7. Rom. 1. 26, 27. Sapient. 10. 6, 7. c Levit. 20. 13. 1 Cor. c. 6. v. 10. d 3 & 4 P. & Mar. Justice Dalisons Reports. Stanf. Pl. Cor. Pl. com. 97. e 11 H. 4. 13. See the 2 part of the Institutes, in the exposition upon the statute of W. 1. cap. 13. and W. 2. cap. 34.

CAP.

CAP. XI.

Of Rape.

Deut. 22. 25.
 Inter leges Alveredi
 cap. 25.
 Canuti 49. 50.
 See W. 2. c. 34.
 W. 1. ca. 13.
 Rot. Parl. 8 E. 2.
 & Rot. Claus.
 8 E. 2. m. 3. Quia
 in casu quando a-i-
 quis, &c.
 6 R. 2. cap. 6.
 18 Eliz. cap. 6.
 Lib. 11. fo. 39.
 Alexander Poulterers
 case.
 See the 1 part of
 the Institutes,
 Sect. 190.
 Mich. 19 E. 3.
 Coram iudice.
 Rot. 19 London.
 quod ipsam de
 puellagio suo felo-
 nice & totaliter de-
 honoravit.
 7 H. 6. 2.
 22 E. 4. 12.
 6 H. 7. 4. b.
 4 Dier 14. El. fo. 304.
 b 18 El. cap. 6.
 e See before in the
 next preceding chap-
 ter of Buggery.
 d Rot. Parl.
 15 H. 6. m. 14.
 e In the same Roll
 nu. 15.
 f Rot. Parl.
 18 H. 6. nu. 28.
 g Rot. Parl.
 31 H. 6. nu. 72.

RAPE is felony by the Common Law, declared by Parliament, for the un-
 lawfull and carnal knowledge and abuse of any woman above the age
 of ten years against her will, or of a woman-child under the age of ten years
 with her will, or against her will, and the offender shall not have the benefit
 of Clergy.

Whereas this was at the Common Law, and what Acts of Parliament
 have been enacted concerning the same, See in the Second part of the Institutes,
 in the exposition upon the statute of W. 1. c. 13. and W. 2. ca. 34. and the First
 part of the Institutes, Sect. 190. 7 H. 6. 2. 22 E. 4. 12. 6 H. 7. 4. b.

The doubt that was made in 14 Eliz. at what age a woman-child might be
 ravished, was the cause of the making of the Statute of 18 Eliz. ca. 6. for plain de-
 claration of the law. [That if any person should unlawfully know and abuse any
 woman-child under the age of ten years, every such unlawfull and carnal know-
 ledge should be felony, and the offender therein being duly convicted, shall suffer
 as a felon without allowance of Clergy.]

Although there be emissio seminis, yet if there be no penetration, that is not
 in it a Rape; for the words of the indictment be, carnaliter cognovit, &c.

In the Parliament Rolls we read what detestation hath been had of this
 heinous offence. At the petition of Isabell late the wife of John Botiler of Beau-
 che in the County of Lancaster knight, whereby Isabell one William Pull of
 Cheshire in the County of Chester Gent. did shamefully ravish; It is enacted
 by Authority of Parliament, that if William Pull do not yield himself after pro-
 clamacion made against him, that he shall be taken as a Traitor attainted,
 & the same Isabell by another petition shewed, how the said William by duress
 and menace obtained her to marry him, and by colour thereof
 ravished her, for the which she prayeth her Appeal, which to her is granted.

Margaret late the wife of Sir Thomas Malfeur knight, made the like com-
 plaint against one Lewys Leyton, alias Gethcy, a Welchman. Against whom the
 like order is taken as was for the said Isabell; only where the Rape was com-
 mitted in Wales, it is enacted that the same shall be tryed in Somersetsshire.

Upon complaint of Henry Beaumont son and heir of Sir Henry Beaumont
 knight, and Charles Vowell Esquire, &c. against one Edward Lancaster of Ship-
 ton in Craven Esquire, for taking away Dame Joan Beaumont the late wife of
 the said Sir Henry, being lawfully married to the said Charles, and for that the
 said Edward married the said Dame Joan against her will, and ravished her.
 Against Edward Lancaster and others remedy is given by appeal, and further
 upon occasions happening thereupon, the statute of 31 H. 6. was made, which
 giveth remedy to a woman enforced to be bound by statute of obligation, as by
 the Act it appeareth.

It is read in story, that when Lucretia being ravished, she was found in et-
 treme heaviness, and it was demanded of her, Salva? she answered, Quomodo
 do mulier salva esse potest laesa pudicitia? And yet thereof it is truly said, Duo sal-
 crunt, & unus commisit adulterium.

In the holy History you shall read, Dimsi cum vidisset Sichu filius Homer He-
 veri, princeps terrae illius, adamavit & rapuit, &c. Observe well what followed
 thereupon. Likewise Ammon prevalens viribus suis oppressit Thamar sororem suam,
 & cubavit cum ea, &c. quae aspergens cinerem capiti suo, scissa talari tunica, imposi-
 tis manibus super caput suum ibat ingrediens & clamans, &c. And observe also the
 end of the offender.

Gen. 34.

2 Sam. 13. 14, 19.

CAP.

CAP. VII.

Felony for carrying away a woman against her will, &c.

WE have thought good next after Suggery and Rape, to speak of the stealing of women, because the Spolis doth rank after the Sodomite, him that is Plagiarius, is called, because lege Flavia plagiis damnatur. And we will begin with the Statute of 3 H. 7. cap. 2.

Erod. 21. 16: Deut. 24. 7. * 1 Tim. 1. 10.

Where women, as well maidens, as widows and wives, having substances, some in goods moveable, and some in lands and tenements, and some being heirs apparent unto their Ancestors, for the lures of such substances, been oftentimes taken by misdoers, contrary to their will, and after married to such misdoers, or to other by their assent, or defoyled, to the great displeasure of God, and contrary to the Kings Laws, and disparagement of the said women, and utter heaviness and discomfort of their friends, and to the evil example of all other: It is therefore ordained, established and enacted by our Sovereign Lord the King, by the advice of the Lords Spiritual and Temporal, and the Commons in the said Parliament assembled, and by authority of the same, That what person or persons from henceforth that taketh any woman so against her will unlawfully, that is to say, maid, widow or wife, that such taking, procuring, and abetting to the same, and also receiving wittingly the same woman so taken against her will, and knowing the same, is felony. And that such misdoers, takers, and procurators to the same, and receitors, knowing the said offence in form aforesaid, be henceforth reputed and adjudged as principal felons. Provided always that this Act extend not to any person taking any woman, only claiming her as his Ward or bondwoman.

3 H. 7. ca. 2. 39 El. ca. 9.

This Act on the offenders part both extend to all degrees, and to all persons, but extendeth not to all women: For on the womans part four things are necessarily required to make the offence felony. First, that the maid, wife or widow have lands or tenements, or moveable goods, or be an heir apparent. Secondly, that she be taken away against her will. Thirdly, that she be married to the misdoer, or to some other by his consent, or be defiled (that is, carnally known.) For if these concur not, the misdoer is no felon within this statute, but otherwise to be punished. And so it was resolved, 3 & 4 Ph. & Mar. and after resolved by all the Judges of England upon written consideration of this Act of 3 H. 7. and upon consultation and conference between them, as the Lord Dier hath reported under his own hand, which I have seen, but the report thereof is omitted in the print: and the Indictments grounded upon this statute are according to this resolution. Fourthly, that she be not ward or bondwoman to the person that taketh her, or cause her to be taken only as his ward or bondwoman.

3 & 4 Ph. & Mar. Justice Dalisons report. Mich. 26. Eliz. Dier Manuscript. And so resolved by Parliament in Anno 39 El. cap. 9.

By this Act, not only the takers, but the procurers, abettors of the felony, and receivers of the said woman wittingly, knowing the same, be all adjudged as principal felons: the like whereof we find not in any other statute, that we remember. But by a construction of the Common Law, they that receive the misdoers,

Nota, quia raro.

doers, and not the woman, are accessories; for this Act maketh the receivers of the woman, as principals.

9 Eliz. cap. 2.
Kelway 81. b.
Stanf. P. Cor. 37. b.
4 & 5 Ph. & Mar. c. 8.
Hil. 34 Eliz. lib. 3.
fo. 37. Ratchiffs case.

For the odiousness of this offence, the benefit of Clergy is taken away from all the offenders against the said Act.

See a good and profitable statute made by such as take away maidens or women children, &c. within the age of sixteen years (though it be not against their will) without consent of parents, &c. and a penalty imposed for taking or contracting matrimony with such maids or women children; and further, the forfeiture which such maids or women children undergo, which conuict to such contract, &c. But because we are now to speak of felonies, we return to that Act extends not, we refer the Reader to the Statute it self. Only we will add a case

Rot. Parl. m. 34.
s. 10. H. 2.
c. 2. H. 2.

where a man by force and violence took the daughter of John Nicford her son (by her first husband) and carried her into the Tower of London, and there kept her in prison, and would not suffer her to be married to her husband, who was a knight, and was a great man in the Tower, and she would not pursue in Court because she was helden to great an offence, as the said Sir Robert was committed by the King to the Tower of London, and he after found surety, and permitted to go but remained to bring for the said Margery by a day prefixed, or else to yield himself prisoner to the Tower again; but it seems the maid was released to her mother again, &c. for a man who had the protection of that cause. See here after, cap. 4. in the 13th Elizabeth.

CAP. XIII.

Of Felony for cutting out of Tongues, and putting out of Eyes, &c.

5 H. 4. cap. 5.

It is felony, with malice prepensed, to cut out the tongue, or put out the eyes, of any of the Kings, or nobles, prebended, or justices, or the members of the same; that when one had been beaten, wounded, maimed or mangled, &c. the offenders, to the end that the party grieved might not be able to accuse them, did cut out their tongues, or put out their eyes, pretending the same to be no felony; and therefore it is ordained and established to be felony by this Act.

Here it is to be observed, that when it doth appear by the preamble of this law, that this offence had been before this Act daily done; this law did so terrifie offenders, as we remember not that we have read in any book of Record, any to be indicted, or upon this law, above one at the most. And of all statutes there are to be preferred which prevent offences before they be done, before those which punish them after they be done. And therefore in the making of this law there was Salutaris severitas, & beata lenitas.

Bracon. lib. 3.
fo. 144. b.

Malice prepensed. That is, voluntary and of set purpose, though it be done upon a sudden occasion; for if it be voluntary, the law impleth malice. We read in Bracon, that the cutting off of a mans right members was felony by the common law: for he saith, Quid dicitur si quis akerius virilia absciderit, & illum libidinis causa vel convitiu castraverit? tenetur sine hoc volens tenetur vel invitus, & sequitur poena aliquando capitalis, aliquando perpetua in exilium cum omni honorum ademptione. And agreeable thereunto find we read in Bracons time to this effect: Hericus Hall & A. uxer ejus capti & detenti sunt in prisona de Evilchester, eo quod reati fuerunt quod ipsi absciderunt virilia

Rot. Claus. Anno
13 H. 3. m. 9.

virilia Johannis Monachi, quem idem Henricus deprehendit cum prædicta uxore ejus, &c. Fleta saith, Si quis castratus fuerit, talis pro mahemato poterit adjudicari. And therewith agreeth old Justice Sennal in the Mirror, and so is the law holden at this day. And in the Appeal and Judgment of Mayhem it is said felonice mayhemavit, whereby we shall speak more hereafter in his proper place. Cutting off of ears is no felony, as it appeareth by the Statute of 47 H. 8. vid. Stat. Pl. Cor. 27. 2. The offender shall have the benefit of his Clergy.

Fleta l. 1. ca. 38.
Mir. ca. 1. §. 9.
De homicidio.
See hereafter ca. 53.
Of Mayhem
37 H. 8. cap. 6.
Mir. cap. 4. de
Artic. de Hirc.

Cap. XLK
Of Burglary.

A Burglar (or the person that committeth Burglary) is by the Common Law a felon, that in the night breaketh and entereth into a mansion-house of another, of intent to kill some reasonable creature, or to commit some other felony within the same, whether his felonious intent be executed or not. We call it in Latine Burglaria, & in Spanis de Bacio Corral. The offenders are called Raptors & murtherers.

This word Burglar is derived from the words Burg, signifying a house, and Laro, signifying a thief, as to the word Bouteville, the word is called it burles, & murtherers are called murtherers derived from Laro.

A Britton collecteth him a Burglar, when he cometh to the branches of this description.

Inter Leg. Bidd.
cap. 6. fo. 76.
22 Deut. 2.
Lib. 4. fo. 39.
Brooks case.
Inter leges Canoni,
fo. 118. ca. 61. Lamba
Horat. lib. 1. Epist.
Britton fo. 17.

[In the night.] The word in the indictment of Appeal, is not Grant, id est, noctu. The natural day is divided in lucem, which is dies solaris, and in tenebras, which is noctu. And therefore as long as the day-light continues, whereby a mans countenance may be discerned, it is called day, and when darkness cometh and day-light is past, so as by the light of day you cannot discern the countenance of a man, then it is called night. In Pofui tenebras, & facta est nox, in qua pertranseunt bestie silvæ, & congregantur fures, & exit homo ad opus, & operationem suam, & redit ad vesper. This doth aggravate the offence, & the night is the time wherein man is to rest, and wherein he should run about seeking their prey.

4 E. 6. Br. Cor. 189
Stat. Pl. Cor. fo. 30.
83 E. 3. com. 202.
Placit. 104.
Lib. 7. fo. 88. b.
Miltborn case.
Tr. 7. E. 1. contra
rege, Rot. 21. Glou.

In ancient Records Crepusculum was signified, when it was said, Inter Canem & Lupum: for when the night begins, the dog sleeps, and the wolf steth his prey. For so we find the entry attentively by the reign of E. 1. as fasting due example for many. Margaria filia Nicolai de Okes appellat Johannem Chole pro Raptu, & pace regis facta, die Martis, &c. inter Canem & Lupum, id est, inter diem & noctem, vel inter vesperum & lucem.

In placito de domo combusta, malitiosa, hora vespertina, Calbeer inter Canem & Lupum, venerunt malefactores A, B, &c. Ignitegium, a regendo ignem, in Coven le fey, hora octava post meridiem, in Bracton saith, Si quis furem nocturnum occiderit, ita demum imponere poterit si parere ei sine periculo suo non potuit: si autem potuit, tunc erit, in manibus Regis sunt vita & mors hominum, sicut in antea Regis apud Windesore de quodam homine de Cocham, coram Guilielmo de Ralgh tunc Justiciario, cui domus Rex in tali casu perdonavit mortem. Agraunt vertunes was the law of the word the tables, Si noctu furtum factum fu, jure capere.

Placit. contra
apud Noyne, ca.
strum anno 24.
E. 1. Rot. 6. An docto
Hil. 3. 2. coram
rege, rot. 8. Londot.
John Imperial case,
in Bract. lib. 2. fo. 1
144. b.
Pardot.

1 Mar. Dier. 99.

Break and enter.

The words of the indictment be, Fregit & intrauit; and this is understood of an actual breaking of the house, and not of a breaking in law; for there entry into the house by a trespasser is a breaking in law, but in case of a burglar, there entry is not a breaking of the house, but the words of the indictment be, Felonice & burglariter intrauit &c. In the case of a mansion-house and upon, and the thief enter into the house for a purpose to steal, this is a breaking of the house in law, and yet no Burglary because there must be an actual breaking. So it is if the window of the house be open, and a thief with a Book or other engine draweth out some of the goods of the owner; this is no Burglary, because there is no actual breaking of the house. But if the thief breaketh the glass of the window, and with a Book or other engine draweth out some of the goods of the owner, this is Burglary, for there was an actual breaking of the house. It is deemed an Entry, when the thief breaketh the house, and his body, or any part thereof, as his foot or his arm, is within any part of the house; or when he putteth a Gun into a window which he hath broken, or into an hole in the house which he hath made, of intent to murder or kill; or, as hath been said, a Book or other engine into any part of the house which he hath broken, of intent to steal; this being done by him into the house, is an Entry, and breaking of the house. And if he both breaketh the house without any such entry at all, that is no Burglary; for it cannot be to steal & intravit. And others come in the night to do a Burglary, and one of them breaks & enter, the rest of them standing near to the door, or about other parts of the house, or at a Range end, or some other place, or of intent to steal; this is Burglary in law, but which is done in a misdemeanor, the law abhors no benefit thereof to the party. As if thieves come in the night with Hue and Cry, pretending that they be robbed, and shall require the Constable to search for their felons, and whilst he searcheth with them into some mans house, they break into the Constable and dweller, this is Burglary; for in judgement of law it is their act.

Stat. Pl. Cor. 30.2.
Dier 1 Mar. 99. a.
22 Aff. p. 39. 95.

23 H. 4. 13.

Into a Mansion-house.

The indictment saith, Domus mansionalis; a mansion or dwelling-house. Domus mansionalis is divided into two kinds, viz. the Hall, Parlor, Kitchen, and Lodging chambers, &c. and the office buildings, as Barns, Stables, Cow-houses, Marns, &c. all these are parcels of the mansion-house, and will pass by the name of Domus mansionalis. And although there mansion-house hath was all these buildings, yet there house for the dwelling and habitation of man is taken to be a mansion-house; where Burglary may be committed. If a man hath a mansion-house, and upon some accident he and all his family some part of the night are out of the house, and in the mean time a thief breaks and enter into the house, of intent to steal; this is Burglary, although neither the owner nor any of his family is in the house; for the indictment of Burglary is, Domum mansionalem, &c. fregit, &c. and this is Domus mansionalis. See hereafter the statutes of 3 H. 8. and 5 H. 8. If a man do break and enter a Church in the night, of intent to steal, this is Burglary, for ecclesia est domus mansionalis omnipotentis Dei. Extra legis auxilium invocat, qui in legem committit. Domus mea domus orationis vocabitur, vos autem fecistis illam templum Latronum. Sacilegium dicitur a sacro & legere, id est furari. A Tent or Booth in Fair or Market is not Domus mansionalis, but of another name or kind, is but that is prohibited for by the statute of 7 E. 6. ca. 9. whether the Robbery be done in the night, or in the day, the owner, &c. being within the same sleeping or watching, nor a shop wherein any person hath dwelt, being parcel of a mansion-house, or not parcel, is taken for a mansion-house.

b Lib. 4. fo. 40. in Brooks case.
Hil. 38 Eliz. per les Justices, ibid.
c 23 H. 8. cap. 1.
e E. 6. ca. 9.
See inter leges Alverdi, c. 6.
d Britton fo. 17.
Dier 1 Mar. 99.
20 E. 2. Cor. 254.
22 Aff. p. 95.
26 Aff. 19.
e 27 Aff. 42.
20 E. 2. Cor. 283.
12 E. 3. Cor. 120.
Rot. Chanc.
3 E. 3. m. 2. & 18.
the Ordinary may allow Clergy for Sacrilege.
Lib. 2. p. 29.
f Marth. 21. 27.
g 5 E. 6. cap. 9.

Likewise

Likewise a Chamber or room, be it upper or lower, wherein any person doth inhabit or dwell, is Domus mansionalis in lege.

Our ancient Authors and old Records did expect Burglary under this word, Hamlockne, or Hamlockne. The first is derived from two Saxon words, viz. of Ham that signifieth a Mansion-house, Domus mansionalis, which to this day we call our home; and Suckne or Succen, that is, Secken, as much to say as to seek a man in his house to slay or rob him.

It is to be noted that our ancient Authors, nor our old Book-cases do distinguish between the day and the night when the offence should be committed in the house, save only the Pirro.

Others derive the Hamlockne from Ham, which of both does is considered to be a Mansion-house, and Suckne which signifieth a Court, as much to say as to have jurisdiction, as to hold plea of offences done to a man in his house.

This is not felony without an act done, though it were noctanter; for the Appreal and Indictment of Burglary, Quod domum mansionalem, &c. fregit & intravit, &c. as with other felonies, any place but the mansion-house only is required to make Burglary.

Ways Burglary may be committed as well in the outward buildings as in the house, for all are parts of the mansion-house, and he that breaks any of the outward buildings, doth break Domum mansionalem, as well as he that breaks the inset.

Of Intention Kill. A man be indicted that he in the night time did feloniously break the house of K. S. & verberandum ipsam K. S. this is no Burglary, because it was but to beat and not to kill. But if it were ad interficiendum, that is, to kill, it is Burglary, though he never touched him; for the intent must be to commit felony, and not trespass, or other thing that is not felony, the words of the Statute, Quod felonice & burglariter fregit & intravit, &c. so as there must be a felonious and burglarious intent.

Of to commit some other felony. They be Burglars which break any house or Church in the night, although they take away nothing; otherwise it is of Robbery, as well be said hereafter, and Stat. Pl. Cor. 25. b.

The Statutes of 29 H. 4. cap. 11. and 5 E. 6. cap. 9. do not denote what Burglary is, but take away the benefit of Clergy from certain kinds of Burglary. As when an actual robbery is done, and when the owner or dweller, &c. is put in fear, &c. or when the owner or dweller, &c. is sleeping or watching within any place within the precinct of the same house, these circumstances do aggravate the Burglary; and therefore the makers of these Statutes took away the benefit of Clergy not in all cases of Burglary, but in those particular cases where a robbery is done, &c. But the Statute of 18 Eliz. cap. 6. hath taken away the benefit of Clergy in all cases of Burglary; and hereby a good and equal proportion is kept in all cases of this nature. And both Acts of Parliament, and the resolution of Judges do well agree together, which concern not well observing have published manifest errors, which being in case of life, are fit to be reformed.

Any man shall be taken by day, and take away thence money or goods to the value of five shillings or more, in any part of a dwelling-house, or out-house belonging to the same, though no person be therein, for this felony he shall lose the benefit of his Clergy, so as for this offence the party shall suffer death, as in case of Burglary.

Bract on lib. 2. fo. 146. b. Britton fo. 23. Statut. Wal. 4. c. 6. ter de Snodon. Mur. cap. 1. de Hamlockne. Exposit. vocab. inter flurita. Fleta lib. 1. ca. 42. 13 H. 4. fol. 7. ut Cor. 299.

13 H. 4. ubi sup. 22 B. 3. Cor. 204. 22 Aff. 39. & 95. 23 H. 8. cap. 1. 5 E. 6. cap. 9.

Clergy. 18 Eliz. cap. 6. 39. Eliz. cap. 15.

Cap. XV.

Of Burning of Houses.

Nothing now spoken of Burglaries and Felonies concerning houses, there
refferth one other of that kind, wherewith we will conclude this distress,
and that is, Burners of houses: which being a felony by the Common Law, let
us see what our ancient Authors, and old Parliaments and Records have left
unto us thereof.

The ancient article of the Etire was, De incendiariis nocturnis vel diurnis,
& combustionibus temporis pacis nequiter perpetratis.

Hereof Bracton saith, Si quis turbata fuditione incendium fecerit nequiter &
in feloniam, vel ad inimicitiam vel alia de causa capitali scripturae punietur. Nequiter
dico, quia incendia fortuita vel per negligentiam facta, & non male confectis, non
se puniuntur, quia civiliter agitur contra tales.

Britton saith, Soit inquis de ceux que felonieusement en temps de pacis ont abters
bles, ou autres maisons aies, & ceux que font de ceo atours, tant a rous, ilint que
ils soient punies per meisme le hoz, dont il appartient.

Fleta saith, Si quis edes aliena nequiter ob inimicitiam vel prodeuocatu in tempore
pacis combusserit, & inde convictus fuerit per Appellum vel sine capitali iudicio scin-
tencia puniri.

The Mirror, Ardours font, que ardent cite, ville, maison home, maison beaft
ou autres catours, de loun felonie en temps de paccus. Item de vengeance, &c.
An appeal De Ardour, Ilint les dile. &c. Que Schright iloutas est deffensy de. de
con que a tel jour des aniel maison, ou hors, melle sui. &c. And afterwarde,
ap respons a arlon, Al arlon soit il dire, que le ventate arons de malchance de lincat
de felony peapne.

So hatours was this offence, that in Anno 5. a. it was declared by Parlia-
ment, Que ceux queux sont punies par arlon felonieusement fait, de lours en arlon
manner repleviables. Adjudicantur suspendi, qui ex malitia precegitata combus-
serunt magnam partem de Lynne in Com. North.

Upon offering of bills, theaunting burning of houses, &c. was made by
treason, whereof moze hereafter: but that it is repeated by 1 E. 2. cap. 2. and
1 Mar. 2. upon that which hath been said, our purpose is to frame a descri-
ption of this felony, as may also be warranted by our Books, and the com-
mon opinion and experience at this day.

Burning is a felony at the Common Law, committed by any that malici-
ously and voluntarily, in the night or day, burneth the house of another.
Now let us peruse this description, by all his material parts.

[Burning.] Putting of fire into any part of an house, whereby the part
burneth. For it is necessary that there be a burning, but it is not necessary that
all or any part be wholly burnt, nor that the fire hath any continuance: and the
intent only sufficeth not. As if one put fire into any part of an house, and it
burneth not, this is no felony, for the words of the indictment, &c. Incendit &
combussit. Again, if it doth burn, though it goeth out of itself, it is felony.

[By the Common Law.] This is proved by all the ancient Au-
thors, Acts of Parliament, and books aforesaid: and the reason thereof is, that
burning of houses being an hostile action, is presumed in Law to be done
maliciously for rebenge, and an ae enemy, to consume the same by fire in time of
peace

De incendiariis in-
ter leges. Etia in
cap. 6. fo. 61.
Et Canuti cap. 61.
fo. 118.
Hubertus numera-
tur inter scelera in-
expiable.
Cap. 11. heris.
b Bract. l. 3. 146. b.
Britton fo. 16.
Fleta lib. 1. cap. 35.
De combustionibus.
Mirror ca. 1. §. 8.
De Ardours ca. 2.
§. 11. d.
Appeal darlon.
& §. 12. cap. 3. §.
Al arlon.
* Ou biens,
W. 1. cap. 35.
Mil. 7 E. 1. coram
rege, Rot. 24.
Noctis
8 H. 6. cap. 6.
Sec 15 H. 6.
m. 23.
All the ancient Au-
thors.
3 H. 7. 10.
11 H. 7. 1.
23 H. 8. ca. 1.
25 H. 8. ca. 3.
5 & 6 E. 6. ca. 9.
4 & 5 Ph. & Mar.
cap. 4. lib. 11.
fo. 35. Alexander
Poulters case.
3 H. 7. ubi supra.

peace. It was made in special manner high Treason (as before is said) viz. 8 H. 6. cap. 6.
 if any threatened by casting of bills to burn an house, if money be not laid in a 3 H. 7. 10. Per
 certain place, and after did burn the house: but this Treason is repealed by Brion.
 1 E. 6. ca. 12: and 1 Mar. but yet the felony remaineth still: for In proditione (as High Treason.)
 hath been said) implicatur felonia Nota.

Maliciously and voluntarily

judgment, which be, Voluntaria ex malicia sua præcogitata, & felonice. For if it be done by mischance or negligence, it is no felony, as before it appeared.

The law doth extend to the burning of the house of another maliciously, & voluntarily. As if one intended to burn the house of A only, and yet the house of B and yet in burning the house of A, the house of B is burnt: in this case the burning of the house of B is felony, because it proceeded of the malicious and voluntary burning of the house of A, and the intent shall be counted as the cause, which was both voluntary and malicious: and therefore in the Judgment for the burning of the house of B, it shall be said, Voluntarie ex malicia sua præcogitata, & felonice, &c.

And he house of another.

This is not only intended of houses, parcell of the mansion house, but the outset also, as barn, stable, Cowhouse, hay house, dairy house, &c. house, and the like, parcell of the mansion house. But burning of a barn, being no parcell of a mansion house, is no felony: and yet if there be Coyn or Hay within it, the burning thereof is felony, though the Barn be not part of a mansion house. But the offender is not ousted of his Clergy, but where he burns some part of a mansion house, or a Barn with Coyn.

More the Statute extends this felony further then houses, viz. to stacks of Coyn, wains of Coals, wood, or other goods. And it is said in 3 H. 7. ubi supra, Certum est quod crematio domus felonice facit feloniam per combustionem legem.

The attempt to burn a stack of Coyn was made felony by the Statute of 3 & 4 E. 6. c. 5. 4 E. 6. but this is repealed by 1 Mar.

Burning of the frame of a house was made felony by the Statute of 37 H. 8. cap. 6. because the frame of a house is no house: but that is repealed by 1 E. 6. ca. 12. & 1 Mar.

It is felony if one burn in the Counties of Cumberland, Westmoreland, Lancashire, or the Is. of Dunelm, wilfully and felonice burnt or caused to be burnt any barn or stack of coyn or grain, without benefit of Clergy.

There is a difference betwixt the Judgment of Burglar and burning: for the Judgment of Burglar must be, (as hath been said) domum mansionelem, but concerned not the Judgment of burning, but domum, viz. a Barn, &c. open house, or the like.

Pl. Com. fo. 41.
 Tr. 44. Eliz.
 Coram rege Rot.
 20. 219. Lib. Int.
 Cole fo. 25. B.
 Lib. 4. fo. 20.
 Barham's case.
 Pl. Com. 475.

CAP.

CAP. XVI.

Of Robbery.

Robbery is a felony by the Common Law, committed by a violent assault upon the person of another, by putting him in fear, and taking from him his goods, or other things of any value whatsoever.

It is termed de la Robe, both because in ancient times (as sometime yet is done) they bereave the true man of some of his robes or garments, and also for that his money or other goods are taken from his person, that is, from or out of some part of his garment, or robe about his person. And is ranked in this place, for that it concerneth not only the goods, but the person of the owner. We call it Robberia & rapina, and the thief Raptor.

Felony by the Common Law. This is agreed of all; both ancient and late, without any question. And it is deemed to be among the most heinous felonies.

Violent Assault. This agreeth with the Indictment, Violenter & felonice cepit, &c.

By putting him in fear. This agreeth also with the Indictment: and this circumstance maketh the difference between a Robber, and a Cutpurse: both take it from the person, but this takes it clam & secretly, without assault or putting in fear, and the Robber by violent assault, and putting in fear. If one man putteth money in the way, he shall be hanged, and the benefit of Clergy is taken from him. But of ancient times the punishment was otherwise. S. Captus in London cum bursa quam scidit cum tribus solidis, & hoc non potuit deducere, & ideo amittat dextram: postquam Britton saith, Des corsors des barbes, voylonz que celuy que la bursa coupa, la tauter mavisce neiert s'ys, eyt judgement de pillory; & l'ilz eyent embie surer chose meinder de 12 deniers, perdent un orail; & si le chose passe 12 deniers, eyent judgement de mort.

By taking. The words of the Indictment be, Violenter & felonice cepit. Hic opus est interprete. For it must be understood that there is an actual taking in law, and a taking in law, and that may be taken a thief receiveth, &c. For example: If thieves rob a true man, and finding but little about him, take it, this is an actual taking; and by means of death, compell him to swear upon a book to fetch them a greater sum, which he doth, and deliver it unto them, which they receive, this is a taking in law by them, and adjudged Robbery: for fear made him to take the oath, and the oath and fear continuing, made him bring the money, which amounteth to a taking in law. And in this case there needs no special Indictment, but the general Indictment (quod violenter & felonice cepit) is sufficient. And so it is, if at the first the true man for fear deliver his purse, &c. to the thief.

This

See the 1. part of the Institutes, Sect. 501. Custom. de Norm. cap. 71. Int. leges Canu. cap. 57. 76. 118. Lamb. Bracon li. 3. fo. 146.

Bracon lib. 3. fo. 150. b. Britton fo. 11. Fleta lib. 1. ca. 37. Mirrur ca. 7. S. 10. Britton & Fleta ubi supra. 14 E. 3. cor. 115.

Bracon li. 3. fo. 150. b.

10 H. 7. Cor. 434.

Britton fo. 24. b.

44 E. 3. 14. 4 H. 4. 2.

This word [cepit] necessarily implieth that the thief must be in possession of the thing stolen. For example, if the bag or purse of the true man be fastened to his girdle, &c. and the thief the more easily to take the bag or purse, do cut the girdle, whereby the bag or purse falleth to the ground, this is no taking, for the thief had never any possession thereof; & sic de similibus: but if the thief had taken up the bag or purse, and in striding had let it fall, and never took it again, this had been a taking, because he had it in his possession; for the continuance of his possession is not required by law.

¶ From his person.] The words of the Indictment be, a persona, &c. If the true man seeking to escape, for the safeguard of his money, cast it into a bush, which the thief perceiving takes it; this is a taking in Law from the person, because it is done at one time. If the true man had cast off his surcote, or other uppermost garment, and the same lying in his presence, a thief assault him, &c. and take the surcote, this is robbery; for that which is taken in his presence, is in law taken from his person: And so it is of the horse of a true man which stands by him; & sic de similibus.

14 E. 3. Cor. 115.

In ancient Authors and Records, in Pleas of the Crown, you shall read of Sakebere, &c. whom we will deribe and explaine. Sakebere, Sacbere, or Sacburgh. Sac, or Sak is an ancient French word, and signifieth a bag, purse or pouch. So that Sackbere is he that did bear the bag, &c. and in legal understanding is he that was robbed of his money in his bag. And this agreeth with the interpretation thereof by Bracton, viz. Furtum vero manifestum est, ubi latro deprehensus est scilicet de aliquo latrocinio, viz. Hondhabende, and Bacherende, & insecutus fuerit per aliquem cujus res illa fuerit, qui dicitur Sacaburth. And herewith agreeth Fleta, lib. 1. c. 42. §. Sunt autem, &c. And Britton fo. 22. b. & 72. b. agreeth herewith, and calleth him Sakebere; and so doth Justice Stanford, Pl. cor. fo. 28. term him, which (as we take it) is his right name deribed of these two words, Sak and bere, that is, he that did bear the bag, &c.

Bract. lib. 3. fo. 150. b.
Fleta l. 1. cap. 42.
Britton fo. 22. b.
& 72. b.
Stanf. fo. 28.

¶ Of what value soever.] Though it be under the value of twelve pence that is taken, (as to the value of a penny or two pence) it is robbery, but somewhat must be taken; for the assault only to rob without taking some money or goods is no felony, and such opinions as seem to the contrary, were maintained by that which then was anciently holden, Quod voluntas reputabatur pro facto. See before cap. High Treason, fo. 5. Infidiator viarum.

14 E. 3. Cor. 115.
22 Aff. p. 39.
27 Aff. 38.
24 E. 3. 42.
13 H. 4. 7.
9 E. 4. 28.

CAP. XVII.

In what case breakers of prisons are Felons.

WE have spoken sufficiently hereof in his proper place, in the exposition of the Statute of 1 E. 2. de Frangentibus prisonam. Only this is to be added, that in case of felony, the offender shall have the benefit of Clergy for the breach of prison.

In the second part of the Institutes upon the Statute of 1 E. 2. de Frangentibus prisonam.

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CAP.

CAP. XVIII.

Where escape Voluntary is Felony.

WE have also spoken somewhat hereof in the exposition of the said Act of 1 E. 2. And the voluntary escape can be no felony in the Gaoler, unless the Prisoner be under custody by lawful warrant expressing the offence, which you may see there at large.

2. There must be a felony done at the time of the escape: for a relation which is but a fiction in law, shall never make a man a felon, as likewise there it appeareth. See Stanford lib. 1. cap. 26.

CAP. XIX.

Of Felony by stealing, carrying away, withdrawing or avoding of Records, &c.

8 H. 6. cap. 12.

8 H. 6. cap. 12.

SI aucun Record ou parcel dicel, Brief, Retorn, Pannell, Proces, ou Garrant D'attorney en les courts le Roy, de Chancery, Eschequer, un Banke ou l'auter, ou sa Tresorie, soit volontairement emblee, emportee, retraits, ou avoidee par aucun Clerk ou autre person, a cause de quel aucun Judgement soit reverse: Que tiel embleor, emporter, retraber & avoider; leur procurators, concellers & abettors, en endites, & sur proces sur ceo fait, ont dueement convicts per leur proper confession, ou per enquests prendre des loyall homes, (dont la moitie soit des homes d'aucun court de mesme les courts, & l'autre moitie des autres) soient adjudges pur felons, & encorgent la paine de felony, & que les Judges de les Courts de l'un Banke ou de l'auter eyent power de oier & terminer tielz defaults devant eux, & ent fait punition, come de vana est dit.

If any Record or parcel of the same Writ, Retorn, Pannell, Process or warrant of Attorney in the Kings Courts of Chancery, Exchequer, the one Bench or the other, or in his Treasury, be willingly stoln, taken away, withdrawn or avoided by any Clerk or by any other person, because whereof any judgement shall be reversed: That such stealer, taker away, withdrawer or avoider, their procurators, counsellors and abettors, thereof indicted, and by Process thereupon made thereof duly convict by their own confession, or by inquest to be taken of lawfull men, (whereof the one half shall be of the men of any Court of the same Courts, and the other half of others) shall be judged for felons,

felons, and shall incur the pain of felony. And that the Judges of the said Courts, of the one Bench or of the other, have power to hear and determine such defaults before them, and thereof to make due punishment, as afore is said.

The mischief before this Statute was, That whereas Records are of such high nature and credit as they import in themselves absolute verity without contradiction, so the end that there might be an end of contention and controverſie, and men might rest in safety and repose, certain Clerks and other persons did oftentimes imbevel Records or some parcel of them, and sometime a Writ, Record, Panel, Process, or Warrant of Attorney, or safe or writ of the same; by reason whereof others judgements were avoided or reversed, whereby no man (as the Statute saith) had any thing in surety: This was a great misfortune, for the which the offenders therein might be punished, either at the suit of the King by indictment, or at the suit of the party by an Action upon his case. See the Record concerning this matter following. Placita coram Iudiciariis, de Banco termino Trinitatis Anno 19 E. 1. Rot. 57. indorf.

Radolphus de Grethope, communis Attornatus de com. Westerland, mactiose Rotulum excurtavit & abscondit, & ideo per annum & diem committitur Turri London, postea anno 20 E. 3. per mandatum Regis liberatur, & per Iudiciarios ei est inhibitum ne de cetero in eadem Curia de aliquibus negotiis se intromittat.

Which remedy and punishment were thought too weak against Clerks and other persons, which (committing such things) commonly were of small ability; therefore this Act, considering the danger of the offence, maketh the same felony, as by the letter thereof appeareth.

¶ **Si aſcun * Record.** A Record is regularly a Monument or Act judicial before a Judge or Judges in a Court of Record, entred in a Parchment in the right Roll. It is called a Record, for that it recordeth or beareth witness of the truth, and is derived of the Verb Recordor, whereof the Poet speaketh,

— Si rite audita recordor.

It hath this soveraign privilege, that it is proved by no other but by it self. Monumenta (quæ nos Recordata vocamus) sunt veritatis & veritatis vestigia. And albeit the cause adjudged be particular, yet when it is entred of Record, it is of great authority in Law, and serves for perpetual evidence, and therefore ought to be common to all, yea, though it be against the King; as it is declared by Act of Parliament in Anno 46 E. 3. which you may read in the Preface to the Third Book of my Reports.

* See the first part of the Institutes, Sect. 117. for this word. 49 E. 4. 3. b. 16 Eliz. Dier 330.2. Virgil.

Rot. Parl. 46 E. 3. 9 H. 7. 16. See the Preface to the third Book.

¶ **Brief, Return, Panel, Proces, ou Garr' D'attornie**] All these are sufficiently known, and yet have we treated of the same in the First part of the Institutes.

En les courts le Roy.] Here are expressly named four of the Kings Courts, viz. the Chancery, the Exchequer, the Kings Bench and the Court of Common Pleas, and hereunto is added the Kings Treasury: so as this Act extendeth not to any other Court or place then is here named.

Chancerie.] This must be understood of the Court of Chancery, which proceedeth according to the course of the Common Law, as in case of Privilege, of Sc. i. e. facias upon Recognizances, Traverses of offices, and the like: for as to these it is a Court of Record, but as to the proceeding by English Bill in Course of equity, it is no Court of Record, for thereupon no Writ of Error lieth, as in the other cases.

37 H. 6. 14.

¶ **Ou la Treasorie.**] The Kings Treasury is called Thesauraris Regis, the place where the Kings Treasure is kept. This Treasure is twofold: viz. his Money or Coin; and another that is far more precious and excellent, and these

Register.
E. N. B. 224. d.

these be the sacred Judgements, Records, and other judicial proceedings under the safe custody of the Treasurer and Chamberlains of the Exchequer. And this Treasury is partly in the Exchequer, and partly in the Tower of London: for there be ancient Rolls of the Treasury remaining in the Tower. And therefore this Act intending to include both the one and the other, saith generally, en la Treasorie.

¶ **Soit voluntasement emblee, emport, retrait, ou avoidé.]**

In the Indictment upon this statute besides felonies, this word [voluntarie] must of necessity be used, to agree with this Act. Here be four words used, emblee Roln, emport carried away, retrait withdraten, ou avoidé or avoided. So as the sense is, if any Record or part of it, Writ, Return, Panell, Process, or Warrant of Attornay, &c. be Roln, carried away, withdraten, or avoided, &c. And this word [avoided] is a large word, and doth include rasing, or clipping, or cutting of the side or other part of the Roll, or any other kind of avoiding the same.

2 R. 3. 10.

2 R. 3. 10.

8 R. 2. cap. 4.

2 R. 3. 10.

2 R. 3. 10.

¶ **Per ascun Clerk ou auter person.]** This Act doth not extend to any Judge of the Court; both because it beginneth with a Clerk, &c. and for that by the Statute of 8 R. 2. a penalty is inflicted upon a Judge, &c. for making any false Entry, rasing any Roll, or changing any Verdict. See the Statute; for it extendeth also to Clerks. Only this is to be observed in that Statute, that where it is said, [the King and his Council,] it is intended of the Court of Justice where the matter dependeth: for the Judges are the Kings Council for judicature and proceedings according to Law and Justice.

Justice Ingham paid in the reign of E. 1. eight hundred Marks for a Fine, for that a poor man being fined in an action of debt at thirteén shillings four pence, the said Justice moved with pity caused the Roll to be rased, and made it six shillings eight pence.

This case Justice Southcot remembred, when Cathlyn Chief Justice of the Kings Bench in the reign of Queen Elizabeth would have ordered a rasure of a Roll in the like case, which Southcot, one of the Judges of that Court, utterly denyed to assent unto, and said openly, That he meant not to build a Clockhouse: for (said he) with the fine that Ingham paid for the like matter the Clockhouse at Westminster was builded, and furnished with a Clock, which continueth to this day.

¶ **A cause de quel ascun judgement soit revers.]** This Act extendeth only to Records whereupon judgement is given. But whether judgement be given in causes criminal at the suit of the King upon an Indictment, or at the suit of the party in an Appeal, or in actions real, personal or mixt, or of the like nature, this Act extends thereunto, if judgement be afterwards given, and to Durlawzies, for there judgement is given per judicium Coronatorum. For it is not material whether the act be done against this Statute, either before or after judgement, so judgement be given.

2 R. 3. 10.

¶ **Revers]** is here taken, not only where the judgement is made erroneous, and to be reberfed by Writ of Error, but where the judgement is so adulterated and made void as it bindeth not, or may be reberfed or avoided by plea. See the Book in 2 R. 3. fo. 10. which expoundeth well this Statute.

¶ **Que tiel embleor, emporter, &c. lour procurers, counsellors & abettors, &c.]** This Act expressly extendeth to Accessories before, and leaveth accessories after to the construction of law, yet may there be accessories after the fact: for whenever an offence is made felony by Act of Parliament, there shall be accessories to it both before and after, as if it had been a felony by the Common Law: and therefore though this Act expressly accessories

Vid. 3 & 4 Ph. & Mar.
Justice Dalifons
Report, ubi sup.

accessories before, yet it taketh not away accessories after, but leaveth them to the Law, contrary to the opinion of Justice Stanford. See before the Exposition of 3 H. 7. for taking away of women against their will. Stanf. Pl. Cor. 44. b. 3 H. 7. cap. 2.

¶ Entendites.] If the acts that make this felony be committed in two Counties, the Indictment saith, as hath been said before, upon the Statute of 2 & 3 H. 6. cap. 2. And this rate of felony rising in two Counties, is not holpen by any Statute yet made. 2 R. 3. f. 10.

¶ Dont lay moity soit des homes dascun court.] Here is a party Jury, the one half to be of the Officers and Clerks of the Court, &c. by their knowledge, and for the better information of the others.

¶ Et que les Judges des dits Courts de lun Bank ou de lautre eyent power de oier & terminer tiels defaults devant eux, & en faire punition, come est avantdit.] This Clause is in nature of a Commission to the Justices of either Bench, if the offence be committed in the County where the Benches do sit. And the Justices of either Bench have concurrent authority, and which of them enquire first shall proceed: but if the felony be committed in another County then where the Benches sit (as for example, in Surrey, Hertfordshire, &c.) there the Justices ought to have a Commission. But if the Bench sit in Middlesex, and the felony is done in London, in which case a Commission is requisite, as is aforesaid. But then some have said, that by the Charters of London confirmed by Parliament, the Mayor ought to be principal in the Commission, and the Mayor is none of the Judges authorized by this Act to hear and determine this felony, but the Justices of the one Bench or the other: and therefore the nature being penal, and to be taken strictly, no proceeding can be. Sed salva res est: For the Charters of the City of London extend only to such offences committed in London, whereof the Mayor with others by Commission may inquire, hear and determine, and not to such offences so annexed by authority of Parliament to other persons (as in this case to the Justices of the one Bench or the other) as the Mayor is not warranted by the said Act to enquire, &c. And therefore a Commission in this case may be made to the Justices of the one Bench or the other omitting the Mayor, ne Curia Regis deficeret in justitia exhibenda. 2 R. 3. 10. 2 R. 3. 11.

And albeit this kind of felony is an heinous offence, yet may the offenders therein have their Clergy: for until the reign of H. 7. (that we may note it once for all) the benefit of Clergy was not taken away by any Act of Parliament in case of Felony. As for the Statute of Bigamy made in 4 E. 1. it was but an exposition and allowance of the constitution made at the general Council at Lyons concerning the same, as before hath been said. But (as we remember) the first Statute making a new felony that took away the benefit of Clergy, was the Statute of 7 H. 7. concerning Soldiers. Vide Lib. 3. fol. 150. & lib. 11. fol. 11. 4 H. 7. cap. 13. 12 H. 7. cap. ult. 7 H. 7. cap. 5.

CAP.

CAP. XX.

Of Felony in such as use the craft of Multiplication.

5 H. 4. cap. 4.

None from henceforth shall use to multiply gold or silver, or use the craft of Multiplication: and if any the same do, he shall incur the pain of felony

This is the Shorten Act of Parliament that we remember; before the making thereof, divers of the Nobility, Gentry, and others did waste and consume a great part of their inheritance and wealth about the art of Multiplication, by the subtil and sinister persuasion of certain impostors, and deceivers, which took upon them to be skillfull therein, and to be able to multiply gold and silver, being themselves for the most part very poor and indigent persons, of whom it was said, Quid pollicentur aliis ingentes divitias, & ipsi percipiunt parvas drachmas. See Chaucer our English Poet, who wrote about the time of the making of this Act, in the tale of the Channons Pedman, fo. 63. (in libro meo.) That the end of this sliding and curled craft (so full of imposture and deceit) is extreme beggary. He is worth the reading; for he discovereth the secrets of this Craft, as our Act requireth.

Now seeing the end of this feigned Art of Multiplication is mere deceit, and tendeth to the undoing of many; at this Parliament the use of this craft of Multiplication is made felony. For the better understanding of that which shall be said, it is to be known that there are six kinds of metals, viz. Aurum, Argentum, Asive, Cuprum, (quia inventum fuit in Cypro) Stannum, Plumbum, & Ferrum; that is to say, Gold, Silver, Copper, Tynne, Lead, and Iron: for Calys Steel is but the harder part of Iron; and Orichalcum, Aurichalcum, viz. Latton or Brass, is compounded of Copper and other things.

[The craft of Multiplication.] That is, to change other metals into very gold or silver. And this they pretend to do by a Quint essence, or a fifth essence. Four Essences or Elements we know, Fire, Air, Water, and Earth: but, say they, this Quint essence is a certain, subtil, and spiritual substance extracted out of things by separation from the four Elements, differing really from their essence, as Aqua vice, the spirit of wine, or the like, and this is called Elixar, or the Philosophers Stone, and is part of Alchemie or Chemie, in Latine Ars Chemica. The offenders therein are called Multipliers, Chemists, Alchemists, &c. There may be Accessories to this new felony both before and after. King Henry the sixth by his Letters Patents, De concilii sui deliberatione deputavit Willim Cautelo & alios cives civitatis London ad investigandam veritatem super hiis quae in scriptis erunt eis monstrata, pro multiplicatione Numismatis, tam de auro quam argento, & quicquid in praemissis egerint, cum eorum opinione referrent in scriptis regi & concilio suo.

The like Letters Patents anno 35 H. 6. pro Thoma Harvie & aliis. Rex rex sua regali prerogativa, &c. dedit licentiam Johanni Faceby & aliis ad investigandum, prosequendum & perficiendum quandam preciosissimam medicinam, quintam essentiam, Lapidem Philosophorum nuncupatum, nec non potestatem faciendi & exercendi transmutationes metallorum in verum Aurum & Argentum, with a Non obstante of this Statute of 5 H. 4. By these Letters Patents this Act is more explained then by any Record we have seen.

How these several kinds of metals, as is supposed, proceed originally from Sulphur

* 7 E. 6. Dier 88. Rot. Pat. 34 H. 6. m. 13. Rot. Pat. 35 H. 6. Rot. Pat. 34 H. 6. m. 7. Hanc artem sophisticam imposturam nominat Melancthon. Mentiendi & fallendi artem Petrarcb. Eras. in Colloquio. Daemonis praestigias Penetrans. Chaucer ubi supra, The cursed and sliding craft. Vertum in fumum quicquid ineptus agit. See Parisiollus Int. nova reperia Tit. 7. fo. 357.

phur and quicksilver, as from their Father and Mother, and other things concerning the same, you may at your leisure read in George Agricola lib. 10. cap. 1. Encelms lib. 1. cap. 1. Pl. com. 339. Vide Stanf. Pl. Cor. 37. b.

Almighty God in the fourth day created the earth, and no mention is made of metals, for that they were as parts of the earth. Gen. c. 1. v. 9. cap. 2. v. 11.

The fatal end of these five are beggary; This kind of Alchemist, the Monopolist, the Concealer, the Informer, and Poettasters.

Sape pater dixit, Studium quid inutile tentas?

Mæonides nullas ipse reliquit opes.

I could give examples (of the above observation) of all these, if it were pertinent to our purpose.

CAP. XXI.

Of Felony in Hunters in the night, or with painted faces, in any Forest, Park or Warren.

AT every such time as information shall be made of any unlawful huntings in any Forest, Park, or Warren by night, or with painted faces, to any of the Kings Councill, or any of the Justices of the Kings Peace in the County where any such hunting shall be had, of any person to be suspected thereof, it shall be lawfull to any of the same Councill, or Justices of Peace, to whom any such information shall be made, to make a warrant to the Sheriff of such County, or to any Constable, Bayliff, or other Officer within the same County, to take and arrest the same person and persons of whom such information shall be made, and to have him or them before the maker of the same warrant, or any other of the Kings said Councill, or his Justices of Peace of the same County. And that the said Councillor or Justice of Peace, before whom such person or persons shall be brought, by his discretion have power to examine him or them so brought, of the said hunting, and of the said doers in that behalf: and if the same person wilfully conceal the same huntings, or any person with him defective therein, that then the same concealment be against every such person so concealing felony, and the same felony to be enquired of and determined as other felonies within this Realm have used to be; and if he then confess the truth, and all that he shall be examined of, and knoweth in that behalf, that then the said offences of huntings by him done, be against the King our Sovereign Lord but trespasss finable, by reason of the same confession, at the next general Sessions of the peace to be holden in the same County by the Kings Justices of the same Sessions there to be held. And if any rescous or disobedience be made to any person having authority to do execution or Justice by any such warrant, by any person the which so should be arrested, so that the execution of the same warrant thereby be not had, that then the same rescous and disobedience be felony, inquirable and deterr-

1 H. 7. cap. 1.

* See the exposition of this word [conceal] hereafter in this chap.

determinable as is aforesaid. And over this, it is enacted and established, that if any person or persons hereafter be convict of any such huntings with painted faces, vizors, or otherwise disguised, to the intent they should not be known, or of unlawfull hunting in time of night, that then the same person or persons so convict, to have like punishment, as he or they should have if he or they were convict of felony.

Now let us peruse the words of this new and ill-penned Law.

¶ **By night, or with painted faces.**] That is to say, either by night, or in the day with painted faces, for that doth equal the case of the night, in respect the offenders cannot be known or discerned in regard of such disguisings. And albeit the body of the Act speaketh only of painted faces, yet it extendeth to vizors, and other disguisings, for those words are in the Preamble rehearsing the mischief, and the remedy must be applicable thereunto, and the last branch of this Act doth make this point clear.

¶ **As information shall be made, &c. of any person to be suspect.**] Herby it appeareth, that a bare information without shewing just cause of suspicion at the least, is not sufficient to ground a warrant according to this Act, for the words be, *Of any person to be suspected.*] And this Act is general, and extends to all persons of what estate or degree soever, and as well to women as to men: for the words be [if any person.] And generalia verba sunt generaliter intelligenda. And it is necessary for him that taketh the information, to take it in writing, because it is the ground of his warrant.

21 E. 1. tit. Forests,
Rast. 19.

¶ **Of any unlawfull huntings in any Forest, Park, or Warren.**] This Act doth not extend to any Chase of the King, or of any other person, neither doth it extend to any Forests, Parks or Warrens in use or reputation, and which are not Forests, Parks or Warrens in Law. See the first part of the Institutes, Sect. 378. what a Forest, a Chase, and a Park, &c. is.

¶ **To any of the Kings Councill.**] This is understood of the Kings Privy Councill; and any one will serve, but he must be dwelling in the County where such offence is committed.

¶ **Or to any the Justices of the Kings Peace, &c.**] And likewise any one Justice of the Peace will serve.

¶ **Warrant.**] This warrant ought to be in writing under the seal of him that maketh it.

¶ **Before the maker of the same warrant, or any other, &c.**] So as the Officer may carry the party arrested before any Privy Councillor, or Justice of Peace within that County, and to that effect must the warrant be made.

¶ **By his discretion have power to examine him or them so brought of the said hunting, and of the doers in that behalf.**] So as the examination must consist upon two parts: First, of the hunting by the party himself; Secondly, of other doers in that behalf.

¶ **And if the said person wilfully conceal the said hunting, or any person with him defective therein.**] This branch being the disjunctive, if he conceal either his own offence, or of the other misdoers with him therein, the letter of this Act is that it is felony, but by construction

D. Howard tempore
H. 7. fo. 24. Vide
Holl.
20 R. 1. 153.
Vide Cambden.
Brit. 210.

Provision upon the whole statute is no felony, and a hunting without a licence of any game, is within the danger of this statute.

This Act is to be taken strictly, for it is the first time that was made for the making of any hunting felony, against that excellent and learned branch of Charles de Foresta, Nullus de cetero vitam vel membra pro venatione nostra, &c. See the Statutes of 1 E. 1. 1 E. 3. Stat. 1. cap. 8. 7 R. 1. cap. 4. 1 W. 1. cap. 8. Reg. fol. 9. F. N. B. fo. 67. Ver. N. B. 41. 49 E. 3. 7. 53 H. 3. 112. 30.

Chart. de Forest. cap. 10.

The old Statutes concerning the Forests are called the good old Laws and Customs, and commanded to be observed; and therefore this new Act of H. 7. is to wherefore be taken that be for natura, because there can be no felony by the common law, nor the Statute of the Forests, Parks, &c. of Subjects, which never was before. And therefore the Judges have made a favorable construction, as hereafter in this Chapter you shall see.

Rot. Parl. 9. H. 4. nu. 40.

¶ And if he confess the truth, and all that he shall be examined of and knoweth in that behalf.] That is, of his own guiltiness and of other misdoers with him, then this Act makes it no felony, but trespasss punishable, as it was before. But it must be a wilful concealment: therefore if he knew not the names of the other misdoers, or knew not whether they were there or no, it is no offence, for the concealment must be wilful. And seeing there is no time limited by this Act, and the concealment ought to be wilful, it were reason that the information should be made in open Court, that after the fact done.

¶ And if any rescous or disobedience be made to any person having authority to do execution of Justice by any such warrant, by any person the which so should be arrested, so that execution of the same warrant be not had, that then the same rescous and disobedience be felony. Here it is to be observed that the hunting being as yet no felony, the rescous could not be felony, if this branch had not been. Herein two things are to be considered. First, that it extendeth not but to the rescous or disobedience which is committed by the party himself, that is to be arrested, and not to any other. Secondly, that if the party rescus himself, or if he be pursued and taken to an execution of the warrant he had, it is no felony, as it is manifest by the letter of this branch.

¶ And over this be it enacted, &c. That if any person or persons hereafter be convicted of any such huntings, with painted faces, visors, or otherwise disguised, &c. or of unlawfull hunting in the night, * that then the same person or persons so convicted, to have like punishment as he or they should have if they were convicted of felony.

* Nota [that then] &c. So as before such conviction there is no felony.

Gerard the Queens Attorney general (who was a grave and reverend man) said openly in the Kings Bench, that it had been resolved by the Justices upon this Statute, that if a man in the night, or by day with painted face do hunt, &c. and being examined according to the Act concealeth it, this is (upon the construction of the whole Act) no felony; for the first clause concerning concealment, and this clause which now we handle, must be coupled or joined by construction together, viz. If any person be convicted of such hunting with painted face, or of unlawful hunting in the night, this conviction must be upon not guilty pleaded, which the Justices expounded to be the concealment intended in the first branch, for they held that it ought to be a judicial concealment, and not an extrajudicial concealment, before one of the Petty Council, or a Justice of Peace, which may lie in averment; so as before it be felony, he must be convicted of such hunting, &c. upon not guilty pleaded first: and after such conviction

Mic. 19 & 20 El. in the Kings Bench a report of the resolution of the Justices upon this branch.

* Concealment expounded.

then shall be indicted again, Super tota materia, that he felonice did conceal, &c. against the form of the Statute. And if the offender upon the first indictment, confesseth the indictment, then it is such a judicial confession as this Act auentureth, and as felony within this Statute. And this we heard the Attorney report, and then observed it, which concurring with our own opinion we thought good to publish, and the rather for that in Master Lombards, book of Iustices of Peace, amongst the Precedents of Indictments, an erroneous precedent of an Indictment is of felony for the concealment, &c. upon examination before Justice of Peace, in one of the said precedents, it is much to be desired that, charging in Parks is made felony, intending this Statute, and the standing it may be made trespass at the pleasure of the party, which we think is the clearest way.

Dier 33 H. 8.
fo. 50. a.

Now what time shall be adjudged night, &c. before in the Chapter of Burglary. For this felony the Delinquent may have his Clergy: See Stanford, fol. 376.

CAP. XXII.

Of Felony for Imbefilling the Kings Armour,

Ordnance, &c. or Victual, to the value of Twenty Shillings, provided for Soldiers.

31 El. cap. 4.

BE it enacted by the Authority of this present Parliament, that if any person or persons, having at any time hereafter the charge or custody of any Armour, Ordnance, Munition, Shot, Powder, or Habilliments of war of the Queens Majesties, her heirs or successors, or of any Victuals provided for the victualling of any Soldiers, Gunners, Mariners, or Pioners, shall for any lucre or gain, or wilfully, advisedly, and of purpose to hidet or impeach, her Majesties service, imbefill, purloin, or convoy away any the same Armour, Ordnance, Munition, Shot, or Powder, Habilliments of war, or Victuals to the value of twenty shillings, at one or several times; That then every such offence shall be judged felony, and the offender and offenders therein to be tried, proceeded on, and suffer, as in case of felony. Provided alwayes, and be it enacted by the Authority aforesaid, that none shall be impeached for any offence against this Statute, unless the same impeachment be prosecuted or begun within the year next after the offence done. And that this Act, nor any thing therein contained, nor any attainder nor attainders of any person or persons for any offence made felony by this Act, shall in any wise extend, or be adjudged, interpreted or expounded to make the offender or offenders to forfeit or lose any lands, tenements, or hereditaments, any longer than during his or their life or lives, or to make any corruption of blood to any the heir or heirs of any such offender or offenders, or to make the wife of any such offender to lose or forfeit her dower, or title of dower, of or in any lands

* Nota for Victuals.

tenements or hereditaments, or her action or interest to the same; any thing in this Act contained, or any Attainder or Attainders hereafter to be had for any offence made felony by this Act to the contrary notwithstanding. And that such person and persons as shall be impeached for any offence made felony by this Statute, shall by vertue of this Act be received and admitted to make any lawful proof that he can, by lawful witnesses or otherwise, for his discharge and defence in that behalf, any Law to the contrary notwithstanding.

This is a necessary law, and so penned, as it requireth no curious exposition.

[Ordinance.] That is, Guns or Artillery, so called, of an Order or Ordinance anciently made, of what boze, size or bulk the same should be. And albeit the Ordinance (that we can find) is not extant, yet the name remaineth.

[Habillements of war.] Habillement is properly apparell or clothing: but in legal understanding it doth not only extend to Varnes and Armour, but to all Utensils that belong to war, without which men have not ability to maintain war.

This Act making a new felony, hath five excellent provisions, worthy to be imitated in all like cases of new felonies. First, that none shall be impeached for this new felony, but within a year after the offence done. Secondly, that the offender should not lose his lands any longer then during his life. Thirdly, this Act makes not any corruption of blood, but that his heir shall inherit. Fourthly, not to make the wife lose her dower. Fifthly, that such persons as shall be impeached for any offence made felony by this Act, shall be admitted to make any lawful proof, a by witness or otherwise, for his discharge and defence in that behalf.

Bonum est scire & sequi.
Vid. hereafter, Cap. of felony, for any having a Plague-sore a more special provision.
4 Nota.

In the Statute of 4 Jacobi Regis there is also a good precedent, viz. [All which trials (viz. in cases of felony in that Act before mentioned) b first, for the better discovery of the truth, and secondly, for the better information of the consciences of the Jury and Justices, there shall be allowed to the party so arraigned the benefit of such witnesses only to be examined upon oath that can be produced for his better clearing and justification: that as witnesses are produced and sworn against him, so he may have witnesses produced and sworn for him, for Jurato creditur in judicio. And to say the truth, we never read in any Act of Parliament, ancient Authoz, Book-case or Record, that in criminal cases the party accused should not have witnesses sworn for him; and therefore there is not so much as scintilla juris against it. And I well remember when the Lord Treasurer Burleigh told Queen Elizabeth, Madam, here is your Attorney General (I being sent for) Qui pro Domina Regina sequitur; she said she would have the form of the Records altered; for it should be Attornatus Generalis qui pro Domina veritate sequitur. And when the fault is denyed, truth cannot appear without witnesses.

4 Jac. Regis, cap 12
b Nota, two excellent means for advancement of justice.

Hobelarius (id est, a Light-horsman) electus in Scotiam recepit armaturas & denarios, ibidem serviturus: postea non proficiscitur per mandatum Regis, & recusavit reddere armaturas & denarios, &c. per Juratores est culp. & committitur Marschallo, & finivit Regi 10. li. & invenit securitatem ad armaturas redeliberandas, &c.

Hil. 16 E. 3. coram Rege.
Rot. 129. Norff.

CAP. XXIII.

Of Felony in such as pass the Sea to serve Foreign Princes, &c. or do serve Foreign Princes, &c. without taking the Oath of Obedience:

3 Jac. cap. 4.

Every Subject of this Realm that shall go or pass out of this Realm to serve any Foreign Prince, State or Potentate, or shall pass over the Seas, and there shall voluntarily serve any such Foreign Prince, State or Potentate, not having before his or their going or passing, as aforesaid, taken the Oath of Obedience (prescribed by that Act) before the Customer and Comptroller of the Port, Haven or Creek, or one of them, or their or either of their Deputy or Deputies, shall be a Felon.

Some have objected, that the going or passing out of this Realm to serve, &c. cannot be tried; for that offences done out of the Realm cannot, without a special provision, be tried within the Realm. And it is a sure rule, that in criminal causes concerning life or member, *ubi deliquit, ibi puniatur*: the offence is local, and cannot be tried but where it is committed, nor cannot be alleged to be in any other place than where in truth it was done. To this it is answered, that by a latter clause in this Act, this felony shall be tried in the Town wherein the Haven or Port is wherein he went or passed over: which Clause is, And be it further enacted, that all and every offence to be committed or done against this present Act, shall and may be enquired of, heard and determined before the Justices of the Kings Bench, Justices of Assize and Gaol delivery in their several Assizes, and all offences other than Treason, shall be inquired of, heard and determined before the Justices of Peace in their Quarter Sessions, to be holden within the Shire, Division, Limit or Liberty where such offence shall happen. So as by the Purten and meaning of the makers of this Act, this felony must be tried in the County where he went or passed over, and consequently in that Town where part of the act was done. And these words [and wherein such offence shall be committed] must be construed in this case, where part of the offence is committed. For, *Sic interpretandum est, ut verba accipiantur cum effectu*: and by the express words, all and every offence to be committed or done against this present Act must be inquired of, heard and determined, &c. And therefore the felony cannot pass away with impunity, and that which is done out of the Realm shall be proved to the Jury in evidence. Note, where a foreign treason by this Act is made, it is enacted to be tried where the offender is taken.

See 33 H. 8. ca. 7. Simile.

¶ Every subject of this Realm.] This branch extends to all persons of what estate, degree or profession soever.

¶ To serve.] Albeit the party did not serve, yet if the offender went or passed over to serve without taking the Oath he is in danger of this Statute. And this extendeth to any kind of service either in Camp or Army, or in house or otherwise.

¶ Any foreign Prince.] [Princes] Prince is here taken for the person that is Primus, i. Qui primum locum & gradum obtinet, whether he be King, or any other that hath sovereign authority, by what name or title soever.

Prince.

The

The word hath other significations, but not pertinent to the exposition of this Act.

¶ **State.** The former word [Prince] includeth that is a Monarch, or in nature of a Monarch, or an absolute Prince. This word [State] extends to any State, either Aristocratical, where few be in Authority, or Democratical, where the people have the chief government without any Superiour, saving such as they elect and chuse.

¶ **Potentate.** This is a large word, and extendeth to Potentates as well Ecclesiastical as Temporal.

¶ **Or shall pass, &c. and there shall voluntarily serve.** Although he went not over of purpose to serve, but upon some other occasion; yet if he after voluntarily serve any such foreign Prince, State, or Potentate, and have not taken the Oath, he is a felon.

¶ **The Oath of Obedience.** This is particularly set down in the said Act.

¶ And that if any Gentleman, or person of higher degree, or any person or persons which have born, or shall bear any office or place of Captain, Lieutenant, or any other place, charge or office in Camp, Army or Company of Souldiers, or Conductor of Souldiers, shall after go or pass voluntarily out of this Realm to serve any such Foreign Prince, State, or Potentate, or shall voluntarily serve any such Prince, State, or Potentate, before he and they shall become bound by Obligation with two such sureties as shall be allowed by the Officers, &c. shall be a Felon.

* Vid. hereafter cap. 34. in fine. Second part of the Institutes. The Statute of additions. 1 H. 5. cap. 5.

By this Branch, if he be a Gentleman, or of higher degree, or any such Military man as here is described, because he is able to do more harm, if he be so disposed, he must not only take the Oath by the former branch, but he must become bound by this branch with two sureties, &c. The form of the Obligation is set down in this Act. The exposition of the former branch giveth light to the understanding of the residue of this Clause.

There is a Proviso, that no attainder of felony made felony by this Act, shall take away dower, nor make or work any corruption of blood, or disinheriton to the heir. The offenders in any of the said cases of felony may have the benefit of their Clergy.

CAP.

CAP. XXIV. Of Felony in Purveyors.

See in the fourth part of the Institutes, cap. Chancery, Articles against Cardinal Woolsey. Artic. 33, 35, 36. 4 Artic. sup. Chart. cap. 2. 18 E. 2. cap. ult. 1 E. 3. cap. 4. 1 E. 3. cap. 2. 25 E. 3. cap. 1. 25 E. 3. cap. 15. d 36 E. 3. cap. 2. Vid. Stanf. Pl. Cor. 37. b.

27 H. 8. cap. 24.

f Trin. 40 Eliz. coram Rege. In a Quo Warrant. the Lord Darcies case.

Rot. Parl. Anno 28 E. 3. nu. 34.

At a Parliament holden 4 Jacobi Regis.

Salt-peter, *quasi* Sal petre, colligitur aut ex materia quam veteres muri, rupes & saxa exsulant, aut ex terra saluginosa & pura, quæ in strubulis animalium urinam ad multos annos excipit, Latine Nitrum.

SEE the Statutes of Artic. super Chartas, anno 28 E. 1. cap. 2. 18 E. 2. cap. ult. 5 E. 3. cap. 2. 25 E. 3. cap. 1, & 15. 27 E. 3. cap. 1. 36 E. 3. cap. 2. And before in the Second part of the Institutes, in the exposition of the Statute of Artic. super Chartas ca. 2. you shall find in what case a Purveyor may be charged with felony, which by itself may be reduced to these four Heads. First, if a any that take upon him to be a Purveyor, or his deputy or servant, make purveyance of any thing above twelve pence without Warrant; Secondly, b or make purveyance of any thing above twelve pence without testimony and appraisement of the Constable and four honest men, and without Deliberation of Tales; Thirdly, c or take any sheep with their wools between Easter and Midsummer, and carry them to his own house and shear them; Fourthly, d or make any takings or buyings, or take any carriage in other manner then is contained in their Commissions, they shall have punishment of life and member: and this Act remains still in force without alteration. The offenders may have the benefit of their Clergy.

e By this Statute it is enacted, that Purveyors assigned by Commission shall make purveyance of victuals, coyn and other things, as well within Liberties and Franchises as without, any grant, allowance or other thing to the contrary, or let thereof, notwithstanding: but the Purveyors shall observe the Statutes for them provided in every behalf, as by that Act appeareth. f Upon this Act it was holden, that if the discharge of Purveyance were by Letters Patents, this Act makes it of no force: but if the discharge were by Statute, then the Purveyor is bound to observe the Statute; as by the Statute of 14 E. 3. cap. 1. pro Clero, Ecclesiastical persons are discharged by Statute, which the Purveyor is bound to observe. See the Statutes of 25 E. 3. Statut. 5. cap. 21. & 43 E. 3. cap. 3. in what manner, and in what time the Kings Butler or his Lieutenant shall take Wines, &c.

See more of Purveyors in the fourth part of the Institutes, Cap. of the Counting-house, or Green cloth.

See Lib. 8. fo. 45, 46. in Evans Case, a Commission for taking up of boys for the Kings Chappel, the general words well expounded.

By an Act of Parliament not in print, it is enacted that no Purveyor arrested for any misdemeanour shall have any Privy Seal, to cause such as arrested him to come before the Council to answer to the King, but have his remedy by the Common Law.

Upon a grievous complaint made at the Parliament holden in the fourth year of our late Sovereign Lord King James, by the commons of the Realm, concerning many grievances suffered by his Subjects in the execution of a Commission granted to certain persons for getting of Salt-peter, his Majesties answer (amongst other things) was, that he had never an intention to make any application of his Privilege therein further then might stand with the lawfull and necessary use thereof. And further, his Majesty was pleased out of his gracious care and goodness to revoke and annul all Commissions or grants made to any person or persons for and concerning digging and working of Salt-peter, intending to consider of such a course afterwards, as the same might be made without any just cause of complaint, as by the said royal answer (amongst other things) more at large appeareth. In pursuance whereof, by the said Kings commandment, Popham Chief Justice, and all the Justices of England, and Barons of the Exchequer, were assembled at Serjeants Inn in Fleet-Street, in December, in the said fourth year, to resolve and certifye what

what prerogative the King hath for digging, and taking of Salt-peter in the houses, buildings or grounds of his subjects; that thereupon a new Commission might be made accordingly; to be upon often conferences; and mature consideration, resolved as follows.

First, where it was objected, that Gunpowder was invented in Germany, within time of memory, in the reign of King E. 3. so as the King could not claim it by prescription; and that before the 31 year of the reign of Edward III. (which was the year after the Spanish Invasion) he was not, and not an Commission of Licence granted by any King or Queen of this Realm to any for the digging or taking of Salt-peter; and in the said 31 year of the said late Queen, two Commissions of Licences were granted, the one particular; to George Constable Esquire, to dig, open and work during the space of eleven years for Salt-peter within the Counties of Poza, Nottingham, Lancashire, Northumberland, Cumberland, and the Bishoprick of Durham; as well within our own lands, grounds and possessions, as also within the lands, grounds and possessions of any of our loving subjects within the Counties aforesaid; and the consideration of the Grant was, that he should deliver a great quantity of powder to be made by the said George Constable, and provided for the use of the Queens Majesty at a lower rate then was paid for it before, with this further clause, [And further our will and pleasure is, that the said George Constable shall at his own proper cost and charges erect, make up, and lay all mud-walls, stables and grounds whatsoever so digged up] whereupon it was inferred, that no other buildings could be digged up by force of that Commission, but only stables; the other Commission was general, made unto George Evelyn, Richard Hills, and John Evelyn; and extended throughout the Realm of England and Ireland, and all other the dominions of the same, as well within our own proper lands, grounds and possessions, as also within the lands, grounds and possessions of any of our subjects, with the like clause of the erection and reparation, as is aforesaid, without naming of Spanken-houses by express words, and without any prohibition to the subject to dig for Salt-peter in their own buildings or grounds.

As to the first, it was resolved by all, That forasmuch as the taking of Salt-peter was for the necessary defence and safety of the Realm; that the King had a right of purveyance of it; and should not be obliged to buy it in foreign parts, which foreign Princes might restrain, and so this Realm might want sufficient for the defence thereof, to the great peril and hazard of the same: but the King was to take it for the necessary defence of the Realm, according to the limitations hereafter expressed; and it is no prejudice to the owners of the soil, for the place that is digged must be made up again, and repaired in as good plight as it was before. Secondly, that this taking of Salt-peter in the buildings or grounds of the subject, being a purveyance as is aforesaid, is an incident inseparable to the Crown, and cannot be granted, demitted, or transferred to any other, but ought to be taken only by the Kings Ministers, as other purveyances ought, and cannot be converted to any other use then for the defence and safety of the Realm, for which purpose only the Law doth give to the King this prerogative: And it is not like to a mine of gold or silver in the ground of the subject, for there the King hath an interest in those metals, and not purveyance only. And if the powder which is so made by the Kings Ministers begin to decay, as it will do within two or three years, then this either ought to be changed for other, or sold, and the money thereof coming to be employed for powder for the defence of the Realm; and the Kings Ministers ought to make great provision of Salt-peter, for that will last a long time, and when

In the Accounts, &c. from the 21 of April 18 E. 3. for one year following Anno Domini 1344. under the title of Artificers and Workmen (inter alios) Gunners 6. and of their wages and stipends per diem, it is said (amongst others) Gunners, six pence. Latine, Bombardæ, Tormenta, Sclopi.

Pichard 1513. Coram Rege Rot. 27. Oxon. Diversi malefactores venerunt ad Manerium, &c. cum Arcubus, Sagittis, Balistis & Goons.

Vide Rot. Parl. 1 R. 2. m. 38. William Captain of the Castle of Carbench, being charged for delivering it to the enemy, in the reign of E. 3. without Commission, answered (inter alia) that the enemies brought to battery thereof nine peeces des grosses Cannons.

Hollingsh. fo. 1453. Walsing. 10 R. 2. 1366. Pol. Virgil. De Invent. rerum, fo. 2. cap. 11.

Pancirollus Nova reperta, Tit. 18. pag. 679. Anno Domini 1378. John Moore, page 196. Anno Domini 1382.

Purveyance of Salt-peter. See the 1 part of the Institutes, Magna Charta cap. 21.

2.

and is to make thereof gun powder, which will be made before the King can be put in readiness, &c. Thirdly, the Ministers of the King cannot in digging for salt-peter undermine, weaken or impair any of the walls or foundations of any of the houses of the Subject, be they Mansion-houses or Out-houses, as Barns, Stables, Dove-houses; Spills or the like; neither can they dig the floor of any Mansion-house which serves for the habitation of man, because his Mansion is the safest place of refuge and safety of himself and his family, as well in sickness as in health, and his defence, as well in the night as in the day, against felons and misdoers; neither can the Kings Ministers dig the floor of any Barn of the Subject employed for the safe keeping of Corn, Hay, &c. for the floor of a Barn cannot be made dry or serviceable again in a long time; but they may dig in the floors of Stables or Dove-houses, so that they leave sufficient room there for the horses and other beasts of the owner, and so that they repair the same again in convenient time as well as it was before. They may also dig in the floors of cellars and vaults, so that the wine, beer, or other necessary provision of the owner be not removed or in any sort impaired. And they may dig any mud walls which be not the walls of any Mansion-house, and in the ruines and decays of any houses which be not preserved for the necessary habitation of man.

4 Fourthly, they ought to make the places as well and commodious for the owner as they were before. Fifthly, they ought not to work in the possessions of the Subject but between the rising of the Sun and the going down of the same, so that the owner may make fast the doors of his house, and put it in defence against misdoers. Sixthly, they ought not to place or fix any furnace, vessel or other necessaries in any house or building of the Subject, without his consent, nor to use any Mansion as he by it may receive any prejudice or inquiet. Seventhly, they ought not to continue in one place above a convenient time; but return thither but after a long time. Lastly, that the owner of the soil cannot be restrained from digging or taking of salt-peter, for the property thereof is to the owner of the soil, and the King hath but the purveyance thereof, and that every man might work that would, and then there should be more plenty of powder, and at a cheaper rate. And these resolutions are agreeable with that Maxim, That the Common law hath so admeasured the Prerogative of the King, that they should neither take away nor prejudice the inheritance of any. And these Monopolies being Malum in se, and against the Common laws, are consequently against the Prerogative of the King; for the Prerogative of the King is given to him by the Common law, and is part of the laws of the Realm, which resolutions were delivered in writing by Popham Chief Justice unto the Kings Privy Council, as the unanimous resolution of all the Judges and Barons of the Exchequer, and were by his Majesties Privy Council well allowed of and approved, as Popham Chief Justice reported. Upon these resolutions these consequences do follow. First, if a man of his own Authority, or by colour of any Commission, Licence or Grant, doth take upon him to take any salt-peter in the buildings or grounds of any other Subject, to make thereof gun powder, in any sort to his own use, albeit he covenanteth or agreeth to serve the King of so many lasts of powder; yet seeing it is but a purveyance, he cannot sell any powder thereof made to any of the Kings Subjects, or make any private benefit thereof: and if he do, he may be indicted of digging and taking of the salt-peter at the Kings suit, and be grievously fined and imprisoned, for that it is a grand trespass with an high hand. Secondly, the party grieved may have his Action of trespass, and recover damages for the trespass, &c. according to the quality of the trespass.

a Complaints made against Purveyors in Parliament.

b By the Statute of 9 R. 2. all Statutes made concerning Purveyors be confirmed, and to be put in execution, and that Justices of Peace have power to hear and determine their offences. See the Fourth part of the Institutes cap. 8. Art. 33, 35, 36. against Cardinal Woolley.

1. Rot. Parl. 1. H. 4. nu. 111. Eodem Anno 81. 9 H. 4. 15. 6 Rot. Parl. Anno 9 R. 2. nu. 31. not in print

1. Pl. Com. 236.

2. Stanf. Pl. Cor. 162. a. Stanf. Prer. 5. b.

a Rot. Parl. 4 H. 4. nu. 111. Eodem Anno 81. 9 H. 4. 15. 6 Rot. Parl. Anno 9 R. 2. nu. 31. not in print

CAP. XXV.

Of Felony in wandering Souldiers and
Mariners.

ALL idle and wandring Souldiers or Mariners, or idle persons wandring as Souldiers or Mariners, shall be reputed felons, and suffer as in case of felony. 39 El. cap. 17.

1. So as not only he that is a souldier or mariner indeed, but he that is an idle wanderer, and takes upon him to be a souldier or mariner, though in troth he be none, is in danger of this law, for, as the preamble saith, they abuse the name of that honourable profession.

2. Every idle and wandring souldier or mariner, which coming from his Captain, from the seas, or from beyond the seas, shall not have a testimonial under the hand of some one Justice of Peace of or near the place where he landed, setting down therein the time and place when and where he landed, and the place of his dwelling and birth unto which he is to pass, and a convenient time therein limited for his passage, is by this Act adjudged a Felon.

3. Or if he hath such a testimonial, and shall exceed the time therein limited above fourteen days, he is by this Act a felon, unless he fall sick by the way, so as after his recovery he setteth himself in some lawful course of life, or resort to the place where he was born or was last abiding: but in both these two cases he must be a souldier or mariner indeed.

4. If any such idle and wandring souldier or mariner, or other idle person wandring as a souldier or mariner, shall forge or counterfeit such testimonial, he is by this Act a Felon.

5. Or if he shall have with him or them any such testimonial forged or counterfeit, knowing the same to be counterfeit or forged, he is also by this Act a Felon. And in both these last cases, as well he that is a souldier or mariner indeed, as he that is none, is in danger of this Act.

And the offender against any of the Articles of this Statute shall not have the benefit of his Clergy.

Justices of Assize, Justices of Gaol-delivery, and Justices of Peace, have power by this Act to hear and determine the said felonies.

But if some honest person valued in the last subsidy to ten pounds in goods, or forty shillings in lands, or some honest freeholder, as by the said Justices shall be allowed, will be contented before such Justices to take him or them into his service for one whole year, and will become bound by recognizance, as the Statute doth appoint, then they shall not proceed any further against him, unless such person retained depart within the year without the licence of him that so retained him; and then he is to be indicted, tried and judged as a Felon, and not to have the benefit of his Clergy.

CAP. XXVI.

Of Felony in Souldiers, that departs from their Captains without licence.

18 H. 6. cap. 19.
5 Eliz. cap. 5.
extendeth it to Marchants and Gunners.

* By the statute of
5 R. 2. cap. 11.

See the Writ in the
Reguler 191. directed
to the Serjeant
at arms.

5 R. 2. cap. 10. Rot.
Parl. 5. H. 4. nu. 29.
the like for keeping
of Castles and
Forts.

Rot. Parl. 5 H. 4.
nu. 24, 25.

2 E. 6. cap. 2.
renewed 4 & 5 Ph.
& Mar. cap. 3.
1 Jac. cap. 25.

7 H. 7. cap. 1.
3 H. 8. cap. 5.

Lib. 6. fo. 27. Cafe
de souldiers.
Dier 4 Eliz. 211.

This Statute is become of little force or use: for the ancient manner of retaining of souldiers whereunto that Act referreth, is utterly altered. For then Knights or Gentlemen expert in war; and of great revenues and libelhood in their Countrey, covenanted with the King to lette him in his war for such a time with such a number of men, and the souldiers made their covenant with their Leaders or Captains, and then they were hindered before the Kings Commissioners; and entered of Record before them, and that was certified into the Exchequer: and thereupon they took their wages of the King, as it appeareth by many precedents of the Exchequer, and may be gathered by the preamble and body, of the Act, and by the Register, where it appeareth that a writ was framed upon that Statute directed to a Serjeant at Arms, to capture conductors and proficenders in obsequium, &c. And this was thought a necessary military policy, that the souldiers, (part whereof were of their own countrey, with whom they must fight in war, and the withdrawal of peace when they returned into their countrey, in respect whereof souldiers would the more cheerfully and obediently follow his Leader, and the Leader would the more respectably and lovingly take his wages when he was an Officer, &c. the ancient form of Commissions for arraying and mustering of men in 5 H. 4. by this Act the benefit of Clergy was forbidden to be taken from the souldiers, and the Statute of 2 E. 6. cap. 2. extended only when the souldier departs after that he hath served the King in his war. And such an offence shall not enjoy the benefit of his Clergy.

And this Act was made so in the 15th year of the reign of King Henry 6. that he hath served the King in his war. And such an offence shall not enjoy the benefit of his Clergy.

If any Souldier being no Captain, immediately retained with the King, which shall be in wages and retained, or take any profit so soon as the King upon the sea, or upon the land beyond the seas depart out of the Kings service without licence of his Captain, that such departing be taken, deemed and adjudged felony. And whosoever all the Justices in every Shire of England, whosoever any such offenders be taken, have power to enquire of the said offences, and the same to hear and determine, as they do and may do of felony, &c. expressed in the Kings Commissions to them made; although the same offences were done in the same shires, and also that the departing of such Souldiers, and also the same offences, shall be traversed, be tried in the same shire where they be for such offences arrested and arraigned.

Both these Acts of 7 H. 7. and 3 H. 8. are repealed, &c. by this word, and include to all his succession.

[Without licence of his Captain.] The Statute of 3 H. 8. is without licence of the Kings Lieutenant there.

[That all the Justices in every shire of England, where any such offenders be taken, &c.] This Act of 7 H. 7. extends to all the Kings Justices in every shire, viz. Justices of Assise, Gaol-Deliber, Dier and Terminer, and of the Peace. And if the offender be taken in the County where

where the Kings Bench sits, he may be indicted, &c. there: but this clause in 3 H. 8. is restrained to Justices of Peace. This clause in both the said Statutes is cumulative, and for more speedy proceeding with the offender. But admit the offender be never taken, yet may he be indicted of felony in the County where the departure was; and if he appear not, he may be outlawed: for by the first clause the offence is made felony, and the second clause is affirmative, and not permissive.

See Stanf. pl. cor. fo. 168. c.

He or they so offending shall not enjoy the benefit of his Clergy. This branch in the Act of 7 H. 7. is general; but in the Act of 3 H. 8. there is an exception of the said branch, viz. of men being within orders of Holy Church. So as it differeth much whether he be indicted upon the one Statute or the other.

But observe the intent of the Statute in England, that upon the Souldier that departed from the King's Service both before and since the Conquest. Item qui deserit a domino rege suo pro cupiditate belli vel moribus in condicione Heterochini sui in expeditione navali vel terrestri perdat ante quod tempus vitam, & suam ipsius vitam, & manus mittat dominis ad terram quam ei antea dederat. For the exception of Heterochini, see the fourth part of the Institutes, cap. Court de Chivalry.

Lamb. Inter Leges Edovardi fo. 136. Hoved. Annal. 35. Pena Heterochi.

Now concerning Armour, Armes, Weapons, and Habitation of them, &c. in the Statutes in print of Constat. Chap. 25. E. 1. Ver. Magna Charta. parte, fol. 35. 1 E. 3. cap. 5. 2 E. 3. cap. 2. 3 E. 3. cap. 8. 4 E. 4. cap. 13. 11 H. 7. cap. 7. and 3 H. 8. cap. 5. and 4 & 5 Ph. & Mar. cap. 3. for appearing at Quarters, &c. But 4 & 5 Ph. & Mar. cap. 3. for having of Horse, Armour and Weapon, is repealed by the Statute of 1 R. 2. cap. 2.

An Act not in print, Rot. Parl. Anno. 1292. for arranging and mustering of men, for marching of Weapons, &c. Records of Parliament, 4 H. 1. fol. 128. 7 H. 1. fol. 124. 11 H. 5. fol. 17. 15th cases, 4 E. 3. 4. 21 E. 1. 17. per Catesby. 4 B. 4. 16. fol. 2. 10. 7. 8. See the Second part of the Institutes, Constat. Chap. 5. ubi supra. Vid. Pasch 16 E. 2. Phelip Master del Hospit. de S. Katherine case, in libromco fo. 83. b.

N 2 CAP.

CAP. XXVII.

Of Felony to marry a second husband
or wife, the former husband or
wife living.

1 Jac. cap. 11.

IF any person or persons within his Majesties Dominions of England and Wales, being married, do at any time after marry any person or persons, the former husband or wife being alive, that then every such offence shall be felony, &c.

This is the first Act of Parliament that was made against Polygamy. Polygama est plurium simul virorum uxorumve connubium.

The difference between Bigamy or Bigamy, &c. and Polygamy is, Quia Bigamus seu Bigamus, &c. est qui diversis temporibus, & successive, duas seu tres, &c. uxores habuit: Polygamus, qui duas vel plures simul duxit uxores.

¶ If any person.] This Law is general, and extendeth to all persons of what estate or degree soever.

See the Part of the Institutes, Sect. 104.

If the man be above the age of fourteen, which is his age of consent, and the woman above the age of twelve, which is her age of consent, though they be within the age of one and twenty, they are within the danger of this law: which appeareth by this, that this Act extendeth not to a former marriage made within the age of consent, as hereafter shall appear.

¶ Being married, &c.] This extendeth to a marriage de facto, or boydable by reason of a precontract, or of consanguinity, or of affinity, or the like: for it is a marriage in judgement of law until it be abolished, and therefore though neither marriage be de jure, yet they are within this Statute.

¶ Do at any time marry.] This second marriage is merely void, and yet it maketh the offender a felon.

And the party and parties so offending shall receive such and the like proceeding, triall and execution, in such County where such person or persons shall be apprehended, as if the offence had been committed in such County where such person or persons shall be taken or apprehended.

See before the exposition of the Statutes of 7 H. 7. and 8. concerning departing of Souldiers, &c.

See 21 E. 4. Consultation. 5. The opinion of the Doctors. Pains case, lib. 9. fo. 72.

Out of the generality of this law there be five exceptions. First, it extendeth not to any person or persons whose husband or wife be continually remaining beyond the seas by the space of seven years together. By this branch notice is not material, in respect of the Commorancy beyond sea.

Secondly, it extends not, when the husband or wife shall absent him or her self the one from the other by the space of seven years in any parts within his Majesties Dominions, the one of them not knowing the other to be living within that time. Here notice is material, in respect the Commorance is within the Realm.

Thirdly,

Thirdly, noz to any person or persons that at the time of such marriage be divorced by any sentence had in the Ecclesiastical Court.

There be two kinds of divorces; the one that dissolveth the marriage, a vinculo matrimonii; as for precontract, consanguinity, &c. and the other a mensa & thoro, as for adultery, because that divorce by reason of adultery cannot dissolve the marriage a vinculo matrimonii, for that the offence is after the just and lawfull marriage. This branch in respect of the generality of the words doth privilege the offender from being a felon as well in the case of the divorce a mensa & thoro, as where it is a vinculo matrimonii, and yet in the case of the divorce a mensa & thoro, the second marriage is hold, libing the former wife or husband. And if there be a divorce a vinculo matrimonii, and the adverse party appeal, which is a continuance of the former marriage, and suspend the sentence, yet after such a divorce the party marrying is no felon within this statute, in respect of the generality of this branch, although the marriage be not lawfull.

Fourthly, noz to any person or persons where the former marriage is by sentence in the Ecclesiastical Court declared to be void and of no effect.

Fifthly, noz to any person or persons, for or by reason of any former marriage made within age of consent. Whereby it appeareth that the makers of the Law intended that this Act should extend to every person above the age of consent.

If the man be above fourteen, and the wife under twelve, or if the wife be above twelve, and the man under fourteen, yet may the husband or wife be above the age of consent, for the advantage or disagreement must be reciprocal. And so it was resolved by the Judges and Citizens; Trin. 42 Eliz. in the Kings Bench, in a Writ of Error between Babington, and Warner. So as if either party be within age of consent, it is no former marriage within this Act.

Trin. 42 Eliz. coram reg. Inter Babington & Warner.

The offender against this Statute may have the benefit of his Clergy.

If he be a Noble-man and Lord of Parliament, he shall be tryed by his Peers, albeit there be no provision special for it: for of common right, (that we may say it once for all) in case of treason, felony, and misprision of treason, or of felony (as hath been said before) he is to be tryed by his Peers.

I find that by the ancient Law of England, if any Christian man did marry with a woman that was a Jew, or a Christian woman did marry with a Jew, it was felony, and the party so offending should be burnt alive.

Marriage in some sort felony by the Common Law.

Contrahentes cum Judæis, Judæabus, Pecorantes, & Sodomite in terra vii confodiantur, &c. Fleta lib. 1. cap. 35. 9. Contrahentes.

CAP. XXVIII.

Of Felony for any that having a Plague-sore upon him, contrary to commandment goeth abroad, &c.

1 Jac. cap. 31.

If any person infected with the Plague, commanded (by such persons as are appointed by the Act) to keep house, shall contrary to such commandment wilfully and contemptuously go abroad, and shall converse in company, having any infectious sore upon him uncured, such person shall be adjudged a felon.

Levit. cap. 13.
Numb. cap. 5.
Regist. F. N. B.
234. Breve de Leproso amovendo.
Braft. lib. 5.
f. 421. a.
Brit. fo. 26. 8a.
Meth. li. 8. ca. 29.
22 E. 1. Rot.
Clauf. a parte
num. 14.

This is felony, albeit no other person by such means be infected; for this statute was made to prevent the most horrid and fearful infection of the plague. The Law was general, and extended to all states and degrees whatsoever, and was made upon the Law of God and the reason of the Law of the Realm is, that the infectious sick should be removed from the whole. The party offending might have had the benefit of the Clergy.

There is a clause added. This no attainder of felony by virtue of this Act shall extend to any attainder or corruption of blood, or forfeiture of goods, chattels, lands, tenements or hereditaments.

In this proviso these things are to be observed. First, that by the avoiding of the corruption of blood the wife dower is impliedly saved: for where the heir shall inherit, the wife shall be endowed against the heir. Secondly, that there shall be no forfeiture of goods or chattels: which is rare, and the like we have not observed before; and by consequent the offender may make his will and Testament, and if he do not, the Ordinary ought to grant administration of the goods and chattels, as he ought to do in other cases.

These words [any attainder or] must be omitted, and the sense be, to any corruption of blood, for as it is printed, it is, that no attainder of felony shall extend to any attainder, &c.

This Act is become of no force for want of continuance, and is expired since we wrote this Chapter, therefore to be put out of the charge of the Justices of Peace.

[Nota.

CAP.

CAP. XXIX.

Of Felony in Jailors by Dures of Imprisonment, &c. by Statute, and by the Common Law.

IF it happen that the keeper of the prison, or under-keeper, by too great dures of imprisonment, and by pain, make any prisoner that he hath in his ward to become an Appeller against his will, and thereby be aggrieved, he shall have judgement of life and members...

14 E. 3. cap. 10. Geol-an French & a prison. Cellier; a keeper of a prison. Anglice, a Jail, or Jayler. * An Approver: 3 E. 3. Cor. 295.

18 E. 3. Cor. 272.

1 E. 3. cap. 14. 20 E. 3. cap. 5. 1 R. 2. cap. 4. W. 1. cap. 36. 11 H. 4. 2. 91. 22 E. 3. 15. See the exposition of W. 1. c. 28. a Mich. 7 Jacobi in Curia Stellar. Sir John Hollis case. 11 H. 4. 73. simile. 13 E. 3. bar. 253. simile.

¶ Keeper of the prison, or Under-keeper. If he be keeper or under-keeper, de jure or de facto, by right or by wrong, he is within the purview of this statute...

¶ By too great dures of imprisonment. Every imprisonment is taken and deemed in Law duritia, dures: a little addition to it by the Jailor is too great dures in this case.

¶ To become an Appeller. This is done when the prisoner, under the duress of the Jailor or Under-Jailor, has sworn or affirmed against his will...

¶ Against his will. When the prisoner, under the duress of the Jailor or Under-Jailor, has sworn or affirmed against his will...

¶ Judgement of life and members. For this offence, if the prisoner die in prison, the Coroner ought to sit upon him. See before Cap. Petit Treason, fo. 34. Two Prisoners are to be demeaned.

* W. 2. cap. 34. 28 E. 3. cap. 3. 13 R. 2. stat. 2. cap. 3. 1 E. 2. De frang. prisonam. 9 E. 4. fo. 26. Br. Cor. 203. b Britton. fo. 18. Fleta lib. 1. c. 26. versus finem. Mirror cap. 1. S. 9. De homicidio.

14 E. 3. cap. 10.
19 H. 7. cap. 10.
Lib. 4. fo. 34.
Muttons case.
Parl. 18 E. 3. nu. 43.
2 Car. Regis in the
Exchequer Cham-
ber, Fortescues case.

Both Coales are rejoyned and united to the office of Sheriffs, & this Statute of 14 E. 3. cap. 10. 19 H. 7. cap. 10. Lib. 4. fo. 34. Muttons case. Add therunto Rot. Par. 18 E. 3. nu. 43. and so was it decreed in Fortescues case, in the Exchequer Chamber, Anno 2 Caroli Regis.

CAP. XXX.

Of Felony by bringing in payment, or receipt of certain money.

3 H. 5. cap. 2.
Stat. 1. Rar.
Abb. Tit. money,
nu. 17.

IT is felony to make, coin, buy, or bring in and put in payment, &c. any Galley half-pence, Suskyn or Dotkyn.

9 H. 5. c. 6. Stat. 2.

The reason of this Law was, for that these moneys were base, and not of the Assay of Sterling, which was (amongst others) the cause of the making of the general Law of 9 H. 5. cap. 6. Stat. 2.

2 H. 6. cap. 9.

It is felony to pay or receive for payment any money called Blanks. For the better understanding of this Statute, it is to be known, that these Blanks were white money coined by King H. 5. in France after his victory at Agincourt, and league with France, whose style then was, Rex Anglie, Regens & hares Francie. And they were called Blanks or Whites in respect of the colour, because at the same time he coined also a Salus in gold, the Salus being of the value of twenty two shillings, was of the assay of Sterling; but the Blanks, which were much more common, being each of them valued at eight pence, were not of the assay of Sterling, and therefore they only were decreed by the said Act of 2 H. 6.

See the Second part of the Institutes, Artic. super Chartas, cap. 20.

For either of these offences of Felony the offender may have his Clergy.

CAP. XXXI.

Of Felony for transportation of Silver, or importation of false or evil money, &c.

Mirror c. 1. §. 3.
Inter les Articles de
viels roys ordains:
Rot. Parl. 17 E. 3.
nu. 15. not printed.

Defendue fuit que nul Argent ferra transport hors del Realm.

This was the ancient Law of England long before the Conquest. At the Parliament holden Anno 17 E. 3. as well the transportation of Silver, as the importation of false and evil money, is enacted by authority of that Parliament to be Felony. And also if the searchers mentioned in the Act be assenting to the bringing in of false money, or willingly suffer Silver or money to be transported, it is also made Felony. But because this Act was never printed nor translated into English, and for that there be other things observable enacted thereby, worthy to be known, we will transcribe the same de verbo in verbum in proprio Idiomate.

Le Parliament tenu a Westm. a la Quinzeme de Pasch. du raign nostre Seignior Le Roy Edward Tiers apres le Conquest Dis & leptisme.

Item accordé est de faire une Monnoie des bones Esterlings en Engleterre du Pois & del a Alay del auncient Esterling, que arvera son cours en Engleterre entre les Grandz & la Commune de la terre, & la quale ne sera portes hors du royaume dengleterre en nulle manere; ne pur quecunque cause que ceo soit. Et en case que les Flemings voissent faire bone monnoie d'argent, grosses ou autres, accordant en alay es bones esterlings, que tiel monnoie eit cours en Engleterre entre Merchand & Merchand & autres q'la voidroint resevire de leur bone gree, isint que nul argent soet portes hors due Roialm.

Item est accordes & assentus, que bones gents & loialx soient assignes es Ports de miere, & ailleurs, ou miester serra, de faire la serche que nul argent soit portes hors due Roialm en monnoie n' autrement, forspri que les Grandz quant ils vont per dela quils pensent aver vesseals d'argent pur servir leur hostels: Et que nul soit cy hardy b de porter fausse & malvois monnoie en Roialme, sur paine de forfeiture de vie & de membre, & a faire eschanges a ceux q' passeront la miere d'or pur leur bones Esterlings a la value.

Item assentus est & accordes que les dits Sercheours, per cause qils ferront leur offices plus diliagement & plus loialment, c ils eient la tierce partie de tote la fauxe monnoie qils purront trover portee deins le Roialm a leur proffit demeen: Et en mesme la manere eient la tierce partie de la bone monnoie quele ils troveront en la miere passent hors de la terre. Et en case qils soient troves negligents ou rebealx a ceux serches faire, d que leur terres & tenements, biens & chateux soient seises en la main le Roy, & leur corps pris, & detenus tanque ils eient fait fine au Roy pur leur disobeisance. Et en case qils soient e assentants de porter tiels fauxe monnoie, & de suffrire sachantement l'argent ou monnoie autrement, (forspriques ler Grandz quant ils vont per dela quils pensent aver vesseals d'argent pur servir leur hostels come desuis est dit) estre mesnes hors du Roialm, eient judgement de vie & de membre.

Item, It is accorded to make money of good Sterling in England of the Weight and Allay of the ancient Sterling, which shall be currant in England between the Great men and Commons of the Land, and the which shall not be carried out of the Realm of England in any manner, nor for any cause whatsoever. And in case that the Flemings will make good money of silver, gross or other, according in
allay

See Britton c. 5. f. 10. b.
Cest allay est solon que le forme & usage del Realm. Mirror cap. 1. §. 3. before the Conquest. & cap. 1. §. 6. & cap. 5. §. 1.
See inter leges Ethelstani c. 14. Canuti cap. 8. Fleta lib. 1. c. 22. Glanv. li. 14. c. 7.
Of what weight and allay the Kings money shall be. 1 25 E. 3. cap. 13. 9 H. 5. ca. 11.
See before cas Treason, Verb. Sa monye. See the second part of the Institutes, Artic. super Chartas cap. 20.
This is felony. See the like in the second part of the Institutes. 1 B. 2. De frangentibus prisonam. 14 B. 3. 10. &c.
The reward of the Searchers if they be diligent, &c.
The punishment of them if they be negligent, &c.
Their assent to the bringing in of false money, or wittingly to suffer silver, or money, &c. to be transported, is Felony.

allay of good sterling, that such money shall be currant in England between Merchant and Merchant, and others who of their own accord will receive the same, so that no silver be carried out of the Realm.

Item, It is accorded and assented, That good and lawful men be assigned in the Ports of the Sea and elsewhere, where need shall be, to make search, that no silver be carried out of the Realm in money or otherwise, (except that the Great men may, when they go out of the Realm, have silver vessels to serve their houses.) And that none be so hardy to bring false and ill money into the Realm, upon pain of forfeiture of life and member, and to make exchanges with them that shall pass the Sea, of gold for, their good sterling to the value.

Item, It is assented and accorded, That the said Searchers, because they may do their offices more diligently and more lawfully, shall have the third part of all the false money that they can find to be brought into the Realm, for their own benefit, and in the same manner they shall have the third part of the good money which they shall find upon the Sea passing out of the Realm. And in case they shall be found negligent or disobedient in making such searches, that their lands and tenements, goods and chattels shall be seized into the Kings hands, and their bodies taken and detained until they have made fine to the King for their disobedience. And in case they shall be assenting to the bringing in of such false money, or wittingly shall suffer silver or money (except vessels of silver for the Great men when they go out of the Kingdom, to serve in their houses, as before is said) to be transported out of the Realm, they shall have Judgement of life and member.

The offenders in case of felony made by this Act may have the benefit of their Clergy.

CAPI

CAP. XXXII.

Of Felony for carrying of **Wool, Woolfels, Leather or Lead** out of the Realm.

NO Merchant, English, Welsh, or Irish, shall carry any manner of **Wools, Leather, Woolfels, or Lead**, out of the said Realm and Lands, upon pain of forfeiture of life and member, nor shall transport any of the said Wares or Merchandizes in the name of Merchant strangers, nor shall send or hold their servants, &c. in the parts beyond the sea to survey the sale of the said wares or merchandizes, or to receive the money coming of the sale of the same, nor take payment of gold or silver, nor of any other thing in recompence or commutation, or in the name of payment, in the parts beyond the sea out of the Realm and lands above said, of merchandizes sold in England, Ireland or Wales, touching the Staple, but that all such payment shall be made in gold or silver, or Merchandizes in England, Ireland or Wales, where the contract was made, upon pain of life and member.

27 E. 3. cap. 3. the statute of the Staple.

Mirror cap. 1. §. 3.
Inter les artic. per vieles royes ordeins. Defendu que nul ne amefnaft leyne hors del realm.

That no Merchant privy nor stranger, nor any other of what condition that he be, go by land or by water towards wines, or other wares or merchandizes coming into our said Realm or Lands, in the Sea, nor elsewhere, to forestall or buy the same, or in other manner to give earnest upon them, before that they come to the Staple, or to the Port where they shall be discharged; nor enter into the ships for such cause, till the merchandizes be set to land to be sold, upon pain of loss of life and member.

Cap. 11.

No Merchant privy, stranger or other, shall carry out of our Realm of England, **Wools, Leather, or Woolfels**, to Barwick upon Twede, nor elsewhere, nor into Scotland, upon the like pain; nor that any Merchant nor any other sell his **Wools, Woolfels, or Leather**, to any of Scotland, nor to any other to carry into Scotland, upon the like pain.

Cap. 12.

If the Merchants or other people of Ireland or Wales, after they be in the sea with their merchandizes, do pass to any place, other then to the Staples in England; it is felony.

Cap. 18.

No Merchant or other shall make any conspiracy, confederacy, &c. or ill device in any point, that may turn to the impeachment, disturbance, defeating, or decay of the Staples, &c. and if any do, and be thereof attainted before the Maior and Ministers of the Staple, or other whom the King shall assign, he shall incur the pain of loss of life and member.

Cap. 25.

Item, ou auterfoitz fut orden en *lestatutes de Lestaple que nul Englois passera la mere ove leynes, quire, pealtz lanuts, ne per auter, sur peine de forfeiture de vie & member, terres & tenements, biens & chateaux: Est accord que la forfeiture de vie & member soit ouste de tout en lestatute de

38 E. 3. cap. 6.
27 E. 3. cap. 3. &c.
Stat. Stapulz.

Lestaple, & que nul home soit impeach per tiel forfeiture de roie & membre, cibien in temps passe come a venir, la forfeiture des terres & tenements, biens & chateaux esteant en sa force. The same in English.

Also where heretofore it was ordained in the statutes of the Staple, that no Englishman should pass the Sea with Wools, Leather, Woolfels, nor by other, upon pain of forfeiture of life and member, lands and tenements, goods and chattels; It is accorded that the forfeiture of life and member be ousted in the whole in the statute of the Staple, and that no man be impeached by such forfeiture of life and member, as well in times past as to come, the forfeiture of the lands and tenements, goods and chattels, being in his force.

By the express letter of the body of this Law the forfeiture of life and member is ousted by the Statute: therefore it is holden that the felony is taken away throughout the Statute, but the forfeiture of lands and goods remaineth by the express letter of this Act.

By the Statute of 18 H. 6. No man shall carry Wooll, or Woolfels, out of this Realm to other places, then to the Staple at Callice, without the Kings license, upon pain of felony, &c. And that as well Commissioners assigned, as the Justices in every County where such Wools and Woolfels shall be so carried out, have power and authority to enquire of the premises, and them to hear, and determine, &c.

But this Act extendeth not to Wools which shall pass the freight of Marroke, And this is a perpetual law, and cannot be expired, as it is supposed in the last Impression of the Statutes at large, but it extendeth only to Wools and Woolfels. The offender herein may have his Clergy.

And for the better understanding of ancient Statutes and Records concerning Wools, it is necessary to explain certain words and terms. By the Statute of 25 E. 3. cap. 9. a Sack of Wooll contains but twenty six stone, and every stone fourteen pound, where before it was a twenty eight stone.

Pochet of Wooll, unde Pochetum, that is a little poke or sack containing half a sack of Wooll. Sarpler, unde Sarplia, is also half a sack, and is deribed from the French word Sarpillier, which signifieth a Wrapper, within which wrapper half a sack is contained.

A Waight of Wooll, unde Waga, is half a sack.

A Tod or Tott of Wooll, unde Toddum lanx, containeth two stone, and is deribed from the French word Toilet, which is a Wrapper, within which by usage two stone of Wooll is folded: some fetch it from the Flemish word Dodderem, which signifieth neccere, to weabe, because it is woben into cloth. Petra lane is a Stone of Wooll, so called, because the weight, being a Stone, contains fourteen pound.

18 H. 6. cap. 15.
Stanf. Pl. Cor. 37.b.

a Compos. de ponderibus vet. Mag. Charta, 2 part. fo. 31. Saccus lanæ.
Rot. Parl. 27 E. 3. nu. 53.
b Compos. de ponderibus, ubi supra.

CAP.

CAP. XXXIII.

Against Transportation of Iron, Brass, Copper, Latten, Bell-metall, Pan-metall, Gun-metall, or Shrooffe-metall, (Tinne and Lead only excepted.)

The transportation of these are prohibited by divers Acts of Parliament upon the penalties therein expressed. And hereby is prohibited the transportation of any Gunnes whatsoever: a necessary Law, and worthy of due execution.

And we have ordered, that God hath blessed this Realm with things for the defence of the same, and maintenance of trade and traffick, that no other part of the Christian world hath the like, viz. Iron to make Gunnes, &c. more serviceable and perdurable then any other. Secondly, Timber for the making and repairing of our Navy, and especially for the knees of the Ships, better then any other. Thirdly, our Fullers-earth is better for the fulling of our cloth then any other. Fourthly, our wooll makes better cloth, and more lasting and defensible against wind and weather, then the wooll in any Nation out of the Kings Dominions; and many other special gifts of God.

But here will we stay, and pray that none of these may be transported, for many inconveniences that will follow thereupon.

28 E. 3. cap. 5.
33 H. 8. cap. 7.
2 E. 6. cap. 37.
See the penalties in the statutes themselves, which are thought to be too weak.
Ferrum à feriendo.
Timber is a Saxon word, in old French Marem, unde Maremium Latinè, Ligai materia, vel Lignum edificatorium.
* Terra fullonica.

CAP. XXXIV.

Of Felony for stealing a Falcon.

Every person that findeth any Falcon, Targelet, Lanner or Laneret or any other Falcon that is lost of his Lords, that forthwith he shall bring it to the Sheriff of the County, and that the Sheriff make proclamation, &c. And if any steal any Hawk, and the same carry away, not doing the Ordinance aforesaid, it shall be done of him as of a thief that stealeth a horse or other thing.

37 E. 3. cap. 19.

The Statute of 34 E. 3. inflicted the penalty for the concealing and taking away of the Hawk, two years imprisonment, and the price of the Hawk to the Lord, if he hath wherewith, and if not, he shall the longer abide in Prison. This Act of 37 E. 3. maketh the offence Felony.

34 E. 3. cap. 22.
Printed for the Society of Stationers, 1618.

The new printed book of the Statutes at large, instead of these words, (or any other Falcon) hath, or any other Hawk.

I have seen some manuscripts, in these words, in the original tongue, where in the Statute was published; Que quecunque person que trove Faucon, Targelet, Lanier, ou Lanyret, Auctor ou auter Faucon. And both these differ from the truth of this Law, For the first extendeth this Act to any Hawk whatsoever; and the manuscript to Auctor or Auctor, a Goshawk: whereas in truth, this Law extendeth only to such as be of the kind of Falcons, being long-winged Hawks, which many times by flying far off are lost, and not to a:

See hereafter, caps Larceny, verb. Personal goods, &c.

402.

Lib. 8. fo. 27, 28.
In casu Principis.

short-winged Hawk, as the Goshawk, the Tercel of the Goshawk, the Sparhawk, &c. And in the body of the Act this word [Falcon] is ever used, and not this word [Hawk] as hereafter appeareth. We would have ben glad to have cleared this point by the Record of the Parliament Roll, but the Roll of this Act is not to be found, and yet being a general Law, the Judges are to take notice thereof: and that which I have set down as the words of the Law agreeth with the first impression thereof, and with all succeeding impressions saving the last.

¶ **Every person.]** This is a general law, and extendeth to all persons of what degree or sex soever.

¶ **That findeth.]** Here, by the Common Law the felonious taking of any Hawk, long-winged or short-winged, from the Park, &c. or from the person of any man, with a mind to steal her, is robbery: but the finding of a Falcon, though he concealed, denied, or sold her, was no felony but by this Act.

¶ **Any Falcon.]** By this and the last words, or any other Falcon, it appeareth that only Falcons are within this Law, as besides those that are here named, the Gersfalcon, Gersfalco or Ardearius, and the Tercel, which is called a Terkin; and the Lanner is called Falcunculus. But the Merlin, which is called Esalo, and the Hobby, which is called Alaudaria, though they be long-winged Hawks, yet being not of the kind of Falcons, they are not within this Statute, neither is any short-winged Hawk, as the Goshawk, the Tercel of the Goshawk, or the Sparhawk, &c. as hath ben said, within this Act.

¶ **Tercelet.]** This is the Tercel of the Falcon, called a Tercel gentil, the male of the Falcon, called Tercolus; quia tertia parte minor sit femella, because the Tercel is a third part less than the female.

¶ **Lanner and Lanneret.]** These, as hath ben said, are of the kind of Falcons, which appeareth not only by the name Falcunculus, but by the words of the Act, for having named the Lanner and Lanneret, it is said, or any other Falcon.

Albeit these Hawks that shall be so lost have no Werbels, yet must the finder carry them to the Sheriff, for Werbels are not required by this Act. The only thing that the finder is to do to save himself from felony, is forthwith (the word in the original is maintainant) after his finding to carry the Hawk to the Sheriff.

¶ **That is lost of his Lords.]** Lords are taken here for the owners: the word in the original is Seigneur, which signifieth as well a Proprietary as a Lord.

¶ **To prove reasonably.]** This is not intended according to the general sense of this word [proof] that is, by a Jury of twelve men, but [reasonably] that is, by Werbels, or by marks, or by other proof to the Sheriff.

¶ **And if any steal any Hawk, &c.]** The concealing and carrying away of the Hawk, not bringing the same to the Sheriff according to this Ordinance, is adjudged a stealing by this Act. And yet if a man find goods, and conceal or deny them, it is no felony.

¶ **As of a thief that stealeth a horse.]** But yet by the Common Law one hath not as good and absolute a property in Hawks, being fera natura, and reclaimed for delight and pleasure, (for they may become wild again, and return to their natural liberty) as in a horse, or any other thing of profit: but the concealing and carrying away of the Hawk reclaimed, being found

10 E. 4. f. 1.
7 R. 2. barre 241.
Lib. 5. fo. 168.
Sir Hen. Constables
case.

14 El. Dier 307.
Fines case.
Lib. 7. fo. 17.
in case de Swans.

found was no Felony before this statute, no more then any thing of profit, because the party came to the Hawk by finding. See more hereof in the Chapter of Larceny. A Hawk that is not reclaimed is nullius in bonis, but occupanti conceditur, and he that first getteth the Hawk enjoyeth it.

In this Act four things are to be observed. First, that the Sheriff must make proclamation in all the good Towns of the County, that he hath such a Falcon in keeping. Secondly, if none come to challenge the Falcon within four months, if the finder be who the degree of a Gentleman (which here is called a simple home) the Sheriff shall have the Falcon, paying reasonable costs, &c. Thirdly, if the finder be a Gentleman, and no challenge by the owner within four months, then he shall have the Falcon, paying reasonable costs, &c. Fourthly, it is to be observed, that in these two latter branches, the last printed book hath the word [Hawk], but in the original, and all the other printed books, the word [Falcon] under which word all the rest mentioned in this Act are included.

* Who shall be accounted in law a Gentleman, See the second part of the Institutes, the stat. of Addit. c. H. 5. c. 5. See before c. 23. 3 Jac. cap. 4. Verb. And that if any Gent.

For this offence of Felony the offender shall have the benefit of his Clergy, for at the time of the making of this Act he that hath stollen a horse should have had his Clergy. See Stanf. Pl. Coron. fo. 37.

CAP. XXXV.

Congregations, &c. by Masons in their general Chapters, &c.

It is ordained and established, that no congregations and confederacies shall be made by Masons in their general Chapters and assemblies, whereby the good course and order of the statutes of Labourers are violated and broken in subversion of Law; and if any be, they that cause such Chapters and Congregations to be assembled and holden, shall be adjudged felons.

H. 6. cap. 1.

The cause whereof this offence was made Felony, is, for that the good course and effect of the statutes of Labourers were thereby violated and broken. And all the Statutes concerning Labourers before this Act, and whereunto this Act doth refer, are repealed by the statute of 5 Eliz. cap. 4. whereby the cause and end of the making of this Act is taken away, and consequently this Act is become of no force or effect: for cessante ratione legis, cessat ipsa lex. And the Indictment of Felony upon this statute must contain, that those Chapters and Congregations were to the violating and breaking of the good course and effect of those statutes of Labourers, which now cannot be so alleged, because those statutes be repealed. Therefore this would be put out of the charge of Justices of Peace written by Master Lambard.

23 E. 3. De servientibus cap. 1, &c. 25 E. 3. De servientibus, ca. 1, &c. 15 El. cap. 4

Cessante causa seu ratione legis, cessat ipsa lex. 14 H. 7. 11. Per Fineux simile Vide Stanf. 37. b.

25 H. 8. 4. b. Aïde: Statute de E. 3. 8. Accedit per Shard. 26 H. 6. Examination 14. *Lambard pag. 127.

CAP. XXXVI.

Of Felony by bringing in of Bulls of Excommunication, &c.

13 R. 2. Stat. 2.
cap. 3.

IF any man bring or send into this Realm, or the Kings power, any Summons, Sentence, or Excommunication against any person of what condition that he be, for the cause of making motion, assent, or execution of the statute of Provisors, he shall be taken, arrested and put in Prison, and forfeit all his Lands and Tenements, goods and chattels for ever, and incur the pain of life and member. And if any Prelate make execution of such Summons, Sentence or Excommunication, that his Temporalties be taken, and abide in the Kings hand, till due redress and correction be thereof made. And if any person of less estate than a Prelate, &c, make such execution, he shall be taken, arrested, and put in prison, and have imprisonment, and make fine and ransome at the discretion of the Kings Council.

By the Common Law, when any person, either Ecclesiastical or Temporal, should by pretext of Foreign power impugn or attempt to frustrate any of the Laws of the Realm, there is then a Writ called Ad jura regia. If it were by an Ecclesiastical person beneficed within this Realm, then the writ is, Rex, &c. Salutem. Turbamur, nec immerito, & movemur, dum illos qui sub nostro degunt dominio, & ibidem beneficiis & redditibus honorantur, quo pre-textu in defensione & tuitione jurium Regiæ Coronæ nostræ ipsos nos assultere condecet, eadem jura erectis contra nos servicibus conspicimus satagentes pro viribus impugnare, &c.

Regist. fo. 61. b.

Ibidem 60. b.
Ibid. 61. b. & 62.

The general Writ is, Rex, &c. Ad jura Coronæ nostræ integra & illata pro viribus conservanda, eo amplius curam & operam adhibere nos convenit studiosam, quod ad hoc ex debito astringimur vinculo juramenti, & alios conspicimus ad ipsorum jurium encervationem anhelare: and particularly against Provisions. So as Provisions, &c. were, as by these Writs it appeareth, against the Common Law of the Realm: but sufficient punishment was not thereby inflicted; therefore this and other Statutes were made.

And here it is worthy of consideration, how the Laws of England are not derived from any foreign law, either Canon, Civil, or other, but a special law appropriated to this Kingdom, and most accommodate and apt for the good government thereof, under which it hath wonderfully flourished, when this law hath been put in due execution: and therefore as by situation, so by law it is truly said,

Et penitus toto * divisos orbe Britannos.

* Divisos } orbe
& } legibus.

[If any man. **]** Though these words be general, yet they extend not to Ecclesiastical persons, because there is special provision for them after in the Act.

[Any Summons, Sentence, or Excommunication. **]** Whereby are prohibited the Popes Bulls of any sentence or excommunication, &c. and process of Summons.

It

It appeareth by our Books that the bringing of any Bull of Excommunication into the Realm against a Subject, was against the Common Law of England, in respect it gave way to foreign authority. And so it was holden in the time of E. 1. and E. 3. &c. long before this Act, &c.

Of execution of the said statute of Provisors.

It hath been often said before, that this punishment is altered by the statute of 12 Eliz. cap. 2. as hereafter in this Chapter shall appear.

And if any Prelate make execution, &c.

And if any Prelate make execution, &c. [The punishment is altered by the statute of 12 Eliz. cap. 2.]

And if any Prelate make execution, &c.

And if any Prelate make execution, &c. [The punishment is altered by the statute of 12 Eliz. cap. 2.]

CAP. XXXVII.

Of Felony in receiving a Jesuite, Seminary Priest, &c.

Every person which shall wittingly and willingly receive, relieve, comfort, or maintain any Jesuite, Seminary Priest, or other Priest, Deacon, or Religious, or Ecclesiastical person (made by authority from the See of Rome since the death of Saint John Baptist, &c.) within this Realm, being at liberty and out of hold, knowing him to be a Jesuite, &c. shall for such offence be adjudged a felon without benefit of Clergy.

The estate of the making of this statute of 27 Eliz. against Jesuites and Seminary Priests, &c. and their felthoods, you may read at large, Lib. 5. folio 59. in the case De jure Regis Ecclesiastico, ubi supra.

21 E. 3. Certif. 6.
30 Aff. p. 3.
19 E. 3. Quare non admittit. 7.
Brook Preman. nire 10.
11 H. 4. 69. 76.
14 H. 4. 14.
7 E. 4. 14.
20 H. 6. 1.
35 H. 6. 2. 3. 4.
F. N. B. 64. 5.
Lib. 5. fo. 12.
in Candries Cafe.
4 W. 2. cap. 24.
1 E. 2. de Frang. prisonam.
28 E. 3. cap. 3.
13 R. 2. sta. 2. c. 3.
9 E. 4. 26.
Br. cor. 203.
b Lib. 5. fo. 35.
36, &c. De jure Regis Ecclesi.

27 Eliz. cap. 2.
Clergy taken away

CAP. XXXVIII.

Of Felony in Recusants concerning Abjuration.

35 Eliz. cap. 1.

If any Recusant (other then a Popish Recusant or a Feme Covert) which by the tenor and intent of this Act is to be abjured, shall refuse to make abjuration, or after such abjuration made shall not go to such haven, and within such time as is by this Act appointed, and from thence depart out of the Realm, according to this present Act, or after his departure shall return into any of her Majesties Realms or Dominions, without her Majesties special license in that behalf first obtained, that then every such person so offending shall be adjudged a Felon.

If any offender against this Act before he or they be required to make abjuration, repair to some Parish Church on some Sunday or Festival day, and there hear Divine Service, and make such submission as by the Act is prescribed; then the said offender is clearly to be discharged.

The offender shall forfeit his goods and chattels, and his lands during his life only; the offence shall be holden of law as if of corruption of blood, and the heir to inherit. The offender shall not have the benefit of his Clergy.

CAP. XXXIX.

Of Felony in Egyptians, &c.

1 & 2 Ph. & Mar. cap. 4. 5 Eliz. cap. 20.

If any outlandish people calling themselves, or being called Egyptians, shall remain in this Realm or in Wales one month, at one or several times, and if any person being fourteen years old, which hath been seen or found in the fellowship of such Egyptians, or which hath disguised him or her self like to them, shall remain here or in Wales by the space of one month, either at one or several times, it is Felony.

The offender shall not have the benefit of his Clergy.

CAP.

CAP. XE.

Of Felony in dangerous Rogues.

If any dangerous Rogue that was banished the Realm or adjudged perpetually to the Gallies, have returned into the Realm without lawful licence or warrant, it is felony: the felony to be tryed where the offender is apprehended.

39 Eliz. cap. 4.
1 Jac. cap. 7. 25.

The offender may have the benefit of his Clergy.

If any Rogue after he hath been branded in open Sessions with a Roman R. upon the left shoulder, or sent to the place of his dwelling where he last dwelt by the space of a year, or the place of his birth, to be placed in labour, have offended again in begging or wandering, contrary to the said Statutes, it is felony, to be tryed in the County where the offender shall be taken.

39 Eliz. cap. 4.
1 Jac. cap. 7.

The offender against this branch shall not have the benefit of his Clergy.

Mendicus non erit inter vos, There shall be no begger among you.

Deut. cap. 15. v. 4.
Murr. cap. 1. §. 3.
Inter les Art. per
viels Royes ordeins.

Ordene fuit que les povres fuissent suscepus par les Parsons, Rectors, & les Parochians, cy que nul ne morust, per default de susceivance.

Rot. Par. 50 E. 3.
nu. 61.
Brit. 49. b.

See an ancient Ordinance in 50 E. 3. concerning Withards and sturdy Beggers, that they be driven to their occupations or services, or to the place from whence they came.

CAP. XLI.

Of Felony by Forgery in the second Degree.

If any person or persons being once condemned of any of the forgeries mentioned in the Act, shall after such his or their condemnation, either commit or perpetrate any of the said offences in form in the said Act mentioned, that then every such second offence shall be adjudged felony. But no attainder of this felony shall extend to take away dower, nor to corruption of blood, or disinheritment of the heir.

5 Eliz. cap. 14.

In 43 Eliz. Markham was attainted of felony upon this branch in the Kings Bench for a second forgery of many of the Mannors and lands late of Sir Thomas Gresham Knight, and was executed therefore.

Markhams case coram Rege, 43 Eliz.

This felony is to be heard and determined before Justices of Oier and Terminer, and Justices of Assize in their Circuit. And albeit that Justices of Peace have power to hear and determine felonies, trespasss, &c. yet are they not included under the name of Justices of Oier and Terminer: for Justices of Oier and Terminer are known by one distinct name, and Justices of Peace by another. But the Justices of the Kings Bench are Justices of Oier and Terminer within this Statute.

Hil. 30. Eliz. coram Rege.
Lib. 9. fo. 118. b.
Smiths case.
3 Mar. Br. tit. Oier & Term. 8.

The offender shall not have the benefit of his Clergy.

See hereafter in the exposition of this Statute for the first offence, where incidently there shall be moze said concerning the second offence.

CAP. XLII.

Of Felony for conveying of any Sheep alive out of the Realm in the second degree.

8 El. cap. 3.
See the statute of
3 H. 6. cap. 2.

His left hand cut
off.

NO manner of person shall bring, deliver, send, receive, or take, or procure to be brought, delivered, sent, or received into any ship or bottom, any Rams, Sheep or Lambs, or any other Sheep alive to be carried and conveyed out of this Realm of England, Wales, or Ireland, or out of any of the Queens Dominions, upon pain that every such person, their aiders, abettors, procurers and comforters, shall for his and their first offence forfeit all his goods, and suffer imprisonment one whole year without bayl or mainprise; and at the years end in some market town in the fullness of the market have his left hand cut off, &c. And that every person afterwards offending against this statute shall be adjudged a Felon, &c.

But this Act shall not extend to any corruption of blood, or loss of Power. This felony is to be heard and determined before Justices of Oier and Terminer, Justices of Gaol-Delivery, and Justices of Peace. And the offender may have the benefit of his Clergy, as well in case of the cutting off his hand, as in case of Felony. Stat. 37. b.

CAP. XLIII.

Of Felony in servants that imbecill their Masters goods after their decease.

33 H. 6. cap. 1.
This extends to the Lord Keeper of the Great seal.
This extends to the Administrators, and also if there be but one Executor or Administrator.
Attainted by force of this Act of Parliament upon default.
See the like many times in the Parliament Rolls.
Rot. Parl. 15 H. 6. nu. 14. & 15.
Rot. Parl. 18 H. 6. nu. 28.

IF any of the household servants of any person shall after the decease of their Lord or Master violently and riotously take and spoil the goods which were their said Lords or Masters, and the same distribute amongst them, that upon full information made to the Chancellor of England for the time being by the Executors or two of them of such riot, taking, or spoil made, the Chancellor by the advice of the Chief Justices and Chief Baron, or two of them, shall have power to make so many and such writs to be directed to such Sheriffs as to them shall seem necessary, to make open proclamation in such sort as by the Act is prescribed, to appear in the Kings Bench, &c. And if any such writ be returned, &c. then if the said person or persons make default, then he or they making default shall be attainted of felony.

The offenders shall have the benefit of their Clergy.

CAP.

CAP. XLIV.

Of Felony in Servants that imbecill their Masters
goods committed to their trust above
forty shillings.

Every servant to whom any Caskets, Jewels, money, goods or Chattels of his or their Master or Mistres shall be delivered to keep, that if any such servant or servants withdraw him or them from their said Masters or Mistresses, and go away with the said Caskets, Jewels, money, goods or chattels, or any part thereof, to the intent to steal the same, contrary to the trust and confidence in him or them put, &c. Or else being in service of his said Master or Mistres, without the assent and commandment of his Master or Mistres, imbecill the same or any part thereof, or otherwise convert the same to his own use, with like purpose to steal it: If the Caskets, Jewels, money, goods or chattels be of the value of forty shillings or above, it shall be deemed and adjudged Felony.

21 H. 8. cap. 9.
27 H. 8. cap. 17.
28 H. 8. cap. 2.
1 E. 6. cap. 12.
5 El. cap. 10.

Concerning the value, (to speak it once for all) Tantum boni valent, quanto vendi possunt.

This Act extendeth not to any Apprentices or Apprentices, nor to any servant within the age of eighteen years at the time of the offence committed.

Vide Dier 25 H. 8. fol. 5.

By the statute of 27 H. 8. the offender was ousted of his Clergy, but that Act is repealed by 1 E. 6. cap. 12. So as at this day the offender may have the benefit of his Clergy.

Dier 25 H. 8. f. 5.
1 E. 6. cap. 12.

[Shall be delivered by his or their Master or Mistres.]

If the master deliver an obligation to his servant to receive the money thereby due, and the servant receive the money of the obligee, and goeth away with the same with intent to steal the same, this is no offence within this statute, because he had not the money of the delivery of his master: and if he had gone with the obligation with intent, ut supra, it had been also out of this Act, because it was a chose in Action. So if the master deliver to his servant wares or merchandizes to sell, and selleth the same, and goeth away with the money, as before, this is no offence within this statute for the cause aforesaid, *de Stanford* 37. b.

Dier 26 H. 8.
fo. 5. a. & b.
See the form of the
Indictment upon
this stat. Lamb. In-
ter Praesides.

CAP.

CAP. XLV.

Of Felony to cut down or break up the Powdike in Marshland in Norff.

22 H. 8. cap. 11.
2 & 3 Ph. & Mar.
cap. 19.

Every peruerse and malicious cutting down, and breaking up of any part of the new Dike called the Powdike in Marshland in the County of Norff, or of the broken Dike called Oldfield Dike by Marshland in the Isle of Ely in the County of Cambridge, or of any other Bank being parcel of the Rinde and uttermost part of the said County, is adjudged Felony.

The Iustices of Peace have power to enquire of, and to hear and determine this felony. The offender may have the benefit of his Clergy.

Some say that this is a private Act: but it is publicum in privato, for the danger is publick, though the place be private, and doth concern multitudes of people; and the sea is such an immense creature, as who can withstand it without length of time, infinite damage, and loss, and extream charge and toll?

43 El. cap. 13.
* See before cap. 12.
fo. 61, 62.
3 H. 7. cap. 2.
Vide 1 H. 5. c. 6.
simile de Gales.
* Black mail is explained by the Act it self.

See the Statute of 43 El. cap. 13. whereby in the Counties of Cumberland, Northumberland, Westmorland, and the B. of Duresme, carrying away or detaining of any person against his will, or imprisoning him or them to ransom them; or to spoil them, upon deadly feud or otherwise, or shall receive or carry Blackmail; or the Black Mail for protection, &c. is made felony without benefit of Clergy.

CAP. XLVI.

Of one of the Grand Enquest being one of the Indictors of any person or persons of treason or felony, and discovering openly what persons were so indicted, &c.

Stanf. fo. 36. 4.

This by some opinion in our books was holden for treason, or felony, and thereof diuers reasons were yielded.

First, that such discovery was against his oath: but that could not be the reason, for perjury was neither treason nor felony.

Secondly, others did hold, that by this discovery the parties indicted of treason or felony might flee or escape: but that can be no reason; for this discovery without moze, can neither make him principal nor accessary.

18 E. 3. Cor. 27a.
27 Aff. p. 63.
Georges case.

Thirdly, others that endeavour to confess and aboid the Authorities in this case in Law, are of opinion, that in those times the intent of a man, in criminalibus, was much respected, in as much as In criminalibus voluntas reputatur pro facto, and that by this open discovery, &c. his intent appeared, that they might flee or escape. And now it is agreed on all parts, that at this day

Such discovery is neither treason nor felony: and the rather, for that no person ever died for such discovery. In Georges case, in anno 27. Lib. Ass. upon his Indictment he was acquitted. But certain it is, that such discovery is accompanied with perjury, and a great indignation to be punished by fine and imprisonment.

CAP. XLVII.

Of Larceny or Theft by the Common Law.

Having thus far proceeded, we are now come to Larceny, which cometh from Latrocinium; and from Latrocinie, by contraction, or rather aduoc, to Larceny.

The *Spitroz* first describeth Larceny, and then explaineth it. Larcine est prise d'autre meuble corporelle trecherouement contre la volunt de celui a qui il est p male egaigne de la possession, ou del use. Then doth he explain and shew the reason of the principal words thereof.

Mirror cap. 2. §. 20. De Larceny.

Pais est dit, car baille nest my title de laroun, ne livery en le case.

Meuble corporelle est dit, pur ceo qui en biens nient meubles, ou nient corporels, sicome de tse, rents, & des Advowsons de Eglises, ne se fait null larceny.

Trecherouement est dit, pur ceo qui si lessaignour entende les biens estre siens, & que il les poet bien prendre, en tiel case ne se fait my ceste peche, nec en case ou len prent l'autrui p la bu len entend, que si pleist il seignour des biens que il les prendra, mes a ceo ttoient enseigner apparant presumption & evidence.

Et sciendum, quod furtum est, secundum leges, contractatio rei alienae fraudulenta, cum animo furandi, invito illo domino cuius res illa fuerat. And then he

Bracton lib. 3. f. 150.

explaineth it. Cum animo dico, quia sine animo furandi non committitur.

Bracton useth not the word latrocinium, but furtum, and so doth Glanvil. See Bracton a whole Chapter de Larcyns. And Fleta hath it thus, Est autem furtum

Glanv. lib. 7. c. 17. & lib. 10. cap. 15. Bracton cap. 15. de Larcyns fo. 22. Fleta lib. 1. cap. 30.

contractatio rei alienae fraudulenta, cum animo furandi, invito Domino cuius res

mauerit, following Bracton totidem verbis. These descriptions are generally of Theft, comprehending Robbery, Burglary, when any thing is taken, and all other latrocines. But here Larceny for distinction sake is taken in a narrower sense, viz for single theft or thievery, and may be described thus:

Larceny, by the Common Law, is the felonious and fraudulent taking and carrying away by any man or woman of the meer personal goods of another, not from the person, nor by night in the house of the owner.

Larceny defined.

Now let us peruse the principal parts of this description.

Felonious taking.

First, it must be felonious, id est, cum animo furandi, as hath been said. Actus non facit reum, nisi mens sit rea. And this intention is not to be taken to come to his hands by possession; for if he hath the possession of it since lawfully, though he hath animum furandi afterward, and carrieth it away, it is no Larceny: but this receiveth some distinction, as hereafter shall appear.

See tit. Piracy, &c. Butlers case. 28 Eliz.

Secondly, it must be an actual taking: for an Indictment, Quod felonice abduxit equum, it is not good, because it wanteth cepit. By taking, and not battening or detaining, for that is a receipt, and not a taking: and therewith agreeth Glanvil Furtum non est ubi mitium habet detentionis per dominum rei.

2 R. 3. 1.

But hereth the Law doth distinguish. For if a Bale or Pack of merchandise be delivered to one to carry to a certain place, and he goeth away with the whole pack, this is no felony: but if he open the pack, and take any thing out animo furandi, this is Larceny. Likewise if the Carrier carry it to the place appointed, and after take the whole pack animo furandi, this is Larceny also; for the delibe-
bery

Glanvil lib. 10. cap. 13. 13 R. 4. 2.

herp had taken his effect, and the priority of the bailment is determined. And so it is of a Tun of wine, or the like, metate mutandis.

Charge.

Also there is a difference between a possession and a charge. For when I deliver goods to a man, he hath the possession of the goods, and may have an Action of trespass, or an Appeal, if they be taken or stoln out of his possession, But my Butler or Cook, that in my house hath charge of my Vessel or Plate, hath no possession of them, nor shall have an Action of trespass or an Appeal, as the Bailie shall: and therefore if they steal the plate or vessel, it is Larceny. And so it is of a Shepherd, for the things he looketh, & non in possessione Promi, Coci, Pastoris, &c.

3 H. 7. 12.
21 H. 7. 15.

13 E. 4. 9.
Special use.

If a Taverner set a piece of plate before a man to drink in it, and he carry it away, or this is Larceny, for it is no bailment, but a parcel set to a special purpose.

22 Aff. pl. 99.
22 E. 3. cor. 265.

Thirdly, not by a robber or finding. If one lose his goods, and another find them, though he convert them, animo furandi, to his own use, yet it is no Larceny, for the first taking is lawfull. So if one find treasure trove, or waife, or Gray, and convert them, it is no Larceny, both in respect of the finding, and also for that Dominus rerum non apparet.

See cap. de Treason, Verb. quant home, &c.
Et cap. Murder. 27 Aff. 40.
2 E. 3. cor. 160.
Lex Inz cap. 50. accord.
Stanf. 26. c.
15 E. 2. cor. 383.

[Felonious] Implyeth, that though the taking be actual, yet must it be done by such persons as may commit felony. A mad man that is non compos mentis, or an infant that is under the age of discretion, cannot commit Larceny, as in another place we have said.

Mich. 37 E. 3. coram Rege. Reg. 89. Lincoln.

A Feme covert committeth not Larceny, if it be done by the coercion of her husband; but a Feme covert may commit Larceny, if she doth it without the coercion of her husband: and there it appeareth, that a man may be accessorie to his wife, but the wife cannot be accessorie to her husband, though she know that he committed Larceny, and relieve him, and discover it not: for by the Law of this Realme she is not bound to discover the offence of her husband.

Bracton lib. 3. fo. 151. b.

Felons came to the house of Richard Dey, and Margery his wife; the wife bid them to be felons, but the husband did not, and both of them received them, and entertained them, but the wife consented not to the felony. And it was adjudged, that this made not the wife accessorie. Quia ipsa in vita mariti sui de aliquo receptamento in presentia viri sui, cui contradicere non potuit, occasionari non debet.

Britton cap. 14. fo. 47.
Fleta lib. 1. cap. 36.

Uxor furi responsata non tenetur ex facto viri, quia virum accusare non debet nec detegere furium suum, nec feloniam, cum ipsa sui potestatem non habet, sed vir.

La feme nequedent a felon poit dire q tout seavoit ele del mawaste son bason, par ceo ne le poet ele my enculer, ne devoit, tanq come ele fult de lay convert, &c.

Uxor autem furis non tenetur pro delicto viri, poena enim ipsa debet tenere aucthores: uxor autem virum accusare non debet, nec feloniam suam consentire, &c.

Pasch. 15 Eliz. Vide statutum.

[Felonious and fraudulent taking.] If a man seeing the horse of B. in his pasture, and having a mind to steal him, cometh to the Sheriff, and pretending the horse to be his, obtaineth the horse to be delivered unto him by a Replevin, yet this is a felonious and fraudulent taking, as it was resolved by the Judges, as Cathm Chief Justice reported in the Kings Bench, Pasch. 15 Eliz. for the Replevin was obtained in fraudem legis.

22 Aff. pl. 39.
01. 01.

[Carrying away.] For the Indictment saith, felonice cepit & asportavit. The removing of the things taken, though he carry not them quite away, satisfied this word asportavit. As if a guest take the coverlet or sheets of his bed, and rising before day, take the coverlet or sheets out of the chamber where he lay, into the Hall, to the intent to steal them, and went to the stable to fetch his horse, and the Watcher apprehended him, this was adjudged Larceny: and the coverlet or sheets were carried away, being removed from the Chamber to the

the Hall; albeit they were still in the house of the owner,

So if a mans horse be in his close, and one taketh him, and as he is carrying him away, he is apprehended before he getteth out of the close, yet this is sufficient to make it Larceny. Justice Dalisons Report.

[Of mere personal goods.] It is said [mere] for though they be personal goods; yet if they labour any thing of the realty, no Larceny can be committed of them: As any kind of corn or grain growing upon the ground is a personal chattell, and the Executors of the owner shall have them, though they be not severed; but yet no Larceny can be committed of them, because they are annexed to the realty. So it is of grass standing on the ground, or of Apples, or any other fruits upon trees, or bushes, or of woods growing; but if the owner cut the grass, or gather the fruit, or cut the wood, then larceny may be committed of them.

12 E. 3. Cor. 199.
22 E. 3. Ibid. 256.
hb. 4. fo. 19.

So it is of a box or chest with Charters, no larceny can be committed of them, because the Charters concern the realty, and the box or chest, though it be of great value, yet shall it be of the same nature the Charters be of: & omne magistratum trahit ad territorium.

10 E. 4. 14.
Lib. 8. fo. 33. b.
Calveys case.

Larceny can be committed by taking and carrying away of a board or of a hillain, because they are in the realty.

It appeareth by all our ancient Statutes ubi supra, and by the statute of W. 1. that there is Grand Larceny and Petit Larceny, distinguished so by the value: for if the personal goods stolen amount to above the value of twelve pence, then it is grand larceny, and if it be under the value of twelve pence, then it is petit larceny, for which he shall forfeit all his goods, and suffer some corporal punishment, as whipping, &c.

W. 1. ca. 15. See the exposition thereof.
27 H. 8. 22.
Corium forisfacere
or perdere, Sax.
their his hide,
is to be whipt.
Mirror. ca. 3. 5. De
crime de robbery.

And this was the ancient law before the Conquest; for the Mirror saith, Et tunc for que l'aley ne s'yt regard forsq' al ceures des peuchers nequident limit le quantite del robbery & larceny en cest maner, cestavoir que nul ad judgement de la mort, li non larceny, &c. ne passent 12 deniers de sterlings.

As man hath a right property in some things that are tame by nature, and yet in respect of the fierceness of the nature, a man shall not commit any larceny, great or small, though he steal them, as of mastiffs, blood-hounds, or of other kind of dogs or of cats, nor of some things that be wild by nature, and made tame, as bears, foxes, spes, monkeys, polecats, ferrets, and the like, and yet no manner of felony can be committed on them, in respect of their wild and savage nature, and therefore no person shall die for them: and likewise it is of their whelps, or cubs, or young; for it is a rule in law, that if no felony can be committed of any thing that is ferum natura, and of age being reclaimed, or made tame, that no felony can be of the young in the nest, kennell or den.

Lib. 7. fo. 18.
In case de Swans.
4 Vide verb. (of
another) next following.
12 H. 8. 39.
14 H. 8. 34.
18 H. 8. 2.
2 E. 2. distres 20.
Jeveret. 2 E. 2.
Avowry. 18a.
ferret.
38 E. 3. 10.
47 E. 3. 10.
5 H. 5. 1.
9 H. 6. 2.
F. N. B. 87. a. &
88 l. 86. l.
b Mirror c. 1. 5. 10.
Dier 14 El. 306.
307. 18 E. 4. 8.
16 E. 4. 11.
14 H. 8. 4.
Vide before.
37 E. 3. fo. 37.
F. N. B. 86. l.
c 18 H. 8. 2. b.
Doct. & Stu. 9. b.
Britton 74. 75.
Braft. 1. 2. fo. 94
8 E. 4. 5.
d 11 H. 7. ca. 17.
31 H. 8. ca. 12.

So as a man may have property in many things, and yet in respect of their nature there can be no felony of them: On the other side, of some things that be ferum natura, being reclaimed, felony may be committed in respect of their noble and generous nature and courage, serving ob vitz solacium of Princes, and of noble and generous persons, to make them fitter for great employments: As all kind of Faulcons and other Hawks, if the party that steals them know they be reclaimed.

[Of another.] No larceny can be committed of wild beasts, or of fowls that be wild, or of fishes that be at their natural liberty in rivers or great waters, because these be nullius in bonis: but larceny may be committed of young pigeons in dovecouses, or of young hawks in the nest. But if any person upon the ground of any other do take the eggs of any Faulcon, Goshawk, Lanner, or Swan out of the nest, this is not felony, but he shall be imprisoned by the space of a year and a day, and fined at the Kings will, the one half to the King, and the other to the owner of the ground. But larceny may be committed of the eggs of such as be domita natura, as of Hens, Turkeys, Pheasants

and

Stanf. 25. c.

12 E. 4. 4.

18 E. 4. 8.

22 H. 6. 59.

43 E. 3. 24.

Vid. before, Verb.

(Of meer personal

goods) 3 H. 6. 55.

lib. 5. fo. 104. b.

lib. 7. fo. 16, 17.

b 10 E. 4. 14.

7 E. 4. 14.

Stanf. 25.

10 Ja. Regis, Hains
case.

Furtum inauditum.

7 H. 6. 43.

21 H. 6. Cor. 455.

Abbridge daff. 63.

Britton fo. 71.

and the like. a And larceny may be committed of fishes in a trunk or pond, because they are not at their natural liberty, but as it were beasts in a pound.

b But if such as be wild, that serbe for the food of man, be made tame, as Deer, wild Boze, Conies, Cranes, Pheasant, Partridge, or the like, Larceny may be committed of them, so as he that stealeth them knoweth that they be tame. But the Deer, &c. being wild, yet when he is killed larceny may be committed of the flesh, and so of Pheasant, Partridge, or the like: And so note a diversity between such beasts as be fera natura, and being made tame serbe for pleasure only, and such as be made tame and serbe for food, &c. which diversity being not observed, hath made many men to err.

A man may be indicted, Quare bona Capella in custodia, &c. and so in title of baration, bona domus Ecclesie.

At the Assises at Leicester, in Lent, Anno 10 Jac. the case was this: One William Hain had in the night digged up the graves of others several men, and of one woman, and took the winding-sherts from the bodies, and buried the bodies again: and adding hereupon for the rareness of the case, consulted with the Judges at Serjeants Inn in Fleetstreet; where was all resolved that the property of the sherts was in the Executors, Administrators or other owner of them, for the dead body is not capable of any property, and the property of the sherts must be in some body: and according to this resolution, he was indicted of felony at the next Assises; but the Jury found it but petit larceny, for which he was whipped, as he well deserved.

Nota. A felonious taking must be of the possession, and not of the property removed from the possession.

If a man doth bail, or lend his goods to another, although he hath the general property of them, yet may he commit larceny of them, by the felonious taking and carrying them away, and in judgement of law he is said in this case to take the goods of another: for the bailor hath jus proprietatis, and the bailee hath jus possessionis, or a special property.

The wife cannot steal the goods of her husband, for they be not the goods of another: for the husband and wife are one person in law, Dux animæ in carne una.

Vide Stanf. Pl. Corpn. fo. 24, 25.

To speak it here once for all, if any person be indicted of treason, or of felony, or larceny, and plead not guilty, and thereupon a Jury is returned, and sworn, their verdict must be heard, and they cannot be discharged, neither can the Jurors in those cases give a private verdict, but ought to give their verdict openly in Court.

Maccgriefs, fleshmengers, such as buy and sell stolen flesh knowing the same to be stolen. Vid. Lamb. inter leges Edw. Regis fol. 140. b. De Machecartis, described of macc an old word for flesh, and grief, wrong or injury.

CAP. XLVIII.

De Anno, Die & Wasto.

Of the Year, Day and Wast.

Hereof we have treated at large in the second part of the Institutes in his proper place, upon the exposition of Magna Charta c. 22. where it appeareth, that at this day the King shall have but the profits for a year and a day in lieu and satisfaction of the wast which the Common law gave to the King in despite and detestation of the offence, as there you may read at large: and there it appeareth how necessary it is, ancient Authoꝝ to be read; all which need not here to be rehearsed: * and that if any Statute be made to the contrary of Magna Charta, it shall be holden for none. And therefore if Prærogativa Regis anno 17 E. 2. cap. ultima, be contrary therunto, it is repealed as to the wast.

Mirror. cap. i.
S. 3. & cap. 4.
S. Et le Roy is remembrance, &c.
Lege quia optime. Glanv. li. 7. cap. 17.
Bracton lib. 3. fo. 129, 137.
Britton c. 5. f. 14.
Fleta lib. 1. c. 28.
S. Causa vero, &c.
* 42 E. 3. cap. 1.

17 E. 2. Præ. Regis cap. ultimo. Regist. 165; Magna Chart. cap. 22. 3 E. 3. Cor. 356, 327, 310, 290.

CAP. XLIX.

Of Piracy, felonies, robberies, murders and confederacies committed in or upon the Sea, &c.

Having now treated of felonies, &c. that are committed and done upon the land, we will consider of Piracies and felonies, &c. done on the sea, which by an Act of Parliament are to be enquired of, heard and determined according to the course of the Common law, as if they had been done upon the land.

Rot. Parl.
8 H. 6. m. 42.

All treasons, felonies, robberies, murders and confederacies committed in or upon the Sea, or in any other Haven, River, Creek, or place where the Admiral hath, or pretends to have power, authority or jurisdiction, shall be enquired, tryed, heard, determined, and judged in such shires and places in the Realm as shall be limited by the Kings Commission under the Great seal, in like form and condition as if any such offence had been committed upon the land, to be directed to the Lord Admiral, or to his Lieutenant, Deputy or Deputies, and to three or four such other substantial persons as shall be named by the Lord Chancellor of England for the time being, &c.

28 H. 8. cap. 15.
Vid. 27 E. 3. c. 13. del staple.
31 H. 6. cap. 4.
Vide 2 R. 3. fo. 2.
Vide Palaches case.

And such as shall be convict of any such offence by verdict, confession, or process by authority of any such commission, shall have and suffer such pains of death, losses of lands, goods and chattels, as if they had been attainted of any treason, felony, robbery, or other the said offences done upon the land.

See before in the chap. of Heresie.

The offenders not to be admitted to have the benefit of Clergy.

The mischief before this Statute was (as it appeareth by the Preamble) that Traitors, Pirates, Thieves, Robbers, Murderers and Confederators upon the sea many times escaped unpunished, because the Common Law of this Realm extended not to these offences, but they were judged & determined before the Admiral, &c. after the course of the Civil Law, the nature whereof is, that before any judgement of death be given against the offenders, either they must plainly confess their offences (which they never will do without torture or pain) or by witness indifferent, such as saw their offences committed, &c. which in these cases cannot be gotten but by chance, or very rarely. For this cause the Commons petitioned in a Parliament in 8 H. 6. that the Justices of Peace might enquire of all Piracies: but the Kings answer was, That he would be advised.

See 40 Ass. pl. 25.

* Concerning treason, see before ca. 2. Verb. *All trials*, fo. 25. 1 E. 6. ca. 12. 5 E. 6. cap. 11, &c. 4 Rot. Par. 8 H. 6. nu. 42.

Hill. 2. Jac. Regis, at Serjeants Inn in Fleetstreet the resolution of the Justices.

Three points resolved.

This Statute requires a considerate and just interpretation, whereof, for that it concerneth the life of man, the safest way is, to follow the resolutions of all the Judges formerly had upon due consideration of all the parts of this Act, and upon others conferences; whereof in the end, when I was Attorney general, it was resolved by them unanimously as followeth:

Where others did in the reign of the late Queen Elizabeth commit Piracy and Robbery upon the high Sea, of others Merchants of Venice in amity with the said Queen, and after the Pirates, being not known, obtained a pardon granted at the Coronation of King James, whereby the King pardoned them all felonies (inter alia) First, that before this Statute, Piracy or Robbery on the high Sea was no felony whereof the Common Law took any knowledge, for that it could not be tried, being out of all Towns and Counties, but was only punishable by the Civil Law, as by the Preamble it appeareth; the attainder by which Law wrought no forfeiture of lands, or corruption of blood. Secondly, that this Statute did not alter the offence, or make the offence felony, but leaveth the offence as it was before this Act, viz. felony only by the Civil Law, but giveth a mean of trial by the Common Law, and inflicteth such pains of death as if they had been attainted of any felony, &c. done upon the land. But yet (as hath been said) the offence is not altered, for in the Indictment upon this Statute, the offence must be alledged upon the sea. So as this Act inflicteth punishment for that which is a felony by the Civil Law, and no felony whereof the Common Law taketh knowledge. Thirdly, although the King may pardon this offence, yet being no felony in the eye of the law of the Realm, but only by the Civil Law, the pardon of all felonies generally extendeth not to it, for this is a special offence, and ought to be especially mentioned.

Vide similia 19 E. 3. Cor. 124. 8 H. 4. 2. 9 E. 4. 28.

Upon this resolution these consequents do follow. 1. That by the attainder upon this Act, though there be forfeiture of lands and goods, yet there is no corruption of blood. 2. Seeing the offence is not made felony by the laws of this Realm, there can be no Accessory of any felony by the laws of the Realm in this case, either before or after the offence, because the Principal is no felon by our law; neither doth this Act speak of any Accessory. 3. If there be an Accessory upon the sea to a Piracy, that Accessory may be punished by the Civil Law before the Lord Admiral, but cannot be punished by this Act, because it extendeth not to Accessories, nor makes the offence felony. Lastly, the Statute of 35 H. 8. cap. 2. taketh not away this Statute for treasons done upon the sea for the cause aforesaid. Which resolution I have thought good to report, because it openeth the windows of this Statute.

* See the fourth part of the Institutes, cap. High Treason. 5 El. cap. 5. Vide supra, cap. High Treason. Verbo *On per sailors*, t. 11.

In Trin. 18 Eliz. in Lord Diers Manuscript, there is a Quere made, what offence it is to lodge and entertain upon the land a Pirat, knowing him to be a Pirat, and whether this Accessory upon the land shall be tried by this Statute, which is only of Principals in Piracy. And it was thought by the Chief Justice, that the surest way was, to have the Commission in the County where the Accessory offended, and there both the Principal and the Accessory may be indicted and tried, *Ut per Statutum anno 5 & 6 E. 6. Quere*

Hac

Hæc ille. So as this Quære is now cleared by the resolution of the Judges: and questionless the Statute (intended of 2 & 3 E. 6. for there is no such thing in 5 & 6 E. 6.) extendeth only, when a murder or felony is committed in one County, and another person is accessory in another County (as hath been said before) but in that case the offence was committed upon the Sea, and not in any County; and so out of that Statute: and therefore this part of the Manuscript of the Lord Dier was not thought fit to be printed.

2 & 3 E. 6. cap. 24.

Vid. Lib. 2. fo. 93.
Bingham's case.
See the Lord Sancars case.
lib. 9. 117, 118.

Butler and other Pirates in Summer vacation robbed divers of her Majesties subjects upon the Coast of Northfolk, upon the high Sea, and brought divers of the goods so taken into the County of Northfolk, and there were apprehended with the goods. The question moved to Wray Chief Justice, and Justice Peryam, Justices of Assize in Northfolk, was, Whether they might be indicted of Felony in Northfolk, as if one steal goods in one County, and carry them into another County, he may be indicted in either County: and it was resolved by them, that they could not be indicted for Felony in Northfolk; because the original taking was no Felony whereof the Common Law took cognisance, because it was done upon the Sea, out of the reach of the common law: and therefore not like the case where one stealeth in one County, and carrieth the goods into another, for there the original act was Felony whereof the Law took cognisance.

Anno 28 Eliz.
Butlers case.

But now let us peruse the words of the Statute.

¶ **Where Traitors, Pirates.** This word Pirate, in Latine Pirata, is deribed from the Greek word *πυραταις*, which again is fetched from *πυρ*, a transcundo mare, of robbing upon the Sea: and therefore in English a Pirate is called a Kober and a Kober upon the Sea.

¶ **Treason, &c.** Note, treason done out of the Realm is declared to be treason by the Statute of 25 E. 3. And yet at the making of this Act of 28 H. 8. it wanted trial (as by the preamble of this Statute it is rehearsed) at the Common law. And therefore to establish a certainty therein, the Statute of 35 H. 8. was made, as is also said, in the exposition of the Statute of 25 E. 3. See Pasch. 43 Eliz. lib. 5. fo. 107. Sir Henry Constables case.

Before the Statute of 25 E. 3. if a subject had committed Piracy upon another (for so is the word to be intended upon a fact done before 25 E. 3.) this was holden to be petit treason, for which he was to be drawn and hanged; because Pirata est hostis humani generis, and it was contra ligeantiam suam debitum; but if an Alien, as one of the Normans who had rebelled in the reign of King John, had committed piracy upon a subject, this offence could be no treason, for though he were hostis humani generis, yet the crime was not contra ligeantiam suam debitum, because the offender was no subject. But since the Statute of 25 E. 3. this is no treason in the case of a subject.

25 E. 3. cap. 1.
40 Ass. p. 35.

¶ **Upon the Sea, or in any other Haven, River, Creek or other place where the Admirall hath, or pretends to have power, authority or jurisdiction.** These words [or pretends to have, &c.] are thus to be understood, between the High-water mark and the Low-water mark: for though the land be infra corpus comitatus at the reftow, yet when the Sea is full, the Admirall hath jurisdiction super aquam as long as the Sea flows: so as of one place there is divisum imperium at several times. But extend not to any Haven, River, Creek, or other place, that is infra corpus comitatus; for offences there committed were triable by the Common Law, and out of the mischief and purbien of this Statute; for in the preamble the Sea is only mentioned, and in the body of the Act it is said, in like form and condition as if any such offence had been committed upon the land.

8 E. 2. cor. 399.
46 E. 3. Conu-
fance 36.
Stanf. pl. coron.
51. k.
Regist. 129.
13 R. 2. cap. 5.
2 H. 4. cap. 11.
Pl. com. 37.
2 R. 3. fo. 12.
19 H. 6. 7.
30 H. 6. 6. per
Prifort.
Fortescue cap. 32.

¶ **As shall be named by the Lord Chancellor of England.** A nomination by the Lord Keeper of the great Seal of England was taken to be

be

5 Eliz. cap. 18.

be within this Act by the greater opinion of the Justices: but the Statute of 5 Eliz. hath made a Declaration of the Common law concerning the power and authority of the Lord Keeper of the Great Seal, which hath cleared that and all other like questions.

Trin. 7 Eliz.
Dier 241. the case of
Brook, alias Cob-
ham.

¶ To hear and determine such offences after the common course of the Laws of this Land used for treasons, felonies, &c. done and committed upon the Land.] If the offender upon his arraignment before Commissioners by force of this Statute stand mute, he shall have judgement De peyne fort & dure, by force of this general branch, but it is out of the latter words of the Act, viz. And such as shall be convict of any such offence by verdict, confession, or Proces. For he that standeth mute, is not convict of the offence, but suffereth for his contumacy. Also it is neither by Verdict, Confession or Proces.

For peyne fort & dure, See in the second part of the Institutes, in the exposition upon the Statute of W. 1. cap. 12.

CAP. L.

Of Clergy.

Lib. 11. fo. 29, 30,
&c. Alexander Poul-
ters case.

Lib. 5. 26, 27. in
Candries case.

Vid. Lib. 5. fo. 50.

Biggens case, &
fo. 110. Heltons case.

18 Eliz. cap. 6.

4 Lib. 4. fo. 43, 44.
Syces case.

19. Bibiths case.

2 E. 3. 27.

21 E. 3. Br. cor. 260.

7 H. 4. 16.

10 H. 4. 5.

3 H. 7. 1.

3 H. 7. cor. 53.

4 E. 6. cor. 184.

3 Aff. 41. 5 Aff. 5.

11 H. 4. 93.

6 Rot. cl. 3 E. 3.

m. 8. 18.

c Tr. 24 E. 3. cor.

rege Rot. 173. Hert-

ford.

d 25 H. 8. cap. 3.

32 H. 8. cap. 3.

Vid. 1 E. 6. cap. 18.

5 E. 6. cap. 10.

What person shall have his Clergy, for what offences, in what suits, who is Judge thereof, and at what time Clergy is to be demanded, you may read at large in Alexander Poulters case in the eleventh part of my Reports: where also is resolved the diversity between a Clerk convict, and a Clerk arraigned; what a Clerk convict which hath his Clergy shall forfeit, and at what time; and that none that hath his Clergy allowed ought to make any purgation at this day; and that the King may pardon the burning of the hand, as well in an Appeal as upon an Indictment.

a If the principal hath his Clergy before attainder, the accessory either before or after ought to be discharged.

b You may add to the former Report a Record in Rot. Claus. An. 3 E. 3. m. 2, & 18. That for sacrilege the Ordinary may allow Clergy. So as it is in the election of the Ordinary, either to allow or disallow Clergy in that case.

c See a notable Record Trin. 21 E. 3. coram Rege, Rot. 173. Hertford, that Privilegium Clericale non competit seditioso equitanti cum armis platis & cote-armuris, per leges Angliæ.

d It is provided by the Statute of 25 H. 8. that if any person be indicted of Felony, for stealing of any goods or chattels in any County, and thereupon arraigned, and be found guilty, or stand mute, or challenge peremptorily above the number of twenty persons, &c. they shall lose the benefit of their Clergy, in like manner as they should have done if they had been indicted and arraigned, and found guilty in the same County where the same robbery or burglary was done and committed, if it shall appear to the Justices, &c. by evidence given before them, or by examination, that for such robbery or burglary in the same shire where they were committed or done, they should have lost the benefit of their Clergy by force of the said Statute, viz. of 23 H. 8. cap. 1.

¶ Any person indicted.] This Act extendeth not to Appeals by Writ or Bill, nor to the Appeals of the Approvers.

¶ Or by examination.] By these words though the offender confess the Indictment, or stand mute, or challenge above twenty, &c. yet if by examina-
tion

e Poulters case.
Ubi supra fo. 31.

from before the Justices the truth of the case appeareth, he may be put from his Clergy.

By force of the said Statute. viz. 23 H. 8. So as if for any Burglary or Robbery in one County he were not ousted of his Clergy by the Statute of 23 H. 8. but some later Statute, then the Deserving shall have his Clergy in the County where the goods are carried. For example, if the robbery be done in a dwelling-house, the owner or dweller, his wife, his children, or servants then being within the house, and put in fear and dread by the same, and the goods be carried into another County, he shall not have his Clergy: but if the robbery in the dwelling-house be not done with all the circumstances mentioned in this Act of 23 H. 8. (which circumstances are not required by the Statute of 5 E. 6. cap. 9.) he shall not be ousted of his Clergy in the other County. And so of all like cases.

Vid. Stanf. pl. cor. fo. 123, &c. De Clergy.

Sec. I Jac. cap. 8. Clergy taken from him which doth stab another that hath no sword or weapon, nor stricken first.

CAP. LI.

Of Abjuration and Sanctuary.

Abjuration by the course of the Common Law may be thus described. As when a man or a woman had committed Felony, and the offender for safeguard of his or her life had fled to the Sanctuary of a Church or Church-yard, and there before the Cozener of that place within forty daies had confessed the Felony, and took on oath for his or her perpetual banishment out of the Realm into a foreign Country, saying toties, Perdere patriam quam vitam. But the foreign Country, into which he was to be exiled, must not be amongst Infidels. And this was the ancient Law of this Realm, which was, Prohibemus autem ac Christiana fide tinctus quispiam a regno procul amandetur, neve ad eos qui nondum Christo fidem adjunxerunt religetur, ne eorum aliquando hac animarum iactura quos propria Christus vita redemit.

Cast. de Norm. cap. 24. & 8. Inter leges Inz, cap. 5.

Inter leges Canoni, fo. 105. cap. 3.

4 E. 2. cor. 420. b Sir Thomas Weyland Chief Justice of the Common Pleas, Anno 17 E. 1. Vid. Inter placita Parl. An. 19 E. 1. apud Ashring in Cr. Epiphane. 650 E. 3. cap. Artic. Cleri. 9 E. 2. cap. 10. 1 R. 2. cap. 9. 7 H. 7. cap. 7. 21 H. 8. cap. 2. 22 H. 8. cap. 14. 26 H. 8. cap. 13. 28 H. 8. cap. 1. 33 H. 8. cap. 15. 1 E. 6. cap. 12. 2 E. 6. cap. 2, & 33. 5 E. 6. cap. 10. 13 Eliz. cap. 7. 1 Jac. cap. 25. d 21 Jac. in the continuance of Statutes, &c. e 35 H. 8. ca. 1 & 2.

The foundation of the Abjuration was the Sanctuary of the Church or Church-yard. For he or she that was not capable of this Sanctuary, could not have the benefit of Abjuration. And therefore it is said, that he that committed Sacrilege, because he could not take the privilege of Sanctuary, could not abjure. For the form of Abjuration in the statute of Abjuration, Ver. Magna Charta, part 1. fo. 167. b. The Common Law herein was very ancient, and had saved the life of many a man; and continued without change until an Act made in the Twenty second year of H. 8. cap. 14. whereby it was provided, that the party abjured should not be banished out of the Realm, but to some other Sanctuary within this Kingdom: and to say the truth, Abjuration was exceedingly intricate and perplexed by the said Act of 22 H. 8. cap. 14. and other statutes. For which causes all Statutes made before the Thirty fifth year of Queen Elizabeth concerning abjured persons, stand repealed by the Statute of 1 Jac. cap. 25. whereby by the ancient Common Law concerning abjuration for Felony was revived.

But by an Act made in the Twenty first year of King James it is enacted, that no Sanctuary or privilege of Sanctuary should be admitted or allowed in any case. By which Act, such abjuration as was at the Common Law, founded (as hath been said) upon the privilege of Sanctuary, is wholly taken away; and the writ in the Register 69. a. De restitutione extracti ab Ecclesia is become of no use.

And yet the abjuration by force of the Statute of 35 Eliz. cap. 1. before Justices

cea of Peace, or Justices of Assize, or by force of an Act made at the same Parliament, cap. 2. before two Justices of Peace or the Coroner by a Mercant, remaineth still: because such abjuration hath no dependency upon any Sanctuary. which being sufficient to shew how the Law standeth at this day, both concerning Sanctuary and Abjuration, might suffice.

But yet he that is desirous to read the general learning of Abjuration the Bench, and of Sanctuary the King, let him read the Mirrour, cap. 1. s. 13. & cap. 5. s. 1. where he may read the right use of Abjuration by the ancient Laws of England. Et inter leges Edwardi nu. 10. Custum. de Normandie cap. 24. Officiu[m] coronatorum, tit. Abjuration, Rast. pl. 2. Bracton li. 3. fo. 135 & 136. Britton cap. Abjuration, fo. 24. & cap. Coroners, fo. 7, and Fleta lib. 1. cap. 29. 8 E. 2. ubi supra. 3 E. 3. Coron. 313, 335. 21 E. 3. 17, 29 Ass. p. 34. Rot. Pat. 25 E. 3. part 3. m. 16. Hill. 43 E. 3. Rot. 10. Coram Rege Huc. Hill. 26 E. 3. Coram Rege Rot. 20. Quando aliquis abjuravit regnum, Crux ei deliberat fuit in manu sua portanda in hincere suo per semitas suas, & vocatur Vexillum Sancte Ecclesie. Rot. Parl. 2 R. 2. nu. 28. the right use of Sanctuary, 6 H. 4. 2. 8 H. 4. 2. 11 H. 4. 40. 7 H. 6. 8. 27 H. 6. 7. 2 E. 4. 17, 21. 9 E. 4. 29. 12 E. 4. 1, 2. 3 H. 7. Coron. Fitz. 54. 1 H. 7. 23, 25. 8 H. 8. Kelway, 188, 189, 190, 191. Fitz. Justice of Peace, fol. 202. Stanf. pl. cor. cap. Abjuration, fo. 116, 117, &c. Et ibidem Sanctuary, cap. 38. Dier 13 Eliz. fo. 296. Lib. 5. fo. 12, 26. Lib. 6. fo. 9. Lib. Intrat. Tit. Abjuration & Sanctuary.

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CAP. LII.

De Hutesio & Clamore.

Of Hue and Cry.

The one being an expression of the other. For huer in French (vide Hutesium) is to boot or shout; in English to cry. There be two kinds of Hues and Cries, the one by the Common Law, and the other by statute. Thereupon there are two pursuits, the one for the King, the other for the party by private suit.

Hue and Cry by the Common Law, or for the King, is, when any Felony is committed, or any person grievously and dangerously wounded, or any person assaulted and offered to be robbed either in the day or night; the party grieved, or any other, may resort to the Constable of the Town and acquaint him with the causes, describing the party, and telling which way the offender is gone, and require him to raise Hue and Cry. And the Duty of the Constable is, to raise the power of the town, as well in the night as in the day, for the prosecution of the offender; and if he be not found there, to give the next Constable warning, and so the next, until the offender be found: and this was the Law before the Conquest. c Si quis latroni obviam dederit, eumque nullo edito clamore abire permiserit, quancunque fuerit latronis vita estimata, extremum solvet denariolum, aut pleno perfectoque iurejurando de facinore se nihil habuisse cogniti confirmato. Si quis proclamantem exaudierit, neque vero fuerit insequutus, suae in regem contumaciae) ni omnem criminis suspicionem diluerit) poenas dato.

In antiquo MS. Si quis furi obviamerit, & sine vociferatione gratis eum dimiserit, emendet secundum Veram ipsius furis, vel plena lada se adlegiet, quod cum eo falsum nescivit: si quis audito clamore supersedit, reddat Oversameffa regis, aut plene se laudiet. Bracton, who wrote before any Act of Parliament concerning Hue and Cry, saith, Omnes tam milites, quam alii qui sunt in annorum

a Rot. Parl. An. 6 E. 3. num. 6. Constable of the town to make hue and cry. b 2 E. 4. 8. b. & 9. a. c Inter leges Canoni fo. 113. c. 26. See, inter leges Edw. Conf. cap. 21.

For Oversameffa, See lib. Rub. ca. 26. Bracton lib. 3. fo.

porum & amplius, jurare debent, quod utlagatos, mtrditores, robbatores, & burgla-
tores non recipient, &c. Et si Hutesium vel Clamorem de talibus audiverint, statim
audito clamore sequantur cum familia, &c. and herewith agreth Britton.

Britton fo. 15. & 19.
Fleta l. 1. c. 24.
See the 2. part of
the Institutes.
W. 1. ca. 9.

The statute of W. 1. cap. 9. being in affirmance of the Common law, probi-
deth, Que tous communement soient prests a les sermons des Viscounts, & au crie
de pais de suer & arrestes felons, quant misser terra, auxibiens deins franchises come
dehors.

And the statute of 4 E. 1. declareth by lawe that whosoever de omnibus homicidiis,
Burglar, occis, seu periculis & rector Hutesium, &c. & omnes sequantur Hu-
telium & vestigium si fieri potest: & qui non fecerit, & super hoc convictus fuerit,
attachatur quod sit eorum Justiciarius de Gaol, &c. And by that Act it appeareth
that so it is in case of Rape, and therewith agreth a Bracton also.

4 E. 1. de officio
coronatoris.
See the statute of
Winch. 13 E. 1.
* 7 E. 3. fo. 16.
22 Aff. 57.
38 E. 3. fo. 6. af-
faulted to be rob-
bed. 9 E. 4. 26.
See the Custom
of Norm. ca. 24.
a Bracton li. 2. fo.
28 E. 3. ca. 11.
b 2 Regum, c. 13.
vers. 19.

The life of hue and cry is fresh suit.

b Thamar the daughter of King David being violently ravished by her brother
Amnon, the Text saith of her, Que aspergens cinerem capiti suo, scissa calari tuni-
ca, impositisque manibus super caput suum ibat ingrediens, & clamans.

c They which leby not Hue and Cry, or pursue not upon hue and cry, shall
be punished by fine and imprisonment. d Also if a man be present when a man
is murdered, or robbed, and doth not endeavour to attach the offender, nor leby
hue and cry he shall be fined and imprisoned.

Of Hue and Cry by force of Acts of Parliament in sbe cases. c First, if a
watchman doth arrest a night-walker, and he disobey and fly, the watchman may
make hue and cry.

c Bract. li. 3. fo.
118. b.
Ca. Itin. m. c. 195.
3 E. 3. Cor. 333.
d See 8 E. 2.
Cor. 395.
e Stat. de Wine.
watch.
4 H. 7. fo. 2. 18.
f Statutum de
Anno 21 E. 1.
Magna Chart. fo.
118. 2.
Foresters.

2. f Si quis Forestarius, Parcarius, aut Warrennarius in baliva sua malefactores
aliquos invenerit vagantes ad dampnum ibidem faciend, & qui se Forestariis aut
Warrennariis illis post Clamorem & Hutesium levatum ad pacem regis ad standum
recte reddere noluerint, imo ad malitiam suam exequend' & continuand' & pacem
regis diffugiend' fugam fecerint, & vi & armis se defenderint, licet Forestarii, Par-
carii & Warrenarii illi, sint alii quicumque ad pacem domini regis existentes in
comitatu Forestariorum, Parcariorum, aut Warrennariorum illorum venientes
ad tales malefactores sic inventos arrestand' seu capiend', aliquem seu aliquos hu-
jusmodi malefactorum interfecerint, non propter hoc occasionentur coram domino
rege, & justiciariis quibuscunque aut aliis balivis domini regis, aut aliorum quo-
rumcumque infra libertatem aut extra, nec propter hoc amittant vitam aut mem-
brum, aut aliam poenam subeant, imo firmam pacem domini regis inde habeant.
Sed bene caveant Forestarii, Parcarii, Warrenarii, & alii quicumque, ne occasione
contentionis, discordie, contumelie, aut alicujus malevolentie seu odii prehabent
aliquibus per balivas suas transeund' malitiose imponant, quod occasione malefaci-
endi in balivis suis intrant, tum hoc non fecerint, nec ipsos vagantes ut malefaciant,
nec maleficientes invenerint, nec causam malefaciendi querentes, & sic eos occi-
dant. Quod si fecerint, & de hoc fuerint convicti, sint de morte sic interfectorum,
prout aliorum ad pacem domini regis existentium, & prout de jure, & secundum
consuetudinem regni fuerit faciend'.

3. Welshmen outlawed, or indicted of treason or felony, that fly into Here-
fordshire, shall be apprehended, &c. or else pursued by hue and cry, and a forfeit-
ure upon those that do not pursue.

23 H. 6. ca. 5.
Vid. 17 H. 8. ca. 5.
Welshmen.

4. Hue and Cry shall be lebled upon takers of carriage within the Werge of
the Staple of that which pertaineth to the Staple.

27 E. 3. ca. 4. Staple.
Winch. 13 E. 1.
28 E. 4. c. 11.
27 El. c. 13.
38 El. ca. 25.

5. Where a man is robbed, upon hue and cry, &c. what remedy he shall have
against the Hundred, &c. and how and in what manner the hue and cry shall be
made in that case, see the statutes, & lib. 7. fo. 6. & 7. the statutes well expounded.
And this robbery must be done in the day time, and not in the night, otherwise
the party grieved shall not have his Action. And so note a diversity between
a hue and cry at the Common law, or for the King, and a hue and cry by statute
where the party grieved is to have his remedy by private Action. Note also a
diversity in the prosecution at the Common law, or for the King, and by the
statutes which give the party remedy: for a prosecution to the next Constable is

good

Lib. 7. fo. 7. 8.
22 El. Dier 370.

29 E. 3. 9.
38 E. 3. 6.
See 5 H. 7. 5. 2.
21 H. 7. 28. a.

Stat. de 18 E. 2.

De civitate London
capenda in manum
Regis, pro Huteho
non levato.
Rot. Claus.
30 H. 3. m. 5.

good by the Common law, but so it is not by the said statutes, which give the party grieved his Action. See lib. 7. fo. 7. & 8. 22 El. Dier 370. For the prosecution at the Common law is a good excuse upon an indictment at the Kings suit: but note that it is no bar to the parties Action.

Where Hue and Cry either by the Common law or by force of any Statute is levied upon any person, the arrest of such person is lawful, although the cause of the Hue and Cry be feigned; and if the case be feigned, he that levies the same shall also be arrested, and shall be fined and imprisoned. But common fame and voice is not sufficient to arrest a man, in case of felony, unless a felony be done indeed.

It is an article of the Lett, to enquire of Hues and Cryes levied and not pursued.

Mandatum est Guilielmo de Haverhull Thesaurario Regis, quod Civitatem London capiat in manum Regis, eo quod Cives ejusdem Civitatis non levaverunt Hatcium & Clamorem pro morte Magistri Guidonis de Arretio & aliorum interfectorum, secundum legem & consuetudinem Regni. Teste Rege apud Wendestock 22 die Augusti.

CAP. LIII.

Of Mayhem.

Of Mayhem you may read at large in the a First part of the Institutes, Sect. 194. & 502. and in Justice Stanford. And where (as it is there cited) he saith, Castratio vero, quamvis latens sit, adjudicatur mahemium; hereof we find an example.

b H. Hull indictatus fuit de mayhemio, eo quod abscidit virilia Joannis monachi, &c. quem idem H. deprehendit, &c. cum A. uxore sua. Of the like accident you may read in Camden.

c Dominus Robertus Nevil (cum numerosam prolem ex uxore suscepisset) ignotus in adulterio deprehensus, & ab adulteræ marito in vindictam generalibus mutilatus, brevi vi doloris expiravit.

Vide inter leges Alveredi, cap. 40. de vulneribus, fo. 43.

d By the ancient law of England, he that maimed any man, whereby he lost any part of his body, the Delinquent should lose the like part; as he that took away another mans life, should lose his own.

And it is truly said, that Duellum est Mahemium inceptum, and Mahemium est Homicidium inchoatum. And therefore in the Appeal or indictment it is said Felonice mayhemavit.

a First part Institutes. §. 194, 502
Stanf. Pl. Cor. 38. b.
Cust. de Norm. ca. 79. Mehamus.
Bracton lib. 3. 144. 145.
Fleta li. 1. ca. 38.
b Rot. Claus. anno 13 H. 3. nu. 9.
See before ca. 13. for cutting out of tongues, &c.
c Camden Brit. pag. 593.
d Bract. lib. 3. fo. 148. nu. 4.
Mirror cap. 4. §. De pains in divers manners. Brit. fo. 48. b. Fleta li. 1. ca. 38. Membrum pro membro. 18 E. 3. 20. a. Vide 28 E. 3. fo. 94. 8 H. 4. 20, 21. Coron. 458.

CAP.

In the name of our Lord Jesus Christ Amen. In the first year of the reign of King Henry the second the King's Council...

CAP. LIIV.

Of Premunire.

Parlement pur ceo que monstre est a nostre seigneur le roy pergne
dous & clamor plains des Grantees & Communes avant dis
comment plusieurs gens sont & ont este treis hors de realme a responder
des choses donec le consaunt appartient a la court nostre Seignour le roy
& auint que les judgements rendus in mesme le court sont empeache
in autre court in prejudice & dishorsion nostre dit Seignour le roy
de sa corone & de tout le peuple de son dit realme & in desavance
& anientisment de la Common ley de nostre le realme in tous temps
Sur quoy nos bons deliberation & de les Grantees & anters de dit
Conceill assent est & accord par nostre dit Seignour le roy & les
Grantees & communes susdites Que tous gens de la lignee le roy
de quel condition que ilz soit que tirent nulz hors de realme en
plea dont le consaunt appartient a la court le roy ou des choses dont
judgements soit rendus en le court le roy ou que soient en autri court
a desaire ou impeacher les judgements rendus in le court le roy, en
jour, &c. In English thus:

27 E. 3. cap. 1.
The print being
examined agreeth
with the Record.
See the first part of
the Institutes,
Sect. 199.

The Statute of
16 R. 2. cap. 5. faith,
In curia Romana,
vel alibi.

First, because it is shewed to our Lord the King by the grievous and
clamorous complaints of the Great men and Commons aforesaid
how that divers of the people be, and have been drawn out of the
Realm to answer of things whereof the cognisance pertaineth to
the Kings Court, and also that the judgements given in the Kings
Court be impeached in another Court, in prejudice and dishonour
our Lord the King and of his Crown, and of all the people of his said
Realm, and to the undoing and destruction of the Common law of
the same Realm at all times used: Whereupon, upon good delibera-
tion had with the Great men and other of his said Council, it is as-
sented and accorded by our Lord the King, and the Great men and
Commons aforesaid, that all the people of the Kings Realme, of what
condition that they be, which shall draw any out of the Realm, in plea
whereof the cognisance pertaineth to the Kings Court, or of things
whereof judgement is given in the Kings Court, or which do sue in
any other Court to defeat or impeach the judgement given in the
Kings Court, shall have day, &c.

The effect of the Statute of 16 R. 2. is, that any person or persons who be pursued
in the court of Rome, or elsewhere, any thing which concerneth the King, against
him, his Crown and Regality, or his Realm, his Nobles, Procurators, or
Factors, &c. shall be out of the Kings protection.

Fourth part of the Institutes cap. 8. Artic. 1. Die Decemb. Anno 21 H. 8. against Cardinal Woolsey. Vet. N. B. 143.

In this Act is declared the Sovereignty, Prerogative and Freedom of the Crown of England; and the first Article exhibited by the Lords of the Council (whereof Sir Thomas More Chancelor was one) and all the principal Judges concerning this matter, is worth your reading.

This offence is called a Premunire of the words of the Writ, grounded upon this and other Statutes for punishment thereof. For the words of the writ be, Rex vicecomiti, &c. Premunire fac. A. R. Occ. And rightly it is so called, for he that is pramonitus is premunitus.

Before the making of this Statute of 27 E. 3. there were three great mischiefs. First, that the Kings subjects had been drawn out of the Realm to the further of things whereof the sentence pertained to the Kings Court. Secondly, of things whereof judgements have been given in the Kings Courts. And thirdly, that after judgements given in the Kings Courts of the common law, of matters determinable by the common law, suits were commenced in other Courts within this Realm, to defeat or impeach those judgements. And these three mischiefs had three unprofitable effects. First, the prejudice and dishonour of the King and of his Crown. Secondly, the dishonour of all his subjects. And thirdly, the undoing and destruction of the common laws of this Realm: all which appear in the preamble of this Act.

They are called other Courts either because they proceed by the rules of other laws, as by the Canon or Civil law, or by other laws than the common law, or by warrant. For the trial warranted by the law of England for matters of fact, is by verdict of twelve men betwix the Judges of the common law of matters pertaining to the common law, and not upon examination or testimony in any Court of equity. So as alia curia, is either that which is governed per aliam legem, or which draweth the party ad aliud examen. For if the freehold and inheritances, goods and chattels, debts and duties, wherein the King or subject hath right or property by the common law, should be judged per aliam legem, or be drawn ad aliud examen, the three mischiefs aforesaid expressed in the preamble and in this Act should follow, viz. dishonour of the King and of his Crown, the dishonour of all his people, and the undoing and destruction of the common law at all times used: by which words of this Act it appeareth that all these mischiefs were against the ancient common laws at all times used. And that also appeareth by the ancient writs of the common law, called Ad iuramentum, whereof some touch hath been given before, and which are worthy the reading: and also by divers Acts of Parliament, as the Statute of Carlisle, Anno 25 E. 1. whereof we have treated before in the Second part of the Institutes, and by the Statute of 25 E. 3. De provisoribus. And it is observed, that in 29 E. 3. within two years after the said Act of 27 E. 3. they that were called in question upon the Statute of Premunire, Invenimus mancipiores sufficientes, de sacramentum presterunt, quod non attemptabunt, citra mare, vel ultra, quod in prejudicium regis, legum, seu corona, seu judiciorum in curia Regis redd. teneat valeat quoquo modo, &c. Whereby, and many other like Records, it appeareth, that judgement ought not to be questioned citra mare in any Court, unless it be according to the course of the Laws of this Realm.

By the Statute of 4 H. 4. cap. 23. it is ordained and established, that after judgements given in the Courts of our Lord the King, the parties and their heirs shall be thereof in peace, untill the judgement be undone by assent, or by error, if there be error, as hath been used by the Laws in the times of the Kings Progenitors.

Also that which hath been said appeareth by our Books and ancient Records, as hereafter shall appear.

b 5 E. 4. fo. 6. where the Statute of 16 R. 2. cap. 5. saith, In curia Romana vel alibi, Ecclesiastical courts within the Realm are within this word [alibi.]

c Mich. 11 H. 7. it was adjudged by the whole Court, that a suit in the Ecclesiastical Court within the Realm for a temporal cause, was in case of Premunire.

11 H. 7. cap. 13. 14. Nota, citra mare.

Regill. 61, 62, &c.

Mic. 29 E. 3. Coram Rege, Rot. 44. Corrub. V. 46 E. 3. 13, 14. Nota, citra mare.

4 H. 4. cap. 23.

210 H. 4. 1, 2. 18 H. 6. 6. b. b 5 E. 4. 6. b. 44 E. 3. 36. c 11 H. 7. Premunire Fitz. 15 H. 7. 9. acc. lib. Inter Rast. 468.

And upon a Premunire, for suing in the Ecclesiastical Court for a debt. It was resolved, that he that sued in the Ecclesiastical Court for the forfeiture of his writ and Testament, incurred the danger of a Premunire, because the party grieved might have his remedy by the common law. And in the same year of 19 H. 7. Justice Spilman also reporteth, that one Turberville, as well for the King as for himself, did sue a Premunire against a person for suing for a debt in the Ecclesiastical Court, alledging the same to be debted from the King's writ, and judgement was given against the Defendant.

Raft. pl. 429. B. & 430. 17 H. 7. of the report of Justice Spilman

And it appeared that the Admirals Court is within this word [alibi] if he hold plea of any thing which is not done super altum mare, but infra corpus communitatis.

Richard Bechampe Esquire, and Thomas Pauncfoot Esquire, and others, are charged with the offence of Premunire, for that they sued John Cressley Esq; before Henry Duke of Exeter, Admiral of England, for taking away a Cross of gold and other goods, supposing the same to be taken super altum mare, where in truth they were taken at Stratford in the County of Essex; where the Statute of 16 R. 2. is recited, that none should sue in curia Romana seu alibi, &c. and that the consuetude of this plea belonged to the common law, and not to the Court of the Admiral. And so it is of the Constable and Marshall, if they hold plea of a matter determinable by the common law.

Mich. 38 H. 6. coram Rege.

John Wymington exhibited a Bill of Premunire against William Poswiche upon the Statute of 16 R. 2. cap. 5. for suing in the Admiral Court before John Earl of Huntingdon, Admiral of England, for a cause which belonged to the common law, whereunto the Defendant pleaded not guilty.

5 Mic. 9 H. 7. coram Rege. Raft. pl. 23. but this cause is entered Trin. 9 H. 7. Rot. 37. coram Rege.

And the reason of all these cases is, because they be matters triable by the common law ad aliud examen, and to be discussed per aliam legem.

But some have made a question, whether since the Ecclesiastical Jurisdiction was acknowledged to be in the Crown, an Ecclesiastical Judge holding plea of a temporal matter belonging to the common law, doth incur the danger of a Premunire. Though hereof there is no question at all, yet lest any man might be led into an error in a case so dangerous, we will clear this point by Reason, Precedent and Authority. The reason moveth still to draw the matter ad aliud examen, &c. And the like question might be made by the Admiral court, which is, and ever was, the Kings Court, but governed per aliam legem: and so likewise of the Court of the Constable and Marshall.

At a Convocation holden Anno 22 H. 8. by a publick Instrument made by all the Bishops and the whole Clergy of England, the King was acknowledged to be Supreme head of the Church of England. After this, viz. 24 H. 8. it appeared that the Statute of Premunire remained in force against Ecclesiastical Judges, for holding of pleas merely determinable by the common law.

h 24 H. 8. tit. Premunire; Brook 16.

In 25 H. 8. Richard Nick Bishop of Norwich was attainted in a Premunire at the Kings suit, and his case was this. Within the Town of Litchford there then was a custom, that all Ecclesiastical causes arising within the said Town should be determined before the Dean there, having a peculiar Ecclesiastical Jurisdiction, and that every person being contrary to that custom, the same being presented before the Mayor of Litchford, should forfeit 8s. Willings eight pence: and that an Inhabitant of Litchford, for an Ecclesiastical cause rising within Litchford, sued another before the Bishop of Norwich within his consistory court at Norwich: and this was presented before the Mayor of Litchford according to the custom, whereby he forfeited 8s. Willings eight pence. The said Bishop cited the said Mayor for taking of the said Presentment Pro salute anime: to appear before him at his house at Dorset in Suffolk, where the Mayor appeared, and there the Bishop excommunicated him upon pain of Excommunication to admiss the said Presentment before a day. And for this offence he was attainted in a Premunire upon his confession before Fitz-James Chief Justice and the Court of Kings Bench, upon the Statute of

Hil. 25 H. 8. coram Rege, Rot. Rich. Bishop of Norwich his case.

of 16 R. 2. the Record whereof we have seen. By which judgement the points are cleared. First, that the Statute of Premunire extends to Ecclesiastical courts within the Realm. Secondly, that after the King was in possession of his Supremacy, the Bishop incurred the danger of Premunire.

The Bishop of Bangor was obtained this Premunire for holding plea of an Abbot, and of others taken from the King's part. Saint Germain in his Book of Donors and Donations, men 1702, after 26 H. 8. holds, That if a man maketh a promise for a temporal thing, and means to perform it, and doth it not, if he be sued for perjury in the spiritual court, a Premunire lieth in that case. Also he saith, If a man be excommunicate in the spiritual court for trespass, or such other thing, as belongs to the King's Crown and his Royal Dignity, &c. the party, if he will, may have a Premunire fac. against him.

Brook reports, that Sir John Bishop of Bath and Wells, in the reign of King E. 6. deprived the Dean of Wells, which Deanery was a Donative, and thereby incurred the danger of a Premunire.

By the Statute of 1 Eliz. (which renews the ancient Jurisdiction Ecclesiastical to the Crown) the Act of 1 & 2 H. 8. Mar. cap. 8. is repealed. But there is a special proviso in that Act of 1 Eliz. that it should not extend to repeal any Clause, Statute or Sentence, contained or specified in the said Act of 1 & 2 Ph. & Mar. which doth concern matter of Premunire, but that in such case that which concerneth any matter or cause of Premunire, should stand in force and effect. And that Clause of the Statute of 1 & 2 Ph. & Mar. is this, That whosoever shall by any Process obtained out of any Ecclesiastical Court, within the Kingdom or without, by presence of any spiritual jurisdiction, or otherwise, contrary to the Laws of the Realm, inquest or molest any person, &c. for any Mannors, &c. parcel of the possessions of any Religious House, &c. shall incur the danger of the Act of Premunire in Anno 16 R. 2.

See the Statute of 25 H. 8. which also hath reference to the said Act of Premunire, and is reprinted by 1 Eliz.

Thomas Stoughton Baron of St. in Suffolk, brought a writ of Premunire against him, upon this Statute of 27 E. 3. for suing in the Court of Audience of the Archbishop of Canterbury, to impeach a judgement given in a Quare Impedit before the Justices of Peace in the County of Suffolk, the defendant pleaded not guilty, &c. And this (amongst many other things for this matter) shall suffice. And note let us peruse the words of the Act.

¶ The nulluy hors de realm. Of this there is no question, being against the ancient Law of the Realm, altho' it is in use, as by this Act appeareth. And this was a Remedy for the first mischief.

¶ Quides choses dont judgements fuer rendus, &c. This branch prohibited all foreign suits, viz. in the Court of Rome, &c. for any thing whereof judgement was given in the Kings Court. And this was a Remedy for the second mischief.

¶ On que luent en autre Court a defaire ou impeacher les judgements rendus in le Court le Roy. This is a Remedy for the third mischief. For having by the second branch prohibited foreign suits, as unto or impeach judgements in the Kings Courts; this branch doth (as hath been said) extend to all Courts which should have been of another Law, or to the party, and therefore this branch doth extend to Ecclesiastical Courts, to the Court of the Constable and Marshal, to the Court of the Admiralty, and to the Court of Chancery according in course of equity: for it had been to us great trouble, to have prohibited against foreign suits, which were troublesome, tedious, and chargeable, and to have suffered the party to have attempted and prosecuted any thing at home within this Realm, to

Trin. 36 H. 8. coram Rege, Rot. 9. the B. of Bangors case. D. & St. lib. 2. cap. 24. fo. 106. b. Lib. 12. cap. 23.

Br. tit. Premunire. 21. Temps E. 6.

1 Eliz. cap. 1.

25 H. 8. cap. 20.

Trin. 29 Eliz. in Communi banco, Rot. 747. Tho. Stoughtons case.

to the prejudice and dishonour of the King and his Crown, and all his subjects, and to the subversion of the Common Law. And first we will speak of the Court of Equity. This Court cannot proceed in course of equity after judgement at the Common Law, for three reasons. First, for that it draweth the matters triable, and determinable by the Common Law ad aliud examen, viz. to a trial by witnesses, which (as hath been said) is contrary to the ancient Law of the Realm, and against the Purview of this Statute. Secondly, after judgement the parties ought to be at peace and quiet, for *judicia sunt tanquam juris dicta*: and if the party against whom judgement is given, might after judgement given against him at the Common Law, go into Court of Equity for matter in equity, there either should be no end of suits, or every Plaintiff would leave the Common Law, and begin in the Court of Equity, to whether in the end he must be brought, and that should tend to the utter subversion of the Common Law, as it is said in the Act. Thirdly, the Court of Equity in the proceeding in course of equity is no Court of record, and therefore it cannot hold plea of any thing whereof judgement is given, which is a judicial matter of record. And this is the ancient Law at all times used, as this Act speaketh. As taking some few examples for many, both before and after this Statute.

37 H. 6. 14

In the case of Edmond Earl of Cornwall in Anno 6 E. 1. It appeareth, that after judgement given before Roger Loveday, and Walter Winborn Justices of Oyer and Terminer, against Walter Bishop of Exeter and his Tenants, the said Bishop procured the Bishop of Landaff in the Parish-Churches of Cornwall and Devonshire, to pronounce sentence of Excommunication by the sentence of the Archbishop of Canterbury (which sentence was had by the procurement of the said Bishop of Exeter) against all persons of what estate, degree or dignity soever, that dealt in the proceedings, &c. against the said Bishop and his tenants before the said Justices: and in this part of the record being in French, it is said, *La Corone & la dignite vostre seignour le Roy ne doit per autre chose Justice ne guyne, &c. Et les choses qui sont passes en la court per judgement, ou en autre manner, ne devient estre en autre court recretees, &c.* Out of this Record we may observe three things. First, what the ancient Law of this Realm was, before the making of this Act. Secondly, that [en autre court] which are the words of this Act, was taken to be another Court within the Realm. Thirdly, that the mischief before this Act, was for suits in other Courts within this Realm, after judgement given in the Kings Courts.

Anno 6 E. 1. the Earl of Cornwall's case. Lanchester in Thefaur.

And in 13 E. 3. there was a suit in the Court of Rome after judgement in the Kings Court, and in that Record it is said, *In regis contemptum, & Corone sue prejudicium, ac iudicium predictum inervationem manifestam, &c. Ac quod iudicia in curia Regis rite reddita frustra redderentur, nisi debitum foret exentur effectum.*

Mic. 13 R. 3. In Communi Banco Rot. 40. Inter Johannem de Dingle & Mich. de Englis Bedf.

And as a Maxim of the Common Law in the judicial Register, fo. 12. 24. 25. &c. it is often said, *Ea que in curia domini regis rite acta sunt, debite executione demandari debent.*

4 Fleta lib. 6. ca. 36 Trin. 19 E. 3. Rot. 50. Coram Rege, John Boltons case.

Now let us see what hath been done since the Act. b The statute of 4 H. 4. cap. 23. hath been recited before, which is a judgement of Parliament. c A judgement was obtained by cobin and practice against all equity and conscience in the Kings Bench: for the Plaintiff retained by collusion and Treachery the Defendant, (without the knowledge of the Defendant, then being beyond seas) the Attorney confessed the Action, whereupon judgement was given: d the Defendant sought his remedy in Parliament, and by authority of Parliament power was given to the Lord Chancellor by advice of two of the Judges to hear and order the case according to equity: which proveth that the Chancellor could not do it of himself without higher Authority.

Mich. 19 E. 3. Rot. 16. & Rot. 29. Alan de Cobesburghs case. F. N. B. 169. f.

And as an Injunction after verdict at the Common Law is to be granted in Chancery, and if the Lord Chancellor should grant an Injunction in that case, the

20 E. 3. effoin 24. 21 E. 3. 40. b. 4 H. 4. cap. 23. 6 Pasch. 5 E. 4. Coram Rege, inter Cobbe & Nore. d Rot. Parl. finis.

Judges

3 H. 5. nu. 44. & 3 H. 6. nu. 22. 22 E. 4. 37.

Judges said, that if the Chancelor suspended the party for breach of the Injunction, they would grant an Habeas corpus and deliver them.

1 Decemb.
21 H. 8. Art. 20.

Amongst the Articles preferred to the King by Sir Thomas Moore Lord Chancelor of England, and all the Prye Councel, and by Fitz-James Chief Justice, and Justice Fitz-Herbert, against Cardinal Woolsey, one is in these words, [And the said Lord Cardinal hath examined others and many matters in the Chancery, after judgement thereof given by the Common Law, in subversion of your Laws, and made some persons to retrace again to the other party condemned that they had in execution by virtue of the judgement of the Common Law] which I have seen in parchment under all their hands, and in pet to be seen.

Doct. & Stud.
cap. 18. the book of
diversity of Courts.

If judgements given in the Kings Courts should be examined in Chancery before the Kings Councel, or any other place, the Plaintiff or Defendant should seldom come to the effect of their suit, nor the Law should never have end, &c. See the diversity of Courts ca. Chancery.

Mich. 8 & 9 El. in
the Kings Bench.

Ralph Heydon Gent. was indicted of a Premunire upon the statute of 27 E. 3. for procuring of Sir Nicholas Bacon, Lord Keeper of the Great Seal, to grant an Injunction in Chancery after judgement given in an Ejectione firme of lands in Hertfordshire. And the record saith, Quod predictus Radus machinatus est antiquas leges & consuetudines regni subvertere.

Trin. 21 El. in
Communi Banco
Rot. 319.

A writ of Premunire upon the said statute of 27 E. 3. by Richard Beans against Richard Loyd, for suing before the President and Councell in Wales, after judgement given in the Court of Common Pleas, in an Action of Debt for forty and two pound ten shillings, in subversionem legum antiquarum, &c.

Paich. 27 El. in
the Kings Bench.

Peter Dewle was indicted for procuring of Sir Thomas Bromly, then Lord Chancelor, to grant an Injunction in the Chancery after a Judgement given in an Ejectione firme.

Trin. 30 El. in the
Kings Bench.
Diversity of Courts
ca. Chancery.

John Heal of the Inner Temple London Esquire, was indicted of a Premunire, for procuring a suit in Chancery after a judgement given at the Common Law, contrary to the statute of 27 E. 3. And the counsel of Heal took two exceptions: one, that the Court of Chancery was not within the statute of 27 E. 3. another, that one of the parties to the suit in Chancery was named in one place by one name of baptism, and in another part of it by another. The Court resolved that the Court of Chancery was within the statute of 27 E. 3. but found the other exception concerning misnaming to be true. And therefore they quashed the Indictment, but made a memorandum indorsed upon the back of the indictment, that it was thereby to be misnaming a name, and not for the matter.

Mich. 39 & 40 El.
See the Fourth part
of the Infil. cap.
Court of Chancery.

Thomas Throckmorton exhibited a Bill in the Chancery against Sir Henry Finch after judgement given against him in the Court of Exchequer upon apparent matter of equity. Upon which Bill the Defendant demurred in Law, and for that Sir Thomas Egerton then Lord Keeper inclined to rule over the demurrer, saying that he would not meddle with the judgement, but punish the corrupt conscience of the Defendant, in relieving the Plaintiff in equity, upon a petition to Queen Eliz. (who ever favoured the due proceeding of her Laws;) she referred the consideration of the Demurrer to all the Judges of England; who hearing Councel learned on both parts, and upon view of Precedents in the time of H. 8. and since of Judgments granted after judgements, and finding hereby that of them to warrant that which had been affirmed, and none of them to be done by the advice of any of the Judges, they all, after divers hearings and conferences, and consideration had of the laws and statutes of the Realm, unanimously resolved, that the Lord Keeper might not after judgement, make the party in equity, although it appeared to them that there was apparent matter in equity. And amongst others, the Judges gave this reason, that if the party against whom judgement was given might after judgement, exhibit against him at the Common Law, the matter into the Chancery, it would tend to the subversion of the Common Law, for that no man would sue at the Common Law,

law, but originally begin in Chancery, being at the last brought thither, after he had recovered by the Common law; and thereupon they all certified, that the Demurrer was good, and that Sir Moyl Finch the Defendant ought not to answer.

An Information upon this statute of 27 E. 3. against Sir Anthony Mildmay, for that he and other Commissioners of Beveles did impeach a judgement in the Kings Bench: he purchased a pardon from the King, and pleaded it. Hil: 12 Jac. Regis Cocam Reg.

See a 2th Seal bearing Teste 18 Julii, Anno Domini 1616. to the contrary, obtained by the impozunity of the then Lord Chancellor being vehemently affraid. Sed judicandum est legibus, and no precedents can prebail against an Act of Parliament. And besides, the supposed Precedents (which we have seen) are not authentical, being most of them in torn papers, and the rest of no credit.

¶ Eient jour contenant le space de 2 moys per garnishment a faire a eux, &c.] By this it appeareth that a Remunire lyeth as well for the party, as for the King, and they both may joyn in one writ.

44 E. 3. 7. 36.
39 E. 3. 7.
7 E. 4. 4.
27 H. 6. 5.
36 H. 6. 30.
43 E. 3. 6.
42 E. 3. 7.
2 R. 3. 17.
27 H. 6. 5.
22 H. 8. Tit.
Præm. Br. 1.
Tr. 39 E. 3.
Rot. 95. Coram
Rege. 39 E. 3. 37.
30 E. 3. 11.
44 E. 3. 36.
Forebys case.
4 H. 4. 6.
Lib. 11. fo. 34. b.
in Alex. Poulterers
case.
39 E. 3. 7.
9 E. 4. 2.
15 H. 7. 9.
F. N. B. 26. m.

If the Defendant come not at the day, &c. by the express letter of the law judgement shall be given against him according to this Act. This suit need not be against them by original writ, but if the Defendant be In custodia Marschalli, the suit may be against him by bill, because the end of the giving of the two months was, that they should have notice, which is satisfied, and therewith agre the Precedents; and the Defendant cannot be sued in any other Court, when they are In Custodia Marschalli. See the statute of 18 El. c. 5. but that statute extends to common Infanzers, and not when the suit is commenced by the party grieved.

But if the Defendant appear and plead, and the issue be found against him, or if he demur in law, &c. judgement shall be given against him, that he shall be out of protection, &c. And so hath this statute been interpreted, and judgement given accordingly. Peruse well the words of this Act for this point, and see the book in 8 H. 4. 6.

By the statute of 38 E. 3. cap. 2. the Defendant ought to appear in person, and therefore he cannot appear by Attorney without a special writ out of the Chancery: and this Act doth bind as well those that are Lords of Parliament, as others.

¶ Avant le Roy & son Councill.] Here Councill cannot be taken, as most commonly it is, for his Judges of his Courts of Justice, who are said to be of his Councill for proceedings in course of Justice, because the Courts of Justice are hereafter in this Act named: neither doth it intend the Kings 2th Councill, but the King and the Lords of Parliament in Parliament, which is a court of Justice.

27 H. 6. 5.
2 R. 3. 10.

See the First part of the Institutes, Sect. 164. Veigne les Burgessees al Parliament. There is Commune Concilium, Magnum Concilium, Privatum seu continuum concilium, and Concilium Justiciariorum, le Councill des Justices.

The King is armed with divers Councils.

¶ Ils, leur Procurators, Attornies, Executors, Notaries, & Mayntainers.] Note by this Act the Procurers, Attornies, Executors, Notaries and Maintainers shall have the same punishment that the Principal shall have. Note in the statute of 2 R. 2. this word [sautors] crept in, a word (deribed a savendo) of a large extent, as it was construed in the reign of H. 8.

The Plaintiff may chuse whether he will make them all principals, or the one principal, & the other accessories: but the damages shall be severally taxed.

S. anf. pl. Cor.
44 f. 44 E. 3. 7.
36 H. 6. 30.
42 E. 3. 7. 8 Rot. 2
Prem. 12.
8 H. 4. 6. pl. tottk
97. b.

He that procures one to sue to the Court Christian, shall forfeit as much as he that sueth, and is principal as well as the other, and is in equal degree of Remunire: but if they both be indicted, the one of the act, and the other of the

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prosecution, and he that is charged with the prosecution is found guilty, and the other by another request is found not guilty, judgement shall never be given against him which was innocent of the prosecution, because he cannot be an offender but in respect of the offence of the other.

See Littleton Sect. 199. and the 1. part of the Institutes the same Sect. Lib. 7. fo. 14. in Calvins case. 25 E. 3. ca. 2. See 4 El. ca. 1.

Hors de la protection le roy. By these words the persons attainted in a writ of Preambure are enabled to have any action or remedy by the Kings law: for the Kings writs are the things whereby a man is protected and aided, and he that is out of the Kings protection, is out of the aid and protection of the law.

And by the statute of 25 E. 3. it is ordained, that he that purchaseth ground out of Abbeys or Priories shall be out of the Kings protection, and that a man may do with him as with the enemies of the King and his Realm, and that he that shall commit any thing against such possessors in body or goods or other possessions, shall be executed against all people.

34 H. 8. forsoit. Br. 101. Pasch. 21. El. resolution of the Judges in Trudgyns case. Dier manuscrite. Vide before. 25 E. 3. Verb. Et soit assavoir.

Et leur terres, biens, & chateaux forsaient au Roy. This is intended of the lands that he hath in fee simple, or for life, which the Delinquent might lawfully forsaite, and not lands in tail: for in tail in 18th shall forsaite only for term of his life, for that was all he could lawfully forsaite at the making of this statute, either in case of Treason or Felony. And so it was resolved by the Judges in the case of Trudgyn of Debonshire, who was attainted of a Preambure upon the statute of 18. El. ca. 2.

Nota, This is a new kind of forfeiture given by this law, and is penal, and cannot by equity extend further then the records, and therefore this Act extendeth not to the forfeiture of Fairs, Markets, Rents, charges, Rent Cocks, Warrens, Annuities, or any other hereditament that is not within this word [terre.]

16 R. 2. ca. 5. Examples of these are quoted before.

Lour corps imprison, & rents al volant le Roy.

The greatness of these punishments doth shew the greatness of the offences.

It is to be observed, that the said statute of 16 R. 2. is strictly penned against offenders. For first it extendeth to all persons of what quality or sex soever the words be [if any]. 2. To all Courts of what Jurisdiction soever, and whether holden by right or by wrong, In curia Romana seu alibi, which word (alibi) is a word of a large extent, as before it appeareth. 3. To all things whatsoever: [Where any thing,] which words be as general as can be. 4. Not only against the King, his Crown and dignity, but against the kingdom also: against the King, his Crown and regalty or Realm. 5. This Act extendeth not only to procurers, abettors, maintainers, counsellors, &c. which are within words of the law, but to favourers, fautores, which word was largely extended in the reign of H. 8. Whereby it is to be observed how dangerous it is to bring new or unusual words into any Act of Parliament, especially into such as be so penned: For there it appeareth that Cliff being a Parson of a Church, granted to the Cardinal an annuity, so long as he should be Legate, ut decentius & sublimius se gereret in autoritate sua Legatina; which the Cardinal had by Bull, and paid to him ten marks in name of feoffment: and he was adjudged a fautor. But such evasions were found out of this and other statutes as were made against usurpations and incroachments upon the good and ancient Common law, as divers and many statutes were made from time to time to meet with such evasions, which being many, (and others which concern the offence of preambure) we will but name, and leave the reader to peruse the same at large, wherein (as we contesse it) he shall find a great light by that which hath been said, viz. 25. E. 3. ca. 22. 25 E. 3. Statu. de provisoribus. 38 E. 3. ca. 1, 2, 3, 4. 3 R. 2. cap. 3. 7 R. 2. ca. 12. 12 R. 2. c. 15. 13 R. 2. Stat. 2. cap. 2. 16 R. 2. ca. 5. 2 H. 4. ca. 3, & 4. 6 H. 4. cap. 1. 7 H. 4. ca. 6, & 8. 9 H. 4. ca. 8. 3 H. 4. ca. 4. 24 H. 8. ca. 12. 25 H. 8. c. 19, 20, 21. 26 H. 8. ca. 15. 28 H. 8. ca. 10. 35 H. 8. ca. 1. Note, Queen Mary repeated

Vide Justice Spilman's Report. Mic. 21 H. 8. Cliff's case.

repealed all offences made to be in the case of Premunire since the first day of the first year of H. 8. but some of them are rebid by the Statute of 1 El. cap. 1. But in all Queen Maries time, the Statutes made concerning the offences of Premunire before the reign of H. 8. were neither repealed nor altered, but (as hath been said, allowed of in Queen Maries time. 1 & 2 Ph. & Mar. ca. 8. 1 El. cap. 1. 5 El. cap. 1. 13 El. cap. 1, 2, 8. 27 El. ca. 2. 21 Jac. ca. 3.

And where the Statute of 25 E. 3. De Provisoribus prohibet, that certain offenders against that Act shall, before they be delibered, make full renunciation, &c. because we desire that our student may in all things understand what he reads, It is to be known, that as well before that Statute, viz. in the reigns of E. 1. E. 2. as after, the form of renunciation was to this effect, I renounce all the words comprised in the Popes Bull to me made of the Bishoprick of A. (or the like) the which be contrary or prejudicial to the King our Sovereign Lord and to his Crown, and of that I put my self humbly in his Grace, praying to have restitution of the temporalities of my said Church, &c. whereby it may appear what the law was in that case before 25 E. 3. And albeit these laws be very severe, especially against the Bulls, &c. of the Pope, and foreign jurisdiction, and though Queen Mary restored his Supremacy in such sort as hereafter appeareth, yet would she not repeal the said Statutes of Prohibition and Premunire, but provided that they should stand in force. See the Statute of 1 & 2 Ph. & Mar. whereby it is enacted, That whosoever should by any process obtained out of any Ecclesiastical Court within this Realm or without, or by presence of any spiritual jurisdiction or otherwise, contrary to the laws of this Realm, molest or molest any person, &c. should incur the danger of the Act of Premunire made in the sixteenth year of the reign of King R. 2, &c. And by another branch in the same Act it is enacted, That all Bulls, Dispensations and Privileges not containing matter contrary or prejudicial to the authority, dignity or preeminence royal of the Realm, or to the laws of this Realm now being in force, and not in this present Parliament repealed, may be put in execution. And lastly, by the same Act it is declared and enacted, That neither any thing contained in the body of the said Statute or in the Preamble thereof, shall be construed or expounded to diminish or take away any of the liberties, privileges, prerogatives, preeminencies, authorities or jurisdictions which were in the Imperial Crown of this Realm, or belonged to the same before the twentieth year of H. 8. and the Popes Holiness to have such authority, preeminence and jurisdiction as his Holiness used, or might lawfully have used by authority of his Supremacy, the said twentieth year of H. 8. within this Realm of England, without diminution or enlargement of the same, and none other. whereby it appeareth how careful the State was in Queen Maries time to preserve the Prerogative of the Crown, and the ancient laws of the Realm, and did at that time so cautiously restore the Supremacy of the Pope, secundum quid, but not simpliciter, and bounded his Supremacy within freight and legal limitations, as by the said Act appeareth.

Dier Manuscript. Hil. 1. El. le case de Christoferson Eveque de Chichester.

1 & 2 Ph. & Mar. cap. 8.

* Nota

See the Statutes which inflict the punishment of Premunire, viz. 3 R. 2. c. 13. 5 R. 2. cap. 3. 7 R. 2. cap. 12. 24 H. 8. cap. 12. 25 H. 8. cap. 19, 20. 1 El. c. 1. 26 H. 8. cap. 15. 28 H. 8. cap. 16. 1 & 2 Ph. & Mar. cap. 1. 8 El. cap. 1. 13 El. c. 2. 8. 39 El. ca. 11. 27 El. ca. 2. See the Fourth part of the Institutes, cap. Chancery, the Articles at large against Cardinal Woolsey, Artic. 7.

we have been the longer concerning cases of Premunire, first, for that they be matters of great weight and necessary to be known, and we wish that the offence may never be committed, And secondly, for that Master Scamford hath in effect but named a Premunire.

Scam. pl. cor. 44. f.

S 1

CAP.

CAP. LV. Of Prophecies.

33 H. 8. cap. 14.
 1 E. 6. cap. 12.
 Nota.
 1 Mar. stat. unicum,
 Sessione prima.
 5 Eliz. cap. 15.
 Mitius imperanti
 melius paretur.
 * Nota.
 The like Act was
 made, 3 & 4 E. 6.
 ca. 15. expired.

Prophecies upon declaration of Arms, Shields, Names, Cognifances, or Badges, were made felony without the benefit of Clergy: but this Act is twice repealed by general words of all Felonies made by any Statute since the first year of H. 8.

In Anno 8. Eliz. a more moderate Statute was made against Prophecies by writing, singing, or other open speech or deed, by the occasion of any Arms, Shields, Beasts, Badges, or other like things accustomed in Arms, Cognifances or Signets: or by reason of any time, year or day, name, blood or war, to the intent thereby to make any rebellion, insurrection, dissention, loss of life, or other disturbance within this Realm or other the Queens Dominions. For the first offence, imprisonment of his body by the space of a year without bail, and forfeiture to the Queen and Informer ten pound. And for the second offence, imprisonment during life without bail, and forfeiture to the Duke all his goods and chattels, real and personal: but he must be therewith impeached or accused within six Months next ensuing the offence by him done. A just and necessary limitation, and the rather, for that the offence may be committed by bare words. This offence is to be heard and determined before Justices of Assize, Justices of Oier and Terminer, and Justices of Peace.

He hereafter the Chapter of Devils, and the Second part of the Institutes, W. 1. cap. 33. He that hath read our Histories shall find what lamentable and fatal events have fallen out upon vain Prophecies carried out of the inventions of wicked men; pretended to be ancient, but newly framed to deceive true men: and withall, how credulous and inclinable our countrey men in former times to them have been, we will set down the truth concerning the same.

Certain it is, that to foretell of things to come, is a prerogative appropriated to the Holy Ghost, and that the Devil cannot predicate, foretell of things to come; which notwithstanding, S. Auslin did sometime hold that he could, but afterwards justly retracted it in these words, Rem dixi oculis illis magis acriore assertionem quam debui, &c. certissimum est Demones non predicare.

Now for the predictions and foretellings of the Sibyls, being Gentiles, so long before the Incarnation of our Saviour Christ, and more directly and particularly of those high mysteries of the Incarnation and Passion of Christ, the coming of Antichrist, the Subversion of Rome, and the end of the world, they are by the true Propheets of Almighty God, who spake by the Holy Ghost, well discovered, that while the Church was in her Cradle, these predictions were invented and fathered upon the Gentiles, to the intent to make the doctrine of the said high Mysteries of the Gospel the more credible amongst the Gentiles. And if any such predictions had been by the said Sibyls, out of question those great Lights of Nature amongst the Gentiles, Plato, Aristotle, Theophrastus, or some other of those great Philosophers, that with great acuity dived into the secrets of all kinds of learning, would have found them out and made some mention of them. But besides the said discovery, such predictions by the Gentiles and Heathen persons are against the word of God.

Also predictions either of the time of the end of the world, or that it is at hand, are not lawfull. For the first, see the first of the Acts, It is not for us to know

August. in lib.
 retract.

^a Cassiodor.
 Exercit. 1. ad apparatus Annalium, cap. 10.
^b Ephes. c. 3. v. 9.
 Col. cap. 1. v. 26.
 Rom. ca. 26. v. 25.
 6 Acts ca. 1. v. 7.
 Mat. 24. 36.
 Mark 13. 32.

know the times and seasons which the Father hath put in his own power, &c. For the second, see the Second Epistle to the Thessalonians, I beseech you, brethren, &c. that you be not shaken in mind or troubled, &c. as though the day of Christ were at hand: let no man deceive you by any means.

We have the rather said hereof thus much, for that we have heard divers men boldly and confidently upon their numeral calculation to have erred herein.

CAP. LVI

Of Approver.

A Prober or Approver, in Latine Probator, is a person indicted of Treason or Felony in prison for the same, and not disabled to accuse: he may a upon his arraignment, before any plea pleaded, and before competent Judges b confess the indictment, and take a corporal oath to reveal all Treasons and Felonies that he knows, and pray a Coroner, before whom he is to enter his appeal or accusation against all those that are participes criminis, or of his society in committing of Treason or Felony contained in the Indictment, those partners being within the Realm: and upon his appeal c all those partners be convicted, the King ex merito justitie is to pardon them. But it is in the discretion of the Court either to suffer him to be an Approver, or after his approbement to respite judgement and execution until he hath convicted all his partners.

Parl. 28 E. 1. cap. Nota, for confronting. 29 H. 5. cor. 440. 21 E. 3. 18. 19 H. 6. 47. 2 H. 7. 3. 12 E. 4. 10. 3 H. 6. 50, 51. b 1 H. 5. cor. 441. 3 H. 6. 50, 51. in Bank le Roy. Pasch. 2 H. 4. coram Rege pl. 6. c 21 H. 6. 29. b. & 34. b. d Bracton lib. 3. fo. 122. b. & 152. &c. Britton fo. 7. 11. 17. 48. Mirr. cap. 1. §. 13. cap. 3. exec. al. provors, cap. 5. e 25 E. 3. 42. 21 H. 6. 34. 22 E. 3. cor. 460. 26 Ass. pag. 19. f Pasch. 2 H. 4. coram Rege, 6. g 11 Ass. pl. 17. 19 E. 2. cor. 387. 19 E. 3. ibid. 443. 17 E. 3. 13. 21 E. 3. 18. h Mirr. ca. 1. §. 13. Starf. pl. cor. 140. d.

A Prover. It is by Bracton called Probator, by Britton Prover, by the Spirro; Prover and Approver: and his name putteth him in mind of his duty, viz. to prove and approve his accusation or appeal in every point, for e any falser of truth offendeth him in omnibus. And as he must affirm the truth, and the whole truth, before the Coroner and his appeal: so in the rehearsal of the appeal before the Judges it must agree with the appeal, 26 Ass. p. 19. & Bracton ubi supra. f In our Record I find him called Appellator.

Person. This extendeth not to a Peer or Lord of Parliament, for it is against Magna Charta, cap. 29. for him to pray a Coroner.

A man attainted of Treason or Felony cannot become an Approver, because (as the book saith) he is Hors de la ley. Also though he be indicted, yet if he be out of prison, he cannot approve.

The Spirro; saith, that Women, Infants, Idiots, Lepers, or Professors in order of Religion, or Clerks, or persons attainted of Felony, or Non compos mentis, cannot be Approvers: and Stanford addeth men above the age of 70. or maimed; because some of them cannot take an oath, and none of them can wage battell.

Indicted. For in any appeal either by Writ or Bill the Defendant shall not become an Approver: and before Indictment no person can approve, because if his approbement be false, no judgement (whatsoever he confessed) can be given against him, unless he be indicted, k and no judgement can be given against him if his appeal be false, but of the offence contained in the Indictment, and so are the books to be understood.

143 Ass. 39. 15 E. 3. cor. 113. 11 H. 7. 5. 4 25 E. 3. 39.

If one be indicted and approve, if after an appeal be sued against him, the approbement ceaseth. 18 H. 5. cor. 441.

Of Treason or Felony. And that is only of that Treason or Felony that is contained in the Indictment, as hath been said. m & Trin. 3 H. 4. Rot. 19. Coram Rege Hertford. Probator in duello devicit appellat', de alta prodicione, pro

m 19 H. 6. 4. 12 E. 4. 10. 6 H. 6. cor. 131. 19 E. 2. cor. 387.

pro quo devictus suspenditur, decapitatur, & quarteria sua dividuntur. Et simile ibid. Anglia.

46 H. 6. ubi sup.
21 E. 3. fo. 18.
V. 3 H. 6. 51, 52.

¶ **In prison.]** a **Albeit** he be indicted, yet if he be at large, and not in prison, he cannot approve, as befoze is said.

b Bract. ubi sup.
9 H. 4. 1.
2 H. 4. 19.
44 E. 3. 44.
Lib. 10. fo. 76. b.

¶ **Competent Judge.]** b **As** Justices of the Kings Bench, Justices of Oier and Terminer, and of Gaol-delibery; but not Justices of Peace, because they have no authority by their Commission to assign a Coroner. And by the same reason the Lord High Steward of England cannot design a Coroner in case of Treason or Felony.

12 E. 4. 10.

¶ **Corporal oath.]** Though the Oath be general of all Treasons and Felonies, yet in course of Law no approbement can be but of the offence contained in the Indictment, as hath been said. And this Oath and the accusation of himself make his appeal or accusation of another of the same crime to amount in Law to an Indictment.

21 H. 6. 34, 35.

¶ **Particeps criminis.]** For it cannot be of another Treason or Felony then is contained in the Indictment.

40 Ass. 39.
10 E. 4. 14.

¶ **Within the Realm.]** For if it be out of the Realm, it wanteth trial, and therefore the accusation or appeal not to be allowed.

1 E. 3. 17.
1 Ass. p. 2.

¶ **Ex merito justitiae.]** And the reason is, for that he rideth the Country of wicked and hurtfull misdoers, whereby the Kings Peace is kept, and the Subject enjoyeth his own quiet. And therefore the King doeth in the mean time give him wages.

26 Ass. 19.
8 H. 5. cor. 459.
21 H. 6. 34.
12 E. 4. 10.

A man became an Approver, and appealed five, and every of them joynd battel with him; Et duellum percussum fuit cum omnibus, & Probator devicit omnes quinque in duello, quorum quatuor suspendebantur, & quintus clamabat esse clericum, & allocatur; & Probator pardonatur: So as the Approver did and ought to fight in that case with all the Appellés. But if there be two or more Approvers against one man of one Felony, and he joynd battel with them all, and banquish the first, he is acquitted against the other. Concerning the Wages upon an approbement, and other incidents, you may read in Mr. Justice Stanford, which need not here to be rehearsed.

Mich. 39 E. 3. coram Rege Rot. 97. Suff.

* If the Appellé joynd battel, or plead not guilty, and after the King pardoneth the Approver, the Appellé shall be discharged and shall not be arraigned at the suit of the King.

7 E. 3. 7.
11 H. 4. 91. b.
Of battel, see more here, Cap. Single combat, and the second part of the Institutes, Westm. 1. cap. 40.
* 47 E. 3. 5.

Stanf. pl. cor. 142.

¶ **Convicted.]** The Appellé may chuse either to wage battel with the Approver, or to put himself upon the Country; and if the Appellé be found guilty by verdict, it serveth as well for the Approver, as if he had been overcome by battel. And therefore the Book in 19 H. 6. 35. is misprinted, or misreported: and the note of Fitzh. in abridging the case, viz. Coron. pl. 6. in the end, is against Law. Vid. Rot. Parl. 17 E. 3. nu. 36.

19 H. 6. 35. 2.

Rot. Parl. 17 E. 3. nu. 36.

CAP.

CAP. LVII.

Of Appeals.

Of Appeals see both books in the 1 Part and 2nd part of the Institutes, also you may read thereof in the Statutes, Lib. 4. fo. 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.

First, that the matter of the Barre had been a good Barre of the appeal by the Common Law, as well as if the Clergy had been allowed: for that the Defendant upon his confession of the Indictment had prayed his Clergy, which the Court ought to have granted, and the deferring of the Court to be advised, might not to prejudice the party defendant, albeit the appeal was commenced before the allowance of it.

The second point adjudged was, that this case was out of the Statute of 3 H. 7. for that the words of that Act are,

If it fortune that the same Felons and Murderers, and Accessories so arraigned, or any of them to be acquitted, or the principal of the said Felony, or any of them to be attainted, the wife or next heir of him so slain, &c. may have their appeal of the same death and murder against the person so acquitted, or against the said principles so attainted, if they be alive, and that the benefit of his Clergy thereof before be not had.

And in this case the Defendant Holcroft was neither acquitted nor arraigned, but convicted by confession, and the benefit of Clergy prayed as is aforesaid. And as the Statute being penal concerning the life of man, and made in restraint of the Common Law, was not to be taken by equity, but in casus omnibus, and left to the Common Law.

As to the Third, it was objected, that every plea ought to have an apt conclusion, and that the conclusion in this case ought to have been, Et petit iudicium si predicta. Thomas Holcroft iterum de eadem morte, de qua supra convictus fuit, respondere compelli debet. But it was adjudged that either of both conclusions was sufficient in Law: and therefore that exception was disallowed by the rule of the Court.

Nota, the ancient Law was, that when a man had judgement to be hanged in an appeal of death, that the wife and all the blood of the party slain should drave the Defendant to execution. And Gaiocigne said, Illinc fuit in diebus nostris.

Richardus de Crek appellat quinque pro feloniam, & offert diffraticinare per corpus suum contra quemlibet eorum separatim. Ipsi petunt se allocari, quod ubi appellans dicit in appello suo, quod ipsi fregerunt ostium Bracini, & non specificat ex parte domus illius, predictam ostium scitum fuit, & petunt iudicium. Et Joh. Wanton unus defendent defendit feloniam, & totum, & passus est defendere per corpus

... of the Institutes, ...
 ... Lib. 4. fo. 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.

11 H. 4. 11.
 Pl. com. 1087.
 Trin. 16 E. 2. in Banco, Rot. 9.
 Nota.

corpus suum sicut curia consideraverit. Ricus dicit quod non potest pugnare contra predictum Johannem, eo quod ipse mahematus est in humero suo dextro. Et predictus Johannes petit iudicium delicut predictus Ricus appellando ipsum obculit disratiocinare predictum Robertum versus ipsum tanquam felonem prout cuf confidet per corpus suum, & nullam fecit mentionem de aliquo Mahemio, unde petit iudicium de appello isto. Et ideo considerat' est tam ad calumpniam predicti Henr. & aliorum, quam predicti Johannis, quod appellum eius nullum. Set pro rege inquiratur rei veritas, &c.

Nora how the conclusion of the appeal of Felony ought to be, when the Plaintiff is mayhemed, and cannot make trial by battail. * See before c. 1. high treason, fo. 10. 1. cap. 14. Glanv. lib. 1. c. 2. Bracton lib. 3. c. 1.

* There lay an appeal of high treason by the Common Law, either in Parliament before the Statute in 1 H. 4. cap. 14. or in such of the Kings Courts as have jurisdiction thereof triable by battail or herdit: and this appeareth by all our ancient Authors, and others Records, and in Bracton fo. 119. a. what Pleas the Defendants in the appeal of Treason may have, to disable the Plaintiff to maintain his appeal, see Fleta ubi supra, & Britton ubi supra.

See 28. 119. Britton cap. 8. & 29. Fleta lib. 1. cap. 27. The Mirror cap. 2. §. 111. Pat. 25. E. 3. part. 1. ad 160. Mich. 4. H. 4. coram Rege Rot. 12. &c. 8 H. 6. cap. 10. F. N. B. 119. Lib. Inrat. Rast. fol. 122.

CAP. LVIII.

Of Treasure trove.

Thesaurus inventus.

Treasure trove is when any gold or silver, in coin, plate or bullion, hath been of ancient time hidden, wheresoever it be found, whereof no person can prove any property, it doth belong to the King, or to some Lord or other by the Kings grant, or prescription.

The reason wherefore it belongeth to the King, is a rule of the Common law, that such goods whereof no person can claim property, belong to the King, as *Beatus, says, 69. Quod non capit Christus, capit Fiscus.* It is anciently called *Findarings*, of finding the treasure. And now let us peruse this description.

[Gold or silver.] For if it be of any other metall, it is no treasure: and if it be no treasure, it belongs not to the King, for it must be Treasure trove.

It is to be observed, that beins of gold and silver in the grounds of subjects belong to the King by his prerogative, for they are royall mines, but not of any other metall whosoever in subjects grounds.

[Wheresoever.] a whethet it be of ancient time hidden in the ground, or in the roof, or walls, or other part of a castle, house, building, ruines, or elsewhere, so as the owner cannot be known.

[Whereof no person can prove any property.] For it is a certain rule, *c Quod thesaurus non competit regni, nisi quando nemo scit qui abscondit thesaurum.*

[Of ancient time hidden.] d Est autem thesaurus vetus depositio pecuniarum, &c. cujus non extat modo memoria, adeo ut jam dominum non habeat.

[Belong to the King.] e where of ancient time it belonged to the King, see 22 H. 6. Cor. 143. d Bracton ubi supra, and the other ancient Authors agree thereunto. e Glanv. lib. 1. cap. 1.

Pl. Com. In case de Mines per totum. Vid. Bract. lib. 2. fo. 222. Auri fodina, & argenti fodina. Fleta lib. 4. cap. 19. Rot. Parl. 3 R. 2. nu. 42. 27 Aff. p. 19. a Bract. li. 1. fo. 10. lib. 3. 120. Britton fo. 3. b. 7. b. 26. b. 71. b. 11. Mirr. cap. 1. §. 3. & §. 13. ca. 3. §. 110. Glanv. lib. 1. c. 2. Bract. lib. 1. cap. 2. b In bundell loquitr. 32 E. 3. in Abbacia Sancte Marie Eborum. Bract. ubi supra. Non refert in quo loco huiusmodi Thesaurus invenitur. c 22 H. 6. Cor. 143. d Bract. ubi supra, and the other ancient Authors agree thereunto. e Glanv. lib. 1. cap. 1.

finder,

finder, as by the said ancient Authoꝝ it appeareth. And yet I find that befoꝛe the Conquest, Thesauri de terra domini regis sunt, nisi in Ecclesia vel Coemeterio inveniatur; & licet ibi inveniatur aurum, regis est, & medietas argenti est medietas Ecclesie ubi inventum fuerit, quæcunq; ipsa fuerit, vel dives, vel pauper.

¶ By the Kings grant or prescription.] 21 H. 6. tit. Prescripti-
on. 4. 22 E. 3. Cor. 241. 1 H. 7:33. 9 H. 7. 20. 46 E. 3. 16. Stanf. pl. Cor. 39. b.
Lib. 5. fo. 109. b.

¶ The punishment of him that concealeth, &c. it.] Glanvil ubi sup.
It appeareth by Glanvil, and Bracton also, that occultatio thesauri inventi, frau-
dulosa was such an offence as was punished by death. But it hath been resolved,
that the punishment for concealment of Treasure trobe is by fine and imprison-
ment, and not * of life and member. Bracton and the
other Authoꝝ, ubi
supra.
* 23 Aff. p. 99.

¶ To whom the charge thereof belongeth.] It belongeth to
the Coroner, as appeareth by the statute de officio Coronatoris, Anno 4 E. 1. The ancient Au-
thoꝝ, ubi supra,
agree hereunto.

CAP. LIX.

Of Wreck.

See the Second part of the Institutes, W. 2. cap. 2. and the exposition upon
the same.

CAP. LX.

Of false tokens, or letters in other mens names.

IF any person falsly and deceitfully obtain into his hands any moneys, 33 H. 8. cap. 1.
goods, chattels, Jewels, or other things of any person or persons, by
colour or means of any false or privy tokens, or counterfeit letters made
in any other mans name, &c. he shall suffer such correction by punish-
ment of his body, setting upon the pillory, or other corporal pain (ex-
cept pains of death) as shall be to him adjudged by the person and per-
sons before whom he shall be convicted, with a saving to the party griev-
ed by such deceit, such remedy by way of Action or other wise as he might
have had by the Common law.

Here it is to be obserbed, that upon this statute, for this offence the offender
cannot be fined, but corporall pain only inflicted.

T

CAP.

CAP. LXI.

Of Theftbote.

Theftbote (described by Act of Parliament) est amenda, sicut capta sunt con- sideratione Curie domini regis : and so much the word signifyeth, bote be- ing taken for amends ; theftbote, that is, amends for theft.

This offence is more then misprision of felony, for that it is not a conceal- ment of the same knowledge only ; but Theftbote is when the owner, not only knows of the felony, but taketh of the thief his goods again, or amends for the same to favour or maintain him, that is, not to prosecute him, to the intent he may escape : but in that case, if he receive the thief himself, and aid and maintain him in his felony, then is he accessory to the felony. And so note a diversity, quando proprietarius recepit latrocinium, & quando latorem. But if a man take his goods again that were stolen, it is no offence, unless he favour the thief, as is aforesaid.

The punishment of Theftbote is ransome and imprisonment : and seeing the punishment of Theftbote, which is greater then concealment of felony, is but ransome and imprisonment, it standeth with reason, that the punishment of misprision of felony should be but fine and imprisonment. Theftbote is some- times taken pro ipso latrocinio, for the thing it self stolen from you.

You shall read in ancient Authors of Redoubbers, Addoubors, derived of the French word addoubeur, they are in Law patchers, botchers, or menders of ap- parell, that take theftbote of cloth (and change it into another fashion) and are dwelling out of Burghs and Cities ; because in those days burghs and cities were so well governed, as such offenders were soon discovered : for they were not then commended, for that they were populous, but for that the Governors were provident in preventing of offences.

CAP. LXII.

Of Indictments.

Concerning Indictments we have spoken somewhat in the First part of the Institutes, Sect. 194, 208. And you may read in my Reports many reso- lutions concerning Indictments, viz. Lib. 4. fo. 40, 41, 42, &c. lib. 5. fo. 120, 121, 122, 123. l. 7. fo. 5, 6, 10. li. 8. fo. 57, 36, 37. li. 9. 62, 63, 116, 118.

We will add one point adjudged in the case between Burgh and Holcroft be- fore mentioned in the Chapter of Appeals, which was, that where it is prohi- ded by the statute de Artic. super Chartas cap. 3. En case del mort del home (deins le verge) ou office del Coroner appent as views, & enquests de ceo faire, soit maunde al Coroner del pais que ensemblement ove le Coroner del hostel le Roy face loffice que appent, &c. And in that case one man was Coroner both of the Kings house and of the County, and the Indictment of manslaughter was taken before him as Coroner both of the Kings house and of the County. And it was adjudged that the Indictment was good, because the mischief expressed in the statute was remedied, as well when both offices were in one person, as when they were in divers : and therefore in this case the rule did hold, Quando duo jura concur- runt in una persona, æquum est ac si effect in diversis.

Richard

Stat. Wall. Anno
12 E. 1. Vet. Mag.
Chart. pa. b. fo. 6.
See Rot. clauf.

An. 1 E. 1. m. 7.

42 Aff. p. 5.

Mir. ca. 2. §. 12.

3 E. 3. Cor. 353.

Stanf. Pl. Coron.

40. b.

42 Aff. ubi supra.

3 E. 3. Cor. 353.

* See before in the
chapter of Misprisi-
on of treason, ca. 3.
Mir. ca. 1. §. 17.

Britton f. 33.

* That is stolon cloth.

See the 1. part of
the Institutes,
sect. 194, 195.

Holcrofts case.
Artic. super Chart.
ca. 10.

The same was again
resolved in Wrotes
case, ubi supra.

Richard Weston, Peamon, late servant of Sir Gervase Elwys Lieutenant of the Tower, and under the Lieutenant Keeper of Sir Thomas Overbury then prisoner in the Tower, was indicted, For that he the said Richard the 9 day of May An. 11 Ja. Regis, in the Tower of London, gave to the said Sir Tho. Overbury poison called Roseacre in broth, which he the said Sir Thomas received; Et ut idem Rich. Weston prefaturus Tho. Overbury magis celeriter interficeret & murraret, 1 Junii An. 11 Ja. Regis supradicti. gave to him another poison called White Arsenick, &c. and that 10 Junii An. 11 suprad. he gave him a poison called Mercury Sublimat in Tarts, ut predicti Tho. Overbury magis celeriter interficeret & murraret: and that a person unknown in the presence of the said Richard Weston, and by his commandment and procurement, the 14 day of Sept. anno. 11. supradicti. gave to the said Sir Thomas a clyster mixt with poison called Mercury Sublimat, ut predictum Thomam magis celeriter interficeret & murraret: Et predictus Thomas Overbury de sepealibus venenis-predictis, & operationibus inde, a predictis sepealibus temporibus, &c. graviter languabat usque ad 15 diem Septemb. Anno 11. supradicto, quo die dictus Thomas de predictis sepealibus venenis obiit venenatus, &c. And albeit it did not appear of which of the said poisons he died, yet it was resolved by all the Judges of the Kings Bench, that the indictment was good; for the substance of the indictment was, whether he was poisoned or no. And upon the evidence it appeared, that Weston within the time aforesaid had given unto Sir Thomas Overbury divers other poisons, as namely the powder of Diamonds, Cantharides, Lapis Causticus, and powder of Spiders, and Aqua fortis in a clyster. And it was resolved by all the said Judges, that albeit these said poisons were not contained in the indictment, yet the evidence of giving them was sufficient to maintain the indictment; for the substance of the indictment was (as before is said) whether he were poisoned or no. But when the cause of the murder is laid in the indictment to be by poison, no evidence can be given of another cause, as by weapon, burning, drowning, or other cause, because they be distinct and several causes: but if the murder be laid by one kind of weapon, as by a Sword; either Dagger, Stiletto, or other like weapon is sufficient evidence, because they be all under one Classis or cause. And afterwards, Ann Turner, Sir Gervase Elwys, and Richard Franklyn a Physician, (purveyor of the poisons) were indicted as accessories before the fact done: And it was resolved by all the said Judges, that either the proofs of the poisons contained in the indictment, or of any other poison, were sufficient to prove them accessories: for the substance of the indictment of them as accessories was, whether they did procure Weston to poison Sir Thomas Overbury: and because that not only Anne Turner and Richard Franklyn, but some of the degrees of Nobility were indicted as accessories in another County, viz. in the County of Midd. divers notable points were resolved upon the statute of 2 E. 6.

First, if the Accessory be in the County of Midd. where the Kings Bench is, and the principal did the felony, &c. in another County, that the Court of the Kings Bench is within the words of that Act, viz. (and that the Justices of Gaol-Delivery, or Oier and Terminer, or two of them, &c.) for the causes and reasons given in the Lord Zanchers case, Lib. 9. fo. 117, 118. &c. Secondly, if the Indictment be taken in the Kings Bench, then the Justices shall not write in their own names, quia placita sunt coram Rege. Thirdly, divers precedents were shewed where the Accessory was in the County of Midd. where the Kings Bench sat, and the principal was attainted in another County, that the Justices of the Kings Bench have removed the Record of the attainder of the principal before them by Certiorari, and so it was done in the Lord Zanchers case, ubi supra. The like precedent was shewed in a case where the principal was attainted in the County of Oxon, and the Accessory was in Midd. and the Kings Bench sitting there, the Justices of the same Court removed the attainder before them by Certiorari. Fourthly, it was resolved, that the Lord Steward of England, who is a Judge in case of High Treason or felony committed by any of the Peers of the Realm, is within these words, Justices of Gaol-delivery,

Sir Tho. Overburys case. Mich. 13 Jac. See before cap. 7. Of murder, more of this case.

Vide lib. 9. fo. 67. Mackallies case Ass.

2 E. 6. cap. 24.

livery, or Oier and Terminer, because he is a Justice of Oier and Terminer, for his authority is by Commission, and the words of his Commission be after divers recitals, Et superinde audiend, examinand, & responderere compellend, & sine debit. terminand: so as he hath power to hear and determine. And where the words be [or any two of them] that is to be intended, where there be two or more Justices; and yet where there is but one, it extendeth to him. As the Statute of Merton ca. 3. power being given to the Sheriff in case of Redisseitin, the words be, Assumptis tecum Coronatoribus placitorum Coronæ, &c. in the Plural number: And yet where there is but one Coroner in the County, the Statute extends thereunto, and the Sheriff shall take that one. Also the words of the Statute are further, That then the Justices of Gaol-delivery or of Oier and Terminer, or other there authorized: within which words [or other there authorized] the Lord Steward is included. Fifthly, if the Record of the attainder were by Writ of Certiorari removed out of London into the Kings Bench, then there arose another doubt upon the said Statute, if afterwards any proceeding should be had against any Peer, for that the words of the Statute be, The Justices, &c. shall write to the Custos Rotulorum or Keeper of the Record where such principal shall hereafter be attainted; and the attainder in this case was in London, and the Kings Bench was in Middlesex: so as if the Record should be removed into the Kings Bench in Middlesex, the Record should not be where the attainder was had; and consequently the Lord Steward could not write to the Kings Bench. And therefore to prevent all questions, it was resolved, That in this case of the Lord Steward, no Certiorari should be granted, but a special Writ should be directed according to the words of the said Act to the Commissioners of Oier and Terminer in London, to certify whether the principal was convicted or acquitted: and they made a particular Certificat accordingly, so as the Record of the attainder of the principal did, notwithstanding that Certificat, remain with the Commissioners of Oier and Terminer in London; so as if any further proceeding should be had, the Lord Steward might write to them, as after he did in the case of R. Carl of S. and F. his wife.

And it is to be observed, that the ancient wall of London (a mention whereof doth yet remain) extendeth through the Tower of London; and all that which is on the West part of the wall is within the City of London, viz. in the Parish of All Saints Barking, in the Ward of the Tower of London; and all that is on the East part of the Wall is in the County of Middlesex; and the Chamber of St Thomas Overbury was within the Tower on the West part of the said Wall, and therefore Weston was tryed within the City of London.

And where it is often said in many Acts of Parliament, b Records, and c Book-cases, that the King cannot put any man to answer, but he must be appyled by Indictment, Presentment, or other matter of Record: True it is, in Pleas of the Crown or other common offences, Offences, &c. principally concerning others, or the publick, there the King by law must be appyled by Indictment, Presentment, or other matter of Record; but the King may have an Action for such wrong as is done to himself, and whereof none other can have any Action but the King, without being appyled by Indictment, Presentment, or other matter of Record, as a d Quare impedit; e Quare incumbavit, a Writ of Attainr, g of Debt, h Detinue of Ward, i Cedeat, k Scie fac. pur repealer patent, &c.

39 H. 42.
23 Aff. P. 7.

a Mag. Chart.
c. 29.

5 E. 3. cap.

25 E. 3. c. 4. stat. 5.

28 E. 3. cap. 3.

37 E. 3. cap. 18.

38 E. 3. cap. 9.

42 E. 3. cap. 3.

b Rot. claus.

18 H. 3. m.

Rot. Parl. 15 E. 3.

nu. 9, 10. & 15.

42 E. 3. nu. 29.

Sir John A Lees

case.

17 R. 2. nu. 37. 2 H. 4. nu. 60. 7 E. 3. fo. 16; 50. Vide 6 E. 3. fo. 33. & 8 E. 3. 30. 16 E. 3. 74. tit. resccus 22. 42 E. 3. 32. per Knivet. 2 E. 3. fo. 75. Johnde Britains case. 3 E. 3. 19. 45 E. 3. Decies tuncum 12. d5 E. 2. Quare Imp. 167. 33 E. 3. Brev. 916. 17 E. 3. 50. 74. F. N. B. 48. f. 13 E. 3. Jurisd. f 42 E. 3. 16. F. N. B. 107. D. 519 H. 6. 47. 34 H. 6. 3. &c. h 39 H. 6. 26. 1 H. 4. 1. 15 E. 3. Corrody 4. i Regist. fo. 165. a. F. N. B. fo. 7. b. 21 H. 3. Brev. 882. Briton fol. 18. b. ca. 18. 4 16 E. 3. Brev. 651.

CAP. LXIII.

Of Councill learned in Pleas of the Crown.

Where any person is indicted of Treason or Felony, and pleadeth to the Treason or Felony, not guilty, which goeth to the fact not known to the party; it is holden that the party in that case shall have no counsel to give in evidence, or alledge any matter for him: but forasmuch as ex facto jus oritur, it is necessary to be explained, what matters upon his arraignment, or after not guilty pleaded, he may alledge for his defence, and pray counsel learned to utter the same in form of Law.

See before cap. 2.
Petit treason.
fo. 29, 34.
9 E. 4. 22.
Stanf. pl. cor.
151. b. otherwise
it is in an appeal
which is the suit of
the party.

And first, upon the arraignment what advantage he may take in case of High Treason by the Common Law. If it be for compassing the death of the King, he may alledge, that in the Indictment there is no such overt or open Act set down in particular as is sufficient in Law, or the like. For it is to be observed, that in no case the party arraigned of Treason or Felony can pray counsel learned generally, but must shew some cause.

1.
1 H. 7. 22.

Secondly, in case of High Treason by force of any Statute, he may alledge, that the Indictment being grounded upon a Statute, the Statute is either mistaken, or not pursued.

2.

Thirdly, of what matters he may take advantage equally concerning them both. He may alledge, that there was not at the time of the Indictment of High Treason two lawfull accusers, that is, two lawfull witnesses.

3.

Fourthly, of what matters he may generally take advantage in all cases of Treason & Felony. He may alledge, that the offence is not certainly alledged in respect of the matter, time and place, or that he is not rightly named, or hath not a right addition, or that the offences were done before the last general pardon.

4.

Fifthly, after he hath pleaded not guilty, what advantage he may take upon the evidence. He may alledge, that he ought to have two lawfull witnesses in case of High Treason, to prove the fact against him.

5.

Sixthly, he may take advantage in arrest of judgement, if the verdict be found against him that the trial came not out of the right place: as it fell out in Arundels case convicted by a Jury of willfull murder; he informed the Court, that the Jury that tried him came out of a wrong place, and thereupon he had Counsel learned assigned him; who indeed found that the Venire facias was misawarded, and the Court thereof by the Council being informed, judgement was stayed. And that the prisoner may alledge these or the like matters it is evident: because for every matter in Law rising upon the fact, the prisoner shall have Counsel learned assigned him. Also it is lawfull for any man that is in Court, to inform the Court of any of these matters, lest the Court should erre, and the prisoner unjustly for his life be proceeded with. And the reason whereof regularly in case of Treason and Felony, when the party pleads not guilty, he was to have no counsel, was for two causes. First, for that in case of life, the evidence to convince him should be so manifest as it could not be contradicted. Secondly, the Court ought to see that the Indictment, Trial and other Proceedings, be good and sufficient in Law; otherwise they should by their erroneous judgement attain the prisoner unjustly.

6.
Lib. 6. fo. 14.
Arundels case.

9 E. 4. 22.

Stanf. ubi supra:
7 H. 4. 34. &c.
See before fo. 29.

Robert Cherford counselled the Prior of the Priory of Winham in Norfolk, that John of Leicester, the Kings Serjeant at Arms, coming to the Priory with the Kings Writ of Priory Seal, should not be admitted to the Priory: for which counsel he was indicted in the Kings Bench, and depending the Process upon the Indictment, the King doth pardon him: and in the pardon is contained a Superseas to the Justices, commanding them to proceed no further.

Rot. clauf.
14 E. 2. 17. 27.
Octob.

CAP.

CAP. LXIV.

Of Principal and Accessory.

Albeit Justice Stanford hath well collected the Books concerning Principal and Accessory, yet diversa desiderantur: and necessary it is, that some things touching the same should be added, which are very necessary to be known.

It is a sure Rule in Law, that, In alia proditione nullus potest esse accessorius, sed principalis solummodo. This rule being well understood, will open the reason of divers cases which yet are involved in darkness.

High Treason is either by the Common Law, or by Act of Parliament: we will set down examples (which ever do illustrate) of both.

A doth counterfeit the Kings coin, viz. Shillings, and C. knowing the same doth receive A. and comfort and aid him: this counterfeiting is High Treason by the Common Law in A. as hath been said; and yet it hath been holden that in this case C. hath not committed Treason: for, say they, in case of Felony, a receiver of a Felon after the Felony done, knowing him to be a Felon, is no Principal, but an Accessory; and for that there is no Accessory in Treason, therefore C. in the case before committeth no Treason, for then in judgement of Law he must be a counterfeit of the Kings coin within our Statute of 25 E. 3. which he is not: and therefore they say, this is Casus omissus, and not within any of the Classes or Heads of the said Act of 25 E. 3. But all agree, that procurors of such Treason to be done before the fact done, if after the fact be done accordingly, in case of Treason, are Principals, for that they are participes criminis in the very act of counterfeiting.

a But saving reformation we hold, that if any man committeth High Treason, and thereby becometh a traitor, if any other man knowing him to be a traitor, doth receive, comfort and aid him, he is guilty of treason, for that there be no Accessories in High Treason. b And so it was resolved in the case of Abingdon, who received, comforted and aided Henry Garnet Supertour of the Jesuits, knowing him to be guilty of the Powder Treason, and accordingly Abingdon was indicted and attained of High Treason.

c And where it is said, that the said offence in Conyers case was misprision of treason, that cannot be, because there was a consent, and not a concealment only: otherwise, High Treason being the highest offence, should have more favour than Felony; for the receiver and comforter in case of Felony is punished by death, and so is not he that committeth misprision of treason. And lastly, this is no new treason, but a partaking and a maintaining of the old.

In case of Felony there are Principals and Accessories, and Accessories be of two sorts, either before the offence be committed, or after. See the Second part of the Institutes, W. 1. c. 14. And concerning this there be also certain Rules. d Nullus dicitur felo principalis, nisi actor, aut qui praesens est abettans, aut auxilians actorem ad feloniam faciendam. But this Rule hath his exception: for e in case of poisoning, if one layeth poison for one, or infuse it into both, or the like, albeit he be not present when the same is taken, and either the party intended, or any other is poisoned, yet is he a principal: and in that case both the principal, and procurer or accessory may be absent. See the Books aforesaid for accessories before the Felony committed, and where, and in what manner the procurement shall be said in Law to be pursued: the learning whereof is so plainly set down, as the same need not herein to be repeated. f Nullus dicitur Accessorius post feloniam, sed ille qui novit Principalem feloniam fecisse, & illum receptavi

Mich. 12 & 13 Eliz.
296. Dier, Coniers
case.

a 19 H. 6. 47.
3 H. 7. 10.
Stanf. fo. 3. See
before cap. Treason,
Verb. Si homo
counterface le grand
Scale.

b Pasch. 4 Jac.
Abingdons case
resolved by the
Justices.

c M. 12 & 13 El.
ubi supra.
See before cap. 3.
Of misprision of
treason.

d 7 H. 4. 27.
21 E. 4. 71.
13 E. 4. 71.
13 H. 7. 10.
Pl. com.

Lib. 4. fo. 42. in
Heydons case.

Lib. 9. fo. 67.

Mackalles case,
& Lib. 11. fo. 5.

e Lib. 4. fo. 44.
Vauxes case.

Pl. com. fo. 474.
Saunders case.

Lib. 9. 81. Agnes
Gores case.

See Pasch. 32 E. 3.
coram Rege Rot.

62 Ph. Cliftons
case.

f 25 E. 3. 39. b.
cor. 126.

26 Ass. 47.

9 H. 4. 1.

7 H. 6. 42.

receptavit & confortavit. a And therefore if a man write Letters for his deliv-
erance, or in favour of him, or the like, he is no accessory, for that he received
not the Felon.

a 25 Ass. ubi sup.

b A Vicar which instructed an Approber which could not read, whilst he
was in prison, to read, whereby he escaped, was adjudged not accessory to the
Felon.

b Mic. 7 R. 2. co-
ram Rege Rot.
23. Cant.
7 H. 4. 27.

Caolin and Browne Justices of Assize in the County of Suffolk put this
case to all the Judges, c A man committed Felony in the County of Suffolk,
for which he was committed to the Gaol; and R. an Attorney advised the friends
of the Felon to persuade the witnesses not to appear to give evidence against
him, which was done accordingly. And it was resolved, that neither the friends
nor the Attorney were accessories to the Felony, but that it was a great contempt
and misprison, for which they might be fined and imprisoned.

c Mic. 11 & 12 El.
the Case of Roberts
the Attorney.

d The accessory cannot be guilty of petit Treason, where the principal is
guilty but of Murder. For Accessorius sequitur naturam sui principalis.

d See before cap.
Petit Treason.

e If divers commit any murder, or other felony, one man may be both prin-
cipal and accessory to the other.

e 7 H. 4. 27.

f See before cap. Clergy, that if the principal before attainder hath his Clergy,
the accessory is discharged. And note generally, where the principal before at-
tainder is pardoned, or his life otherwise saved, the accessory is discharged.

f 2 H. 4. 16.

CAP. LXV.

Of Misprisions divers and several; and first of
Misprison of Felony, &c.

Of Misprison of treason we have already spoken, and of the Etymology of
the word. It remaineth now that we speak of other Misprisions.

Misprison is twofold: one is Crimen omissionis, of omission, as in con-
cealment, or not discovery of Treason or Felony: another is Crimen commissio-
nis, of commission, as in committing some heinous offence under the degree of
Felony.

Of Misprison is of two sorts, viz. Passive, and Active. Passive is of the
nature of concealment, whereof some be by the Common Law, and some by
Statute. By the Common Law, as Passive misprison that is concealment of
High Treason, whereof we have spoken; and Passive Misprison that is con-
cealment of Felony, whereof we are now in this Chapter to speak. Some by Sta-
tute: as if any be moved to make commotion or unlawful assembly, and do not
within Twenty four hours declare the same to a Justice of Peace, Sheriff,
Mayor, or Bayliff &c. Concealment by Juries, 3 H. 7. ca. 1. 33 H. 8. ca. 6 &c.

1 Mar. 1. Parl. ca. 12.
1 Eliz. cap. 17.
See the second part
of the Institutes.
W. 1. cap. 9.

Now are we to speak of concealment, or not discovery of Felony. As in case
of High Treason, whether the treason be by the Common Law or Statute, the
concealment of it is misprison of treason; so in case of Felony, whether the Fe-
lony be by the Common Law, or by Statute, the concealment of it is misprison
of Felony.

If any be present when a man is slain, and omit to apprehend the slayer, it
is a misprison, and shall be punished by fine and imprisonment.

8 E. 2. Cor. 395.

And as the Concealment of High Treason is higher by many degrees than
the concealment of Felony, so the punishment for the concealment of the greater
is heavier than of the lesser; and yet the concealment of Felonies in Sheriffs
or Bayliffs of liberties is more severely punished than in others, viz. by impri-
sonment by one year, and ransome at the will of the King. From which pun-
ishment

W. 1. cap. 9. See
the exposition
thereof, ubi sup.

nishment if any will save himself, he must follow the advice of Bracton, to discover it to the King, or to some Judge or Magistrate that for administration of Justice supplieth his place, with all speed that he can.

Braet. lib. 3. fo. 118. a.

Non enim debet morari in uno loco per duas noctes vel per duos dies, nec debet ad aliqua negotia, quamvis urgentissima, se convertere, quia vix permittitur ei ut retrospiciat.

And this is intended of a concealment, or not discovery of his m^r knowledge: For in case of High Treason, he that knoweth it before it be done, and assenteth unto it, is particeps criminis, and guilty of treason; and in case of Felony, he that receiveth the thief, and assenteth to it, is accessory.

See before the chap. of Misprison of treason, fo. 35. and of Principal and Accessory, fo. 148.

* Ecclesiastes ca. 10. ver. 20.

So before in the Chapter of Misprison of Treason, that every Treason and Felony doth include in it Misprison of Treason and Felony. So the Statute of 23 El. cap. 1. Of Misprison, that is, crimen commissionis.

Compassings or imaginations against the King by word, without an overt Act, is a high Misprison, as before is said. * In cogitatione tua ne detrahas Regi, &c. quia aves cœli portabunt vocem tuam, & qui habet pennas annuntiabit sententiam.

4 See the 2. part of the Institutes.

W. 1. cap. 33.

25 E. 3. cap. 1.

It is high treason to kill any of them in their places.

6 22 E. 3. 13.

19 E. 3. Judgement

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Mich. 6 E. 3. Coram Rege, Rot. 55. Eborum.

41 E. 3. Cor. 280. Nota, the forfeiture of his lands is but during his life.

41 E. 3. 25.

6 Inter leges Alveredi. cap. 34.

3 El. Dier 188.

2 Ja. Bellinghams case coram Rege, with his elbow and shoulder.

4 33 H. 8. cap. 12.

a If any man in Westminster Hall, or in any other place, sitting the Courts of Chancery, the Exchequer, the Kings Bench, the Common Bench, or before Justices of Assise, or Justices of Oier and Terminer, (which Courts are mentioned in the Statute of 25 E. 3. De Proditionibus) shall draw a weapon upon any Judge or Justice, though he strike not, this is a great misprison, b for the which he shall lose his right hand, and forfeit his lands and goods, and his body to perpetual imprisonment: the reason hereof is, because it tendeth ad impedimentum Legis terræ. c So it is, if in Westminster Hall, or any other place, sitting the said Courts there, or before Justices of Assise, or Oier and Terminer, and within the view of the same, a man doth strike a Juroz or any other with weapon, hand, shoulder, elbow, or foot, he shall have the like punishment; but in that case if he make an assault, and strike not, the offender shall not have the like punishment.

d If any strike in the Kings Palace, where the Kings royall person resideth, he shall not lose his right hand, unless he draw blood; but if he draw blood, then his right hand shall be stricken off, he perpetually imprisoned, and fined, and ransomed.

Note, the Law makes a great difference between stroke or blow in or before any of the said Courts of Justice, where the King is representatively present, and the Kings Court, where his royall person resideth. For in the Kings house (as hath been said) blood must be drawn, which needeth not in or before the Courts of Justice, but a stroke only sufficeth. Again, the punishment is more severe in the one case then in the other: such honour the Law attributeth to Courts of Justice, when the Judges or Justices are doing of that which to Justice appertaineth: and the reason is, Quia Justitia firmatur Solium.

But note, that by the ancient Laws of this Realm, striking only in the Kings Court was punished by death. Vide Lambert inter leges Inæ ca. 6. Si quis in Regia pugnarit, rebus suis omnibus mulctator, & sine morte etiam plectendus, Regis arbitrium & jus esto. Inter leges Canuti cap. 56. Si quis in Regia dimicarit, capitale esto, &c. Inter leges Alveredi cap. 7. Qui in Regia dimicarit ferrumve destrinxerit, capitor, & Regem penes arbitrium vitæ necisque ejus esto, &c.

Mich. 15 El. in the case of Peter Burchet Esquire of the middle Temple.

e Peter Burchet prisoner in the Tower, struck within the Tower John Longworth his Keeper (who stood in a window reading of the Bible) with a billet on the head behind, whereby blood was shed, and death instantly ensued: this being without any provocation, was adjudged murder, for which he was attainted, and before his execution (which was in the Strand over against Somerset house) his right hand was first stricken off, by force of the Statute of 33 H. 8. for that the Tower was one of the Queens standing houses or Palaces.

The Kings Palace at Westminster hath this liberty and privilege, viz. Nulla

Nullæ citationes aut summonitiones liceant fieri cuicunque infra Palatium Regis Westm.

Pasch. 8 E. 2.
Coram rege, Rot.
28. Norf.

Like pibledge hath Westminster-Hall, or other place where the Kings Justices, &c. sit, as by these following Records appeareth.

^a Quia Bedellus Universitatis citari fecit Will. de Wivelingham infra ostium aulae Westm', Julticiariis sedentibus, ad comparend' coram Cancellario, &c. pro quo se posuit in gratiam Regis, committitur Gaolæ, & Henricus de Harwood, ad cujus scdam profecutus fuit, committitur Marischal. & finem fecit 40 s.

2 Mich. 12 E. 3.
Coram Rege,
Rot. 101. Cant.

^b Matilda de Nyerford, filia Willielmi de Nyerford militis defuncti, did libell against John Earl of Warren and ^c Johan de Barro Countess of Warren the Kings niece (in camirina dominæ Reginæ Consortis domini Regis) in a cause of matrimony and divorce, and the same Johan de Barro was cited in the Kings Palace at Westminster, &c. It was upon full examination of the cause adjudged in Parliament in these words, Quod prædictum Palatium domini regis est locus exemptus ab omni jurisdictione ordinaria, tam regis dignitatis & coronæ suæ, quam libertatis Ecclesiæ Westm', & maxime in præsentia ipsius domini Regis tempore Parlamenti sui ibidem: ita quod nullus summonitionis seu citationes ibidem faciat, & præcipue illis qui sunt de sanguine domini Regis, quibus major reverentia quam aliis fieri debet, &c. Consideratum est, quod officia committatur Turri London, & ibidem custodiantur ad voluntatem domini Regis.

^b Placita coram domino rege in Parlamento suo apud Westm' in præsentia domini regis, An. 21 E. 1.

^c Ellenor daughter of E. 1. married with William Earl of Barry alias Barro in France, and had issue the said Johan, who married John Earl Warren.

Here two things are principally to be observed: First, that this royal pibledge is not only appropriated to the Palace of Westminster, but to all the Kings Palaces, where his royal person resides. Secondly, that this pibledge is to be exempted from all Ecclesiastical jurisdiction, regis dignitatis & coronæ suæ ratione, &c.

If any do rescue a prisoner in or before any of the abovesaid Courts, committed by any of the aforesaid Justices, it is a great misprison, for which he and the prisoner assenting to it shall forfeit their lands and goods, and their bodies to perpetual imprisonment, but shall not lose his hand, because no stroke or blow was given.

22 E. 3. 13.

But it was resolved by all the Judges, that where Thomas Oldfield, sitting the Court of the Dutchy of Lancaster, with a knife stabbed one Ferror a Justice of Peace in the view of the said Court, that the Court of the Dutchy was none of the Courts to make it a misprison to lose his right hand, &c. but the offender was to be indicted, and grievously fined.

Trin. 8 Jac. reg.
Oldfields calc.

And in 9 El. one Guirling struck another in the White-hall, sitting the Masters of Requests, and it was then resolved by the Court of the Kings Bench, that it was not any misprison for the which he should lose his right hand, &c. but he was indicted and fined.

Pasch. 9 Eliz. Guir-
lings calc.

Quia Thomas de Holbroke manus violentas imposuit super Johannem de Loudham, &c. ad Sessionem suam sedentem apud Gipwicum, & eum dementitus est, committitur in Parlamento Turri London, & finitur 20 l. & invenit sex milites manucaptors pro bono gestu suo.

Hil. 13 E. 3. Coram
rege, Rot. 104. Suff.

And where some of the books abovesaid say, that the offender shall forfeit his lands, and some that he shall be disherited, yet the forfeiture of his land is only for fear of his life, (as before is said,) for being no felony, the blood is not corrupted, nor the heir disabled to inherit. And this severe punishment is at the suit of the King, and the party may have his action, and it shall be tried by the officers and cryers. And for such a stroke Thomas of Whittesly recovered the hundred pounds, Trin. 9. E. 3. Rot. 154. Midd.

Trin. 9. E. 3. Rot.
154. Midd.

Britton saith, Ascuns trespasses sont nequedent plus punishable, si come trespass fait en temps de peace a Chevaliers ou auters gents honorables, per Ribaws ou auters viles persons; En quel case nous volons, que si Ribawe soit attain al suit de chescun Chivalier, que il eyt serue per felony sans defart del Chivalier, que le Ribawe perd son pome dont il trespassa: so great a respect in those dayes was had of honour and order. Ribawe is taken here for a Kitchill Kuffian. There is a great misprison when any revenge is sought against a Judge, Justice,

Brit. ca. 25. fo. 47.
* Nota for the dignity of Knights.

Justice, Officer, Juror, Sergeant, Countess, Sheriff, or Clerk, for that which they do in discharge of their several duties, offices and places, concerning the administration of Justice.

Mich. 33. &
34 E. 1. Coram.
Rege Rot. 75.

Roger de Hegham and others being Justices of Oier and Terminer, and sitting in the Exchequer chamber, gave judgement for Mary late the wife of William Brewse Plaintiff, against William le Brewse Defendant; which judgement was pronounced by Roger de Hegham. William de Brewse demanded of Roger de Hegham if he would abate the judgement, and said, Roger, Roger, now thou hast thy will which of long time thou hast sought: of whom Roger de Hegham demanded, what is that? To whom William de Brewse said, my shame and my loss, and this I will reward or recompence, or I will think of it. Whereof he being indited and arraigned, and confessing the offence, the Record saith, Et quia, sicut honor & reverentia, qui ministris domini regis ratione officii sui faciuntur, ipso regi attribuuntur, sic et decus & contemptus ministris suis facti eidem domino regi inferuntur; Consideratum est quod predictus, Willielmus de Brewse, discinctus in corpore, capite nudo, tena deposita, erat a banco domini regis ubi placita tenebantur in aula Westm^{onasterii}, per medium aulae predictae, cum curia plena fuerit, usque ad Scaccarium (ubi deliquit) & ibidem veniam petat a prefato Rogero, &c. & postea committatur Turri London, ibidem moratur ad voluntatem regis.

Nota.

Brañ. lib. 2. 105.
These words were
given to the Treas-
urer of England by
the procurement of
Pierce of Gaveston.
Hil. 20 E. 3. Coram
Rege Rot. 160.

Note this exemplary judgement against a Gentleman of a great and honorable family. Qualibet poena corporalis, quamvis minima, major est qualibet poena pecuniaria. And in that Record it is said, Quod dominus rex filium suum primogenitum & charissimum, Edwardum Principem Wallie, pro eo quod quedam verba grossa cuidam ministro suo dixerat, ab hospitio suo fere per dimidium anni amovit, nec ipsum filium suum in conspectu suo venire permisit, quousque dicto ministro de dicta transgressione satisfecerat.

Quia Petrus de Scales minatus fuit Ricum de Worlingworth, qui fuit de consilio Johannis de Moten, de vita & membris, dictus Petrus invenit plegios de bono gessu suo.

There be many Records for abusing of Jurors, viz. Pasch. 10 E. 3. Coram Rege Rot. 87. Gilbertus Twist. Pasch. 26 E. 3. ibidem, Rot. 22. Essex, Tho. Hubbert. Hil. 7. H. 5. ibidem, Rot. 24. Ricus Cheddre, Mich. 17 E. 2. Coram Rege Rot. 63.

Percussio clerici curie in veniendo versus curiam, &c. Trin. 11 E. 2. Coram Rege Rot. 42. London. Not only these particular rebenges abovesaid, but all other of what kind soever are great misprisions.

Cap. Itineris 5.
ultimo.

Also when any rebenge is sought against any man for complaining in any of the Kings Courts, super gravaminibus, &c. for grieivances, &c. Quia deterret homines a querelis super gravaminibus in forma juris. De his qui vindictam fecerint, eo quod aliquo modo super predictis gravaminibus in curia domini regis conquesti fuerunt.

Pasch. 10 E. 3.
Coram Rege Rot.
86. Linc.

Justiciarii taxaverunt damna 2 Marc' super Willielmum Botesford, eo quod minabatur quandam Hawisiam de vita & membris, eo quod ipsa prosequeretur ipsum in placito transgressionis.

Inter leges Inz
cap. 9. Lamb.
See the 4. part of the
Instit. cap. Chan-
cery, Artic.
Vers. Cardinal
Woolsey, Art 4,
5, 6, 11, 41.

We will conclude this point for private rebenge with an ancient law before the Conquest. Si quis privato consilio illatam sibi injuriam vindicaret, antequam jus æquum sibi dari postulaverit, quod nomine vindictæ eripuit reddito, integrum rei pretium præstato, & 30 solidos dependito.

See in the Fourth part of the Institutes cap. Of the Chancery, in the Articles against Cardinal Woolsey, 4, 5, 6, 11, 41.

CAP. LXVI.
Of Conspiracy.

Conspiracy is a consultation and agreement betwixt two or more, to appeal or indict an innocent falsly and maliciously of felony, whom accordingly they cause to be indicted or appealed: and afterward the party is lawfully acquitted by the verdict of twelve men: the party grieved may be redressed, and the offender punished two wayes. First, by a Writ of conspiracy, which is a civil or common Action at the suit of the party, wherein the plaintiff shall recover damages, and the defendant shall be imprisoned. Secondly, by Indictment at the suit of the King, the judgement whereof is criminal; of which we are now to speak.

Upon this suit of the King, if the offenders be convicted, the judgement is grievous and terrible, viz. That they shall lose the freedom or franchise of the Law, to the intent that he shall not be put or had upon any Jury or Assize, or in any other testimony of truth: and if they have any thing to do in the Kings Courts, they shall come c per solem, id est, by broad day, and make their Attourney, and forthwith return by broad day. And their houses, lands and goods, shall be seized into the Kings hands, and their houses and lands strepped and waiked, their trees rooted up and arrased, and their bodies to prison: all things retrograde, and against order and nature, in destroying all things that have pleased or nourished them; so that by falsehood, malice and perjury, they sought to attain and overthrow the innocent. Which judgement in our Books is called a villanous judgement. First, in respect of the villany and shame which the party hath which receiveth it. Secondly, so that by the judgement he loseth the freedom and franchise of the Law, and therefore undergoeth a kind of bondage and villany. And the reason of this heavy and terrible judgement is, 1. For that the offenders have conspired and plotted the death and shedding of the blood of an innocent. 2. That they do it under fair pretence of Justice, and by course of law, which was instituted for the protection and defence of the innocent. 3. That if they had attained the innocent, he should have lost his life, (by an infamous death) his lands, his goods, and his posterity; so that his blood thereby should have been corrupted, &c. 4. All this falsehood, malice and perjury is committed in placito Coronæ, in a suit for the King, which aggravateth and increaseth the offence; so that the King is the Head of Justice, and a protector of the innocent: and therefore at the Kings suit, and not at the suit of the party, this villanous judgement shall be given. So as the law hath excellently distributed the remedies; the private action of the party to give him damages, &c. and the suit of the King for exemplary punishment. And it is to be observed, that this Villanous judgement is given by the Common law, (as in the case of Attaint) and not by force of any Statute.

King E. 3. demanded of his Justices and Serjeants, whether others men being indicted of conspiracy for the indicting of R. of felony, were mainpernable or no. And they answered the King expressly, that they were not, in respect of the odiousness of the offence.

a Vide statut. de conspiratoribus, Anno 21 E. 1. vet. Mag. Chart. part 1. fo. 111. & definition conspir. 33 E. 1. ibid. fo. 90. b. Artic. sup. Chart. cap. 10. F. N. B. 114, 115. Stanf. pl. cor. 172, 8cc. Lib. 4. fo. 45. Lib. 9. fo. 16. 56, 57, 58. b 24 E. 3. 45. 27 Aff. 43 E. 3. Conspiracy. 11. 59. 4. H 5. Judgement 120. the like judgement as in attain. ee the first part of the Institutes. Sect. 6 Trin. 18. E. 3. coram Rege, Rot. 148. Pasch. 32. E. 3. coram Rege, Rot. 58.

27 Lib. aff. p. 12.

CAP. LXVII.

Of Pensions, &c. received by Subjects of Foreign Kings, &c.

See the fourth part of the Institutes, cap. the Chancery, Artic. against Cardinal Woolsey, Art. 27. Vide Parl. 7 R. 2. nu. 16.

Mat. ca. 26. v. 24. *Nemo pot. st. duobus dominis servire: aut eam unum odio habebit, & alterum diliget; aut unum diliget, & alterum contemnet.*

4 Regum ca. 5. v. 26, &c. Geheli. See 3 Jac. c. 2. 5. concerning the service of a Subject as a Souldier or Captain to a foreign Prince, hereafter cap. Fugitives. Pollydor.

Hall.
Hollingshed,
Stow, &c.
a Rot. Parl. 7 R. 2. nu. 15, 18, 20, 21, 22, 23.
b Ibid. nu. 17.
c Ibid. nu. 24.

It is not lawfull for any subject of the King of England to take a Pension of any foreign King, Prince, or State (without the Kings license) albeit they be in league with the King of England; both, for that they may become enemies, and for that also it is mischievous and dangerous to the King himself and his State, as it appeareth by this Distichon,

Principe ab externo veniunt lethalia dona,
Quæ studii specie, fata necemque serunt.

And this was (say they) the case of the Lord Hastings, Chamberlain to King E. 4. who in the Fiftenth year of his reign, received a Pension of two thousand Crotons yearly from the French King: who being informed by Just. Catesbye his inward friend, and others learned in the law, that the receiving hereof was an offence against Law, being desired by Pierce Clerret a Frenchman (who paid the Pension) to make him an acquittance for receipt thereof for his discharge, utterly refused the same. This report I do the rather hold to be true, for that all our English Historians (who for the most part rehearse but the carcasses or outside of any point in law) give great credit hereunto. And what ill consequence this and other like Pensions, and others of the Council of King E. 4. had, you may read in our Histories.

See the case in 7 R. 2. of a Spencer Bishop of Norwich; and there also the case of b Pierce Cressingham and others, and of c Sir William Ellingham and others, punished for receiving of money, &c. of the French King, which doeth them, without the Kings license, to yield up Castles and Forts in France committed to their custody, punished by Fine and Imprisonment.

See the fourth part of the Institutes, cap. Of the Chancery, Artic. 27. against Cardinal Woolsey.

CAP. LXVIII.

Of Bribery, Extortion, Exaction, &c.
And first of Bribery.

Bribery is a great Misprision, when any man in Judicial place takes any Fee or Pension, Robe or Livery, Gift, Reward, or Brocage of any person, that hath to do before him any way, for doing his office, or by colour of his office, but of the King only, unless it be of meat and drink, and that of small value, upon divers and grievous punishments.

Fortescue, cap. 51.

This word [Bribery] cometh of the French word Briber, which signifieth to devour, or eat greedily, applyed to the devouring of a corrupt Judge, of whom the Psalmist speaking in the person of God, saith, *Qui devorat plebem meam sicut escam panis. Qui cognoscit faciem in judicio, non bene facit: iste pro buccella panis deserit veritatem.*

Psalm 13. 46
Prov. 28. 21.

But let us peruse the Branches of this description.

[A great Misprision.] But it may be objected, that Bribery in a Judge was sometime adjudged a higher offence. For whereas at the Assises holden at Lincoln in the 23 year of E. 3. an Exigent was to have been awarded against Richard Saltley, Hildebrand Boreward, Guilbert Holliland, Thomas Derby, and Robert Daldery, who formerly had been indicted of divers Felonies before Sir William Thorpe, Chief Justice of the Kings Bench, and one of the Justices of Assise of the said County of Lincoln, by the said Sir William Thorpe, to stay the said Writ of Exigent against them, *Cepit munera contra juramentum suum, viz. of Richard Saltley 10 li. of Hildebrand 20 li. of Holliland 40 li. of Derby 10 li. and of Daldery 10 li.* King Edward the Third appointed the Earls of Arundell, Warwick, and Huntington, and two Lords, the Lord Gray, and the Lord Burghers, to examine the matter. Before whom Sir William Thorpe being charged with the said Bribery, *Non potuit dedicere, &c.* Now the Record saith, *Consideratum est per dictos Justiciarios assignatos ad judicand. secundum voluntatem Domini Regis, & secundum regale posse suum, quod quia predictus Willielmus de Thorpe, qui sacramentum Domini Regis quod erga populum suum habuit custodiendum, fregit maliciose, false, & rebelliter in quantum in ipso fuit, & ex causis supradictis per ipsum Willielmum, ut predictum est, expresse cognitis, suspendatur, & quod omnia terra & tenita, bona & catalla sua remaneant forisfacta.* This sentence seemeth to have his foundation as well upon the oath of the Judges, (for the Record saith) *contra juramentum suum,* and the conclusion of the Oath, And in case ye be found in any default in any of the points aforesaid, ye shall be *ad voluntatem Regis,* of body, lands, and goods, thereof to be done as pleaseth him; As also for that this last clause is enacted by authority of Parliament (as they say) in Anno 20 E. 3. And hereupon they the said Lords were appointed to judge *secundum voluntatem domini Regis, & regale posse suum,* according to the words of the Oath and Act of Parliament. And this judgement was repeated in Anno 25. to the Lords; and affirmed by them.

Rot. Pat. Anno 24 E. 3. part 4. m. 2. & Rot. Pat. Anno 25 E. 3. part 1. m. 17. Rot. Parl. 25 E. 3. nu. 10. 23 E. 3.

Anno 24 E. 3.

The Oath of the Justices Anno 18 E. 3.

20 E. 3. cap. 1.

This precedent is not to be followed at this day for divers causes. First, it seemeth by the violation of the Kings Oath, and of this word [rebelliter] and by the forfeiture of all his lands and tenements to the King, that this offence should be

be treason against the King; and then it being either High Treason or Petit Treason, it is taken away by the statute of 25 E. 3. De proditionibus, the same being none of them that are there expressed. And in all the Record this word [felonice] is not to be found, as it ought to have been if it had been felony.

Neither by the words of the Statute, or of the supposed Act of 20 E. 3. can the judgement (quod suspendatur) be warranted: for these words [to be at the Kings will for body, &c.] cannot be extended to loss of life, no more then the Statute of Carlisle (sub forisfactura omnium quæ in potestate sua obinet) extendeth to forfeiture of life, but to imprisonment, &c. viz. loss of liberty, &c.

But at this Parliament, viz. in Anno 20 E. 3. taking in hand of quarrels other then their own, and maintenance of them, is prohibited upon the pains aforesaid, viz. the pains contained in the said supposed Act of 20 E. 3. cap. 1. upon pain to be at our will, body, lands and goods, to do thereof as shall please us: which without question was never extended to loss of life, &c. but to imprisonment, as common experience daily teacheth. For hæc & voluntas Regis, viz. per Justiciarios suos & per legem, &c. Therefore, as by the Record appeareth Sir William Thorpe was pardoned and restored to all his lands. And we were desirous to see the Record of the Act of 20 E. 3. cap. 1. but there is no Record of any such Act in the Parliament Roll. And the very frame and composition of it seemeth to be but a rehearsal of a Commandment from the King: for the letter of it beginneth, First, we have commanded all our Justices, that they shall from thenceforth do equal law, &c. and therefore justly omitted out of the Parliament Roll of Acts of Parliaments: and yet the imprinting of it necessary, for that the fourth Chapter of this Parliament hath reference to the pains contained in it.

Anno 35 E. 1. the
stat. of Carlisle.
20 E. 3. cap. 4.

2 R. 3. fo. 11.
See 8 R. 2. cap. 3.
Rot. Par. 10 R. 2.
nu. 24.

Vid. 1 H. 4. nu. 99.
& Nota.

It is enacted by Parliament Anno 11 H. 4. in these words.

Rot. Parl. Anno
11 H. 4. nu. 28.
never imprinted.

Item. **Q**ue nul Chancelor, Treasorer, Garden del Privee Seal, Counselor le Roy, Ser'nts a counsell dell-roy, ne null autre Officer, Judge ne minister le Roy, pernants fees ou gages de Roy pur leur ditz offices ou services, preigne en null manner en temps a vover ascun manner de done ou brocage de nulluy pur leur ditz offices & services a fair, sur peine de responder au Roy de la treble que issint preignent, & de satisfaire la partie, & punys al volunt le Roy, & soit discharged de son office, service & conseil per tous jours; & que chescun que voiera poursuivre en la dit matter, eyt lay suite cibien pur le Roy, come pur luy mesme, & eit la tierce part del somme, de que la partie est duement convict.

By this Act of Parliament, which is the judgement of the whole Parliament, it appeareth, that if that which is imprinted as the first Chapter of 20 E. 3. had been an Act of Parliament, then this statute of 11 H. 4. would never have inflicted this kind of punishment, which is other, and far less then that which is mentioned in 20 E. 3. And where it is said in this Act of 11 H. 4. [& punis al volunt le roy] that is, by fine and imprisonment by the Court where the conviction shall be; for, as hath been said, hæc est voluntas Regis, viz. per Justiciarios suos & legem suam, & non per dominum Regem in camera sua, vel aliter.

So as by warrant of this Act of Parliament we have said, that *Bziberg* is a Disposition; for that it is neither treason nor felony: and it is a great Disposition, for that it is ever accompanied with Perjury.

True it is, that Sir Thomas Weyland, Chief Justice of the Court of Common Pleas, was attainted of felony, but it was not of *Bziberg*, but being guilty of

2 R. 3. 11. 2.
* Plac. de Parl. apud
Atherugg in Cr'o
Ep. anno 19 E. 1.
Et Hollinsh.
Chron. pag. 284.
285. he confessed
felony, and abjured.

offending necessary to murder, for the which by the common law he was abjured the Realm.

Likewise Adam de Stratton Chief Baron of the Exchequer, a man of great possessions and riches, was attainted of Felony by him committed: all which I collect upon Records of Parliament, the surest guides. For in the Parliament holden in 18 E. 1. in the same year when he was attainted, I find two petitions; one presented by himself in these words, Adam de Stratton petit gratiam regis, quod restituatur ad aliquam partem terrarum suarum, & de bonis suis quæ habuit tempore quo fuit. viz. 26000. li.

Rot. Parl. 18 E. 1. fo. 5. nu. 61.

* There is a space left in the Record. Et ibid. nu. 69.

The other by Margareta de Boseler in these words, Margareta quæ fuit uxor Joh. de Boseler, de qua Adam de Stratton tenuit 12. li. 10. s. in London, clamat habere ut eschaet. Respons. Rex non concessit; quia in civitate nulla est eschaeta nisi regis. And at the same Parliament fo. 3. it is resolved, non sunt nisi tres formæ brevis de Eschaeta; Quia ut legatus, vel suspensus, vel abjuravit regnum. And by consequence Adam de Stratton seeing his lands escheated, must have the judgement of one of these three. Which we have added to answer secret objections that might be made out of the mistakings of our Chronicles.

The rest of the Justices were removed, fined and imprisoned, saving Johannes de Mettingham, and Elias de Beckingham, who to their eternal memory and honour were found upright, and free from all bribery and corruption.

Rot. Parl. 20 E. 1. fol. 5.

It was petitioned in Parliament, that the statutes whereby the Justices of the one Bench or the other should take no reward, ne be of any mans fee, may be observed. The Kings answer was, [The King hath and will charge such Justices to minister right, and will punish the contrary, and therefore willet that all statutes made touching them and the Barons of the Exchequer be made void.]

10 R. 2. nu. 24.

¶ When any man in judicial place, &c.] For the difference between bribery and extortion is, that bribery is only committed by him that hath a judicial place, and extortion may be committed either by him that hath a judicial place, or by him that hath a ministerial office.

And this offence of bribery may be committed by any that hath any judicial place either Ecclesiastical or Temporal. Non accipies personam nec munera, (and the reason is expressed by the Holy Ghost) quia munera excæcant oculos sapientum, & mutant verba iustorum.

Deut. 16. 19.

If bribery hath so great force as to blind the eyes of the wise Judge, and to change the words of the just, Beatus ille qui excutit manus suas ab omni munere. Judex debet habere duos sales; Salem Sapientiar, ne sit insipidus, & Salem Conscientiar, ne sit diabolus.

Though the bribe be small, yet the fault is great: and this appeareth by a Record in the reign of E. 3. Quia diversi Justiciarii ad audiendum & terminandum assignat ceperunt de Johanne Berners qui indictatus fuit, 4. li. pro favore habendo die deliberationis suæ, finem fecerunt domino regi per iiii M. marcas, so as they paid for every pound a thousand marks. As before Sir William Thorps case, Rot. Parl. 7 R. 2. the Chancellour was accused of a bribe of ten pound, and his man four pound and certain shillings, which, though the things were small, yet it had been punished, if it had been proved.

Pasch. 17 E. 3. Coram Rege, Rot. 139. Effex. John Berners case. Rot. Parl. 7 R. 2. nu. 12, 13.

¶ Take any fee, robe, gift, or reward.] This is warranted by the oath aforesaid.

Arno 18 E. 3.

But admit the party offereth a bribe to the Judge, meaning to corrupt him in the case depending before him, and the Judge taketh it not, yet this is an offence punishable by the Law in the party that doth offer it.

* Since these Institutes so was it resolved in the Star-chamber, Trin. 6. Car. Reg. in an information against Bosham Norton and others.

¶ Brocage.] There is good warrant for this word by the said Act of 11 H. 4.

¶ Of any person that hath to do before him any way.] This hath his ground upon the oath aforesaid; so as bribery may be committed not

2 R. 2. cap. 2. See
the statute of
5 E. 6. cap. 16.

not only when a suit dependeth in foro contentioso (as it was in the case of Sir Fr. Bacon Lo. of S. Albans, Lo. Chancellour of England, who for many exorbitant and sozbid bziberes was sentenced by the Lords of Parliament, which you may read Rot. Parl. Anno 19 Jacobi regis) but also when any in Judicial place doth any thing virtute oz colore officii, though there be no suit at all. For example, if the Lord Treasurer for any gift oz bzocage, shall make any Customer, Controller, oz any Officer oz Minister of the King, this is bzibery, for he ought to take nothing in that case by the statute of 12 R. 2. but that he make all such Officers and Ministers of the best and most lawfull men, and sufficient for their estimation and knowledge. (An excellent Law, tending greatly to his Majesties advantage, to the good usage and encouragement of Merchants, &c. and generally to the advancement of commerce, trade and traffique, the life of this Island.) Read this statute, for it is of a large extent, and the statute of 5 E. 6. for they are Laws made contra ambitum, and woerthy to be put in execution, for they prevent bzibery and extortion: for they that buy, will sell.

Vendit Alexander claves, altaria sacra:

Vendere jure potest, emerat ille prius.

Hil. 8 Ja. In Comuni banco D. Trevers case.
See hereafter cap. of Simony, and the 1. part of the Infit. Sect. 378. fo. 234.
* Rot. Parl. 21 Ja. regis.

And that statute of 5 E. 6. doth extend as well to Ecclesiastical offices as Tempozal, which concern the administration and execution of Justice. And it was resolved in the case of Doctor Trever, Chancellour of a Bishop in Wales, that both the office of Chancellour, and Register of the Bishop are within that statute, because they concern the administration of Justice.

* L. Earl of M. Lord Treasurer of England, took colore officii divers bzibes, &c. And namely where the Farmers of the Customs exhibited a petition to have certain just allowances, which his Majesty referred to the said Lord Treasurer, who long delayed the petitioners, until they gave him several bzibes, and then he gave way to relieve them. For this and other his bziberes, extortions, oppzessions, and other grievous misdemeanours in his several offices of the Lord Treasurer, and Master of the Court of Wards (no suit being in any of those cases depending) upon complaint and charge of the Commons in this Parliament, and after evident proof, and often hearing of the cause, the Lords of Parliament (the Lord Treasurer being brought to the bar by the Gentleman Usher and Serjeant at Arms, and kneeling till he was commanded to stand up) upon the petition of the Commons by the Speaker, gave this judgement against him by the mouth of the Lord Keeper in these words; This High Court of Parliament doth adjudge, First, that you L. Earl of M. now Lord Treasurer of England, shall lose all your offices which you hold in this Kingdom. 2. And shall be for ever incapable of any office, place, oz employment in this State and Common-wealth. 3. And that you shall be imprisoned in the Tower of London during the Kings pleasure. 4. And that you shall pay to our Sovereign the King the fine of 50000. li. 5. And that you shall never sit in Parliament any more. 6. And that you shall never come within the Werge of the Kings Court; as by the said Roll of the Parliament appeareth, which is woerthy of your reading at large.

Anno 21 H. 8.
Artic. 18.

In anno 21 H. 8. by Articles under the hands of all the Lords of the Privie Councell, whereof Sir Thomas Moor then Lord Chancellour was one) and of the principall Judges of the Realm, which I have seen, Cardinal Woolsey was charged with divers bziberes, namely in the eighteenth Article, in these words, Also the said Lord Cardinal constrained all Ordinaries in England yearly to compound with him, or else he would usurp half or the whole of their jurisdiction by prevention, not for good order of the Dioces, but to extort treasure: for there is never a poor Archdeacon in England but that he paid to him a yearly portion of his living.

21 H. 8. cap. 5.
Vide 2 R. 2. Rot.
Parl. nu. 46.

If any Ordinary, &c. having power by the Act of 21 H. 8. to grant the administration of the goods of him that dieth intestate, oz as intestate, to the widow oz next of kin, &c. take any reward for preferring of any person before another to the administration, it is Bzibery.

Si

Si quis contra fas & leges administrarit, vel pro odio quod in alium habuerit judicarit perperam, aut denique nummariam se Judicem præbuerit, proprii capitis æstimatione Anglorum jure regi damnatur, nisi quidem legum id accidisse incitita, &c.

The law before the Conquest. Inter leges Canuti; cap. 13.

CAP. LXIX.

Of Extortion, Exaction, &c.

This is another great a *Wispiffion*, because it is accompanied with perjury. Hereof you may read in the First part of the Institutes, Sect. 710. See also in the Second part of the Institutes W. 1. cap. 26. & cap. 10. and in the Fourth part of the Institutes, cap. Chancery, in the Articles against Cardinal Woolsey, Articl. 3. Extortion of Ordinaries. *b* Ranuifatores hominum, extortionatores hominum: a *Rancunier*, an extortioner of men.

c The Collectors of the Fifteens were committed to prison, for that they took of every town eighteen pence for an acquittance.

d A Coroner was committed to prison, because he would not take the view of the dead body, before he had received for himself six shillings eight pence, and for his Clerk two shillings, and was fined at forty shillings.

e If any of the Kings Council or his Ministers do exact a bond of any of his subjects, to come to the King with force and arms, &c. when they should be sent for, such writings are to the Kings dishonour; for that every man is bound to do to the King, as to his liege Lord, & all that appertaineth to him, without any manner of writing (note the generality hereof) and such writings are to be cancelled, as by the Act appeareth.

Hereupon (by Authority of this Parliament) these conclusions do follow. First, whatsoever any subject is bound to do to the King as to his liege Lord, no bond or writing is to be exacted of the subject for doing thereof. Secondly, whatsoever bonds or writings are to the Kings dishonour, are against law. Thirdly, whether such bonds or writings be made to the King or any other, the bonds or writings be void.

g If a Bishop or other Ecclesiastical Judge or Minister doth exact a bond or oath of any person in any case Ecclesiastical not warrantable by law, the bond is void, and this exaction is punishable by fine, &c. the Record is very long, but worthy to be read. See Rot. Parl. Anno 8. H. 4. nu. 15, 16, 17, 18, 19, 20. excellent matter concerning law in Courts of Justice, and in the Kings household.

h Officialis indictatus de citando & affligendo plurimos, non potest dedicere, & petit quod admittatur ad finem.

i Contra sequestratores, commissarios, & alios offic' episcoporum pro captione feodorum, priusquam debent, pro testamentis probandis.

k The extortion of the Clergy and of their Ministers to be enquired of by Justices of Peace.

Resolutions upon the statute of 21 H. 8. ca. 5.

If a man makes his Testament in paper, and dieth possessed of goods and chattels above the value of forty pound, and the Executor causeth the Testament to be transcribed in parchment, and bringeth both to the Ordinary, &c. to be proved, it is at the election of the Ordinary whether he will put the Seal and Probate to the original in paper, or to the transcript in parchment: but whether he put them to the one or the other, there can be taken of the Executor, &c. in the whole but six shillings, and not above, viz. two shillings six pence to the Ordinary, &c. and his Ministers, and two shillings six pence to the Scribe

4 Lib. 10. fo. 101. & 102. Beawfages case. See the 1. part of the Institutes Sect. 701. Verb. [Extortioners] 2. part of the Instit. W. ca. 26. The 4. part of the Institutes, ca. Chancery, in the Articles against Cardinal Woolsey, Art. 3. *b* Trin. 28 E. 3. Coram Rege, Rot. 37. Eborum. *c* Hil. 20 E. 3. Coram Rege, Rot. 159. Norff. *d* Ibidem in the same Roll. *e* 1 E. 3. Stat. 2. ca. 15. *f* Nota. *g* Int. Inquisit. apud Lancelton Coram Rogero Loveday & Waltero de Wynborn An. 6 E. 1. Cornub. *h* Mich. 22 E. 3. Coram Rege, Rot. 181. Eborum. *i* Hil. 23 E. 3. Coram Rege. *k* Rot. Parl. 3 R. nu. 38, 39. 1 H. 5. nu. 23, 24. Mich. 6 Jacobi, Rot. 1301. in Communi Banco, Int. Edm. Neale Informer, &c. & Jacobum Rowls official' infra Archidiaconat' de Huntingdon Defendant per le Chief Justice Walmesley, Warburton, Daniel, & Foster.

¶

for

For punishment of Ecclesiastical Judges for Extortion, See Rot de Inquisit. in Com. Eborū, Somerset, &c. Anno 4 E. 1. in Thesaurar. De iudicibus Ecclesiasticis dicunt, &c. Rot. Parl. 8 E. 3. nu. 9. a
The Statute of 31 E. 3. cap. 4. Pasch. 32. E. 3. Coram Rege, Rot. 27 Rot. Parl. 50 E. 3. nu. 9. 1 R. 2. nu. 109. 2 R. 2. nu. 40. 13 R. 2. nu. 38, 39. 7 R. 2. nu. 53. The Statute of 3 H. 5. ca. 4.

Mich. 20 Jacobi, in Camera Stellata, in Sir Jo. Bennets case.

2 H. 4. ca. 10.

2 H. 4. ca. 8.

2 H. 4. ca. 23.

33 H. 8. ca. 39.

for registering the same; or else the said Scribe to be at his liberty, to refuse those two Shillings and six pence, and to have for writing every ten lines of the same Testament, whereof every line to contain ten inches, one penny.

If the Executors desire that the Testament in paper may be transcribed in parchment, he must agree with the party for the transcribing; but the Ordinary, &c. can take nothing for it, nor for the examination of the transcript with the original, but only two shillings six pence for the whole duty belonging to him. Where the goods of the dead do not exceed an hundred shillings, the Ordinary, &c. shall take nothing, and the Scribe have only for writing of the Probate six pence, so the said Testament be exhibited in writing with wax thereunto affixed ready to be sealed. Where the goods of the dead do amount to above the value of an hundred shillings, and do not exceed the sum of forty pound, there shall be taken for the whole but three shillings six pence, whereof to the Ordinary, &c. two shillings six pence, and twelve pence to the Scribe for registering the same. Where by custom less hath been taken in any of the cases aforesaid, there less is to be taken. And where any person requires a copy or copies of the Testament to proved, or Inventory to made, the Ordinary &c. shall take for the search, and making of the copy of the Testament or Inventory, if the goods exceed not an hundred shillings, six pence, and if the goods exceed an hundred shillings, and exceed not forty pound, twelve pence; and if the goods exceed forty pound, two shillings six pence, or to take for every ten lines thereof of the proportion before rehearsed, a penny.

When the party dies intestate, the Ordinary may dispose somewhat in pious uses, notwithstanding the said Act of 31 E. 3. but with these cautions. 1. That it be after the Administration granted, and Inventory made, so as the state of the intestate may be known, and thereby the sum may appear to be competent. 2. The Administrator must be called to it. 3. The use must be publick and godly. 4. It must be expressed in particular. And 5. there must be a decree made of it, and entered of record. So in case of commutation of penance, it must be after sentence, and mutatis mutandis, ut supra.

Whereas twenty, forty, or an hundred be indicted of one felony or one trespass, and all plead to an issue, as not guilty, the Clerk of the Crown of the Kings Bench ought not to take for the Venire facias, or for the entering of the plea, above two shillings, but the said Clerk did take for every such name by extortion two shillings. It is ordained and established, that the said Clerk of the Crown shall take no more then hath been duly used of old time. And moreover our Sovereign Lord the King hath charged the said Justices of the Kings Bench, that no extortion be done in this behalf in the Bench aforesaid.

The Chirographer of the King in the Common Bench for making and writing of every Fine leited four shillings, and no more, upon pain (if he take more) to lose his office, be expelled the Court, one years imprisonment, and to pay to the party grieved his treble damages.

The fees to the Marshall of the Marshales of the Kings house, you may read in the statute of 2 H. 4. Vide 9 R. 2. cap. 5.

If any Auditor of the Exchequer, Dutchy of Lanc', or Court of Wards take more then three shillings four pence for the enrolment of any Letters Patents, Decree, Grant, or Indenture of Lease, he shall forfeit for every penny so taken six shillings eight pence.

Munera ne capias, uncus latet hamus in eisca.
Nulla caret visco munera, virus habent.

CAP.

CAP. LXX.

Of Usury.

Usurery is a contract upon the loan of money, or giving dayes for forbearing of money, debt or duty, by way of loan, chibstance, gifts, sales of wares, or other doings whatsoever. *Usura dicitur ab usu & ere, quia datur pro usu eris: or Usura dicitur, quasi ignis urens.*

And first, Usury is directly against the laws of God. And the reason wherefore it was permitted by the law of God for an Hebrew to an Infidel, was, because it was a mean either to exterminate, or to depauperate them, as they should not be able to invade or injure Gods people.

And it is adjudged by authority of Parliament, that all Usury being forbidden by the law of God, is sin, and detestable. And it is also enacted by Parliament, that all usury is unlawfull, that is to say, against the laws of the Realm. Let us therefore see what former laws have provided herein.

d Si quis de usura convictus fuerit, omnes res suas amittat.

e Usurarii omnes res, siue testatus siue intestatus decesserit, domini Regis sunt: vivus autem non solet aliquis de crimine usurae appellari, nec convinci, sed inter ceteras regias inquisitiones solet inquiri & probari aliquem in tali crimine decessisse, per 12 legales homines de vicineto & per eorum sacramentum. Quo probato in Curia, omnes res mobiles, & omnia catalla, quae fuerunt ipsius usurarii mortui, ad usum domini Regis capiuntur, penes quemcunque inveniuntur res illae. Haeres quoque ipsius hac eadem de causa exheredatur secundum jus regni; & ad dominum vel dominos revertitur haereditas. Sciendum tamen quod, si quis aliquo tempore usurarius fuerit in vita sua, & super hoc in patria publice defamatus, si tamen a delicto ipso ante mortem suam desisterit, & poenitentiam egerit, post mortem ipsius ille, vel res ejus, lege usurarii minime censentur. Oportet ergo constare quod usurarius decesserit aliquis ad hoc, ut de eo tanquam de usurario post mortem ipsius judicetur, & de rebus ipsius tanquam de rebus usurarii disponatur.

Vide testatur de Merton cap. 5. & Fleta lib. 2. cap. 50. *f Manifestus usurarius est intestabilis.*

g Et inter les constitutions ordeins p les viels royes Alfed, &c. ordeine fuit que les chartels des usurers fussent al Roy, & que les heritages des usurers remeissent escheats al seigniors des fets, & ne ferr' interre in Sanctuary.

h Item, atrox injuria est, quae omnium mobilium amissionem confert, & legem liberam aufert, quae locum habet in usurariis Christianis.

i Ad 16 Artic. de usuris respondetur: Quod licet Episcopis pro peccato illo poenitentiam usurario in jungere salutarem. Sed quia committendo usuram, usurarius furtum committit; & super hoc est convictus, catalla & t're usurarii, sicut catalla furis, sunt regis; & si qui sequi voluerint contra hujusmodi usurarium, restituantur eis bona sua, quae ipsi usurarii per usuram extorserunt.

k And it appeared by Bracton, that it was an Article of the charge of Inquiry by Justices in Eyre De usurariis Christianis mortuis, qui fuerunt, & quae catalla habuerunt, & quis ea habuerit. Et quod nullus recipiet usuram arte vel ingenio, And others were indicted for taking usury before Justices in Eyre, and some were pardoned by the King, and others not.

In ancient time a great rebouue by reason of the usury of the Jewes came to the Crown: For between the 50 year of H. 3. and the 2 year of E. 1. which was not above seven years compleat, there was paid into the Kings Coffers Four hundred and twenty thousand pounds of and for the usury of the Jewes. And yet that excellent King, for divers weighty reasons woorthy to be written in letters of gold, did by Authority of Parliament utterly prohibit the same, in these words:

37 H. 8. ca. 9.
13 Eliz. ca. 8.

Deur. cap. 23.
Exod. 22. Levit. 25.
Psal. 15.

c 13 Eliz. cap. 8.
21 Jac. cap. 17.

d See the cust. de
Norm. cap. 20.
Int: leges S. Edw.
e Glanvil. lib. 7.
cap. 16.

Merton cap. 5.
f Fleta lib. 2.
cap. 50.

g Mirror cap. 1.
§. 3. & cap. 5. §. 1.
Parl. 50 E. 3. nu. 58.
h Fleta lib. 2. c. 1.

i Rot. Parliam.
51 H. 3. Petitiones
Cleri.

k Bract. lib. 3.
fo. 116, 117.
Fleta lib. 2. c. 1.
Cap. iudicis vet.
Mag. Chart.
part. 1. fo. 151.
Rot. pat. 3 E. 1.
m. 10. 19, 20, 21,
22. 36 Rot. claus.
2 E. 1. m. 1.
l Rot. pat. 3 E. 1.
nu. 14, 17, 26.
Willielm. Middleton
reddit computum.

Vet. Mag. Chart.
2 part. 10. 58, 59.
Stat. de Judaismo.
See the 2. part of
the Institutes,
Stat. de Judaismo,
and the Exposition
upon the same.

words: Forasmuch as the King hath perceived that many evils and disherifons of the good men of his land had come to pass by the Usuries which the Jews have done in times past, and that many sins and offences have risen thereupon; albeit he and his Ancestors have had great profit thereby of the Jews; notwithstanding, for the honour of God, and for the common profit of his people, the King hath ordained and established, that no Jew shall take Usury, &c. Before this time Jews were divers times banished this Realm, but still they returned again. But this wise and worthy King by Authority of Parliament banishing their Usury, put the Jews into perpetual exile into foreign Countries; where Usury was tolerated. By which Act it appeareth that the suppression of Usury tendeth to the honour of God, and the common profit of the people.

By which Authorities and Records, and by many others that might be remembered, it appeareth that by the ancient laws of this Realm Usury was unlawful and punishable, although the punishment was not alwayes one, but sometime greater, and sometime lesser. And therefore at the Parliament holden in the sixteenth year of E. 3. it was enacted and declared, according as it had been sometime holden, that the King and his heirs should have conuifance of Usurers after their death, and that the Ordinary of holy Church should have conuifance of Usurers alibe, forasmuch as to them it appertained; to compel them by the censures of holy Church, for the sin, to make restitution of usuries taken against the law of holy Church. But this statute was afterward repealed, as hereafter shall appear.

15 E. 3. ca. 5.

Hil. 6 E. 3. Coram
Rege, Rot. 130.
Norff.

Vide 26 E. 3. fo. 71.
Moignes case.

Johannes Hopd convictus per Juratores pro Usura capiend' 11. s. d. pro 20. s. praestand', & sic de similibus.

Many of the Citizens of London giving over trade and traffick (which is the life of the Common-wealth, and especially of an Island) and betaking themselves to live upon usury, Sir William Walworth being Lord Mayor, by the advice of the Aldermen his brethren, took such good and strict order for the execution of laws, and for suppression of Usury within the City of London, as the Commons in Parliament put up a petition to the King in these words, [That the order that was made in London against the horrible vice of usury, might be observed throughout the whole Realm.] Whereunto the King answered, That the old laws should continue.

Rot. Parl. 50 E. 3.
nu. 158.

Vide Rot. Parl.
6 R. 2. nu. 57.
14 R. 2. nu. 14.

After this Sir John Northampton Mayor of the City of London, by the advice of the Aldermen his brethren, took more strict order for the suppression of unlawful Usury within the City of London: which had so good success, as the Commons in Parliament petitioned the King in these words, The Commons pray, that against the horrible vice of usury (then termed Schefes) and practised as well by the Clergy as Laity, the order made by John Northampton late Mayor of London may be executed through the Realm. Whereunto the King answered, The King willeth those Ordinances to be viewed, and if they be found so be necessary that the same be then affirmed. And here it is to be observed, that of ancient time the notable Merchants of London detested Usury and Dye exchange. By the statutes of 3 H. 7. and 11 H. 7. all Usury is damned and prohibited, and there it is called Dye exchange. So as Usury is not only against the law of God, and the laws of the Realm, but against the law of Nature. Usura contra naturam est, quia usura sua natura est sterile, nec fructum habet.

Rot. Parl. 14 R. 2.
nu. 14.

3 H. 7. ca. 5. 6.

11 H. 7. ca. 8.

Vide 5 E. 6. c. 20.

37 H. 8. ca. 9.

13 Eliz. ca. 8.

21 Jac. cap. 17.

But now by the statutes of 37 H. 8. and 13 Eliz. all former Acts, Statutes and Laws ordained and made for the abiding or punishment of Usury, are made void and of none effect. So as at this day, neither the Common law nor any statute is in force, but only the statutes of 37 H. 8. 13 Eliz. and 21 Jac. And the Ecclesiastical jurisdiction is taken by the said statute of 13 Eliz. as thereby it appeareth. For the Exposition of which statutes of 37 H. 8. and 13 El. see in my Reports, viz. Lib. 3. fo. 80, 81. Lib. 5. fo. 67, 70. Lib. 9. 26.

C. A. P.

CAP. LXXI.

Of Simony and corrupt Presentations.

Simony. Simonia est vox ecclesiastica, a Simone illo Mago deducta, qui donum Spiritus sancti pecuniis emi putavit.
 Against Simony, &c. the statute of 31 Eliz. is made in these words.

Simony described by the Act following. Stat. de 31 Eliz. cap. 6.

BE it enacted, that if any person or persons, bodies politick or corporate, shall or do for any sum of mony, reward, gift, profit or benefit, directly or indirectly, or for or by reason of any promise, agreement, grant, bond, covenant, or other assurance, of or for any sum of mony, reward, gift, profit or benefit whatsoever, directly or indirectly present or collate any person to any benefice with cure of souls, dignity, prebend, or living Ecclesiastical, or give or bestow the same for or in respect of any such cause or consideration; * That then every such presentment, collation, gift and bestowing, and every admission, institution, investiture and induction thereupon shall be utterly void, frustrate and of none effect in Law; and that it shall and may be lawfull to and for the Queenes Majesty, her heirs and successors, to present, collate unto, or give, or bestow every such benefice, dignity, prebend and living Ecclesiastical for that one time or turn only; and that all and every person and persons, bodies politick and corporate, that shall give or take any such sum of mony, reward, &c. shall forfeit and lose the double value of one years profit of every such benefice, dignity, prebend and living Ecclesiastical. And the person so corruptly taking, procuring, seeking, or accepting any such benefice, dignity, prebend, or living, shall thereupon, and from thenceforth be adjudged a disabled person in Law to have or enjoy the same benefice, dignity, prebend, or living Ecclesiastical.

See the 2. part of the Instit. in the exposition of the said Act of 31 El. *Injustum est illa vendere que gratis distribui debent.* Vide Matth. cap. 10. vers. 8.

* Nota, the statute doth not make the bond, promise, covenant or other assurance void, but the presentment, &c. and so it was adjudged, Pasch. 40. Eliz. Rot. 1745. in Communi Banco; between Gregory Plaintiff, and Oldbury Defendant. Nota differentiam inter malum in se against the common law, and malum prohibendum by statute law, and malum in se against the common law and malum prohibendum by the Civil or Canon law; whereof the Judges of the Common law in these cases take no notice.

This is the text of this part of the Act: now let us proceed to the exposition hereof, being a necessary Law to be put in execution.

[Present or collate.] This is not only intended where the person presenting or collating hath right to present or collate; but also where any person or persons, bodies politick and corporate, do usurp, and have no title to present or collate. And so it was adjudged in case where the usurpation was to a Church of the King.

Sed quando presentatio & jus patronatus sunt temporalia, queritur quomodo fit Simonia per donum pecunie pro illis. Respondendum est, quod jus patronatus & presentatio dicuntur spiritualia respectu rei ad quam presentatur, que spiritualis est. Vide Linwood cap. de Jurejurando, fo. 80.

Mich. 13 Jac. in Quare impd. Between the King and the B. of Norwich, Tho. Cole, and Robert Secker, which began Pasch. 13 Jac. Rot. 21. for the Vicarage of Haverell in Suffolk.

[Shall be utterly void and of none effect.] But here is to be observed a diversity between a presentation or collation made by a rightfull patron, and an usurper. For in case of a rightfull patron, which doth corruptly present or collate, by the express letter of this Act the King shall present: but where one doth usurp, and corruptly present or collate, there the King shall not present, but

the

the rightfull Patron : for the branch that gives the King power to present, is only intended where the rightfull Patron is in fault ; but where the rightfull Patron is in no fault, there the corrupt act and wrong of the usurper maketh the benefice, &c. void, but taketh not away the lawfull title to present from the rightfull Patron : and so was it adjudged in the case abovesaid.

Also upon these words, [If any Patron without the notice of the person so presented or collated, doth take reward, &c.] yet by the express Letter of this branch the Church, &c. is void, for both the Letter and intention of this Act is to make the admission, institution and induction of any presentee, that cometh in by a corrupt patron, void. And so it was resolved in the case abovesaid, as it hath been formerly adjudged in the Common pleas. But where the presentee is not privity nor consenting to any such corrupt contract as is prohibited by this Act, because it is no Simony in him, there the presentee shall not be adjudged a disabled person within this Act : for the words of that branch be, And the person so corruptly given, &c. so as he shall not be disabled, unless he be privity to the corrupt contract. And upon the several penning of these several branches, the diversity abovesaid was resolved, Mich. 13 Jac. ubi supra.

¶ Shall forfeit and lose the double value of one years profit.] This double value shall be accounted according to the very or true value, as the same may be letten, and shall be tryed by a Jury, and not according to the extent or taxation of the Church : whereof one was made both of the spiritualities and temporalities in 20 E. 1. 1292. in the time of Pope Nicholas : (Of that vide 11 H. 4. fo. 35. F. N. B. 176. & Polichron. lib. 7. ca. 38. Rot. Parl. 18 E. 3. nu. 44. stat. 2. 1 R. 2. nu. 102. 8 H. 6. nu. 15.) and the other taxation was made in 26 H. 8.

¶ Be adjudged a disabled person in Law.] It was resolved in the case of Mich. 13 Jac. ubi supra, that the King could not dispense with this disability by a Non obstante : for when an Act of Parliament is made that disableth any person, or maketh any thing void or tortious for the good of the Church or Common-wealth, in this law all the Kings Subjects have an interest, and therefore the King cannot dispense therewith no more then with the Common law : but where a statute prohibiteth any thing upon a penalty, and giveth the penalty to the King, or to the King and Infanter, there the King may dispense with the penalty : and this diversity is warranted by our books.

* King James referred this case unto Sir Thomas Egerton Lord Chancellor of England, and to the chief Justice of the Kings Bench. Sir Robert Vernon being Cofferer of the Kings house, by reason of which office he hath the receipt and payment of 40000. li. of the Kings treasure yearly, and payeth the wages beneath the stairs, &c. did bargain and sell the said office for a great sum of money, and for certain annuities to be paid to Sir Arthur Ingram Knight. The first question was, whether the said office were void by force of the statute of 5 E. 6. ca. 16. The second was, seeing the words of this Act be [shall be adjudged a disabled person in Law to all intents and purposes to have and occupy any such office, &c.] whether the King might dispense with that [disabled.] And upon mature deliberation and hearing of council learned, they resolved, and so certified the King, that the said office was void by the said bargain and sale, and that the King could not dispense with the said disability, for the reason and cause abovesaid ; and thereupon Sir Marmaduke Darrell was preferred to that office.

¶ Likewise by the statute of 5 Eliz. Every person which shall be elected a Knight, Citizen, Burgefs, or Baron of the Cinque ports for any Parliament, before he shall enter into the Parliament house, shall take the oath of Supremacy appointed by the Act of 1 Eliz. and that he that entreteth into the Parliament without taking the said oath, shall be deemed no Knight, Citizen, Burgefs, or Baron, nor shall have any voice, but shall be as if he had been never returned or elected. Where be words that amount to a disability, and therefore that according to the former resolutions the King cannot dispense with the same.

Mic. 13 Jac. ubi supra.

Mich. 41 & 42 El. in communi Banco between Baker and Rogers.

24 E. 3. fo. 35.
38 E. 3. 3.
7 Eliz. Dier 257.

5 E. 3. 29. 11 H. 4. 76. 2 H. 7. 6.

11 H. 7. 11.

13 H. 7. 8. b.

27 H. 8. F. N. B.

211. b. Placia som. 502.

* Anno 12 Jac. regia. Sir Arthur Ingrams case upon the statute of 5 E. 6. cap. 16.

5 Eliz. cap. 1.

¶ It is further enacted, that if any person shall for any summe of money, reward, &c. (*ut supra*) other then for usual fees, admit, institute, install, induct, invest, or place any person in or to any Benefice with cure of souls, dignity, Prebend, or other Living Ecclesiasticall, That then every person so offending shall forfeit and lose double value, *ut supra*; and that thereupon immediately from and after the investing, installation, or induction thereof had, the same Benefice, &c. shall be estfoons meerly void, &c.

The reason of this clause (for I was of this Parliament, and observed the proceedings therein) was to abold haste and precipitate Admissions, Institutions, &c. to the prejudice of them that had right to present, by putting them to a Quare Impedit, and no such haste or precipitation is used, but for reward, &c. as it is to be presumed.

There be two great enemies to justice and right, viz. Precipitatio, & morosa Cunctatio.

And albeit the Church is full by the Institution, &c. against all but the King, yet the Church becometh not bold by this branch of this Act untill after induction.

¶ And that the Patron, &c. shall and may present, &c.] This is intended of the rightfull Patron, or of him that hath right to present.

¶ And be it further enacted, that if any Incumbent of any Benefice with cure of souls shall corruptly resign or exchange the same, or corruptly take for, or in respect of the resigning or exchanging of the same, directly or indirectly, any pension, summe of money, or benefite whatsoever; That then as well the giver as the taker, &c. shall lose double the value of the money so given, and double the value of one years profit.

Vid. 14 H. 4. 19.

By another branch of this Act it is provided, That if any person or persons shall, or do receive or take any money, reward, &c. *ut supra*, (ordinary and lawfull fees only excepted) for or to procure the ordaining or making of any Minister, or giving any Orders, or licence to preach, shall for every offence forfeit and lose the summe of forty pound; and the party so corruptly made Minister, shall forfeit and lose the summe of ten pound; and if at any time within seven years after such corrupt entring into the Ministry he shall accept or take any Benefice, Living, or promotion Ecclesiasticall, that then immediately from and after the induction, investing or installation thereof, or thereunto had, the same Benefice, Living, and Promotion Ecclesiasticall, shall be estfoons meerly void, &c.

¶ Take a Benefice.] This word Beneficium Ecclesiasticum extendeth not only to Benefices of Churches Parochiall, but to dignities and other Ecclesiasticall Promotions; as to Deaneries, Archdeaconries, Prebends, &c. And it appeareth in our books that Deaneries, Archdeaconries, Prebends, &c. are Benefices with cure of souls; but they are not comprehended under the name of Benefices with cure of souls within the statute of 21 H. 8. by reason of a special Proviso; which they had been, if no such Proviso had been added, viz. Deans, Archdeacons, Chancellours, Treasurers, Chanters, Prebend, or a Parson where there is a Vicar indowed.

33 E. 1. tit. Annuir. 51.
Vide Canon. 40.
1 Jacobi 1603. the oath against Simony, &c.
9 B. 3. 22.
10 B. 3. 1.
29 E. 3. 44.
Regist. 58.
21 H. 8. cap. 13. vers. finem.

¶ If any person or persons, bodies politick or corporate, which have election, nomination, voice, or assent in the choice, election, presentation

presentation or nomination of any Scholar, Fellow, or any other person to have room or place in any Church Collegiate or Cathedral, Colledges, Schools, Hospitals, Halls, or Societies, shall take or receive any money, fee, or reward, &c. the place, room, office, &c. of the offender shall be void, &c.

Like cases in Pl. com. 176. upon the statute of 32 H. 8. of Cond. Dier 20 El. upon the statute of 27 H. 8. of Uses.

¶ Which have election, presentation, &c.] This Act being a law perpetual, these words extend not only to such person and persons, &c. as at that time had election, presentation, &c. but to all and every person and persons that at any time hereafter should have election, presentation, &c. otherwise the Law should be but temporary, which should be directly against the meaning of the makers of the Act. And by the same reason this Act extendeth not only to Churches, Colledges, Schools, Hospitals, Halls and Societies founded at the time of the making of the Act, but to all such as should be created or founded after.

¶ And if any Fellow, Officer, or Scholar in any of the Churches, Colledges, &c. as supra, contract or agree for any money, reward, &c. for the leaving or resigning up of the same, his room or place to any other, &c. he shall forfeit and lose double the sum of money, &c. so received, and every person by whom, or for whom any money, &c. shall be given, &c. shall be incapable of that place or room for that time or turn, &c. And it is further enacted, that at the time of every such election, presentation or nomination, as well this present Act, as the orders and statutes of the same places concerning such election, presentation or nomination, shall then and there be publickly read, upon pain to forfeit and lose the sum of forty pound, &c. whereof the one moiety to him that will sue, and the other moiety to the Church, Colledge, &c.

I have read ancient Verses concerning Simony, and other corrupt entries into Churches, which are not unnecessary, in detestation of them, to remember.

*Quatuor Ecclesiarum portis intratur in omnes,
Cæsaris & Simonis, Sanguinis atque Dei.
Prima patet magnis, nummo patet altera, charis
Tertia, sed paucis quarta patere solet.*

Four doors hath every Church, and all but one forbod.

(Whereof unscen some may be peradventure)

Of Cæsar, Simony, of Kindred, and of God :

And each Church-man by one of these doth enter.

Great mens command doth open wide the first,

At next by money enter many one,

The third to weak Allies, (but for the Church the worst,)

Gods door doth open to a few or none.

To conclude this chapter with this, that Simony is odious in the eye of the Common law: for a Guardian in socage of a Mannor, whereunto an Adowson is appendant, shall not present to the Church, because he can take nothing for the presentation, for the which he may account to the heir; and therefore the heir in that case shall present of what age soever. And if an heir of tenant in capite hath liberty cum exitibus, yet shall the heir not present to an Adowson, because no issues or profit can be taken thereof.

* Latro est qui a rum ex religione sectatur.

And the Common law would have the Patron so far from Simony, as it denied him to recover damages in a Quare Impedit, or Assise of Darrain Presentment, before the statute of W. 2. cap. 5.

a Simony is the more odious, because it is ever accompanied with Perjury, for the presentee, &c. is sworn to commit no Simony.

CAP.

7 E. 3. 39. a.
27 E. 3. 89.
29 E. 3. Present. al
eiglife. Fitz. 17. 8 E. 2.
present. 10. Fitz.
N. B. 33. S.
24 E. 3. 29.
* Item.
3 H. 6. tit. dama-
ges 17. adjudge.
See the 2. part of the
Instit. W. 2. cap. 5.
Lib. 6. fo. 50. & 51.
Lib. 5. 58, 59.
Speccot.
4 Vide Linwood ubi
supra.

CAP. LXXII.

Of Monomachia, Single-combate, Duell,
Affrays and Challenges, and of Pri-
vate Revenge.

This single combat betwixt any of the Kings subjects, of their own heads and for private malice or displeasure, is prohibited by the laws of this Realm: for in a settled State governed by law, no man for any injury whatsoever ought to use private revenge; for revenge belongeth to the Magistrate, who is Gods Lieutenant. And the law herein is grounded upon the law of God. *Vindicta est mihi, & ego retribuam, dicit Dominus, Vengeance is mine, and I will repay it, saith the Lord. Qui vindicare vult, inveniet vindictam a Domino, & peccata illius servans servabit, He that will revenge shall find vengeance from the Lord, and he will surely keep his sins in remembrance.*

Deut. 32. 35.
Rom. 12. 19.
Ecclesiasticus 18. 1.
Gen. 34. ver. 25.
& 30. of Simeon and Levi.

It is also against the law of nature and of nations, for a man to be Judge in his own proper cause, *Judex in propria causa*, especially in Duello, to beere fury, wrath, malice and revenge are the rulers of the judgement. See more of private revenge, cap. Misprision in [Crimen commissionis.]

But it is objected, that this single combat may be undertaken for revenge and preservation of the honour of the party grieved. *Objct.*

1. The honour or estimation of the party may more justly and notoriously be revenged and repaired by the Magistrate in publick then by the party in private. 2. There is nothing honourable that is against the laws of his Country, and the law of nature and nations. 3. Whatsoever is against the law of God is impious and dishonourable. 4. The eminent danger of the parties seeking private revenge first, concerning the souls of both of them, as well of him that killeth (who is *vir sanguinis*) as of him that is slain and dieth in his malice: and, as to the world, he that slayeth is in worse case then he that is slain, for the murderer loseth not only his lands and goods, but his life also and his honour which he so much respected; for by his attainder his blood shall be corrupted, and if he were noble or gentle before, he thereby becomes ignoble and base; and he that is slain, by law loseth none of them: so as hereof it is truly said, *Infelix pugna, ubi majus periculum incumbit victori quam victo.* 5. Not only the soul of man, but the body also, was originally made to the image of God. *Quicumque effuderit humanum sanguinem, sanctorum sanguis illius; ad imaginem quippe Dei factus est homo, Whoso sheddeth mans blood, by man shall his blood be shed; for in the image of God made he man. Solus Deus qui vitam dat, vitæ est Dominus; nec potest quisquam eam juste auferre nisi Deus, vel gerens auctoritatem Dei, ut Judex. And this was the reason that amongst Christians it was not lawful for the Lord to kill his Willain.*

Gen. 5. 6.

In ancient time so much the law did respect honour and order, as hear what Britton saith, *Si trespas son fait en temps de peace a Chivaliers ou a autres gents honorables per Ribaudes ou autres viles persons, si le serue soit per felony, &c. sauns desert del Chivalier, que le Ribaude perdra son poigne dount il trespassa.*

Brit.c.25. f. 49. B.

And many Ordinances, Laws, and Acts of Parliament which do prohibit the pardon of wilful murder, are also grounded upon the law of God, to the end none should offend in hope of pardon. *Non accipies pretium ab eo qui reus est sanguinis, statim enim & ipse morietur. Ne polluatis terram habitationis vestre quæ cruce maculatur; nec aliter expiari potest, nisi per ejus sanguinem.*

Glouc. 6 E. 1 c. 9.
2 E. 3. ca. 2.
4 E. 3. c. 13.
14 E. 3. cap. 15.
13 R. 2. Sc. 2. c. 11
Read these stat.
Numb. 35, 31, 33:

See before in the
chapter of Murder.

nem qui alterius sanguinem effuderit. Ye shall take no satisfaction for the life of a murderer, which is guilty of death, but he shall be surely put to death: so ye shall not pollute the land wherein you are, for blood defileth the land, and the land cannot be cleansed of the blood that is shed therein, but by the blood of him that shed it.

Mat. 26. 52.
Apocal. 13. 10.

And this law is confirmed by Christ himself in the Gospel, and by the last book of the holy Scripture. Omnes qui acceperint gladium gladio peribunt. Qui in gladio occiderit, oportet eum gladio occidi.

Affray.
Trin. 10 E. 3. Co-
ram Rege, Rot. 87.
North.

Not altho upon the single combat no death is, nor blood be drawn, yet the betwixt combat for revenge is an Affray, and a great breach of the Kings peace, an affray and terror to the Kings subjects, and is to be punished by fine and imprisonment, and to find sureties for their good behaviour, for it is Vi & armis & contra pacem domini Regis, &c. and in respect of incroachment upon royal Authority for revenge, it is contra coronam & dignitatem.

4 H. 6. fo. 10.
8 E. 4. fo. 5.

An Affray is a publick offence to the terror of the Kings subjects, and is an English word, and so called, because it affrighteth and maketh men afraid, and is enquirable in a Let as a common Pleas. See the Statute of 2 E. 3. c. 3. where it is, [en affraier de la pais,] and the writ grounded upon that Statute saith, In quorundam de populo terrorem, as it appeareth in F. N. B. fo. 249. & and the register agreeth with the original, and therefore the printed book (en affray de la peace) must be amended.

Regula.

And if any subject by word, writing or message, challenge another to fight with him, this is also an offence before any combat be performed, and punishable by law, and it is contra pacem, coronam & dignitatem. For Quando aliquid prohibetur, prohibetur & omne per quod devenitur ad illud. For such offenders may be punished in the Star-chamber, whereof there be many precedents. Now when an affray is made by single combat, any stander by that is no officer may endeavour to part them, and prevent further danger, and the law doth encourage them hereunto: for if they receive any harm by the Affrayors, they shall have their remedy by law against them, and if the Affrayors receive hurt by the endeavouring only to part them, the standers by may justify the same, and the Affrayors have no remedy by law. But if either of the parties be slain or wounded, or so stricken as he lieth down for dead, in that case the standers by ought to apprehend the party so slaying, wounding or striking, or to endeavour the same by hue and cry, or else for his escape they shall be fined and imprisoned. But if the Sheriff, Justice of Peace, Constable or other conservator of the peace, do not part the Affrayors for the preservation of the Kings peace, and apprehend them being within his shire, or do not his utmost endeavour to part and apprehend them, they may be fined and imprisoned for their neglect thereof, for they may command others to assist them, and therefore the rule holdeth in them, Idem est facere, & nolle prohibere cum possit; & qui non prohibet, cum prohibere possit, in culpa est. And if any be commanded to assist them therein, and refuse or neglect the same, it is a contempt in them, to be punished by fine and imprisonment.

8 E. 2. Cor. 295.
22 Aff. pl. 56.

3 H. 7. 10. b.
Beddingfields case.

There is a duellum allowed by law depending a suit for the trial of truth, whereof we have spoken in another place; and, as here it appeareth, there is a duellum against law. Of both these an ancient Author saith thus, and first of the lawfull: Duellum est singularis pugna inter duos, ad probandum veritatem litis, & qui vicerit probasse intelligitur; & quamvis iudicium Dei superest ibidem, quicumque tamen Monomachiam, i. e. singularem pugnam, sponte suscipiat, vel obtulerit, homicida est, & contrahit mortale peccatum. Et eodem modo iudex qui autoritate defert, vel prestat, omnesque accessores & consules, faventes & adjuvantes, nec non & sacerdos qui dat benedictionem.

Fleta li. 1. c. 32.
§. Duellum.
2. part of the Inflit.
W. 1. c. 40.
Fleta ubi supra.

11 H. 3. Tit. droit.
Fitz. 57.

In a writ of right, if the tenant make battail by his champion, and if the champion after become blind by infirmity, and not of his own fault, he shall be discharged of the battail. And if a man be appealed of felony, and make battail, and after become blind, ut supra, he shall be discharged of the battail, because he becometh

becometh so by the Act of God. And if the Appellant after battail waged become blind upon any occasion, the Appellee in favorem vite shall go quit. When issue is joyned to be tryed by battail, and the tryal by battail is become impossible by the Act of God, or by the default of the Appellant, the Appellee goeth free.

And this kind of battail, in case of Appeals and writ of right, is by publick authoritie and course of law, whereunto all the people by an implied consent are parties; and (as some hold) hath his warrant by the word of God, by the single battail between David and Goliath, which was stricken by publick authoritie.

¹ Sam. c. 17. ver. 49, 53, &c.

King E. 3. in the fiftenth year of his reign, having war with the French King for his right to the Kingdom of France, out of the greatness of his mind, for love of his subjects, the saving of Christian blood, and a speedy tryal of the right, offered the Kings combat with the French King, but he refused it.

Afterwards also, after long and chargeable wars between the Crowns of England and France, for the right of the Kingdom of France, it was an honourable offer which King R. 2. made to Charles the French King for saving of Christians guiltless blood, and to put an end to that bloody and lingering war, which we will rehearse in the very words of the Record it self.

^a Rot. Francie, 7 R. 2. m. 24.

a Rex dedit potest. Johanni Duci Lancast' Avunculo suo de certis requestis seu oblationibus Carolo Regi Franc' faciend', viz. quod negotium bellicum inter predictos reges finiatur, 1. Per certamen personarum suarum. 2. Vel aliter inter personas suas cum tribus Patribus ipsorum ipsis utrinque adjunctis. 3. Aut alioquin quod dies congruus assignaretur & locus, quibus sub universali certamine potentiarum suarum finis bello imponi valeat. The Duke of Lanc' according to his Commission made these offers from the King of England to King Charles of France, but he was audient, sed non exauditus; for King Charles liked none of these offers.

The offer of R. 2. to King Charles of France.

1. A single combat between the two Kings,
2. Or a combat between the two Kings and three of their Uncles on either side.

b And in Anno Domini 1196. Anno Regni Richardi primi octavo, Philip King of France sent this challenge to Richard the first, that King R. would chuse five for his part, and he the King of France would appoint five for his part, which might fight in lists for tryal of all matters in controversee between them, for the avoiding of shedding of more guiltless blood. King Richard accepted the offer, with condition that either King might be of the number, but this condition would not be granted.

3. Or that a fit day and place might be assigned, when under the universal conflict of both their armies, an end might be put to the war.

c These and the like offers, as they proceeded from high courage and greatness of mind, so had they been lawful, if they had been warranted by publick authoritie.

^b N. Trivet.
^c See the 2. part of the Institutes, W. 1. ca. 20.

CAP. LXXIII.

Against going or riding armed.

1 E. 3. cap. 3.
Pasch. 18. E. 3.
coram rege, Rot.
146. Midd.
8 R. 2. cap. 13. the
printed book is 7.
but it ought to be 8.
and so recited in
20 R. 2. ca. 1. Lib. 5.
fo. 72. St-Johns case.

20 R. cap. 2.

Pasch. 29 E. 1.
coram rege, Rot.
101. Essex.
Pasch. 18 E. 1.
coram Rege,
Rot. 32. Glouc.

Vet. mag. chart.
2. part. fo. 40. b.
Rot. Parl. 6 E. 3.
nu. 2 & 3.
13 E. 3. nu. 2.
14 E. 3. nu. 2.
15 E. 3. nu. 2.
17 E. 3. nu. 2.
18 E. 3. nu. 2.
25 E. 3. nu. 50.
Parl. 1 & 25 E. 3.
Parl. 2. nu. 5.
a 11 H. 7. fo. 23.
vide before cap.
Homicide. Brook
Coron. 229. See
24 H. 8. cap. 13.
Justs, Turnies,
Barriers, &c.
b Pasch. 18 E. 3.
coram rege, Rot.
146. Nora bene.
c 25 E. 3. cap. 2.
d See before cap.
High Treasor, verb.
Ois si home levy
guerre, fo. 9.

Item. IT is enacted, that no man, great or small, of what condition soever he be, (except the Kings servants in his presence, and his ministers in executing *des mandemens le Roy*, or of their Office, and such as be in their company assisting them, and also upon a Cry made for arms to keep the peace, and the same in such places where such things happen) be so hardy to come before the Kings Justices, or other the Kings Ministers doing their office, with force and arms, nor bring force in affray of the people, nor to go nor ride armed by night or by day, &c. before the Kings Justices, or in any place whatsoever, upon pain to forfeit their armor to the King, and their bodies to prison at the Kings pleasure, and to make fine and ranome to the King, &c.

Upon this statute two things fall into consideration. First, what the Common law was before the making of this statute. Secondly, the true sense and exposition of this Act. For it appeareth by a Record in 29 E. 1. quod non liceat torneare, bordeare, iustas facere, aventuras guerare, seu ad arma presumere, sine licentia regis. See Britton fo. 29. b. It was called *turnementum decursus*, of turning and winding, in respect of the agility as well of the horse as of the man. For in those days this deed of Chivalry was at random, whereupon great peril ensued. Therefore in the reign of E. 3. for safety the *Hilt* was devised. See the statute of 7 E. 2. De defensione portandi arma, and the statute of W. 1. cap. 9. & cap. 17. W. 2. cap. 39. and the expositions upon the same.

It is Lex & consuetudo Parliamenti, that wheresoever the Parliament is holden, proclamation should be made forbidding wearing of armor, and exercise of playes and games of men, women or children, in or about the City or place where the Parliament is holden, lest the proceedings in the high court of Parliament pro bono publico should thereby be hindered or disturbed.

a If any by mutual assent do use Justs or Turnements, or to play at sword and buckler, or any other deeds of arms, and the one killeth the other, this is felony, for that it is not lawfull to use them without the Kings licence; which agreeth with the record abovesaid, of 29 E. 1.

b Willus Jordan inventus fuit vagans armatus de platis, artachiatu, &c. comperit per Juratores, quod minatus fuit per quosdam ignotos, & quod pro saluatione vite sue, platas predictas apposuit super corpus suum, tamen invenit securitatem pro bono gestu suo.

c The clause of the statute of 25 E. 3. concerning this matter, we have referred to this place, viz.

d And if percase any man of this Realm ride armed covertly or secretly with men of arms against any other, to slay him, or rob him, or to take and keep him till he hath made fine or ranome, it shall not be adjudged treason, but it shall be judged felony or trespass, according to the laws of the realm of old time used, and according as the case requires. And if in such case, or other like, before this time any Justices have judged treason, and for this cause the lands and tenements have come into the Kings hands as forfeit, the chief Lords of the fee shall have the escheats of the tenements holden of them, whether that the same tenements be in the Kings hands or in others by gift, or in other manner. Saving

ving.

ving alwaies to our Lord the King the year and the wast, and the forfeitures of chattels, which pertain to him in the cases above-named. And that writs of *Scire facias* be granted in such case against the land-tenants without other original, and without allowing any protection in the said writ. And that of the lands which be in the Kings hands, writs be granted to the Sheriffs of the Counties where the lands be, to deliver them out of the Kings hands without delay.

Concerning the point of Felony, it must be observed that at the making of that statute, and by the Lawes of the Realm of old time used in such case, when any purposed to stab, and declared it by such overt act, voluntas reputabatur pro facto, as hath been said before; and so is this branch concerning that point to be understood.

Vide cap. High treason, verb. *Faci compasser*, fo. 6.

¶ And that writs of *Scire fac.* be granted.] Here it may appear what speedy remedy by *Scire fac.* the makers of this Law gave for restitution to be made, where any of the Justices had in any of the cases mentioned in this branch judged it treason, which is declared by this Law to be against Law.

Scire fac.

Note, for restitution. See hereafter cap. Restitution.

Now let us peruse the words of the said Act of 2 E. 3.

¶ His ministers in executing.] By the order of the Common Law and Statutes of the Realm, the Sheriff, or other minister of the King, in execution of the Kings writs, or process of law, might after resistance take posse comitatus. For, *Sequi debet potentia legem, & non antecedere.*

W. 1. cap. 9 & 17.
W. 2. cap. 39.
18 E. 2. Execution 251.
19 E. 2. *ibid.* 247.
3 H. 7. fo. 1 & 10. b.
24 H. 7. 8.
Lib. 5. fo. 91. *Scimaynes case.*

¶ Des mandemens le Roy.] That is, of the Kings writs and process of law, secundum legem & consuetudinem Angliae. Though in this Act there be three speciall exceptions, yet the Law doth make another exception, and that is, to assemble force to defend his house, as hereafter shall be said.

¶ To come before the Kings Justices, or other the Kings ministers doing their office, with force, and arms.] Bracton doth notably write of the diversity of forces, viz. that there is *vis expulsiva, perturbativa, inquietiva, ablativa, compulsiva, &c.* which you may read in him. And then (which is pertinent to our purpose) he saith, *Est etiam vis armata, (armis dejectum dico qualitercunque fuerit vis armata) non solum si quis venerit cum telis, verum etiam omnes illos dicimus armatos, qui habent cum quo nocere possunt. Telorum autem appellatione omnia in quibus singulis homines nocere possunt accipiuntur, sed si quis venerit sine armis, & ipsa concertatione ligna sumpserit, fustes & lapides, talis dicitur vis armata. Si quis autem venerit cum armis, armis tamen ad deiciendum non usus fuerit, & dejecerit, vis armata dicitur esse facta, sufficit enim terror armorum, ut videatur armis dejecisse.* Agreeing with that of the Poet,

Bracton. lib. 4. fo. 16a.

Jamque faces & saxa volant, furor arma ministrat.

Britton saith, *Nous volons, que tous gents plus usent judgement que force.*

Virgil.

Britton 116. a.

¶ Nor to bring force in affray of the (païs, i.) Country.]

See the chapter next before, verb. *Affraye*. Registrum.

This Act is notably expounded by the writ in the Register, and F.N.B. for by that writ it appeareth, that if any doth enter into, or detain with force any houses, lands or tenements, the party grieved may have a writ upon this statute directed to the Sheriff, by force of which writ, if the Sheriff find the force, then if any after proclamation made, (which proclamation is by reasonable construction to be made for avoiding of bloodshed) shall disobey, or if it be found by inquisition, the Sheriff is to seize their arms and weapons, and to arrest and take the offenders and commit them to prison, &c. But note, the Sheriff cannot restore the party grieved upon this writ to his possession, no more then he can upon the writ *de vi laica removenda*, but restitution must be made by force of the statutes of 8 H. 6. & 21 Jac. b. And yet in some case a man may not only use force and arms, but

F. N. B. 249. f.

Nora.

Vide lib. 5. fo. 9.

Semaynes case.

F. N. B. 54. f.

48 H. 6. cap. 9.

21 Jac. cap. 25.

3 E. 3. cot. 303,

305.

26 Ass. p. 22.

21 H. 7. 394

assemble company also. As any may assemble his friends and neighbours, to help his house against those that come to rob or kill him, or to offer him violence in it, and is by construction excepted out of this Act: and the Sheriff, or ought not to deal with him upon this Act; for a mans house is his castle, & domus sua cuique est tutissimum refugium; for where shall a man be safe, if it be not in his house? And in this sense it is truly said,

Armaque in armatos sumere jura sinant.

But he cannot assemble force, though he be extremely threatened, to go with him to Church, or market, or any other place, but that is prohibited by this Act.

¶ Nor to go armed by night or by day, &c. before the Kings Justices in any place whatsoever. Sir Thomas Figgitt Knight went armed under his garments, as well in the Palace, as before the Justices of the Kings Bench: for both which upon complaint made, he was arrested by Sir William Shardishill Chief Justice of the Kings Bench; and being charged therewith, he said, that there had been debate between him and Sir John Trevel Knight in the same week, at Pauls in London, who menaced him, &c. and therefore for doubt of danger, and safeguard of his life, he went so armed. Notwithstanding the Court upon their plea awarded, that the arms were forfeited, and thereupon the same were seized, and he commanded to ward in the Marshalsea during the Kings pleasure. Sir Thomas prayed to find mainprize, which was denied, untill the pleasure of the King was known, because he was imprisoned during the Kings pleasure; according to this statute.

¶ Upon pain to forfeit their armour, &c. It appeareth before by the case of Sir Thomas Figgitt, that the offender was to be punished according to this Act but by forfeiture of the armour and imprisonment; but the statute of 20 R. 2. cap. 1. doth add fine and imprisonment.

¶ And that the Kings Justices, in their presence, &c. So did Sir William Shardishill, as is aforesaid.

¶ And other ministers in their bailiwicks, &c. That is to say, Sheriffs, Bailiffs of liberties, &c.

¶ Lords of Franchises. And their Bailiffs, Wapors, and Bailiffs of Cities and Boroughs, within the same Cities and Boroughs, and Borough-holders, Constables and Wardens of the Peace within their wards, shall have power to execute this Act. And the Justices assigned at their coming down shall inquire how such Officers and Lords have exercised their offices in this case, and to punish them whom they find, that have not done that which pertained to their office. 12 R. 2. cap. 6.

It is to be observed, that upon this statute by the resolution of the King a writ was framed, and inserted into the Register, when any such force and arms enter any lands and tenements, or detain the same with force and arms, directed to the Sheriff, reciting the force, and our Act, (and saith) Nos statutum predictum inviolabiliter observari, & idem infringentes juxta vim & effectum ejusdem statuti castigari facere volentes & puniri, Tibi precipimus, &c. publice proclamari facias, &c. as in the writ. And here is a Secret in Latin, that upon any statute made for the Common peace or good of the Realm, a writ may be devised for the better execution of the same, according to the force and effect of the Act.

Note, Proclamations are of great force which are grounded upon the Laws of the Realm.

21 H. 7. 39.
Lib. 5. fo. 91. b.
Semaynes case.

24 E. 3. fo. 33.

24 E. 3. ubi supra.
Vide the 4. part of
the Institutes, cap.
Lxx.
20 R. 2. cap. 1.
Vid. indiff. claus.
2 E. 2. 19, 22.

Registram
F. N. B. 249. f.
24 E. 3. fo. 33.

Vide 36 E. 3. cap. 9.
Simile.

CAP. LXXIV.

Of Perjury and subornation of Perjury, and incidently of Oaths.

EVERY person which shall unlawfully and corruptly procure any witness to commit any wilfull and corrupt perjury in any matter or cause depending in suit and variance by any writ, action, bill, complaint, or information, in any of the Kings Courts of Chancery, Star-chamber, or in any of the Queens Majesties Courts of Record, or in any Leet, view or Frank-pledge, ancient demesne Court, Hundred Court, Court Baron, or of the Stannary, or elsewhere within any of the Kings Dominions of England or Wales, or the Marches of the same, or shall unlawfully and corruptly procure and suborn any witness to testify *In perpetuam rei memoriam*; That then every such offender shall forfeit the sum of forty pound, &c. And if any person either by subornation, or by their own act, consent or agreement, wilfully and corruptly commit any manner of wilfull perjury by their deposition in any of the Courts above-mentioned, or being examined *ad perpetuam rei memoriam*; then every person so offending shall lose and forfeit twenty pound, and to have imprisonment by the space of six months without bail or mainprise, &c. the one moiety of all which forfeitures to be to the Queen, and the other moiety to such person or persons as shall be grieved; &c.

Albeit by the Common law trial of matters of fact is by the verdict of twelve men, &c. and deposition of witnesses is but evidenced to them: yet, for that most commonly Juries are led by deposition of witnesses, perjury of witnesses was severely punished by the ancient Lawes of this Realm, perjury it self being forbidden by the Law of God, a Non perjurabis in nomine meo, nec pollues nomen Dei tui. And again, Non perjurabis, reddes Domino juramenta tua.

A false witness is called Perjurus, quia perperam jurat. b Perjury before the Conquest was punished sometime by death, sometime by banishment, and sometime by corporal punishment, &c.

Ascuns sont punies per cowper de langues, come solloit estre de faux testimoignes. But too severe Lawes are never duly executed. Afterwards it came to be more mild, For d Fleta saith, Atrox injuria est quæ omnium mobilium amissionem, confert, &c. de perjurio convictis.

Afterwards it came to fine and ransom, and never to bear testimony.

Et ceux se voillent perjurer par lower, ou par serment, de ascun, & ceux sont reints a nostre volunt, & mes ne soient crus per nul serment. And it appeareth in 7 H. 6. that he that is perjured shall be fined and imprisoned.

Thomas Vigrus & duo alii sunt culpabiles, &c. perjurati pro fractione orbello-rum Johanne de Huntingfield in separali piscaria sua in aqua de Hadfeld.

Qui testes de perjurio convincere satagit, multis illis plures producere necesse habet.

The punishment of Perjury in Juroz for a false verdict was so severe by the Common Law, as few or no Juries were upon just cause convicted, for the

4 Exod. 20. 13.
Levit. 19. 11.
Mat. 5. 34.
b Leges Edw. c. 3.
Ethelst. c. 10. 25.
Edm. c. 6. Casari
c. 6 & 35, &c.
Edw. & Gr. c. 11.
c Mitt. cap. 4. 5. de
paines.
Int. Leg. Casari
c. 15. Convictori
Lingua exciditur.
d Fleta lib. 2. cap. 1.
5. Item Atrox, &c.
Britton fo. 38.
237, 238.
7 H. 6. fo. 25.
Hil. 8 E. 1. in
Communibus Banco
Rot. 38. Effex
* Fortescue cap. 32.

Vide 1. part of
the Institutes,
Verb. Attaint.

Seft. 514. Glanvill lib. 2. cap. 19. 6 H. 3. Attaint. 72. Bract. lib. 4. fo. 292. b. Fleta lib. 5. cap. 21. Britton fo. 245. 8 E. 2. Judgement. 196. 16 E. 3. Ibidem 109. Mich. 3 H. 5. Coram Rege, Rot. 14 & 49. Fortescue cap. 29.

Judgement

judgement against them was, 1. Quod amodo amittant liberam legem imperpetuum. 2. Non trahantur in testimonium veritatis. 3. Bona & catalla sua forisfaciant regi. 4. Terræ & tenementa sua capiantur in manus regis. 5. Quod uxores & liberi sui amodo amoveantur. 6. Quod terræ & tenementa suo exarpentur, &c. 7. Quod capiantur & in Gaolam detrudantur. Which sheweth how odious perjury was in the eye of the Law: and this Law doth yet remain in force; but a milder punishment is set down by the statute of 23 H. 8. wherein the party grieved hath election to ground his writ of Attaint upon this statute, or to take his remedy at the Common Law.

23 H. 8. c. 3.

2 H. 4. 10.
 11 H. 4. 58.
 20 E. 4. 10. b.
 22 E. 4.
 13 El. Dier 302.
 Mich. 7 & 8 El.
 Dier 242, 243.

For perjury concerning any temporal act, the Ecclesiastical Court hath no jurisdiction; and if it be concerning a spiritual matter, the party grieved may sue for the same in the Star-chamber. See the statutes of 3 H. 7. cap. 1. 11 H. 7. c. 25. 32 H. 8. cap. 9. And when you have read the case in Mich. 7 & 8 Eliz. Dier 242, 243. you will confess how necessary the reading of ancient Authors and Records is, and the continual experience in the Star-chamber is against the opinion conceived there.

Mich. 10 Ja. Rowl.
 ap Elizaes case, in
 cam. Stellat. See
 hereafter Verb. In-
 formation.

And Mich. 10 Jac. in the Star-chamber in the case of Rowland ap Eliza, it was resolv'd, that perjury in a witness was punishable by the common law, as hereafter shall be shew'd more at large. But now let us peruse the words of the statute.

Mich. 40 & 41 El.
 Lib. 5. fo. 99. in
 Flowers case.

[By any Writ, Action, Bill, Complaint or Information.]

Out of these words are perjury and subornation of perjury upon an indictment for the King (for example of Riot) as it was resolv'd in Flowers case, because that perjury upon an indictment is not within the statute. But seeing perjury was an offence punishable by the Common law, though the indictment of Flower grounded upon this statute was overthrown, yet is such perjury upon an indictment punishable, and most commonly punished in the Star-chamber.

The case of Rowland ap Eliza in the Star-chamber ubi supra.

[Information.]

By this it appeareth, that perjury committed in an Information exhibited by the Kings Attorney, or any other for the King, by any witness produced on the behalf of the King, is punishable either by this Act, or by the Common Law. And so it was resolv'd in the said case of Rowl. ap Eliza, which was this: The Kings Attorney preferred an Information in the Exchequer against Hugh Nanny Esquire the father, and Hugh Nanny the son, and others, for intrusion and cutting down a great number of trees, &c. in Penrose in the County of Merioneth. The Defendant pleaded not guilty, and the trial being at the bar, Rowl. ap Eliza was a witness produced for the King, who deposed upon his oath to the Jury, that Hugh the father and Hugh the son joyned in fall of the said trees, and commanded the Wendes to cut them down: upon which testimony the Jury found for the King, and assessed great damages, and thereupon judgement and execution was had. Hugh Nanny the father exhibited his bill in the Star-chamber at the Common Law, and charged Rowland ap Eliza with perjury, and assigned the perjury, in that he the said Hugh the father never joyned in fall, nor commanded the Wendes to cut down the trees, &c. And it was resolv'd, First, that perjury in a witness was punishable by the Common Law. Secondly, that perjury in a witness for the King was punishable by the Common Law, either upon an indictment or in an information, or by this Act in an information. And the said Rowland ap Eliza was by the sentence of the Court convicted of wilfull and corrupt perjury.

But for our more orderly proceeding, let us define or describe what Perjury is in legal understanding, both upon this statute, and at the Common Law.

Perjury described.

Perjury is a crime committed when a lawfull oath is ministred by any that hath authority, to any person, in any judicial proceeding, who sweareth absolutely and falsely in a matter material to the issue, or cause in question, by their own act, or by the subornation of others. Now let us peruse the branches of this description.

[A lawful Oath.] This word Oath is derived of the Saxon word Eoth; and is expressed by three several names, viz. 1. Sacramentum, a sacra, & mente, because it ought to be performed with a sacred and religious mind. Quia jurare, est Deum in testem vocare, & est actus divini cultus. 2. Juramentum, a Jure, which signifieth law and right, because both are required and meant, or because it must be done with a just and rightful mind. 3. Jusjurandum, compounded of two words, a jure & jurando. In the Common law Sacramentum is most commonly used; in our books and ancient statutes published in French, Serement, of the French word Serment, is used.

An Oath is an affirmation or denial by any Christian of any thing lawful and honest, before one or more that have authority to give the same, for advancement of truth and right, calling Almighty God to witness that his testimony is true. And it is twofold, either assertorium ut de preterito, sicut testes, &c. seu promissorium de futuro, sicut judices, justiciarii, officarii, &c. So as an oath is so sacred, and so deeply concerneth the consciences of Christian men, as the same cannot be ministered to any unless the same be allowed by the Common law, or by some Act of Parliament: neither can any Oath allowed by the Common law or by Act of Parliament be altered, but by Act of Parliament. It is called a corporal oath, because he toucheth with his hand some part of the holy Scripture.

The Oath of the Kings Privy Council, the Justices, the Sheriff, &c. was thought fit to be altered and enlarged, but that was done by Authority of Parliament. For further proof whereof, and of the matters abovesaid, see the statutes here quoted, and it shall evidently appear, that no old oath can be altered, or new oath raised without an Act of Parliament, or any oath ministered by any that have not allowance by the Common law, or by an Act of Parliament.

5 R. 2. cap. 12. 6 R. 2. ca. 12. 4 H. 4. ca. 18. 2 H. 5. ca. 7. 8 E. 4. cap. 2. 1 R. 3. cap. 6. & 15. 19. H. 7. 23 H. 8. cap. 5. 32 H. 8. ca. 46. 2 E. 6. ca. 13. 27 El. cap. 1. See 3 Jac. c. 4.

And to conclude this point, It was resolved in Parliament holden in Anno 43 Eliz. that the Commissioners concerning Policies of assurances could not examine upon oath, because they have no warrant either by the Common law, or by any Act of Parliament: and therefore it was enacted at that Parliament, that it should be lawful for the said Commissioners to examine upon oath any witnesses, &c. At this Parliament I attended, being then Attorney general. And oaths that have no warrant by law, are rather nova tormenta quam sacramenta; and it is an high contempt to minister an oath without warrant of law, to be punished by fine and imprisonment. And therefore Commissioners that sit by force of any Commission that is not allowed by the Common law, nor warranted by authority of Parliament, that minister any oath whatsoever, are guilty of an high contempt, and for the same are to be fined and imprisoned. For Commissions are legal, and are like the Kings Writs, and none are lawful but such as are allowed by the Common law, or warranted by some Act of Parliament; and therefore Commissions of new Inquiries, or of novel invention, are against law, and ought not to be put in execution.

Coram Rege, Rot. 2. 24 E. 3. Com. Br. 3. 29 E. 3. 30, 31. 18 E. 3. ca. 1. & 4. 18 E. 3. Stat. 2. ca. 6. nu. 47. 28 E. 3. ca. 19. Rot. Parl. 50 E. 3. nu. 56, 61. 2 H. 4. nu. 22. optime. 4 H. 4. ca. 9. Rot. Parl. 9 p. 5. 12. 42 E. 3. ca. 3. Dier 1 Eliz. 160. Scrogs case.

And albeit divers of the Kings Courts in England proceed not according to the course of the common law, yet are their proceedings allowed either by the Common law, or by some Act of Parliament.

Certain poor Christians that had spoken against the worshipping of Images, were by the Bishops sworn to worship Images: which oath was against the express law of God, and against the law of the Land, for that they had no wat-

Psal. 86. 10. 96. 7. 115. 4. Levit. 26. 1. &c. Esay 44. 9. &c. Jeremy 10. 3. &c. Sapient. 13. 10. &c. ad Jan. ca. 11. idem de fide & symbolo, ca. 7. idem in Psal. 113. con. 2.

Serment or serment, i. Sacrament, i. Sacramentum. Fleta li. 5. ca. 2. Brit. ca. 97. fo. 23. 8. b. 19. 74. 134. 165. 236. b. Fleta li. 5. ca. 21.

So resolved An. 26 El. in the case of the Under Sheriff.

Magna Chart. c. 6. Stanf. Pr. 17. F. N. B. 264. W. 1. 3 E. 1. c. 40. 18 E. 3. ubi sup. ca. 14. 14 H. 8. c. 2.

43 Eliz. cap. 12.

* Commissions. Regist. 1, 2, 3. 125, 126. 88. 128. 138. 161. F. N. B. 110, 111. 2 E. 3. 26. Palch. 44. E. 3. Rot. Parl. 18. E. 2. H. 4. nu. 36. 42. Ass.

Dorff. claus. An. 19 R. 2. nu. 17. * Exod. 20. 4. Deut. 5. 8. August. Epist. 118.

Gregor. lib. 9.
Epiit. 9.

rant to minister the same. Let the childzen of the Church be called and instructed by the testimonies of the holy Scripture, that nothing made with hands may be worshipped. See the second part of the Institutes, Marlbridge cap. 14. & 19. concerning oaths, and specially out of Glanvile, concerning the Nobility of this Kealm, and W. 1. ca. 38.

Bracton lib. 4.
fo. 136.

¶ **By any having authority.**] For where the Court hath no authority to hold the plea of the cause, but it is coram non iudice, there perjury cannot be committed. For, as Bracton saith, Sacramentum habet in se tres comites, Veritatem, Justitiã, & Judicium: Veritas habenda est in jurato; justitia & judiciũ in Iudice.

Jer. 4. 2.

And all this is grounded upon the law of God, Jurabis, Vivit Dominus, in veritate, & iudicio, & in justitia.

Trin. 13. Ja. Li. 11.
fo. 98. Bagges case.

¶ **In any judicial proceeding.**] For though an Oath be given by him that hath lawful authority, and the same is broken, yet if it be not in a judicial proceeding, it is not perjury punishable either by the Common law, or by this Act, because they are general and extrajudicial, but serve for aggravation of the offence, as general Oaths given to Officers or Ministers of Justice, Citizens, Burgeses, or the like, or for the breach of the Oath of Fealty or Allegiance, &c. they shall not be charged in any Court judicial, for the breach of them afterwards. As if an Officer commit extortion, he is in truth perjured, because it is against his general Oath: and when he is charged with extortion, the breach of his Oath may serve for aggravation.

If a man calleth another perjured man, he may have his action upon his case, because it must be intended contrary to his Oath in a judicial proceeding; and so it is termed in our statute of 5 Eliz. but for calling him a forsworn man, no Action doth lye; because the forswearing may be extrajudicial. If the defendant perjureth himself in his answer in the Chancery, Exchequer-Chamber, &c. he is not punishable by this statute, for it extendeth but to witnesses, but he may be punished in the Star-chamber, &c.

Bracton lib. 4. fo.
289.
Fleta lib. 5. ca. 21.

¶ **Who sweareth absolutely.**] For the deposition must be direct and absolute, and not ut putat, nor sicut meminit, nor ut credit, &c.

Gurneys case in the
Star-chamber
Mich. 9 Jac.

¶ **And falsely.**] Herein the law taketh a diversity between falshood in express words, and that is only within this statute, and falshood in knowledge or mind, which may be punished though the words be true. For example: Damages were awarded to the plaintiff in the Star-chamber according to the value of his goods riotously taken away by the defendant: the plaintiff caused two men to swear the value of his goods that never saw nor knew them; and though that which they swear was true, yet because they knew it not, it was a false oath in them, for the which both the procurer and the witnesses were sentenced in the Star-chamber.

Fleta ubi supra.

For (as Fleta saith) Ad rectum juramentum exiguntur, tria, veritas, conscientia & iudicium: truth and conscience in the witness, and judgement in the Judge. And herewith agreeth Bracton, that a man may swear the truth, and yet be perjured. Dicunt quidam verum & mentiuntur, & pejerant, eo quod contra mentem vadunt. Ut si Judæus juraverit Christum natum ex virgine, perjurium committit, quia contra mentem vadit, quia non credit ita esse ut jurat.

Bracton lib. 4.
fo. 289.

Equivocation.
Britton fo. 237.
Job 13. 7.

By the ancient law of England, in all Oaths Equivocation is utterly condemned; for Britton saith, Serement est honest & leal, quant sa conscience demesne accord a chescun point a la bouche, ne plus ne meins, & sil ad discord, doncs est perillous. And this is grounded upon the law of God. Nunquid Deus indiget mendacio vestro, ut pro illo loquamini dolos, aut decipietur ut homo vestris fraudulentis? Perjuri sunt qui servatis verbis juramenti decipiunt aures eorum qui accipiunt. If equivocation should be permitted tending to the subversion of truth, it would shake the foundation of Justice.

¶ In

¶ In a matter material to the issue, or cause in question.] For if it be not material, then though it be false, yet it is no perjury, because it concerneth not the point in suit, and therefore in effect it is extrajudicial. Also this Act giveth remedy to the party grieved, and if the deposition be not material, he cannot be grieved thereby. And Bracton saith, Si autem Sacramentum fatuum fuerit, licet falsum, tamen non committit perjurium.

Bract. lib. 4. 188.
Fleta lib. 5. ca. 21.
accord.

¶ By their own act; &c.] This clause of the statute, although it be more general than the clause of procurement, yet being the first clause concerning procurement extended not to perjury upon an Indictment, this clause by construction shall extend no further then the former. See Lib. Intr. Coke fo. 164, 165, 362.

Flowers case, ubi supra.

¶ Or by the subornation of other.] Subornation is derived of Sub and orno, and ornare in one of his significations is to prepare, so as subornare is as much to say, as to prepare secretly or underhand. Et autem subornare quasi subtus in aure ipsium male ornare: unde subornatio dicitur de falsi expressione, aut de veri suppressione. And here is to be noted, that in the judgement of the Parliament Plus peccat author quam actor; for the suborner forfeits 40 l. and he that is suborned but 20 li. Fleta saith, Si servus cogatur scienter a Domino perjurare, uterq; est perjurus; qui autem provocat eum ad jurandum quem scit falsum jurare, vel exigit, vel recipit juramentum, talis vincit homicidam, quia homicida solum corpus occidit, iste vero animam suam & alterius: & peccat, qui alium audit falsum jurare, scit, & tacet.

Fleta lib. 5. ca. 21.

In an Action of perjury brought upon this statute, the plaintiff counted that the defendant also dixit & deposuit, &c. and in what action, upon what issue, and in what Court, &c. and concluded, & sic commisit voluntarium & corruptum perjurium. And it was ruled by the whole Court, that the Count was vicious and insufficient for two causes. First, for that in this Act of 5 Eliz. as here it appeareth, there be two distinct clauses, one if he be perjured of his own proper act; the other, if he be perjured by subornation, &c. and the plaintiff ought to declare in certainty, within which of them the defendant is perjured. The second cause was, where the Act saith [wilfully and corruptly commit any wilful perjury, &c.] and the words of the Count be, falso dixit & deposuit; and saith not, voluntarie & corrupte: and the said clause, & sic commisit voluntarium & corruptum perjurium, saith not the former insufficiency, because it is but a conclusion upon the former matter.

Mic. 29 & 30.
Eliz. coram rege.

And the like judgement was given in this Court as to this latter point, Anno 27 Eliz. in the case of one Mellers of Lincolnshire.

27 Eliz. Mellers case.

¶ That as well the Judge and Judges of every such of the said Courts.] If the perjury be committed by any witness deposed in the Chancery, &c. and the party grieved commenceth his suit there upon this Act, the same and all the proceedings thereupon must be in Latin, according to the course of the common law, and the defendant shall not be sworn to his answer, nor examined upon interrogatories (unless the Court of Chancery had before this Act used to examine perjurers, and to examine the defendant upon oath upon interrogatories before this Act, for then such jurisdiction had been saved by a proviso in this Act) and when issue is joyned, it shall be tryed in the Kings Bench, as by Law it ought: & sic de similibus.

Dier 12 El. 288.

If a man be taken for a suspect, and he is not indicted, nor is there any certain cause to arraign him, the Court may give him the Oath of Allegiance, viz. Que ilerra foial, & loyal, &c. Vide 45 E. 3. 17. b. simile devant cap. 7. De Conjurati- on, &c. in fine. 22 E. 4. 36. 20 H. 6. 37. Attorney absure.

25 E. 3. 42. b.
cor. 131.

See more of Perjury and of Witnesses in the fourth part of the Institutes, Cap. Commissioners for examination of witnesses. See 21 Jac. cap. 20. a good Act to prevent and reform profane swearing.

CAP. LXXV.

Of forging of Deeds, &c.

5 Eliz. cap. 14

IF any person or persons upon his or their own head or imagination, or by false conspiracy or fraud with others, shall wittingly, subtilly and falsly forge, or make, or subtilly cause, or wittingly assent to be forged or made any false Deed, Charter or Writing sealed, Court-Roll, or the Will of any person or persons, in writing, to the intent that the state of freehold or inheritance of any person or persons, of, in, or to any lands, tenements or hereditaments, freehold or copy-hold, or the right, title, or interest of any person or persons of, in, or to the same, or any of them, shall or may be molested, troubled, defeated, recovered, or charged, &c. or shall pronounce, publish, or shew forth in evidence any such false and forged Deed, Charter, Writing, Court-Roll, or Will, as true, knowing the same to be false and forged, as is aforesaid, to the intent above remembred, and shall be thereof convicted, either upon action or actions of forger of false Deeds to be founded upon this Statute, at the suit of the party grieved, or otherwise according to the order and due course of the laws of this Realm, or upon bill or information to be exhibited into the Court of Star-chamber, &c. he shall pay to the party grieved his double cost and damages, &c.

And be it further enacted, that if any person or persons, upon his or their own head or imagination, or by false conspiracy or fraud had with any other, shall wittingly, subtilly and falsly forge or make, or wittingly, subtilly and falsly cause or assent to be made or forged, any false Charter, Deed or Writing, to the intent that any person or persons shall or may have or claim any estate or interest for term of years, of, in, or to any Mannors, lands, tenements or hereditaments, not being copy-hold, or any Annuity in fee-simple, fee-tail, or for term of life, lives or years, or shall make or forge, as is aforesaid, any Obligation or Bill Obligatory, Acquittance, Release or discharge of any debt, account, action, suit, demand, or other thing personal, or shall pronounce, &c. *as supra*; that then he shall pay, &c.

And be it further enacted, that if any person or persons being hereafter convicted or condemned of any of the offences aforesaid, &c. shall after any such his or their conviction or condemnation afterwards commit or perpetrate any of the said offences in form aforesaid, that then every such second offence or offences shall be adjudged felony, &c.

We have spoken of forgery or counterfeiting of the Great Seal or the Kings Coin, &c. which are declared by the statute of 25 E. 3. to be High Treason: Now we are to treat of forgeries of Deeds, Charters, and writings sealed, &c. in the case of Subjects. And first, after our accustomed manner, how these offences were punished of ancient time.

Mir. cap. 4.
§. Des pairs.
Et cap. 5. §. 1.

The *pitroz* saith, *Ascuns peches font punies p pde de poulce, come est de faulx notoires, &c. peccans membrum puniebatur.* (Car par faulx de seale ne l'it judgement mortel.)

Britton

Britton saith: Le jugement des troyes, & de l'usser mort, doit encourir ceux courre, q' p appeales de felony sont atteints, q' ilz eyent le seale leur seignour, qui main-past ils sont, ou q' homes p homage counterfait, ou autrement fause, &c. Et si tiels maneres des faits soient atteints a nostre suit, si sont pur le seale fause juges a judgement de pillory, ou de perdre le oraille si le fait soit simple: & si le fait soit grand de l'hyde, sicome touchant d'herisson ou perpetuall damage, si soient juges a la chaise.

Britton fo. 16. a. & b.

Fleta saith: Cuiusdams facti dicitur, cum quis accusatus fuerit vel appellatus, quod sigillum Regis, vel domini sui de cuius familia fuerat, falsaverit, & brevia inde confignaverit, vel chartam aliquam vel literam ad exheredationem domini, &c. sigillaverit: in quibus causis si quis convictus fuerit, detractari meruit & suspendi. Et quod de huiusmodi falsariis dicitur, de sigilla adulterina Chartis & Literis apponendis dicitur in eodem. And in another place he saith, Est etiam atrox injuria que perpetuam inducit infamiam cum poena pillorari vel tumbrelli, que quandoque fit per falsarios sigillorum (dum tamen non regis nec domini sui de cuius familia.)

Fleta lib. 1. ca. 222

Fleta lib. 2. cap. 1.

We have the more willingly repeated these ancient punishments, to shew how in part (viz. concerning the ears and Pillory) this Act for the first offence concurs with the ancient punishment.

[Forge.] To forge is metaphorically taken from the Smith, who beateth upon his Anvil, and to geth what fashion and shape he will: the offence (as it appeareth before its called Crymen falsi, and the offender falsarius, and the Latin word to forge is falsare or fabricare. And this is properly taken when the Act is done in the name of another person.

The Statute of 1 H. 5. hath these words [forge of new any false deed.] And yet if A make a feoffment by deed to B of certain land, and after A maketh a feoffment by deed to C of the same land, with an antedate before the feoffment to B, this was adjudged to be a forgery within that statute, and by like reason within this statute also: and the rather in respect of the words subsequent, [or make, &c.]

26 H. 6. forger. 8. 27 H. 6. 3.

[Or make, &c.] These be larger words then to forge: for one may make a false writing within this Act, though it be not forged in the name of another, nor his seal nor hand counterfeited. As if A make a true deed of feoffment under his hand and seal of the Shannoz of Dale unto B, and B of some other rate out D the first letter of Dale, and put in S, and then where the true Deed was of the Shannoz of Dale, now it is falsly altered, and made the Shannoz of Sale. This is a false writing under seal within the purben of this statute. And so it is if a Rent Charge of one hundred pounds by the year be granted out of land in fee or for life, &c. and the grantee of any other rate out one, and in stead thereof writeth two; this is a false writing within the danger of this statute.

[Or subtilly cause, or wittingly assent.] To cause, is to procure or counsell one to forge, &c. To assent, is to give his assent or agreement afterwards to the procurement or counsell of another. To consent, is to agree at the time of the procurement or counsell, and he in law is a procurer.

[Deed, Charter, or Writing sealed.] It is required that the Deed, Charter, or writing must be sealed, that is, have some impression upon the wax; for Sigillum est cera impressa, quia cera sine impressione non est sigillum: and no Deed, Charter, or Writing, can have the force of a Deed without a Seal.

[Writing sealed.] These are large words: for the making of a false customary of a Shannoz in writing under seal, containing divers false customs, tending to the disherison of the Lord of the Shannoz, and that the same had been allowed

Pasch. 15 Eliz. D. er 322. James Taverners case, in Ca. vera stellata.

allowed and permitted by the Lords of the Spanner, &c. which was also false, was resolved to be within these words [a false writing sealed.]

¶ **Court-Roll, or the will of any person or persons in writing.]** There be two kinds of writings that need not be sealed, because they may take effect without any seal, for that they be no deeds; as Court-rolls concerning grants, surrenders, admittances, &c. of Copy or Customary lands, and the last will in writing. If any person which writeth the will of a sick man inserteth a clause in his last will, concerning the devise of any lands or tenements which he had in fee-simple, falsely without any warrant or direction of the Deceased; albeit he did not forge, or falsly make the whole will, yet is he punishable by this statute, as it hath been often holden in the Star-chamber against the opinion reported by my Lord Dier.

Dier 12 El. f. 288.
Sir James Marvyns
case.

¶ **To the intent that the state of freehold or inheritance of or in any lands, tenements or hereditaments, freehold or copyhold, shall or may be molested, troubled, defeated, recovered, or charged.]** The great doubt upon this branch, and the branch hereafter ensuing, was, for that it is not expressed by this Act, what estate or interest should be mentioned to pass by the Deed, Charter, &c. whereby the estate of the freehold or inheritance should or might be molested, &c. or charged; whether if one did forge, &c. a deed, charter, &c. of an interest, or term of a hundred or a thousand years, &c. of lands, which are the freehold or inheritance of another, whereby the same shall or may be molested, &c. and the same question of a rent-charge for years in the like case: and the doubt was the greater, in respect of the clause hereafter ensuing, which is, To the intent that any person or persons shall or may have or claim any estate or interest for term of years of, in, or to any manors, &c. And it was resolved, that a lease or charge for years of any lands being the freehold or inheritance of any person, was within this branch, for the clause is general, not mentioning any estate or interest, &c. whereby the molestation should grow; and it was requisite it should extend to Leases or Charges for years, for otherwise mens estates of freehold or inheritance, &c. might be of little or no value; and accordingly it was resolved, Pasch. 38 Eliz. in the Star-chamber between the Lady Gresham Plaintiff, and Roger Booth Scribener of London, Markham and others Defendants, for the forging of a grant of a rent-charge by deed bearing date anno 21 Eliz. for ninety nine years to the said Markham out of all Sir Thomas Greshams lands of inheritance, and for publication thereof; and sentence given upon the said branch accordingly against Roger Booth for publication of the same.

Pasch: 38 Eliz. in
Camera Stellata:
the Lady Greshams
case.

And the said branch after ensuing is to be understood when the forging, &c. is to the molestation of a Term. As if A be possessed of a lease of lands for years, and B in his name doth forge an assignment to C of his term, this is directly within the letter and meaning of this branch, and the rather in respect of those things that be joynd therewith under the same punishment.

Vide 4 H. 6. 25.
8 H. 6. 33.
20 H. 6.
33 H. 6. 23.
15 E. 4. 24.
Pl. com. 88.

¶ **Or the right, title, or interest of any person or persons in or to the same.]** These words were added, for that the statute of 1 H. 5. being to undo and trouble the possession and title (in the Conjunctive) of the said Kings liege people, doubt was made whether a forgery to bar one that had but a bare right or title, and no possession, was within that statute: and therefore this clause of 5 Eliz. added this clause in the Disjunctive, as here it appeareth. But now by a special branch of this Act the statute of 1 H. 5. cap. 3. being doubtfully penned, is repealed by a clause in this Act, and greater punishment inflicted by this statute.

¶ Or

¶ Or shall pronouace, publish, or shew forth in evidence any such false and forged deed, &c. as true, knowing the same to be forged.] Here be two things to be explained: first, what it is to pronounce or publish as true. Secondly, what knowledge is sufficient.

To pronounce or publish is, when one by words or writing pronounceth or publisheth the deed, &c. to any other as true.

¶ Knowing the same to be forged.] This knowledge may come by two means, either of his own knowledge, or by the relation of another. As if A telleth B that such a deed is false and forged, and yet B will after pronounce or publish this to be a true deed, and afterwards it falleth out by proof that the relation of A was true, and the deed in truth was forged, B is in the danger of this statute: and so was it resolved in the abovesaid case of the Lady Gertham, against Roger Booth, &c. ubi supra, and sentence given accordingly.

¶ And that the Defendant shall suffer upon the Pillory the corporall penance, &c.] And there is a clause that the Plaintiff should not release nor discontinue the punishment, &c. but only costs and damages: and yet it was resolved that the Queen might pardon the corporall punishment, which trencheth to common example.

Dier 15 Eliz.
Taverners case;
ubi supra.

And upon the statute of W. 2. cap. 25. which giveth two years imprisonment in a rabiement of ward, the King may pardon the said corporall punishment of imprisonment. And the punishment of finding of surety, and forjuring the Realm, &c. upon the statute of W. 2. cap. 28. De malefactoribus in parcis, may be pardoned by the King.

Pasch. 34 E. 3.
Coram Rege,
Rot. 30. Canc' the
case of Goditha
Waldish.
Dier 7 El. 231:

¶ Any false charter or deed.] This must be intended to be sealed according to the former clause, though it be not here specified.

¶ To the intent that any person or persons shall or may have or claim any estate or interest for term of years.] This branch hath been explained before in the former part of this statute.

Pl. com. 80. b:

¶ Not being copy-hold.] This needeth no explication.

¶ Or annuity.] This is evident.

¶ Any obligation, or bill obligatory.] These must be intended to be sealed. If a man forge a statute staple, or a Recognizance in the nature of a statute staple, that is, acknowledge them or either of them in the name of another; these are obligations within this Act, for each of them hath the seal of the party. But otherwise it is of a Statute Merchant, or of a Recognizance, because they have not the seal of the Conusor.

F. N. B. 96. b. c.
& 10. a.

15 H. 7. 15, &c.

¶ Or writing.] This extends to a testament in writing, whereby a term for years or goods and chattels is devised, and the former branch extendeth to a will in writing concerning freehold and inheritance.

Dier 13 El. 302. b.

¶ Acquittance, release or discharge.] Lodowick Grevil Esquire was bound by Recognizance of two hundred pound to Rowland Hinde of the Inner Temple, for payment of one hundred pound. Hinde wrote a Letter to Grevil, and writ his name in the lowest part of the letter; (as many use when they write to men of great calling.) Grevil caused the letter to be cut off, and a generall release in few words to be written above Hindes name, and took off Hindes seal, and fixed it under the release: so there was Hindes hand and seal to this release.

Mich. 13 & 14 E.
in Camera Stellata
inter Hinde &
Grevil.

release. Hinde being not paid his hundred pound, brought a Scire fac' upon the recognisance, whereunto Grevill pleaded this release. Hinde pleaded non est factum, and tried his deed, whereupon judgement was given against him, where by Hinde was barred of his debt. For this forged release Grevill was sentenced in the Star-chamber upon this statute.

¶ Shall pay to the party grieved his double damages.] Upon these words in the case aforesaid between Hinde and Grevill, the question was, whether Hinde should have double damages in respect of the penalty, viz. the two hundred pound, or of the hundred pound, the due debt appearing in the condition of the recognisance. And it was resolved, that damages should be assessed by the Court to double the penalty, for the penalty should be recovered by law if the forged release had not been; and this was reported by the Lord Dier, and imprinted, and since omitted out of the print.

¶ Being hereafter convicted or condemned of any of the offences aforesaid, shall, &c. afterwards commit, &c. any of the said offences.] There be four kinds of offences. The first concerning molestation, &c. of freehold and inheritance. Secondly, the publication of the same knowing, &c. The third concerning a term for years, annuities, and demands personals. Fourthly, the publication thereof.

Now the question upon this branch concerning felony, was, that whereas the said Roger Booth was convicted in the Star-chamber for the publishing of the forged grant by deed of a rent-charge of a hundred pound per annum, as is aforesaid; afterwards the said Roger and others were charged in the Star-chamber with the forging of a deed of feoffment in the name of Sir Thomas Gresham, bearing date 20 Eliz. but forged long after: whether this second forgery was felony or no, within this branch: and the doubt did rise upon the said words [afterwards] commit any of the said offences. And it was objected, that by reason of this word [afterwards] iterum, the second offence must be of the same nature as the first offence was; as the first offence being for publication of a forged deed, &c. the second offence must be for the publication of another forged deed, &c. and upon that branch whereupon the first offence was grounded, or else it was said, it was not iterum, which word was in signification quasi iter unum, that is to say, per idem iter, and it is so taken for the second time. Primo quidem decipi, incommodum est, iterum stultum, tertio turpe. Which doubt was referred to the considerations of the two Chief Justices and Chief Baron, who upon hearing of Councill learned of both sides, and upon conference, and consideration had of this Act, resolved, that the second offence was felony within the words and meaning of this Act, for the words be expressly, being condemned of any of the said offences, afterwards commit any of the said offences: So as by reason of these words, any of the said offences, this word [afterwards] is well satisfied, if he commit the second time any of them: and so these words any of the said offences extend to any of the said four offences before mentioned. And it was also resolved by them, that by reason of this word [afterwards] the second forgery, &c. must be committed after the first conviction, or else it is no felony.

¶ Provided alwaies, &c. that if any person, &c. hath of his own head, &c. forged or made, &c. Or if any person, &c. hath heretofore published or shewed forth any false deed, &c. Handford before this statute forged a lease for years of the land of the Lord Williams of Lame, which lease after by Weynman (which had married one of the daughters and heirs of the said Lord Williams) was impeached, but not as forged, and by composition for two hundred pound was redeemed by Weynman, and the lease was cancelled. And after Weynman perceiving the lease to be forged, sued Handford in the Chancery to have restitution of the two hundred pounds, and

Paſch. 7 Ja. Inter
Sir Will. Reade Pl.
& Rogerum Booth
& alios Def. in Ca-
uſa Stellata.

Cetero Lib. 1. de
Invent.

Trin. 11 El. Dier, in
a manuſcript not
printed.

and there Hanford after this Statute of 5 Eliz. maintained the lease as good and true: whereupon Weynman sued Hanford in the Star-chamber; where by the opinion of the Chief Justices it was holden, that it was not within this Statute, because that the deed was cancelled, and Hanford made no title to the interest of the term.

¶ Provided alwayes, &c. that this Act, or any thing therein contained, shall not extend to any person that shall plead or shew forth any Deed or Writing exemplified under the Great seal of England, or under the seal of any other authentique Court of this Realm; nor shall extend to any Judge or Justice, or other person that shall cause any seal of any Court to be set to such Deed, Charter, or Writing enrolled, not knowing the same to be false or forged.

This must be intended of a Deed or Writing, which by law may be exemplified: for the knowledge whereof we will report a resolution of the whole Court of the Common Pleas. The issue between the said parties to be tried at the Bar was, whether the last Abbot of Abbingdon, and all his Predecessors, &c. held certain land in the parish of Saint Ellens, &c. discharged of the payment of Tythes: and the Plaintiff offered to shew in evidence to prove the said land to be discharged of payment of Tythes, a Vidimus or Innotescimus under the Great Seal in these words, Vidimus quendam antiquum librum in pergameno, intitulum Volumen de copiis munimentorum seu diversorum gestorum & actorum monasterii de Abbingdon. In which book was a copy of a Bull of the Pope, for the discharge of the said land for payment of tythes, which was but part (amongst other things) of the said book. And by the opinion of the whole Court, hearing of the counsel of both parties, it was resolved that the said exemplification ought not to be given in evidence to the Jury, for these causes. First, because that which was exemplified, was not of record; for neither Deed, Charter, or other Writing, either sealed, or without seal, ought to be exemplified under the Great Seal, or any other Seal in Court of Record: for seals of Courts of Record ought not to exemplify any thing but that which is of record, because Records be publick, whereunto every subject may have recourse, to confer the exemplification with the Record it self; and Records be in the custody of sworn Officers, and therefore no inconvenience can follow upon the exemplification of them. But a Deed, Charter, and other Writings are private, and remain in the custody of the party, and may be rased, interlined, or corrupted in points material, and if they should be exemplified, the rasure, interlineation and corruption shall not appear therein. Also the Deed, Charter, or other writing may be forged; and if they should be exemplified, then the exemplification might ever be shewed in evidence, and not the Deed, &c. it self, and so the forgery and falsity should never upon the view of the Deed, or of the seal, or other things rising upon the view, be discovered. Moreover if a forged Deed should be exemplified, then the effect of this Statute concerning publication should be taken away; for then the forged Deed, &c. it self might never be published, or given in evidence, but the exemplification; and so this Statute in that point deluded; and therefore where this Statute or any other Statute or book speaks of an Exemplification, Vidimus or Innotescimus of a Deed, &c. it must be intended of a Deed enrolled, viz. the Exemplification, Vidimus or Innotescimus of the enrolment thereof, which is of record. It was further resolved that no Record, or enrolment of any Record, may be exemplified under the Great Seal, but of a Record of the Court of Chancery, or other Record duly removed thither by Certiorari, &c. Furthermore it was resolved that no exemplification ought to be of any part of Letters Patents, or of any other Record, or of the enrolment thereof, but the whole Record of the enrolment thereof ought to be exemplified, so that the whole truth may appear, and not of such part as makes for the one party,

Mich. 10 Jacobi Regis in communi banco in a prohibition between Tho. Read Pl. and Avis Hide and Rich. Hide Defendants.

Mich. 29 & 30. Eliz. lib. 5. fo. 44. in Pages case.

and nothing that make against him, or that manifesteth the truth. And in the case at the Barr, the said Book was intituled, Volumen de copiis memoriarum, & diversorum gestorum. So as seeing the Bull it self (being no matter of Record) could not be exemplified; afortiori, no exemplification could be had of the copy of the same. And if Bulls, &c. might be exemplified, then there might be an evasion to make the statute of 28 H. 8. cap. 16. of small force, which prohibiteth pleading, or alledging of Bulls, &c. under pain of a Premunire, as by that Act appeareth.

28 H. 8. ca. 16.
1 & 2 Ph. & Mar.
cap. 8.
1 Eliz. cap. 1.

CAP. LXXVI.

Of Libels and Libellers.

Mic. 10 E. 3. coram Rege. Rot. 92. Eborum.

What a Libell is, how many kinds of Libels there be, who are to be punished for the same, and in what manner, you may read in my Reports, viz. Lib. 5. fo. 124, 125. Lib. 9. fo. 59. To these you may add two notable Records. By the one it appeareth that Adam de Ravenworth was indicted in the Kings Bench for the making of a Libell in writing, in the French tongue, against Richard of Snowhall, calling him therein Roy de Ravensers, &c. Whereupon he being arraigned, pleaded thereunto not guilty, and was found guilty, as by the Records appeareth. So as a Libeller, or a publisher of a Libell, committeth a publick offence, and may be indicted therefore at the Common Law.

Mic. 18 E. 3. coram Rege. Rot. 151. Libellum.

John de Northampton, an Attorney of the Kings Bench, wrote a Letter to John Ferrers one of the Kings Council, that neither Sir William Scot Chief Justice, nor his fellows the Kings Justices, nor their Clerks, any great thing would do by the commandment of our Lord the King, nor of Queen Philip, in that place more then any other of the Realm; which said John being called, confessed the said Letter by him to be written with his own proper hand. *Judicium Curie. Et quia predictus Johannes cognovit dictam literam per se scriptam Roberto de Ferrers, qui est de concilio Regis, quæ litera continet in se nullam veritatem, prætextu cujus Dominus Rex erga Curiam & Justiciarios suos hic in casu habere posset indignationem, quod esset in scandalum Justicie & Curie; ideo dictus Johannes committitur Marchiæ, & postea invenit 6 manucaptors pro bono gestu.*

CAP.

CAP. LXXVII.

Of Champerty, Imbracery, Maintenance, &c.

SEE the first part of the Instit. Sect. 701. Verb. Maintenance; and the second part of the Institutes, W. 1. cap. 8. 32. & W. 2. cap. 49. and the exposition upon the same. See also the statute of 32 H. 8. cap. 9. in the first part of the Institutes, *ubi supra*, Rot. Parl. 17 R. 2. nu. 10. John de Winsors case; and the fourth part of the Institutes, cap. Chancery. Whereunto you may add, that where by the statute of 6 H. 6. cap. 2. it is recited, that divers in times past have been disherited, because that in special Assises the Tenant and Defendant might not have knowledge nor copy of the pannel of them that be impannelled to pass in the said Assises, to inform them of their right and title before the day of the session that the Assises shall be demanded; which is a rebartal of the Common law, but so to be understood, that both parties, plaintiff and tenant, shall be present when such information is given, and consenting thereunto: otherwise, if one of them informeth in the absence of another, it is unlawful, and a good cause of challenge of such of the Jury as shall be so on the one part informed; for every Jury must be indifferent, as he stands unsworn.

CAP. LXXVIII.

Of Barrettry.

SEE the first part of the Institutes, Sect. 701. Verb. Barretors. See the statute of Ragan temp. E. 1. whereby the Commission of Trailebaston is said. *Et par trois parties passers de querels, dont le court le roy ee favorable, voet le roy, & enjoine les Justices, q nul enquerelant ne respoignant ne soit inspuite ne chasce per Hocketours, ou Barretours, pou que le veritie ne soit ensue.*

Vet. Mag. Chart. cap. 28. 2. part.

Hocketors or Hocquetors is an ancient French word for a Knight of the Post, (which is he that is a post) a decayed man, a wicket carrier. For Barretors, see the first part of the Institutes, *ubi supra*.

CAP. LXXIX.

Of Riots, Routs, Unlawful Assemblies,
Forces, &c.

Riotum cometh of the French word Rioteur, i. Rixari: and in the Common Law signifieth, when three or more do any unlawful act, as to beat any man, or hunt in his Park, Chase or Warren, or to enter or take possession of another mans land, or to cut or destroy his corn, grass, or other profit, &c.

* Latine Turba.
Comes est discordia
vulgi;
Namq; a turbando
nomen sibi turba re-
cepit.

Lamb. int. Leg.
lxx ca. 13, 14, 15.
Vide Alvered.
cap. 26.

* Turma quasi
tordena.

* Rota is derived of the French word Rout, and properly in law signifieth when three or more do any unlawful act for their own or the common quarrell, &c. As when Commoners break down Hedges or Pales, or cast down Ditches, or Inhabitants for a way claimed by them, or the like.

An unlawful assembly is when three or more assemble themselves together to commit a Riot or Rout, and do it not. Prædones autem nominamus usque numerum septem virorum; deinde (quousque numerus 35 coaluerit) *Turmam (Saxonicæ blotb) dicimus: numerus si excreverit, exercitum vocamus, blotbota, to be quit of unlawful Assemblies.

One may commit a Force. But of this, that I may not unprofitably repeat, you may read at large Fitzherbert, and those others that have written of this Argument.

Regula.

Interest regi habere subditos pacatos. Vis legibus est inimica. De Lib. 5. fo. 91. & 115. Lib. 11. fo. 82. De the first part of the Institutes, Sect. 431, 440. Custom. de Norm. cap. 52. fo. 66, 67.

CAP. LXXX.

Of Quarrelling, Chiding, or Brawling by words
in Church or Church-yard.

5 E. 6. cap. 4.

The offender being a Lay-man, is to be suspended by the Ordinary ab ingressu Ecclesie; and being a Clerk, from the ministracion of his Office, so long as the Ordinary thinks meet, according to the fault.

CAP.

CAP. LXXI.

Of Smiting, or laying violent hands upon another in Church or Church-yard.

The offender shall be deemed ipso facto excommunicate, and excluded from the company of Christs congregation.

5 E. 6. ubi supra. V. Lib. 6. fo. 29. b. Ornes calc. sim.

CAP. LXXII.

Of malicious striking with any weapon, or drawing of any weapon in Church or Church-yard, to the intent to strike another, &c.

The offender being convicted by the oath of twelve men, or by his own confession, or by two lawful witnesses, before Justices of Assize, Justices of Oyer and Terminer, or Justices of Peace in their sessions, shall lose one of his ears: and if he hath no ears, to be marked in the cheek with a hot Iron with the letter F, and ipso facto be excommunicate.

5 E. 6. ubi supra. * Note the disjunctive. Int. leg. Inc. ca. 6. Qui in templo pugnaverit 120. solidis noxiam facio. Dier 23 Eliz. 197. Case ultim.

CAP. LXXXIII.

For striking, &c. in any of the Kings Courts of Justice: and for striking, &c. in any of the Kings Houses, &c.

See before in the 81st and Chapter of Statution, that is, Crimes Commissionis.

CAP.

CAP. LXXXIV.

Against Fugitives, or such as depart out of the Realm without license, and such as sto beyond Sea, and return not upon command.

Omne solum fortis patria est, in pfectis aquor,
Et volucris vacuo quicquid in orbe patet.

Ovidius.

It is first to be seen of Acts in Parliament published by print, which of them are abrogated and repealed, and which of them stand in force. The statute of 5 R. 2. cap. 2. is repealed by the statute of 4 Jac. cap. 1. And the statutes of 12 R. 2. cap. 15. 12 R. 2. cap. 15. 12 R. 2. cap. 15. Such as pass the Seas, or tend out of the Realm to provide or purchase any benefice, or any Church, hath cure or without due, or in danger of a Prebend. No person resident within any of the Kings Dominions shall depart out of any of those Dominions, to any University, Congregation, or Assembly for Religion.

12 R. 2. cap. 15.

25 H. 8. cap. 19.
1 Eliz. c. 1. revivc.

1 Jac. cap. 4.
3 Jac. cap. 1.

And the 1 Jac. cap. 4. and 3 Jac. cap. 1. shall remain in force as touching of children to any Dominions beyond Seas, and against the departure out of the Realm (without license) of any children not being apprentices, partners, merchants, or other apprentices of husbandry, for any cause whatsoever. And also 3 Jac. cap. 1. against imposing felony upon any subject that shall depart this Realm, to serve any Prince, State, or Potentate; or shall pass over the Seas, and there shall voluntarily serve any such foreign Prince, State, or Potentate, not having before his or their going or passing, been by the Statute mentioned in that Act. And likewise imposing felony upon any Gentleman or person of higher degree, or any person which hath born, or shall bear any office, or place of Captain, Lieutenant, or any other place of charge or office in Camp, Army, or Company of Soldiers, or Conductors of Soldiers, that shall go or pass voluntarily out of this Realm, to serve any such foreign Prince, State, or Potentate; or shall voluntarily serve any such foreign Prince, State, or Potentate, before he be bound by obligation with two sureties, to be by the Statute mentioned. But it is provided that upon the attainder of any such felony, no forfeiture of dower or corruption of blood shall ensue, as if he had been convicted of felony, whereby he is punished, as they need no exposition.

Next unto this, two things fall into consideration; First, what Acts of Parliament not published in print in our Books of Statutes do prohibit men to pass the Seas without license. And secondly, what may be done therein by the Common Law of England.

At the Parliament holden at Clarendon, Anno 10 H. 2. called the Assise of Clarendon, facta est recognitio cujusdam partis consuetudinum & libertatum antecessorum Regis: & cap. 4. sic recognitum est. Archiepiscopis, Episcopis, & personis regni non licet exire regnum absque licentia Domini Regis; & si exierint, si Regi placuerit, securum eum facient, quod nec in eundo nec in redeundo, nec moram accipiendo, perquirent malum seu damnum Domino Regi vel regno.

This appeareth in it self to be but a recognition, or declaration of the Common law: and this is manifestly proved by the writ in the Register at the Common law, pursuing in effect the very words of the said Act of 10 H. 2. Breve de securitate invenianda, quod se non divertat ad partes externas sine licentia Regis.

And hereupon there ariseth a diversity between one of the Clergy, and one of the

Regist. fo. 89. 90.
F. N. B. 85.

the Laitie: for a man of the Church may be compelled to put in surety, that he shall not depart the Realm without the Kings license, nor shall there attempt any thing in contempt or prejudice of the King or of his people. And this Writ is directed to the Sheriff, and saith, Quia datum est nobis intelligi, quod A. B. Clericus versus partes exteras ad quamplura nobis & quampluribus de populo nostro prejudicialia & damnosa ibid. prosequend, &c. Whereby it appeareth, that this Writ lyeth only in the case of an Ecclesiastical person, or a man of the Church, and that for three reasons. First, for that they had the cure of souls, and therefore ought to be resident. Secondly, for that they, maintaining foreign authority, impugned many of the Kings laws to the great prejudice of the Laitie. Thirdly, they had no temporall lands, therefore they found sureties.

There is another Writ in the a Register, and that is to be directed to the party himself, viz. either to the Clerk, or to the Layman, wherein the King reciting, Quod datum est nobis intelligi, quod tu vers. partes exteras absque licentia nostra clam destinas te divertere, & b quamplurima nobis & coronæ nostræ prejudicialia ibid. prosequi intendas, &c. sub periculo quod incumbit prohibimus, ne vers. partes exteras absque licentia nostra speciali atqualiter te divertas, nec quicquam ibid. prosequi, &c. And upon this Writ the party is not to find any surety, for there is no word of surety in this Writ. And if the c subject cannot be found, the King may make a Proclamation under the Great Seal to the effect of the Writ last mentioned.

Now let us peruse such authorities as we find in Records or Books of Law in serie temporis, taking some few examples for many that might be cited.

d Willielmus Marimon Clericus profectus est ad Regem Franciæ sine licentia Domini Regis, & propterea finem fecit, &c. Note the going over without any prohibition precedent unlawful.

e Nul grand Seigneur ou Chivalier de nostra Realm ne doit prender chemin (daler hors de Realm) sans nostre conge, car il n'est purroit le Realm remain disgarne de sort gés. And the f Nobles and Biers of the Realm are of the Kings great Council.

By this it appeareth, that these are prohibited to go beyond Sea without licence: but others of the Inletour Laitie may go without licence, if they travel not to the abovesaid prohibited ends. But g those of the Laitie, and men of the Church also being beyond Sea, may be commanded by the Kings Writ, either under the Great Seal, or by the Seal, in side & Ligeantia, &c. to return into the Kingdom (though he be not there to any of the abovesaid prohibited ends;) and if he return not, for his contempt his lands and goods shall be seized, quousque, &c. h Commandment was given to an Ecclesiastical person residing at Rome to return into England.

i Quamplurimæ literæ Domini Regis missæ Romæ, ad revocand diversos Clericos ibid. commorantes, qui quamplurima attemptarunt in dedecus Regni præcipient' etiam, quod rediant ad festum eis appuncturatum: & pro eo quod non venerunt, præceptum fuit viccomiti quod eos capiat. Et Rogerus de Holme Præbendarius, in Ecclesia Sancti Pauli London captus per Vic. London, & arenatus, examinatus, & convictus mittitur prisonæ Turris London ibid. moraturus, &c.

k Rex proclamari fecit in omnibus comitatibus Angliæ, quod ne quis comes, baro, miles, religiosus, sagittarius, aut operarius, &c. extra regnum se transferat, sub pœna arrestationis & incarcerationis.

Herein it is to be observed, that being by Law, no Earl, Baron or Knight, (as Britton saith) nor religious, &c. ought to go out of the Realm, a generall Proclamation declarat he will serve to aggravate their offence but otherwise it is of those that are not prohibited by law, they must have such a particular Writ or Proclamation as is abovesaid.

Sir Matthew Gourny Knight was prohibited by the Kings Writ to depart the Realm, and to serve in wars express inhibited by the King; which notwithstanding he did. Now the Record saith, Quia Mathæus Gourny miles contra defensionem Regis transfretavit, & se guerres libi per regem inhibitis immiscuit, tam in corpore quam in bonis in foris fecit Regi manerium de Corimallet simul cum una Carucat' terræ, &c.

Vide simile Regist. 61, &c. Ad jura Regia. Regist. fo. 193. De licentia transfretandi pro religiosis.

a Regist. 89, 90. F. N. B. fo. 85.

b So as neither this Writ, nor a Proclamation in nature of this Writ, ought to be granted, but where the party intends to depart the Realm for these ends.

c F. N. B. fo. 85. b. Vide Dier 1 Eliz. 165. b.

d Rot. Finium.

6 H. 3.

Et Rot. clauf.

7 H. 3. m. 5.

e Britton temp.

E 1. fo. 282, 283.

Vide le statut. de

5 R. 2. cap. 2.

Seigniors except out of that statute.

f See the first part of the Instit.

sect. 164. f. 110. 2.

27 August 5 H. 4.

De son grand conseil.

g An. 19 E. 2. in Scac.

2 & 3 Ph. & Mar.

Dier 128. pl. 61.

Will. de Britaine

Countee de Rich-

mones case.

h Rot. clauf.

4 E. 3. m. 38.

i Hil. 24 E. 3. coram Rege, Rot. 13.

k Dorf. clauf.

25 E. 3. m. 18.

l Mich. 39 E. 3. coram Rege.

Rot. 97 Somers.

Rot. Vasc. 10 E. 3.

m. 29.

m By seizure and imprisonment.

Rex

a Rot. Par.
40 E. pt. 1. nu. 40.
Mich. 41 E. 3.
Coram Rege,
Rot. 34. Priorissa
Sancti Barth. &
de novo Castro
quod mare non
transibit, &c.
* Nota (legum
suarum) ut supra.
b E. N. B. 85. f.

a Rex licentiam dedit Abbati de E. quod proficisci possit ultra mare ad visitandum caput Sancti Johannis Baptistæ Ambiani, corpora trium regum Coloniz, feretrum Sancti Francisci in & Sanctum Jacobum in Galicia, ita quod non prosequetur aut procurabit quicquam in præjudicium regis, aut legum suarum, sicut idem Abbas in præsentia Cancellarii regis per juramentum promittit.

Note that Ecclesiasticall persons could not go beyond Sea on Pilgrimage without licence, nor do any thing in prejudice of the King, or his Lawes.

b And it is to be obserbed, that the King may grant licence to travel beyond the Seas, either under the Great Seal, Pryby Seal, or Pryby Signet; but he cannot recall one that is beyond Sea, but by the Great Seal, or Pryby Seal.

But for avoiding of tediousness, and heaping many to one end, let us descend to later times.

c The Letters under the Great Seal or Pryby Seal to recall any from beyond Sea, ought to be serbed by some d messenger, who upon his oath is to make a certificate thereof in the Chancery, and from thence a Mittimus to be sent into the Exchequer, and thereupon a Commission to be granted to seize the lands and goods of the Delinquent.

e Mich. 12 & 13 Eliz. it was resolved by all the Justices (except two) that a Merchant of London departing the Realm, to the intent to live freely from the penalty of the Law, and out of his due obedience to the Queen, and not for any Merchandise, that it was no contempt to the Queen, for Merchants were excepted out of the said statute of 5 R. 2. cap. 2. and by the Common Law Merchants might pass the Sea without licence, though it were not to Merchandize.

It is holden, and so it hath been resolved, that divided Kingdoms under severall Kings in League one with another are sanctuaries for servants or subjects flying for safety from one Kingdom to another, and upon demand made by them, are not by the laws and liberties of Kingdoms to be delivered: and this (some hold) is grounded upon the law in Deuteronomy, Non trades servum domino suo, qui ad te contugerit.

When Queen Elizabeths Ambassadour Iteger in France, anno 34. of her reign, demanded of the French King Morgan, and others of her subjects, that had committed treason against her; the answer of the French King to the Queens Ambassadour is truly related in these words. Si quid in Gallia machinantur, regem ex jure in illos animadversurum; fin in Anglia quid machinati fuerint, regem non posse eisdem cognoscere, & ex jure agere. Omnia regna profugis esse libera; regum interesse, ut sui quisque regni libertates tueatur. Imo Elizabetham non ita pridem in suum regnum Mountgomerium, principem Condaum, & alios e gente Gallica admisisse, &c. and so it rested.

King H. 8. in the 28. year of his reign being in league with the French King, and in enmity with the Pope, who was in league with the French King, sent Cardinal Pool Ambassadour to the French King, of whom King H. 8. demanded the said Cardinal being his subject, and attainted of treason, and to that end caused a treatise to be made (which I have seen) that so it ought to be done jure gentium: sed non prævaluit. But Ferdinando King of Spain, upon request made by H. 7. to have Edmound de la Pool Earl of Suffolk, attainted of High Treason by Parliament anno 19 H. 7. at the first intending to observe the privilege and liberty of Kings, to protect such as came to him for succour and protection, delibered him not; yet in the end, upon the earnest request of H. 7. and promise that he would not put him to death, caused the said Earl to be delivered unto him, who kept him in prison, and construing his promise to be personal to himself, commanded his son Henry after his decease to execute him, who in the fifth year of his reign upon cold blood performed the same.

We could add moze examples of this kind; but (to speak true for all) having purposed

c Dier Hil.
2 Eliz. 176. the
case of Barteu and
the Dutchess of
Suffolk.

d See 10 H. 4. 5.
Englefields case.
Lib. 7. fo. 11.
See the 1. part of
the Institutes
Sect. 102.

e Mich. 12 & 13 El.
Dier f. 296. & Palch.
23 Eliz. fo. 375. 5.

Deut. c. 23. v. 15.

Camden Elizab.
pa. 35.

Anno 21 H. 7.
Rot. Parl. 19 H. 7.

purposed to give some taste of every thing pertinent or incident to such things as we have undertaken to treat of, these shall suffice.

See the statute of 3 Car. an Act to restrain the passing and sending of any to be Popishly bred beyond the Seas.

Flemenesfreme, five Flemenesfrembe, interpretatur, Catalla fugitivorum.

3 Car. ca. 2.
Mich. 10 H. 4.
Coram Rege,
Rot. 59. Hertford.

CAP. LXXXV.

Against Monopolists, Propounders, and Projectors.

It appeareth by the Preamble of this Act (as a judgement in Parliament) that all Grants of Monopolies are against the ancient and Fundamental laws of this Kingdom, and therefore it is necessary to define what a Monopoly is.

The statute of 21 Jac. c. 3.
Rom. 1. 30. Inventores malorum.

A Monopoly is an Institution, or allowance by the King by his Grant, Commission, or otherwise to any person or persons, bodies politick or corporate, of or for the sole buying, selling, making, working, or using of any thing, whereby any person or persons, bodies politick or corporate, are sought to be restrained of any freedoms or liberty that they had before, or hindered in their lawful trade.

A Monopoly described. See the Exposition upon Magna Charta, c. 29. & 30. in the second part of the Instit.

For the word Monopoly, dicitur, ἀπό τοῦ μόνου, i. solo, & πώλησις, i. vendere, quod est, cum unus solus aliquod genus mercaturæ universum vendit, ut solus vendat, pretium ad suum libitum statuens: hereof you may read more at large in that case. And the law of the Realm in this point is grounded upon the law of God, which saith, Non accipies loco pignoris inferiorem & superiorem molam, quia animam suam apposuit tibi, Thou shalt not take the nether or upper millstone to pledge, for he taketh a mans life to pledge. Whereby it appeareth that a mans trade is accounted his life, because it maintaineth his life; and therefore the Monopolist that taketh away a mans trade, taketh away his life, and therefore is so much the more odious, because he is vir sanguinis. Against these Inventors and Propounders of evil things, the holy Ghost hath spoken, Inventores malorum, &c. digni sunt morte.

Trin. 44 Eliz.
Lib. 11. f. 84. 85. le case de Monopolies.

Deut. ca. 14. v. 6.

That Monopolies are against the ancient and Fundamental laws of the Realm (as it is declared by this Act) and that the Monopolist was in times past, and is much more now punishable, for obtaining and procuring of them, we will demonstrate it by reason, and prove it by authority.

Rom. 1. 30. Comm. rciun iure gentium commune esse dicit, & non in Monopolium & privatum paucalorum quæsum coercendum Iniquum est alios permittere, alios ihibere mercaturam. 11 H. 7. 11.

Whosoever offence is contrary to the ancient and Fundamental laws of the Realm, is punishable by law: but the use of a Monopoly is contrary to the ancient and Fundamental Laws of the Realm: therefore the use of a Monopoly is punishable by law.

That offence which is contrary to the ancient and Fundamental laws is malum in se. The same is proved by this declaration in Parliament.

The liberty that the subject hath to go to any Clerk in the Kings Court cannot be restrained but by Parliament.

W. 1. cap. 27.

In 50 E. 3. John Peachie of London was severely punished for procuring a licence under the Great Seal, that he only might sell sweet wines in London.

Rot. Par. 50 E. 3. nu. 33.

See in the Preambles of 9 E. 3. cap. 1. 25 E. 3. cap. 2. 27 E. 3. & 28 E. 3. Stat. Stap. 2 R. 2. ca. 1. See the statute of Magna Chart. ca. 3. 31 E. 3. cap. 10. 7 H. 4. ca. 9. and 12 H. 7. ca. 6. 1 & 2 Ph. & Mar. c. 14. Rot. Parl. 1 R. 2. nu. 20. 4 R. 2. nu. 39. 5 R. 2. nu. 89. Forcscue cap. 35, 36. One of the Articles whereby William de la Pool Duke of Suffolk was charged, was for procuring of divers liberties in derogation of the Common law, and hindrance of Justice: Note this is an offence punishable.

Rot. Parl. 28 H. 6. nu. 30.

Mich. 2 & 3 El.
D. er, Manuscript not
Printed.

King Philip and Queen Mary by their Letters Patents granted to the Mayor, Bailiffs and Burgesles of Southampton and their successors, (for that King Philip first landed there) that no wines called *Palmites*, brought into this Realm from the parts beyond the seas by any Liege-man or Alien, should be discharged or landed in any other place of the Realm, but only at the said town and port of Southampton, with a prohibition, that no person or persons shall do otherwise upon pain to pay treble custome. And it was resolved by all the Judges of England, that this grant made in restraint of the landing of the same wines was against the laws and statutes of this Realm, viz. Magna Charta, 29, 30. 9 E. 3. ca. 1. 14 E. 3. 25 E. 3. cap. 2. 27 & 28 E. 3. Statute of the Staple, 2 R. 2. cap. 1. and others: and also that the assessment of *wreble* custome was against law, and merely void. And after at the Parliament holden in Anno. 5. Eliz. the Patent as to Aliens, was by a private Act confirmed by Parliament, & not for English.

Stat. de 5 Eliz.

Trin. 41 Eliz. Coram Rege, Rot. 92. In. Davenant and Hurdys in trespas. Trin. 44 Eliz. in Lib. 11. fo. 84, 85, &c. Edward Darcies case. Hil. 7 Jacobi in Lib. 8; fo. 124, 125; &c. the case of the City of London.

The judgement in the said case of Monopolies cited before, Trin. 44 Eliz. was the principal motive of the publishing of the Kings Book mentioned in the Preamble of this Act, and that Book was a great motive of obtaining the royal assent to this Act of Parliament whereof we are now to speak. This Act moved from the house of Commons: the Act is long and in print, and need not here to be rehearsed; yet will we peruse and explain the words in the several branches of the Act.

¶ **By his Grant, Commission, or otherwise.**] These words [or otherwise] are of a large extent, and are well warranted by this Act, the words whereof extend not only to all Proclamations, Inhibitions, Restraints, and warrants of assistance of the King, but all Inhibitions, Restraints, and warrants of assistance of all or any of the Privy Council or any other: and all other matters or things whatsoever either of the King, or of all or any of his Privy Council, to the instituting, erecting, strengthening, furthering, or countenancing of the sole buying, selling, &c. or any of them, are declared to be altogether contrary to the laws of this Realm, &c. as in Statute. This Act herein, and in the residue thereof, is forcibly and vehemently penned for the suppression of all Monopolies: for Monopolies in times past were ever without law, but never without friends.

¶ **Sole.**] This word [sole] is to be applyed to the several things, viz. buying, selling, making, working, and using; four of which are special, and the last, viz. [sole using] is so general, as no Monopoly can be raised, but shall be within the reach of this statute, and yet for more surety these words [or of any other Monopolies] are added: and by reason of these words [sole using] others prohibitions are made by this Act, as hereafter shall appear.

¶ **Of any thing.**] As the words before were general, so these words [of any thing] are of a large extent. Res enim generalem habet significationem; quia tam corpora quam incorporea, cujuscunque sunt generis, naturæ, five speciei, comprehendit: and this word causeth some exceptions hereafter to be made, whereof we shall speak in their proper place.

¶ **Whereby any person or persons, &c.**] For this see the statute of Magna Charta, ubi supra; and this clause is impliedly warranted by these words [or of any other Monopolies] in the first clause of the Purvisen.

¶ **Shall be forever hereafter examined, heard, tried and determined by and according to the Common laws of this Realm, & not otherwise.**] This act having declared against all monopolies,

lies, &c. to be void by the Common law, hath provided by this clause, that they shall be examined, heard, tried and determined in the Courts of the Common law according to the Common Law, and not at the Council-Table, Star-chamber, Chancery, Exchequer-chamber, or any other Court of like nature, but only according to the Common laws of this Realm, with words negative, and not otherwise. For such boldness the Monopolists took, that often at the Council-Table, Star-chamber, Chancery and Exchequer-chamber, petitions, informations and bills were preferred in the Star-chamber, &c. pretending a contempt for not obeying the commandments and clauses of the said grants of Monopolies and of the proclamations, &c. concerning the same: for the preventing of which mischief this branch was added.

¶ That all person and persons, bodies politic and corporate whatsoever, which now are, or hereafter shall be, shall stand and be disabled and incapable, &c.] This branch for further extirpation of all Monopolies, disableth all men, &c. to have, that is, to take any Monopoly, or to use, exercise or to put in use, any Monopoly, &c. where the wish and desire of the Poet is granted.

Funditus extirpa Monopolas & Nomopolas,

Hic labor, hoc opus est; Hercule major eris.

Paucorum nocuit scelerata licentia multis,

Argento mutat dum Monopola piper.

¶ If any person or persons after the end of forty dayes next after the end of this present Session of Parliament shall be hindered, grieved, disturbed, or disquieted, &c.]

By this branch six things are provided and enacted. 1. Remedy is given to the party grieved at the Common law by action or actions to be grounded upon this statute. 2. This remedy may be had in the Court of the Kings Bench, Common Pleas and Exchequer, or any of them, at the election of the party grieved. 3. The party grieved shall recover treble damages, and double costs. 4. No escoin, protection, wager of law, aid prayer, privilege, injunction, or order of restraint to be allowed in any such action. By [aid prayer] is intended as well the Writ de domino rege inconsulto, as the usual form of aid prayer, for both are to one end; and [order of restraint] was added, for the Council-Table, Star-chamber, Chancery, Exchequer-chamber, and the like.

¶ 5. If any person or persons shall after notice given, &c. cause or procure any such action to be stayed or delayed before judgement, by colour or means of any order, warrant, power or authority, save only of the Court wherein such action shall be brought and depending, the person or persons so offending shall incur the danger of Premunire, &c.

This clause extends to the Privy-council, Star-chamber, Chancery, Exchequer-chamber, and the like, and likewise to those that shall procure any warrant, &c. from the King, &c. and so it was resolved by a Committee of both Houses before this Bill passed; but it extendeth not to the Judges of the Court before whom any such action shall be brought, for before judgements, days must be given by orders of Court, &c.

¶ 6. Or after judgement had upon such action, shall cause or procure execution of or upon any such judgement to be stayed by colour or means of any order, warrant, power or authority, save only by writ of Error and Attaint, the person or persons so offending shall incur the danger of Premunire, &c.

This clause is more general then the former, being the fifth clause, for this extendeth also to the Judges of the Court where the action is brought or depending, if any stay or delay be used by them after judgement, and so it was resolved as is aforesaid.

Concerning new
manufactures, and
heretofore granted,
&c.

Pasch. 15 Eliz. in the
Exchequer Cham-
ber, Bircots case.

Rot. Parl. 21 E. 4.
nu. 29.
22 E. 4. ca. 5.
7 E. 6. ca. 6.
1 Jacobi, ca. 5.

Concerning new
manufactures here-
after to be granted,
&c.

There be in this Act concerning Monopolies or sole buying, &c. many Pro-
bises. The first is, That this Act shall not extend to any Letters patents or
grants of privilege heretofore made of the sole working or making of any
manner of new manufacture, but that new manufacture must have seven pro-
perties. First, it must be for twenty one years or under. Secondly, it must
be granted to the first and true inventor. Thirdly, it must be of such manu-
factures, which any other at the making of such Letters Patents did not use:
for albeit it were newly invented, yet if any other did use it at the making of
the Letters Patents, or grant of the privilege, it is declared and enacted
to be void by this Act. Fourthly, the privilege must not be contrary to law:
such a privilege as is consonant to law, must be substantially and essentially
newly invented; but if the substance was in use before, and a new addition
thereunto, though that addition make the former more profitable, yet is it not
a new manufacture in law: and so it was resolved in the Exchequer-chamber
Pasch. 15 Eliz. in Bircots case for a privilege concerning the preparing and
melting, &c. of lead War: for there it was said, that that was but to put a new
button to an old coat; and it is much easier to add then to invent. And there
it was also resolved, that if the new manufacture be substantially invented ac-
cording to law, yet no old manufacture in use before can be prohibited. Fifth-
ly, nor mischievous to the State by raising of prices of commodities at home.
In every such new manufacture that deserves a privilege, there must be Ur-
gens necessitas, and evidens utilitas. Sixthly, nor to the hurt of trade. This is
very material and evident. Seventhly, nor generally inconvenient. There was
a new invention found out heretofore, that Bonnets and Caps might be thick-
ened in a fulling-mill, by which means more might be thickened and filled in one
day, than by the labors of fourscore men, who got their livings by it. It was or-
dained that Bonnets and Caps should be thickened and filled by the strength of
men, and not in a fulling-mill, for it was holden inconvenient to turn so many
labouring men to idleness. If any of these seven qualities fail, the privilege
is declared and enacted to be void by this Act: and yet this Act, if they have all
these properties, set them in no better case then they were before this Act.

The second Proviso concerneth the privilege of new manufactures hereaf-
ter to be granted: and this also must have seven properties. First, it must be
for the term of fourteen years or under. The other six properties must be such
as are aforesaid; and yet this Act maketh them no better then they should have
been if this Act had never been made, but only except and exempt them out of
the Purview and penalty of this Law.

The cause wherefore the privileges of new manufactures either before this
Act granted, or which after this Act should be granted, having these seven pro-
perties, were not declared to be good, was, for that the reason wherefore such a
privilege is good in law is, because the inventor bringeth to and for the Com-
mon-wealth a new manufacture by his invention, cost and charges, and therefore
it is reason that he should have a privilege for his reward (and the encourage-
ment of others in the like) for a convenient time: but it was thought that the
times limited by this Act were too long for the private, before the Common-
wealth should be partaker thereof: and such as served such privileged persons
by the space of seven years in making or working of the new manufacture
(which is the time limited by laws of Apprenticeship) must be Apprenti-
ces or Servants still during the residue of the privilege, by means whereof
such numbers of men would not apply themselves thereunto, as should be re-
quisite for the Common-wealth, after the privilege ended. And this was the
true cause wherefore, both for the time passed, and for the time to come, they were
left of such force as they were before the making of this Act.

The third Proviso is, that this Act shall not extend or be prejudicial to any grant
or privilege, power or authority heretofore made, granted, allowed or confirmed
by any Act of Parliament now in force, so long as the same shall so continue in
force. This was added, for that the City of London, & other Cities & Boroughs, &c.
have

have some privileges for buying, selling, &c. by Acts of Parliament. For example, The statute of 1 & 2 Ph. & Mar. giveth a privilege to Cities, Boroughs, Towns corporate and Market-towns, for the sale by retail of certain wares and Merchandises, and some other Acts of Parliament in like case: all which do prove that such privileges could not be granted by Letters patents. But specially this clause was added in respect of the generality of these words [sole using.]

1 & 2 Ph. & Mar. cap. 7.

The fourth Proviso. Prohibited also, and it is hereby further intended, declared and enacted, that this Act, &c. shall not in any wise extend or be prejudicial unto the City of London, &c.

By this Proviso, not only the Grants, Charters and Letters Patents to any City or Town Corporate, &c. but also the customs used within the same, are excepted out of this Act: which seemeth to be more than need, because the first clause of the purbten of this Act doth extend but to Commissions, Grants, Licences, Charters, and Letters Patents.

The fifth Proviso doth except out of the Purbten and penalty of this statute four things, but leaveth them of the like force & effect, and no other, as if this Act had never been made. First, the privilege concerning printing made, or hereafter to be made. Secondly, Commissions, Grants and Letters Patents made, or hereafter to be made, for or concerning the digging, making or compounding of Salt-peter or Gunpowder. Thirdly, or the casting or making of Ordnance, or shot for Ordnance. Fourthly, Grants and Letters Patents heretofore made, or hereafter to be made, of any Office or Offices heretofore erected, made, or ordained, and now in being, and put in execution, (other then such Offices as have been decreed by any his Majesties Proclamations.) So as to the thing by this Branch excepted, Four things are required. First, that it be an Office. This extendeth only to lawfull Offices for others causes. 1. It was necessary to except lawfull Offices in respect of these words [sole using.] 2. Offices are duties, so called, to put the Officer in mind of his duty. 3. That which is void and against Law, is no duty, unless it be not to use them. 4. Such as are erected against Law, are Monopolies and Oppressions of the people, and no Offices. 5. In Acts of Parliament lawfull Offices are intended, as in like cases hath been often adjudged: therefore unlawful Offices are all taken away by this Act, and lawfull Offices remain and continue.

Lit. Sect. 731.
Pl. com. 246. b.
11 H. 4. 80.
4 E. 4. 31. pl. 2.

Secondly, that it be an Office heretofore erected. By this Act the erection of all new Offices, which were not erected before this Act, are wholly taken away.

Thirdly, that it be now in being, and put in execution. Though the Office were erected before this Act, yet if it were not in being, and put in execution the 19 day of February in the 21 year of the reign of King James (at what time this Parliament began) it is clearly taken away by this Act.

Fourthly, that if it be such an Office as hath not been decreed, (for so is the Record of Parliament, and not [decreed] as it is in the printed book) by any of his Majesties Proclamations: for all such Offices as be decreed, that is, either forbidden or prohibited by any of his Majesties Proclamations, or where the party grieved is left to his remedy at the Common law by any Proclamation, they be also decreed, for being contrary to the laws of this Realm, as it is declared and enacted by this Act, they are also decreed with a witness, and can never be granted hereafter.

See the Proclamation bearing date 10 July An. 19. Jac. Regis, and another Proclamation bearing date 20 Martii Anno 19 Jac. Regis:

The fifth Proviso concerning the making of Allom, or Allom-mines, needed not, for they belong to the subject in whose ground soever the Ore is: and therefore any privilege thereof cannot be granted but in the Kings own ground.

The sixth Proviso concerns the Hostmen of Newcastle, &c. This clause was inserted in respect of these words [sole using.]

The rest of the Provisoes concern particular persons, and do exempt and except certain supposed privileges out of the Purbten and penalty of this Law, but leaveth them of like force and effect as they were before the making of it.

But it is to be observed, that all the Provisoes after the sixth, extend only to the supposed privileges therein particularly mentioned, already granted, and not to any to be granted hereafter.

CAP.

CAP. LXXXVI.

Against those that obtain power to dispense with penal laws, and the forfeitures thereof.

The statute of
21 Jac. cap. 3.

In Exilio Hugonis.

Rot. Parliam.
50 E. 3. nu. 17, & 28.
See 28 H. 6. nu. 301
before the Purvien
of the Act of 21 Ja.
cap. 3.
The offence de-
scribed.

It appeareth by the Preamble of this Act, that all Grants of the benefit of any penal law, or of power to dispense with the law, or to compound for the forfeiture, are contrary to the ancient fundamental laws of this Realm.

It was one of the Articles wherefore the Spencers in the reign of King E. 2. were sentenced, that they procured the King to make many Dispensations. Per lour malveis counsell defasant ceo q' le Roy. ad grant p Parliament p bone advicc.

In 50 E. 3. Richard Lions a Merchant of London, and the Lo. Latimer, were severally sentenced in Parliament for procuring of Licences and Dispensations to transport wools, &c.

It is declared and enacted, that all Commissions, Grants, Licences, Charters, and Letters Patents, heretofore made or granted to any person or persons, bodies politic or corporate, of any power, liberty or faculty, to dispense with any others, or to give licence or toleration to do, use or exercise, any thing against the tenour or purport of any Law or Statute, or to give or make any warrant for any such dispensation, licence or toleration, to be had or made, or to agree or compound with any others for any penalty or forfeitures limited by any statute, or of any grant or promise of the benefit, profit, or commodity of any forfeiture, penalty or sum of money, that is, or shall be due by any Statute before judgement thereupon had, and all Proclamations, Inhibitions, Restraints, Warrants of assistance, and all other matters and things whatsoever, any way tending to the instituting, erecting, strengthening, furthering or countenancing of the same or any of them, are altogether contrary to the Laws of this Realm, in no wise to be put in execution.

And shall be forever hereafter examined, heard, tried, and determined, by and according to the Common Laws of this Realm, and not otherwise, &c.

Provided also, that this Act shall not extend to any Warrant or Privy Seal made or directed, or to be made or directed by his Majesty, his Heirs or Successors, to the Justices of the Courts of Kings Bench, Common Pleas, Barons of the Exchequer, &c. and other Justices for the time being, having power to hear and determine, &c. to compound, &c.

This Act moved from the House of Commons. Now let us peruse, first, the words of the Purvien of this Act, and secondly, of this Prohibita.

In and by the Purvien five things are declared and enacted to be void, and contrary to the ancient fundamental Laws of this Realm. First, all Commissions, Licences, Charters and Letters patents of any power, liberty or faculty, or to give licence or toleration to do, use or exercise any thing against any Law or Statute. The reason hereof is notably expressed by the resolution of all the Judges of England, in the case of penal statutes, whereunto we refer you.

Hil. 2. Jac. Lib. 7.
fo. 36. b. the case
of penal statutes.

¶ 2 Or to give or make any warrant for any such dispensation, licence, or toleration.] For this branch also, see the said case of penal Statutes, ut supra.

¶ 3 Or to agree or compound with any others for any penalty, or forfeiture, or other thing, by any statute.] By this branch, all Commissions to agree or compound with any others for any penalty or forfeiture limited by any statute, are declared to be void, and against the ancient fundamental Lawes of the Realm. The great insubornment hereof appeared in the proceedings of Empson and Dudley, in the reign of King H. 7, who had the Office of ~~Master~~ of the forfeitures: and by colour of their Commission and Office, did most intolerably and unlawfully oppress, burden, and depauperate the Subjects. Let them which follow their steps be afraid of their fearful end, Qui eorum velligia sequuntur, eosum exitus perhorrescant. The like oppression was used by certain Commissioners for compositions to be made for offences committed against penal Statutes in the reign of Queen Mary. This branch hath stricken at the root, and prohibited this mischief for ever hereafter.

¶ 4 Or of any grant or promise of the benefit, profit, or commodity of any forfeiture, penalty, or sum of money, that is or shall be due by any statute before judgement thereupon had.] This branch declareth not only the grant to be void, and against the Lawes of this Realm, (for the which, see the resolution of all the Judges in the said case of penal Statutes, ubi supra) but the promise thereof also. And the reason that the Judges yield there is notable, in these words, For that in our experience it maketh the more violent and undue proceeding against the Subject, to the scandal of Justice, and offence of many: So as the grant or promise of any forfeiture before judgement is both against Law, and inconvenient. And if it be so in case of a forfeiture or penalty; much more in case of life and death, for the forfeiture, &c. of any man to be begged, before he be duly and lawfully attainted. For, as the Judges say, there is the more violent and undue proceeding against the Subject, to the scandal of Justice, and the offence of many: and therefore such beggars are offenders, worthy of severe punishment.

Against these hunters for blood the Prophet speaketh thus, Perit sanctus de terra, & rectus in hominibus non est; omnes in sanguine insideantur, vir fratrem suum ad mortem venatur. There is not a godly man upon earth, there is not one righteous amongst men; they all lie in wait for blood, and every man hunteth his brother to death. Micah 7. 2.

¶ 5 And all Proclamations, Inhibitions, Restraints, Warrants of assistance, and all other matters or things any way tending to the instituting, erecting, strengthening, &c.] This is the like clause, and is so to be expounded, as before hath been in the Chapter of Monopolies.

Concerning the said Proviso, the Judges before whom the cause dependeth, and that have power to hear and determine the same, who are presumed to be indifferent between the King and the Subject, may by warrant or Writ, Seal, &c. compound, &c. for the King only, after plea pleaded by the Defendant.

There is another Proviso concerning Letters Patents, or Commissions for licensing of keeping of any Tavern, or selling, &c. of Wines, &c. or for the making of any compositions for such licenses, so as the benefit of such compositions be reserved, and applied to or for the use of his Majesty, his Heirs or Successors, and not for the private use of any other person or persons.

The report of the said case of penal Statutes was a principal motive of the Kings Book, mentioned in the preamble of this Act: and that Book amongst other just and weighty causes moved the King to give his Royall assent to this Act of Parliament, &c. whereof we have spoken. CAP.

CAP. LXXXVII.

Against Concealours (*turbidum hominum genus*) and all pretences of Concealments whatsoever.

Statut. de Anno
21 Jac. cap. 2.

That the Kings Majesty, his Heirs, or Successors, shall not at any time hereafter sue, impeach, question, or implead any person or persons, bodies politicke or corporate, &c.

The Act is long, and need not here be rehearsed. Yet will we peruse and explain the severall branches and parts of the Act.

Before the making of this statute, in respect of that ancient prerogative of the Crown, that *nullum tempus occurrit Regi*, the titles of the King were not restrained to any limitation of time; for that no statute of limitation that ever was made, did ever limit the title of the King to any Mannors, Lands, Tenements, or Hereditaments, to any certain time. And where many Records and other Instruments, making good the estate and interest of the Subject, either by abuse or negligence of Officers by devouring time were not to be found, by means whereof certain indigent and indigent persons pying into many ancient titles of the Crown, and into some of later time concerning the possessions of others and sundry Bishopricks, Dean and Chapters, and the late Monasteries, Chauntries, &c. of persons attainted, and the like, have passed surreptitiously in Letters Patents, oftentimes under obscure and general words, the Mannors, Lands, Tenements and Hereditaments of long time enjoyed by the Subjects of this Realm, as well Ecclesiastical as Temporal: Now to limit the Crown to some certain time, to the end that all the Subjects of this Realm, their Heirs and Successors, may quietly have, hold and enjoy, all and singular Mannors, Lands, Tenements and Hereditaments, which they, their ancestors or predecessors, or any other by, from or under whom they claim, have of long time enjoyed; this Act was made and moved from the House of Commons, the body whereof consisteth of these parts. First, that part which above is in part rehearsed, consisteth on these Branches.

The first part.

First, That the King, his Heirs or Successors, shall not at any time hereafter sue, impeach, question, or implead any person or persons, bodies politicke or corporate, for, or in any wise concerning any Mannors, &c. *Secondly*, Or for, or concerning the revenues, issues or profits thereof. *Thirdly*, Or make any title, claim, challenge, or demand, &c.

This part is exclusive and negative: and herein six things are to be observed.

1. This clause extendeth to all manner of suits, &c. either in Law, or in Equity.
2. To all manner of Courts whatsoever.
3. It extendeth not only to all manner of suits, but to all impeachments, questionings, impleadings, making of title, claims, challenges, or demands.
4. Under these words, [right and title] not only bare rights and titles are comprehended, but real estates also.
5. Not only suits, &c. for or concerning any Mannors, &c. but for or concerning the revenues, issues, or profits, &c. and this extendeth to the ancient demesnes of the Crown, which are mentioned to be restrained by an Act of 11 H. 4.
6. So as all Writts of Scire fac' or other proces upon any Record, all informations of intrusion, or charging any man as Bayliff, all finding of Offices, either of intitling the King, or of information, are restrained, not only within these words [impeach or question] but also within these words [or make any title, claim, challenge, or demand] which are large and beneficial words, and all other suits, &c. of
what

Rot. Par. 11 H. 4.
m. 23. not im-
printed.

what kind or nature soever. But this Negative clause must have Four incidents. 1. The Kings right and title must accrete unto him above threescore years past before the Ninetenth day of February in the 21 year of King James, which was the day of the beginning of this Parliament. The reason hereof was, that if any title of escheat, forfeiture, &c. accreted within threescore years, then it should be out of this Act: for generally the time of limitation to bar the King was threescore years, but such right or title must now be in effe. 2. Unless the King or his progenitors, &c. or any under whom he or they claim, have been answered by force and virtue of any such right or title to the same, the rents, revenues, issues or profits thereof within threescore years, &c. In this branch these words [by force and virtue of any such right or title] were materially added; for otherwise if the King had been answered the rents, revenues, &c. by reason or pretext of Wardship, primer seison, extent, or the like, it might have made a doubt whether such an answering of the revenues, &c. had been within this Act; which doubt is cleared, that it must be by force or vertue of any such right or title, whereby the King impeacheth the State of the Subject. 3. Or that the same have been duly in charge to his Majesty, or to the late Queen Elizabeth, within the space of threescore years. Duly in charge in judgement of law, is the roll of the pipe: for although a note before the Auditor or any other may be a mean to bring it in question, and to be put in charge, yet that is not in judgement of law said to be duly in charge, unless it be in charge in the pipe. 4. Or have stood in super of record within the said space of threescore years. It cannot stand in super, unless the thing in question were before duly in charge.

But there is a good Proviso added towards the end of this Act, viz. that no putting in charge, or super, or answering of the farm rents, revenues or profits, &c. in four cases shall be within this Act, viz. 1. By force, colour or pretext of any Letters Patents of concealments. They were called Letters Patents of concealments, because either they had a clause before the habendum, *Quæ quidem maneria nuper fuerunt a nobis conclata, subtracta, vel injuste detenta,* or to the like effect; or else a Proviso after the habendum to the like effect. Letters Patents of concealment were granted in Queen Maries time: and the first that I find, were granted to Sir George Howard: and in all succeeding Acts of Parliament of confirmation of Letters Patents, Letters Patents of concealments are excepted.

2. Or defective title. By Letters Patents passed by the warrant of certain Commissioners under the Great Seal for composition of defective titles, pretending the same to be for the Kings benefit, and safety of the Subject; in which Letters Patents no words of concealment, &c. are mentioned, but yet upon the matter, they were supposed to be concealed, &c. from the Crown.

3. Or of lands, tenements or hereditaments out of charge. This was a new device, to have a certificate that they were not in charge, and then to take a grant from the King, for a very small composition, &c. And these were but inventions and subtil devices to deceive the King, to rob him of his tenures, and to the infinite vexation and trouble of the Subject: all which mischiefs are now remedied by this Act.

4. Or by force, colour or pretext of any Commission or other authority to find out concealments, defective titles, or land, &c. out of charge. This was a necessary clause to be added, for of this kind there were infinite numbers.

Out of this first part all liberties and franchises be excepted.

¶ And that every person and persons, bodies politick and corporate, their heirs and successors, and all claiming from, by, or under them, or any of them, for and according to their several estates and interests, which they have, or claim to have in the same respectively, shall hereafter quietly and freely have, hold and enjoy against his Majesty, his heirs and successors, &c.

This is the second part of the body of the Act: and as the first part is Negative and exclusive of the right and title of the King, so this part is Affirmative, and establishing the state of the subject.

The mischief before this Statute was in two sorts, viz. either when the King had any estate being contained in him; or where the King had but a bare right. For example; the Kings Tenant seized of lands, &c. in fee is attainted of felony; and dyeth, the King hath a real estate in him: but if before the felony the Kings tenant were disseised, and after is attainted, and dieth, then hath the King but a bare right. In both these cases, & sic in similibus, the subject is prohibited for by this Act, both by the first part, and by this also. For where in this part it is said, according to their and every of their several estates and interests which they have or claim: If they have an estate, and the King but a bare right or title, then are they within these words which they have; and if the King hath a real estate in him, then are they within these words [or claim:] so as the remedy is applied to both the mischiefs. Again, the words in this part are further, have held, or enjoyed: That is, where the subject hath an estate, and the King but a bare right or title.

¶ Or taken the rents, issues, revenues, or profits thereof.]

These words extend to all cases where the real estate is in the King. Whereby is understood the actual taking of the rents, issues, revenues or profits by one that claims an interest in the land; for albeit the King may in law charge him as Sheriff, yet without question, de facto, he did take the rents, issues, revenues and profits, and that sufficeth to answer the letter and meaning of this Act.

Moreover, the words of this part are, [against him, his heirs or successors.] So as admit in the case put before, the Kings tenant being disseised, as is aforesaid, before his attainder of felony, that that disseisor had been disseised, or had mortgaged the land before this Statute, this Act in this case barreth the King of his right and title, and so that end worketh upon the state of the disseisor or Mortgage: but yet the first disseisor or the Mortgage for the condition performed or broken may re-enter: for the words of this part be [against the King, his heirs and successors] so as the bar is only against them: and every subject shall take benefit of this Act, for the Kings right and title is thereby utterly barred: and there is a saving hereafter in this Act to all persons, &c. other then the King, &c. all such right, &c. as they ought to have had before this Act.

This part extendeth not to liberties and franchises.

Now followeth the third part of the Purden of this Act.

The 3. part.

And furthermore, that every person or persons, bodies politick and corporate, their heirs and successors, &c. shall quietly and freely have, hold, and enjoy all such Mannors, &c. as they now have, claim, and enjoy, &c. against all and every person and persons, their heirs and assigns having, claiming, or pretending to have any estate, right, title, interest, claim or demand whatsoever, &c. by reason or colour of any Letters Patents, or grants upon suggestion of Concealment, or wrongful detaining, or not being in charge, or defective titles, or by, from, or under any Patentees, &c. of or for which Mannors, &c. no verdict, &c.

This part secures the subject against the subject, viz. against Patentees and Grants of concealments, defective titles, or lands not in charge, and all claiming under them. A beneficial Law both for the Church and Commonwealth, in respect of the multitude of Letters Patents and Grants of these natures and qualities, and many of them of large extents, and in general words, and had passed through the hands of many indigent and needy persons, &c.

This part extendeth to Liberties and Franchises, which the former two parts did not.

The

The two first Provisions are plain, and in effect are included in the body of the Act. The second Provision was necessary to preserve tenures: the saving needeth no explanation. The third Provision is particular and evident. The fourth Provision, Provided also, and be it enacted, that where any fee-farm rent, &c. This was added for the preserving of the Kings fee farms and rents out of such Mannors, &c. which are established and made sure by this Act. For example, King Edward the first did grant the Mannor of D. which came to him by the Statute of Chantry, to I. S. and his heirs, reserving a fee farm, or any other rent; which grant for some Imperfection was insufficient in law to pass the said Mannor, and yet is established and made sure by this Act. This Provision maketh good the fee-farm or rent to the King, if he hath been answered the same by the greater part of fifty years last past.

The last Provision is particular and evident.

Of the benefit of this Act the poor do participate as well as the rich, for hereby (amongst other things) above an Hundred Lay-Hospitals having had Priests within them in those days to pray and sing for souls, &c. (if need were) are established against all heratons and pretences of concealments.

See an excellent Act made against these Harpyes or Helluones, that under obscure words, endeavoured surreptitiously in a Patent of concealment to have swallowed up the greatest part of the possessions of that ancient and famous Bishoprick of Norwich, which by the industry and prosecution of the then Attorney general was overthrown; and yet for more surety in a matter of so great weight, a Bill preferred in Parliament for establishing of the Bishoprick, which in the end passed as a law, anno 39 El. ubi supra.

See 39 El. ca. 22. which is worthy to be read. See this case at large in the 4 part of the Institutes, cap. Confessory-Courts, &c.

*Tristius haud illis monstrum, nec saevior ulla
Pestis & ira Dei stygiis sese extulit undis:
Virginis volucrum vultus, foedissima ventris
Proluvies, unæque manus, & pallida semper
Ora fame.*

CAP. LXXXVIII.

Against vexatious Relators, Informers, and Promooters upon penal Statutes.

That all offences hereafter to be committed against any Penal Statute, for which any common Informer or Promooter may lawfully ground any popular action, bill, plaint, suit or information, &c. shall be commenced, sued, prosecuted, &c. before the Justices of Assize, Justices of Nisi prius, &c. in the Counties where the offences were committed, and not elsewhere.

Statut. m. de 21 Jac. Reg. c. 4.

Whereas a good and profitable law was made in the 18 year of Queen El. for the ease and quiet of the Subject, and for the regulating of Informers upon penal statutes, inflicting corporall punishments in certain cases upon them; and whereas two other good laws were made for the same ends, the one in the 28 year, the other in the 31 year of the said late Queens reign, which yet stand and remain in force: yet these Acts did not meet with all the mischiefs and grievances offered to the Subject by the Relators, Informers and Promooters, (turbidum hominum genus) but these four mischiefs and grievances remained still.

18 El. ca. 5.

28 El. cap. 5.

31 El. ca. 10.

First, many penal laws obsolete, and in time grown apparently impossible, or inconvenient to be performed, remained as snares, whereupon the Relator, Informer or Promoter did bet and intangle the Subject; Such as were the statutes made anno 37 E. 3. cap. 3. concerning the prices of Poultry, and 34 E. 3. ca. 20. concerning transportation of Cozn, and 3 E. 4. ca. 2. concerning Cozn not to be brought into the Realm, and 4 H. 7. c. 9. concerning the prices of Hats and Caps, and 14 R. 2. cap. 7. concerning the passing of Tyn out of the Realm, and 15 R. 2. cap. 8. concerning the carriage of Tyn to Calice, and 4 H. 5. cap. 3. concerning making Pattens of Asp, and 4 H. 7. ca. 8. concerning the prices of Broad-cloth, &c. and 11 H. 7. ca. 2. concerning Wagabonds, unlaboufull games, and Alehouses, &c. and one other statute in the 19. year of H. 7. cap. 12. concerning those matters, and 11 H. 6. cap. 12. concerning Wax-chandlers and the price of Candles, and 34 H. 8. cap. 7. concerning the sale of Wines, and 28 H. 8. cap. 14. concerning the prices of Wines, and 27 H. 8. Stat. de Monasteriis, concerning keeping of house and households upon sites of Monasteries, &c. and 4 H. 7. cap. 19. concerning houses of husbandry and tillage, and 7 H. 8. ca. 1. concerning letting down of totns, and 27 H. 8. cap. 22. concerning decay of Houses and Inclosures, and 5 E. 6. ca. 5. for the maintenance of tillage, &c. and 5 Eliz. cap. 2. for maintenance and increase of Tillage, and 14 R. 2. cap. 4. 8 H. 6. ca. 23. and 5 E. 6. cap. 7. concerning the buying of Wool, woollen yarn, &c. and 33 H. 8. cap. 5. concerning the keeping of great hozles, the statute of Winchest. in the time of E. 1. concerning Harnesse and Arms, Artic. super Chart. c. 20. concerning making of Rings, Crosses and Locks, and 37 E. 3. cap. 7. that makers of whitte hessel should not guild, and 2 H. 5. ca. 4. Stat. 2. that Goldsmiths should not take moze then forty six shillings eight pence for a pound of Troy silver guild, and 2 H. 6. ca. 14. that no silver shall be bought for moze then thirtie shillings the pound of Troy, and 2 H. 4. c. 6. against the bringing in of Coin of Flanders, Scotland, and other Forain Coin, and 13 R. 2. c. 8. and 4 H. 4. cap. 25. concerning the prices of Hay and Wats sold by Wollers, and 4 & 5 Ph. & Mar. cap. 5. concerning the putting to sale of coloured cloth, and another part of the same statute concerning the mystery of making, weaving, or rotting of woollen cloth, &c. and 18 El. ca. 16. for toleration of certain Clothiers to dwell out of totns corporate, and many other unnecessary statutes unfit for this time, about the number of threescore, repealed by an Act made at this Parliament in the 21. year of the reign of King James, as by that Act appeareth: and many like Acts are not continued, as by the conference betwen that Act and other former Acts of continuance may appear. So as these snares that might have lien heavy upon the Subject, by this and other former statutes either are repealed or not continued.

The second mischief was, that common Informers, and many times the Kings Attorney, dzeto all Informations for any offence in any place within the Realm of England against any penall law, to some of the Kings Courts at Westminster, to the intolerable charge, vexation and trouble of the Subject; and it was feared that Westminster-Hall would labour of an Apoplexy by drawing up all suits unto it, as the natural body doth tabescore when the humours of the body are drawn up unto the head, which in the end (if it be not prevented) turneth to an Apoplexy.

The third mischief was, that Informations, &c. the offence supposed to be against the penall law, and to be committed in one County, was at the pleasure of the Informer, &c. alledged in any County where he would, where neither party nor witness was known, against the right institution of the law, that the Jury (for their better notice) should come de vicineto of the place where the fact was committed.

The fourth mischief was, that in others cases the party Defendant in Informations or Actions upon the statute, was dzten to plead specially, which was both chargeable and dangerous to him, if his plea were not both substantial and formal also.

These three mischiefs last mentioned are expressly and absolutely provided for

by

13 E. 1. Stat. de
Winton.

by this Act, which moved from the house of Commons. And so did the Act of continuing and rebiving divers statutes, and repeal of divers others. 21 Jac. cap. 28.

The first part of the Purview beginning thus, For remedy whereof The first part of the Act.
 be it enacted by the authority of this present Parliament, that all offences, &c.

This clause consisteth upon three parts. First, affirmative: and this is divided into two branches. 1. For the Informations, &c. It is enacted, that where a common Informer might before this Act have informed upon any penal statute before Justices of Assise, Justices of Nisi prius, or Justices of Gaol-delivery, Justices of Oier and Terminer, or Justices of Peace in their general or quarter Sessions; there a common Informer may inform, &c. 2. Before what Judges: this Act appoints no new Judges, but such as former penal laws appointed, viz. the Justices before mentioned, or any of them, according to the former Act.

The second part is restrictive, restraining any Information, &c. to be commenced, sued, &c. either by the Attorney General, or by any Officer, common Informer, or any other person whatsoever, in any of the Kings Courts at Westminster. So as the Kings Bench, Star-chamber, Chancery, Common-Pleas, Exchequer, or Exchequer-Chamber, cannot receive or hold plea of any Information, &c. upon any penall statute, either by the Kings Attorney, any common Informer, or any other person whatsoever: but the matter shall be heard and determined before such Justices as are aforesaid in the proper County where the offence was committed.

The third part giveth the like Proces upon every popular Action, Bill, Plaint, Information or Suit to be commenced or prosecuted by force of, or according to the purpose of this Act, as in an Action of Trespass, Vi & armis, at the Common law: but upon no other popular Action, Bill, &c. which is not sued, &c. by force of this Act.

The second part of this Act doth meet with the second of the said three mischiefs, and standeth upon three branches.

The second part of the Act.

First, that in all Informations, &c. exhibited, &c. either for the King or any other, &c. the offence shall be layed and alledged, &c. in the said County where such offence was in truth committed, and not elswhere.

The second branch is, that if the Defendant pleadeth the generall issue, the Plaintiff or Informer upon evidence to the Jury must prove two things: First, the offence laid in the information, &c. Secondly, that the offence was committed in that County, otherwise the Defendant shall be found not guilty.

The third branch is, that for more surety that the offence shall be alledged truly in the proper County where in truth it was committed, no information, &c. shall be received, filed or entred of Record, untill the Informer or Relator hath first taken a corporall oath before some of the Judges of that Court, which consisteth of two parts; First, that the offence or offences laid in such information, &c. were not committed in any other County then where the same are alledged in the information, &c. Secondly, that he believeth in his conscience that the offence was committed within a year before the information or suit. And this Oath is to be entred of Record. And all this is to be done before the Information be received, filed, or entred of Record.

The third part of this Act meeteth with the last mischief: for by this part the Defendant may plead the generall issue, and give any special matter in evidence to the Jury; which matter being pleaded, had been a good and sufficient matter in Law, to have discharged the Defendant, &c.

The third part of the Act.

There is a very beneficial clause, and cleareth many questions at the Common law. And where it may be objected, that for want of sufficient Clerks the proceeding according to this statute will be erroneous, and to be reversed by Writ of Error, so as it will deter Informers to inform, &c. and in effect lay asleepe all penall laws: To this it may be answered, First, that it shall be the fault of the Informer himself; for if he inform before Justices of Assise or Nisi prius, they

27 H. 8. f. 24, &c.

they have sufficient Clerks. Secondly, I persuade my self that the other Justices will in discharge of their conscience and duty, provide sufficient Clerks. And lastly, that few or no errors shall fall out in respect of the general pleading. The last clause of this Act is this, Provided always that this Act, or any thing therein contained, shall not extend to any information, &c.

By this clause this Act extends not to penall statutes of these sorts; concerning 1. Heretick Rituallents for not coming to Church, 2. Maintenance, Champerty, or buying of titles, 3. The subsidy of Tonnage and Poundage, Tithes, &c. 4. The detranding the King of any Custom, Tonnage, Poundage, Subsidy, Impost, or Passage, 5. Transportation of Gold, Silver, Potoder, Suet, Punition of all sorts, Tithes, Tithes, or Leather: but that every of these offences may be layed or alleged to be in any County at the pleasure of any Informer. But yet the Informer cannot inform, &c. for any of these offences in any of the Courts at Westminster, but before the Justices appointed by this Act: for this clause extendeth only for the laying, or alleging of any of these offences in any County that he will.

Mich. 29 & 30 El.
Coram Rege.

In the case of Widelstone & Clark Papoz of Pottingham, the case was this: Widelstone being arrested in Pottingham by Precept in the nature of a Capias, he was imprisoned in the custody of the Papoz, being keeper of the Gaol within the same town, and before the return of the Precept Widelstone offered to the Papoz sufficient surety to appear, &c. and he refused to accept the same: whereupon Widelstone brought this Action by bill upon the statute of 23 H. 6. cap. 10. whereunto the Defendant pleaded the generall issue; and it is found by verdict against the Defendant. In arrest of judgement it was shewed, that by the said statute of 18 Eliz. cap. 5. it is provided, that none shall be admitted or received to pursue against any person upon any penal statute, but by way of information or original action, and not otherwise: in respect of the said negative words it was adjudged, that, for that the said action was brought by Bill, and not by Information or Original, Quod querens nihil capiat per billam. &c. the rest of the statute of 18 Eliz. concerning Informers.

18 Eliz. cap. 5.
Vid. lib. 6. fo. 19. b.
Gregories case.

You have heard of our viperous Wermyn, which endeavoured to have eaten out the sides of the Church and Common-wealth: These whereof, viz. the Monopolist, the Dispenser with publick and profitable penal laws for a private, and the Concealers are blotted up and exterminated, and the fourth, viz. the Vexatious Informer, well regulated and restrained, who under the rebellious Mantle of Law and Justice, instituted for protection of the innocent and the good of the Common-wealth, did vex and depauperice the Subject, and commonly the poorer sort, for malice or private ends, and never for love of Justice. And these are worthily placed among the Pleas of the Crown, because it is for the honour and benefit of the Crown, when the Church and Common-wealth do flourish in peace and plenty: for the King can never be poorer when his Subjects are rich.

Hil. 36 Eliz.
Rot. 135. Int. plac.
Regis, coram Rege,
Hamonds case.

George Hamond informed upon a penal statute concerning shipping of Cloth in the name of another, Qui tam, &c. against Edw. Griffith Defendant. Hamond the Informer dyed, and upon motion made by the Attorney General, it was the opinion of the whole Court, that he the Attorney General might proceed for the Queens Solety after the death of the Informer.

Trin. 31 Eliz. coram Rege, Strattons case.

Between Stratton, Qui tam, &c. and Taylor Defendant, that after a popular Action commenced, although the Attorney General will enter an Ulcerius non vult prosequi; or if the Defendant plead a special plea, although the use be, that the Attorney (to the end that there may be no juggling or Cabin between the Informer and the Defendant) reply only; notwithstanding, if the Attorney General will not reply, the Informer may proceed and prosecute for his part: for the Informer by his suit commenced, hath made of a popular Action his private, which the King cannot for the part of the Informer pardon or release. And notwithstanding in all these cases before any Action or Information commenced by the Informer, but the suit remaining popular, wherein the King only, and no Subject

See hereafter cap.
105. of Pardons.
7 H. 6. fo. 4.
5 E. 4. 3.
2 R. 3. fo. 12.
1 H. 7. 3.

Subject hath any interest, the King may pardon and release the same: for after that pardon, no Informer can inform tam pro Domino Rege quam pro se ipso, according to the Statute, &c. and for himself only in a popular Action he cannot inform.

CAP. LXXXIX.

Of Forefalling, Ingrossing, &c.

Forefalling, viz. *Forefallere* & *Forefallere*, & *Forefallarius*, verbed of the Baron, viz. *Forefallere*, (via aut iter) unde fore for a passage and forewell, to go or proceed well, he has turned far to for, and fall, which we retain still, and signifieth in reception of impedimentum transitus, hinderance or interruption. And the offender is called *Forefallarius*. For of this offender in the ancient Statute, Nullus Forefallarius in villa patiatur morari, qui pauperum sit deceptor manifestus, & totius Communitatis, & patrie publicus inimicus, qui bladem, pilas, &c. vel res quaslibet venales per portam vel per aquam venientes, quandoque per terram, quandoque per aquam obviando pro ceteris festinat, hunc sitiens vitiosum, pauperis opprobriens, dilibens, decipiens, qui sic minus iusto illo qui eos oportere multo magis vendere machinatur, quam mercatores exterraneos venalibus venientibus circumvenit, offerens se venditionem rerum suarum, & suggerit, quod bona sua carius vendere poterunt quam vendere proponebant, & sic arte, vel ingenio, villam seducit & patriam. Primo convictus graviter amercietur, secundo subeat iudicium pilorum, tertio incarceretur & redimatur, quarto abjuret villam. Et hoc iudicium dicitur de Forefallariis universis, & similiter de his qui consilium aut auxilium eidem praestiterint vel favore, &c. And his description see in a latter Act. See before in the Chapter of Monopolists.

Ingrossator or Ingrossation, of the English word *French* word *grosle*, that is, great or whole, unde *Marchant grosle*, a Merchant that selleth by great or whole-sale. We remember not that we have read of this word [in *grosle*] in any Act of Parliament, Book-sale, or Record, but rarely before the said Act of 5 E. 6. And there is an Ingrosser by the Common Law, who is hereafter described. And there is an Ingrosser by Act of Parliament, and he is described by the statute of 5 E. 6. And by that Act a Regrator is also described, who is a kind of Ingrosser. Regrator is verbed of the French word *Regratier*, for *Duckstery*. But in ancient time both the Ingrosser and Regrator were comprehended under Forefaller.

It was resolved by the Justices and Barons of the Exchequer upon conference betwixt them, that salt is a victual, and the buying and selling thereof was within the Statute of 5 E. 6. for it was not only of necessity of it self for the food and health of man, but it seasoneth and maketh wholesome, Beef, Pork, &c. Butter, Cheese, & other Wines. And Peryam Justice said, h Hil. 26 El. in *Communi Banco*, that so it had been lately adjudged.

i Mich. 6 Jac. in *Scaccario*, in an information by Baron against Boy, upon the Statute of 5 E. 6. cap. 14. of Ingrossers for buying and selling of Apples, the defendant pleaded not guilty, and was found guilty. But the Barons gave judgement against the Informer, and caused an Entry to be made in the margin of the Record, that the judgement was given upon matter apparent to them, that Apples were not within the said Act, for that the Act is to be intended of victuals necessary for the food of man; the words of the Act being [Corn, Grain, Butter, Cheese, Fish; or other dead victual] which is as much as to say, of other dead victual of like quality, id est, of like necessary and common use. And therefore

See the first part of the Institute, Sect. 240. *Domesday*. *a* Chent. Dover. ter. *b* Worcester. *c* Scirofiscir Civitas. *e* Fleta lib. 1. cap. 42. §. forefall. & lib. 4. cap. 11. *Britton* fo. 33. a. 77. a. *d* Vid. Vet. M. C. part 2. 24 b. 34 E. 1. de Pistor. Braciatoribus & aliis victuellariis, & de Forefallariis, hic infra. * 51 H. 3. Rast. weights and measures. 25 E. 3. c. 3. stat. 3. 27 E. 3. cap. 11. stat. stat. 28 E. 3. cap. 13. 5 E. 6. cap. 14. 5 Eliz. cap. 12. 13 Eliz. cap. 25. *e* For the word [Ingrossor.] see 27 E. 3. c. 5. stat. 1. 37 E. 3. cap. 5. *f* For this word [Regrator.] see 51 H. 3. weights and measures. 4. Rastall. 14 R. 2. cap. 4. 8 H. 6. cap. 5. Regrators or Choppers, and in some Countries called Jobbers. 8 M. 44 & 45 El. at Serjeants Inne in Fleetstreet. *b* Hil. 26 Eliz. judgement like per Peryam Justice. 5 M. 6 Jac. in Scac. Int. Baron & Boy.

therefore Apples being rather of pleasure than necessity, are not within the said Statute, no more then Plums, Cherries, or other fruit; and no information hath ever been exhibited for ingrossing of Apples, Plums, Cherries, or other fruit: but the statute of 2 E. 6. cap. 15. doth forbid conspiracy of Costermongers and Fruterers, and maketh such conspiracy unlawfull. And the said judgement of the Barons was affirmed in a writ of Error in the Exchequer-chamber.

Venditio Bracci non est venditio Victualium; nec debet puniri sicut venditio panis, vini & cervisia, & hujusmodi, contra formam statuti. But the Act of 5 E. 6. hath made corn, grain, &c. to be victual within that Act. Vide Ver. N. B. 2. part 23. b. Stat. de Pittor, Braccator, & aliis victulariis 34 E. 1.

It was upon conference and mature deliberation resolved by all the Justices, that any Merchant, Subject or Stranger, bringing victuals or merchandise into this Realm, may sell them in gross; but that vendor cannot sell them again in gross, for then he is an Ingrosser according to the nature of the word, for that he buys in gross, and sells in gross, and may be indicted thereof at the Common law, as for an offence that is malum in se. 2. That no Merchant, or any other may buy within the Realm any victual or other Merchandise in gross, and sell the same in gross again, for then he is an Ingrosser, and punishable, ut supra: For by this means the prices of victuals and other merchandise shall be inbaunced, to the grievance of the Subject; for the more hands they pass through, the dearer they grow, for every one thirsteth after gain, vitiosum sitium lucrum. And if these things were lawfull, a rich man might ingross into his hands all a commodity, and sell the same at what price he will. And every practice or device by act, conspiracy, words or news, to inbaunce the price of victuals or other merchandise, was punishable by law; and they relied much upon the statute aforesaid. Nullus forstellarius, &c. which see before in this Chapter: and that the name of an Ingrosser in the reign of H. 3. and E. 1. was not known; but comprehended within this word [forstellarius] lucrum-sitium vitiosum; and ingrossing is a branch of forstellling. And for that forstellarius was pauperum depressor, & totius Communis & patriæ publicus inimicus, he was punishable by the Common law. They had also in consideration the Book in 43 Ass. where it was presented, that a Lombard did procure to promote and inbaunce the price of merchandise, and showed how: the Lombard demanded judgement of the presentment for two causes. 1. That it did not sound in forstellling. 2. That of his endeavour or attempt by words, no bill was put in ure, that is, no price was inbaunced, & non allocatur, and thereupon he pleaded not guilty. Whereby it appeareth, that the attempt by words to inbaunce the price of merchandise was punishable by law, did sound in forstellment: and it appeareth by the Book that the punishment was by fine and ransom. And in that case Knivet reported, that certain people (and named their names) came to Cotestwold in Herefordshire, and said in deceit of the people, that there were such wars beyond the Seas; as no Wool could pass or be carried beyond Sea, whereby the price of wools was abated: and upon presentment hereof made, they appeared; and upon their confession they were put to fine and ransom. See the statute of 25 H. 8. cap. 2. whereby the Lords of the Council, Justices, &c. or any seven of them, &c. have power to set prices on victuals, and the same to be proclaimed under the Great Seal.

For preventing of all ingrossing and forstellling, it was the ancient law before the Conquest, Decrevimus porro, ne quis extra oppidum quicquam 20 Denariis carius estimatum emat, verum intra portum presente oppidi præfecto, aliove viro fideli, aut ipso denique præposito regio, in celebri plebis concursu, & hominum oculis quisque mercator.

Interdicimus etiam ut nulli pecudes emanantur nisi infra civitates, & hoc ante tres fideles testes, nec alia necessaria sine fidei iussore & warranto, &c. Item nullum mercatum vel feria sit, nec fieri permittatur, nisi in civitatibus regni nostri & in burgis, &c.

Commissio

P. 18 E. 2. Coram Rege, Rot. 76. South.

Mich. 34 & 40 El. Resoluzion de tous les Jullices.

* Dardanarius. An Ingrosser by the common law described.

—Lucrumque acquirit eundo, Nivis ut exiguis crescit eundo glorie.

3 E. 2. Action sur lestat. F.N.B. 250. l.

43 Ass. p. 38, Tit. Ass. 354.

Nota, the abatement by undue means of the Price of our native commodities, is punishable by fine and ranfome.

See 23 E. 3. cap. 6. 13 R. 2. cap. 8. Inter leges Ethelstans, cap. 12. Inter leges Will. Conquist. fo. 125.

Commissio facta fuit Roberto Hadham ad vendend' blada & alia bona diversarum Abbatiarum alienigenarum; qui venit & cognovit quod vendidit blada Prioris de Tickford in garbis in duabus * tassis existent' pro 10 li. quæ venditio facta fuit contra legem & consuetudinem regni Angliæ, vendend' in garbis, priusquam triturat' fuerunt, quod fieri debuisset per mensuram post eorum triturationem; Ideo committitur prisonæ, & adjudicatur, quod ab omni officio Domini Regis amoveatur, & quod finem faciat cum Domino Rege.

Hil. 25 E. 3. coram Rege, Rot. 13 Buck. Hadhams. case.
* Of the French word *Tasser*, to heap in Goves or stacks. See 5 E. 6. ca. 14. He is an Ingrosser that buyes (other then by grant or lease of land or tithes) any corn growing in the fields, &c.

Obferve well this judgement that it is against the Common law of England to sell corn in sheafs befoze it is threshed and measured: and the reason thereof seemeth to be, for that by such sale the Market in effect is forestalled.

CAP. XC.

Against Roberdsmen.

It is an English Proverb, That many men talk of Robin Hood, that never shot in his Bow: and because the Statutes and Records hereafter mentioned cannot well be understood, unless it be known what this Robin Hood was that hath raised a name to these kind of men called Roberdsmen, his followers, we will describe him.

This Robert Hood lived in the reign of King R. 1. in the borders of England and Scotland, in woods and deserts, by robbery, burning of houses, felony, waste and spoil, and principally by and with Wagabonds, idle wanderers, night-walkers and Drab-latches: so as this notable thief gave not only a name to these kind of men, but there is a Bay called Robin Hood's Bay, in the River of in Yorkshire. And albeit he lived in Yorkshire, yet men of his quality took their denomination of him; and were called Roberdsmen, throughout all England.

He was, saith Maior Scotus, prædonum princeps, & prædo minutissimus.

Against these men was the statute of Winchester made in 13 E. 1. for preventing of robbery, murders, burning of houses, &c. Also the statute of 5 E. 3. which reciteth the statute of Winchester, and that there had been divers manslaughteres, felonies and robberies done in the times past by people that be called Roberdsmen, Masters, and Drab-latches; and remedy is provided by that Act for the arresting of them.

13 E. 3. Statut. de Winchest. c. 1. 4. 5 H. 7. fo. 5. 5 E. 3. cap. 14.

At the Parliament holden 50 E. 3. it was petitioned to the King that Kibauds and sturdy Beggers might be banished out of every town. The answer of the King in Parliament was touching Kibauds, The statute of Winchester and the declaration of the same, with other * statutes of Roberdsmen; and for such as make themselves Gentlemen, and men of Arms and Archers, if they cannot so prove their selves, let them be driven to their occupation of service, or to the place from whence they came.

Rot. Parl. 50 E. 3. nu. 61.

It is provided by the statute of 7 R. 2. that the statutes made in the time of King Edward, Grandfather of the King, of Roberdsmen and Drab-latches, be firmly holden and kept, and further provision against Wagabonds wandring from place to place. See a law made in the fifth Parliament of Queen Mary, Anno Dom. 1555. in Scotland against Robert Hood, Little John, &c.

* 5 E. 3. cap. 14. 2 H. 5. cap. 9. 8 H. 6. cap. 14. Vid. 39 Eliz. ca. 4.

7 R. 2. cap. 5. Vid. 39 Eliz. ca. 4.

CAP. XCI.

Of Bankrupts.

Vide in the fourth part of the Institutes, Cap. The Court of the Commissioners of Bankrupts.

CAP. XCII.

Of Recusants.

1 Eliz. cap. 2.
27 Eliz. cap. 1.
28 Eliz. cap. 6.
35 Eliz. cap. 1, 2.
3 Jac. cap. 4.
2 Jac. cap. 6.
Lib. 10. 54. the
Chancelour of
Oxfords case.
Lib. 11. 56, 57, &c.
Dr. Fosters case.
Lib. 5. fo. 1.
Caudries case.
Dier 3 Eliz. fo. 203.

First, the Acts of Parliament that are made against them are 1 Eliz. cap. 2.
23. Eliz. cap. 1. 28 Eliz. cap. 6. 35 Eliz. cap. 1. & 2. 3 Jac. cap. 4. 7 Jac. ca. 6.
These Acts of Parliament are interpreted and expounded by others judgements
and resolutions heretofore given, Lib. 10. fo. 54, &c. Le case de Chancelour,
&c. de Oxford, an exposition of the statute of 3 Jac. ca. 4. & Lib. 11. fo. 56,
&c. Doctor Fosters case, an exposition of all the said statutes. See Lib. 5.
fo. 1, &c. Caudries case. See Dier 3 Eliz. fo. 203. an exposition of the said Act
of 1 El. concerning hearing of Appeals.

CAP. XCIII.

Of Newes, Rumours, &c.

Tacitus.

Int. leg. Alveredi
cap. 28.

SEE the Second part of the Institutes, W. 1. cap. 33. Newes. See also in the
fourth part of the Institutes, cap. Chancery, in the Articles against Cardinal
Woolsey, Artic. 32. Convicia, si irascaris, tua divulgas; spreta, ex olefcunt: If
you seek to rebenge slanders, you publish them as your own; if you despise
them, they banish.

The law before the Conquest was, that the authoz and spreader of false ru-
mours amongst the people had his tongue cut out, if he redeemed it not by the
estimation of his head.

CAP. XCIV.

Of Weights and Measures.

SEE the second part of the Institutes, W. 1. cap. 4. and the exposition upon
the same

CAP.

CAP. XCV.

Of Apparell.

Divers Acts of Parliament have been made against the excess of Apparell in the reign of E. 3. As 11 E. 3. cap. 2. & 4. 37 E. 3. cap. 8, 9, 10, 11, 12, 13, 14. 38 E. 3. cap. 2. in the reign of E. 4. 3 E. 4. cap. 5. 22 E. 4. cap. 1. in the reign of H. 8. 1 H. 8. cap. 14. 6 H. 8. ca. 1. 7 H. 8. cap. 7. 24 H. 8. cap. 13. 33 H. 8. cap. 5. 37 H. 8. ca. 7. 1 & 2 Ph. & Mar. ca. 2. 4 & 5 Ph. & Mar. c. 2. 5 El. ca. 6. 8 El. ca. 11. 13 El. ca. 19. Some of them fighting with and cuffing one another, some of them expired. But sozasmuch as those that stood in force were obsolete, and remained but as snares to catch or bez-men at the pleasure of the Promoter; at the Parliament holden Anno 1 Ja. all Acts of Parliament befoze the time made concerning Apparell are repealed and abrogated, and since that time no Act hath been made concerning Apparell, and so standeth the law at this day. These costly things there are that do much impoverish the subjects of England, viz. Costly Apparell, costly diet, and costly building. The best mean to repress costly Apparell and the excess thereof, is by example; for if it should please great men to shew good example, and to wear Apparell of the cloth and other commodities brought within the Realm, it would best cure this vain and consuming ill, which is a branch of prodigality, and herewith few wise men are taken. If you will look into the Parliament Roll of 2 H. 6. you shall see what plain and frugal Apparell that renowned King H. 5. after he was King did wear, his gown of lute value then 40. s.

1 Jac. R. ca. 25.

Excess of Apparell is best cured example & vituperio.

Rot. Parl. 2 H. 6. nu. 30.

Deut. 22. 5.

Magna corporis cura, magna animi incuria.

Non induetur mulier veste virili, nec vir utetur veste foeminae: abominabilis apud Deum qui facit hoc.

Dd 2

CAP.

CAP. XCVI.

Of Diet.

^a Rot. Claus.
⁹ E. 2. m. 26. in
 Dorst. intitled
*Ordinatio super mensu-
 ratione ferculorum.*
^b 2 E. 6. cap. 19.
⁵ E. 6. ca. 30.
⁵ El. ca. 5.
²⁷ El. ca. 11.
³⁵ El. ca. 7.
^c *Lent* 2 Saxon.
Quaresime.
Quadragesima.
^e Hereof see the
 4. part of the In-
 stitutes, cap. The
 Court of Audience,
 &c. and Faculties.
^d Vide Britton
 cap. 53. and other
 books make men-
 tion of these.

^d Luc. c. 21. v. 34.
 Rom. ca. 13. v. 13.
 Ecclesiasticus
 ca. 37. v. 30, 31.
^e Ecclesiasticus
 31. 20.
^f Cicero.
 Horace 2 Ser. 2.

^g From whence ex-
 cess of drinking in
 England came.
^h From whence
 troops of Idle
 serving-men came
 into England.

ⁱ 4 Jacobi c. 5.
 See 1 Ja. c. 9.
 7 Ja. ca. 10.
 21 Ja. c. 7. an ex-
 cellent law.
*una salus sanis nullam
 potare salubrem.*

There was an a Ordinance made by King E. 2. by advice of his Councell
 against the excess of Diet; but because it had not the strength of an Act
 of Parliament, it wrought no effect.

^b It is provided by statutes made in the reign of E. 6. and Queen Elizabeth,
 that no flesh shall be eaten on Fish-dates, viz. Friday, Saturday, Embzing
 dates and Vigils, and the time of Lent; c and forscences to eat flesh on Fish-
 dates, &c. see the Preambles of the statute of 2 E. 6. c. 19.

^c Embzing dayes, so called because in former times when they fasted they put
 Ashes or Embers on their heads, Job 2. 12. Jer. 6. 26. 2 Sam. 13. 19. And as
 the natural conversion of the flesh of the body is to dust, so the sins of the soul
 (unrepented) are turned to fire, and this was shadowed under Embers that
 ever keep fire.

^d These Embzing dates are the week next before Quadragesima, so called,
 for that it is the fortyeth day before Easter, and is the first Sunday in Lent.
^e Quinquagesima the Sunday fifty dates before Easter, Sexagesima fifty dates
 before Easter, and Septuagesima seventy dates before Easter.

Before these late Acts the eating of Flesh on Fridates was punishable in the
 Ecclesiastical Court, as yet it is, the jurisdiction being saved by the said Acts.

But there is no Act of Parliament against excess of diet, for it is known to
 be so hurtful for mans body, and so obscureth the faculties of the mind, as the
 understanding, memory, &c. as to men, especially to Christian men, there needed
 no law at all to be made, ever being mindful of that *Cabeat, d Attendite autem*
vobis, ne forte graventur corda vestra in crapula & ebrietate, &c.

^e *Vigilia, & cholera, & tortura viro infrunito; Somnus sanitatis homini parco,*
dormiet usque in mane, & anima illius cum ipso delectabitur. The Moral
heaven men by the Light of nature agree hereunto. Tantum cibi & potus adhiben-
dum est, ut recitiantur vires, non opprimantur.

*Accipe tu victus tenuis quæ quantaque secum
 Afferat: imprimis valeas bene. Nam variæ res
 Ut noccant homini credas, memor illius escæ
 Quæ simplex olim tibi sederit: At simul assis
 Miscueris elixa, simul conchylia turdis;
 Dulcia se in bilem vertent, stomachoque tumultum
 Lenta feret pituita: vides, ut pallidus omnis
 Cæna desurgat dubia? —*

Ex plenitudine generantur morbi, qui superant medicorum artem.

King Edgar permitting many of the Danes to inhabit here (^g who first
 brought into this Realm excessive drinking) was in the end constrained to
 make a law against this excess (which never cometh alone) drinking certain
 nails into the sides of their cups, as limits and bounds, which no man upon
 great pain should be so hardy as to transgress.

William of Palmesbury, comparing Englishmen and Normans together,
 saith, that in his time the English manner was to sit drinking whole hours af-
 ter dinner, ^h and that the Norman fashion was to walk the streets with great
 troops, with idle and loose serving-men following them; both which were
 causes of many disorders and outrages.

ⁱ If the excess of drinking extend to the loathsome and odious vice of drunken-
 ness, it is punishable by Act of Parliament. And to say the truth, the an-
 cient Britans were free from this crime.

Edce

Ecce Britannorum mos est laudibilis iste,
Ut bibat arbitrio pocula quisque suo.

And the Lawes against drunkenness are very new.

Nothing is here said against that great Peacemaker and branch of liberality, orderly Hospitality, but against the dainty and disorderly excess of meats and drinks, which is a species of prodigality: for it is prohibited by Act of Parliament W. 1. 3 E. 1. cap. 1. that the grace of Hospitality shall not be withdrawal from the needy.

See the Statute of 37 E. 3. cap. 8. against excessive apparel and diet: but it was repealed in the next Parliament, 38 E. 3. cap. 2.

CAP. XCVII.

Of Buildings.

WE have not read of any Act of Parliament now in force made against the excess of building, or touching the order or manner of building; but it is a wasting evil, whereunto some wise men are subject. But the Common law doth prohibit any subject to build any Castle or house of strength unbattled, or without the Kings licence, for the danger that might ensue. Also the Common law prohibiteth the building of any edifice to a common nuisance, or to the nuisance of any man in his house, as the stopping up of his light, or to any other prejudice or annoyance of him. *Edificare in tuo proprio solo non licet, quod alteri noceat.*

b In Deuteronomy it is said, *Cum edificaveris domum novam, facies c murum recti per circuitum, ne effundatur sanguis in domo tua, & sis reus, labente alio, & in preceptis ruente.*

d I like well the Counsell to a Nobleman, whosoever gave it, *Si vis (ait ille) edificare domum, inducat te necessitas, non voluptas; cupiditas edificandi edificando non tollitur; nimia & inordinata cupiditas edificandi expectat edificii venditionem: Turris completa & arca evacuata faciunt tarde hominem sapientem.*

*Edificare domos multas, & pascere multos,
Est ad pauperiem semita laxa nimis.*

To build many houses, and many to feed,
To poverty that way doth readily lead.

Of these three it hath been truly said, *Vestium, Conviviorum, & Edificiorum luxuria agræ civitatis sunt indicia, & species prodigalitat.*

But by the Common law, and general custom of the Realm, it was lawful for Bishops, Carls, and Barons, to build Churches or Chappels within their Sees: and hereof King John informed Pope Innocentius the third (naming only, honoris causa, the Bishops and Baronage of England, albeit this liberty extended to all) with request that this liberty to the Baronage might be confirmed. To these Letters the Pope made this answer, *Quod enim de consuetudine regni Anglorum procedere regia Serenitas per suas literas intimavit, ut liceat tam Episcopis, quam Comitibus & Baronibus Ecclesias in feodo suo fundare, laicis quidem principibus id licere nullatenus denegamus, dummodo Diocesani Episcopi eis suffragetur assensus, & per novam structuram veterem Ecclesiarum justitia non lædatur.* Whereas the Baronage had absolute liberty before, now the Pope addeth the consent of the Bishop: but that addition bound not, seeing it was against the liberty of the Baronage warranted by the Common law: and we would not have rehearsed this Epistle, but that it is a proof what the general custom of the Realm was concerning the building of Churches

See the 1. part of the Institutes, Sect. 1. fo. 5. 2. Vet. Mag. Chart. 1. part fo. 162. cap. Eschaetry, &c. 14 H. 6. m. 7. licence to the D. of Glouc. to imbatell Greenwich. 2 Lib. 9. f. 54, & 58. Lib. 5. fo. 101, &c. b Deut. 22. 8. c Battlements. This was for safety only. d Bernhard consilium.

Euripides translated by Sir Tho. Moor.

Vide the like in the Regist. 36. b. Prohib. de decimis separatis. In Epist. decret. Innocent. 3. l. 10. pag. 228.

Trin. 20 E. 1. Rot. 13. in banco Rich. de Turnys case. Eborum.

Churches by the Baronage of England. And albeit they might build Churches without the Kings licence, yet could they not erect a spirituall polittick body to continue in succession and capable of indowment without the Kings licence: but by the Common law before the Statutes of Mortmain, they might have indowed this spirituall body once incorporated, *perpetuis futuris temporibus*, without any licence from the King or any other.

And as the law is in cases of *Debetion and Religion*, so it is in cases of *Charity*: Any man may erect and build a house for an *Hospital, School, Workshop-house, or house of Correction, or the like*, without any licence, for that is but a preparation, and may be done as owner of the soil; but by the Common law could not incorporate any of them without licence, but now he may, and indow them with lands in certain cases, as by the statutes of 39 Eliz. cap. 5. and 3 Car. c. 1. as in the Second part of the Institutes in the exposition of those statutes it appeareth.

Concerning the building or erecting of *Tombs, Sepulchers or Monuments* for the deceased, in Church, Chancell, Common Chappell, or Churchyard, in convenient manner it is lawfull, for it is the last work of charity that can be done for the deceased, who tobiles he lied was a libely Temple of the holy Ghost, with a reberend regard and Christian hope of a joyfull resurrection. And the defacing of them is punishable by the Common law, as it appeareth in c the book of 9 E. 4. 14. a. And so was it agreed by the whole Court, Mich. 10 Ja. in the Common plea between Corven and Pym. And for the defacing thereof, they that build or erect the same shall have the action during their lives, (as the Lady Wiche had in the case of 9 E. 4.) and after their deceases, the heir of the deceased shall have the action. But the building or erecting of the Sepulcher, Tomb, or other monument ought not to be to the hinderance of the celebration of divine service. And in that case of Corven it was resolved, that albeit the freehold of the Church be in the Parson, yet if a Lord of a Mannor, or any other that hath an house within the town or parish, and that he and all those whose estate he hath in the mansion-house of the Mannor, or other house, hath had a seat in an Isle of the Church for him and his family only, and have repaired it at his proper charges, it shall be intended that some of his Ancestors, or of the parties whose estate he hath, did build and erect that Isle for him and his family only; and therefore if the Ordinary endeavour to remove him, or place any other there, he may have a Prohibition. d It was further resolved, that if any man hath a house in a town or parish, and that he and those whose estate he hath in the house, have had time out of mind a certain Pew or seat in the Church maintained by him and them, the Ordinary cannot remove him; (for prescription maketh certaintie, the mother of quietness) and if he do, a prohibition lyeth against him. e But where there is no prescription, there the Ordinary that hath the cure and charge of souls, may, for avoiding of contention in the Church or Chappell, and the more quiet and better service of God, and placing of men according to their qualities and degrees, take order for the placing of the Parishioners in the Church or Chappell publick, which is dedicate and consecrate to the service of God.

Nota, Funerall expences according to the degree and quality of the deceased, are to be allowed of the goods of the deceased, before any debt or duty whatsoever, for that is *opum* or *charitativum*.

Amongst the people of Almighty God, as it appeareth in the Holy Writings, Sepulture, was ever had in great reberence, not only of Kings, but of other men; as amongst many others good old Barzillai, when he had excused himself for not going with the King to Jerusalem, he concluded, *Obsecro ut revertar servus tuus, & moriar in civitate mea, & sepeliar juxta Sepulchrum patris mei & matris mee, &c.*

And also the mozell Heathens had building and erecting of Sepulchers or Monuments in great account; as it doth appear by the Seven wonders of the world, which for memoery may be expressed in these few Verses.

1. Pyramides

* Lib. 10 fo. 27.
Le case de Surttons
Hospital. See the
statute of 39 El.
cap. 4. whereby Au-
thority is given to
Justices of Peace to
build and erect
houses of Corre-
tion, &c.
a 39 El. cap. 5.
3 Car. cap. 1.
b *Tumba, tumulus,*
sepulchrum.
c 9 E. 4. 14. the
Lady Wiches case,
wife of Sir Hugh
Wiche.
* Mich. 10 Ja. in
Communi banco
Int. Corven & Pym.
Barth. Cassaneus
fo. 13. Conclus. 29.
Actio datur siquis
arma in aliquo loco
posita delevit, seu
abrafit, &c.

d 8 H. 7. 12. a. per
Hussy accord.
Pasch. 10 Jac. in
curia Cam. Stellatz
Inter Hussy Plain-
tiff; & Kath. Layton
& al' Defendants
issint resolve per le
Court.
e 8 H. 7. 12. a. acc.
12 H. 7. 12. per
Hussy.

2 Sam. 19. 37.

1. Pyramides Memphis,
2. Babylonis moenia celsa,
3. Templum ingens Epheli, virgo Diana, tuum,
4. Mausoli Cariz monumentum,
5. Raraque Pharo Turris,
6. Olympiaci splendida imago Jovis,
7. Denique apud Rhodios splendentis statua Phœbi :
Hæc septem mundus mira, viator habet.

Besides the religious and Christian regard abovesaid, these monuments do serve for four good uses and ends. First, for evidence and proof of descents and pedigrees. Secondly, what time he that is there buried deceased. Thirdly, for example, to follow the good, or to shun the evil. Fourthly, to put the living in mind of their end, for all the Sons of Adam shall die. Statutum est hominibus semel mori.

Monumentum servat alicujus rei memoriam aliter interitum, eamque nobis representat : and therefore a Monument is called a Memorial.

Monumentum dicitur a monendo ; quicquid enim nos admonet est monumentum, ut sepulchrum, quod nos sumus mortales.

Cum tumulum cernis, tum tu mortalia spernis :

Esto memor mortis, sisque ad coelestia fortis.

It is to be observed, that in every Sepulcher that hath a monument, two things are to be considered, viz. the monument, and the sepulture or burial of the dead. The burial of the Cadaver (that is, caro data vermicibus) is nullius in bonis, and belongs to Ecclesiastical cognizance ; but as to the monument, action is given (as hath been said) at the Common law for defacing thereof.

* Britton fo. 84. b.

In the year of our Lord 1586. and in the 28 year of the reign of that glorious Queen Elizabeth, was the old gate called Ludgate in the City of London (as Stow saith, taken down to be new builded : There was found couched within the old wall thereof a stone, wherein was graven in the Hebrew tongue and Characters an Epitaph, signifying in English, This is the Tomb of Rabbi Moses son of the illustrious Rabbi Isaac : which certainly was before the 23 year of the reign of H. 2. Anno Domini 1177. for before that time all the Jews in England were buried within the City of London, and in that year, saith Hoveden, Dominus rex pater dedit licentiam Judæis terras suas habendi cœmeterium in quolibet civitate Angliæ, extra muros civitatum, ubi possunt rationabiliter & in competenti loco eære, ad sepeliend' mortuos suos : prius enim omnes Judæi mortui Londoniæ ferebantur sepeliendi.

Stow in his Survey of London fo. 19.
* For so is the truth.

Ro. Hoveden Anno Dom. 1177.
Holl. eodem An. fo. 101. b. 20.

And albeit Churches or Chappels may be built by any of the Kings subjects (as hath been said) without licence, yet beside the lawfull knowledge of them to be Churches or Chappels, the Bishop is to consecrate or dedicate the same : and this is the reason that a Church or not a Church, a Chappel or not a Chappel, shall be tried, and certified by the Bishop.

8 H. 6. 32, 37.

See for this dedication or consecration the 43 chapter of Ezekiel, the 23 chapter of Genesis, the 90 Psalm, the 24, 26, 27, 84, and 114 Psalms, the 2 of Samuel 6. 10. of Saint John vers 22. to the end.

Vide inter leges Edwardi Confessoris cap. 3. Similiter ad dedicationes, ad Synodos & ad Capitula venientibus, &c. in etiam de redendo fit summa pax.

We finde in ancient times, that Vaults, hollow places, or Substructions under the ground were made by men for secrets or receptacles for keeping of their wives, children, money and goods secret, to avoid violence and rapine in time of hostility or rebellion, and we find no law against them.

De subterraneis substructionibus & cryptis.

These kind of buildings we had from the Germans, as we finde it in Tacitus, who treating of the old Germans, saith, Solem & subterraneos specus aperire ; & si quando hostis adventu, aperta populatur, abdita autem & defossa aut ignorantur, aut eo ipso fallunt, quod quaerenda sunt. They use to build Vaults under the earth, and if the enemy come, he seeketh all upon and above ground, but such things as lie hidden in the eare, either they be unknown, or at least they deceive him, in that he is enforced to finde them out. Neither have we found any

Tacitus

* In the Mannor of Minster Lovel in Com' Oxon, &c. a Camden Linc. pag. 406.

b See the statute of 8 El. cap. 13. and the Letters Patents of the Lord Admiral.

c 4 H. 8. cap. 1.

d De propugnaculis, munitis munitis munitis, &c. of Bulwarks, Barbicanes, Block-houses, Piles, &c.

e 13 E. 1. cap. 46.

f 32 Aff. 5.

g H. 4. 39.

h 7 El. Dier 240.

i See the 2. part of the Institutes.

j W. 2. cap. 24.

k Lib. 5. fo. 101.

l Lib. 8. fo. 46.

m Lib. 9. fo. 54, 58.

n See Lib. 4. fo. 84. Lutterels case, and the authorities there cited.

o 31 Eliz. cap. 7.

Lamb. Perambulation of Kent. These words you shall read in Records concerning Priviledges.

p 29 E. 3. 16.

q 2 H. 4. f. 3.

r 9 E. 4. 34.

s 14 H. 4. cap. 2.

t Lib. 11. fo. 29. Alex. Poulterers case.

any licence of the King to make them, nor punishment of any that made them without licence, and yet many have been made by many subjects, some whereof we have seen.

a We read of Alexander Bishop of Lincoln, in the reign of H. 1. and King Stephen, a Roman born, who was insanis substructionibus ad insaniam delictatus.

b No person can build or erect Light-houses, Pharos, Sea-marks or Beacons without lawfull warrant and authority.

Lumina noctivaga tollit Pharus æmula Lunæ.

In Light-house top is rear'd the light

As high as the Moon that walks by night.

c Prohibition was made by authority of Parliament for building and erecting Block-houses, Bulwarks, Piles and the like; for without Parliament subjects cannot be charged with building or erecting of them: and that Act is expired.

e The Lord of the Soil may build a Windmill, Shep-cote, Dairy, enlarging of a court necessary, or a curtilage in grounds, where men have common of pasture.

f A man cannot erect any building upon his own ground in the Kings Forest, but it is a purpresture, and may either be demolished or arrented to the Kings use, &c. at a Justice Seat.

Concerning houses of husbandry and tillage, the statutes of 4 H. 7. cap. 19. 7 H. 8. ca. 1. 27 H. 8. ca. 22. 5 E. 6. ca. 5. 5 El. cap. 2. are repealed by the statute of 21 Jac. cap. 28. and the statutes of 39 El. cap. 1. & 2. are expired, for that they were so like Labyrinths, with such intricate windings and turnings, as little or no fruit proceeded of them.

g No man can erect an house or building to the nuisance of any other.

h He where a man hath any house or mill, &c. and having any privilege or thing appurtenant thereunto, pulls it down, and builds a new, where the privilege or appurtenant remains, and where not.

i Concerning the erecting, &c. of Cottages, see the statute of 31 El. cap. 7. which could not be restrained in such sort as they are, but by authority of Parliament.

There was a statute made Anno 35 El. (when I was Speaker) against buildings in the Cities of London or Westminster, or within three miles of the gates of the City of London, and against the dividing and converting of any dwelling-house or building into divers habitations, and against Inmates; but that endured but for seven years, and until the end of the next Session of Parliament: which Act, being holden dangerous, was not continued at the Session of Parliament holden in 43 Eliz. being the next Session after the seven years, and therefore expired with the same. In the mean time there was a law made against new buildings, &c. which then was a warrant, and since hath been a colour for divers proceedings in Courts of Justice, not observing the expiration of that law; but now that law hath long since lost his force, and the ancient and fundamental Common law is to be followed.

Sylliva, or Sulliva, is a word derived from the Saxon Syll, and signifieth a poste or plate fixed in the ground: the Saxon word is not yet out of use, for every man knows what a groundstille is.

Pera, a Pier, derived from the Latin word Petra, Plance, &c. the English word Planks, for boards or tables, is use also at this day.

Having spoken of erecting of houses and buildings, &c. we will tell you what we find in our Books and Records of Dilapidation, and decay of buildings.

k Dilapidation of Ecclesiastical Palaces, houses and buildings is a good cause of depopulation.

l It appeareth by the statute of 4 H. 4. cap. 2. that Depopulators agrorum were great offenders by the ancient law, and that the Appeal or Judgment thereof ought not to be general, but in special manner; and it provides, that the offenders therein might have their Clergy. They are called Depopulatores agrorum, for that by prostrating or decaying of the houses of habitation of the Kings people, they depopulate, that is, dispeople the towns.

Prohibitio

Prohibitio Regis quod Incolæ de villa de Southampton non prosternent domos suas in alias migraturi regiones.

Dorf. Clauf. An. 43 E. 3. m. 23.

Simile pro magna Jermenuthia.

Rot. Clauf. Anno 21 R. 2. m. 15.

That which may lawfully be prohibited before it be done, may be justly punished after it is done.

And herewith we will close up this Chapter: that the law doth favour the supportation of houses of habitation and use for mankind.

First part of the Institutes, f. 14. b. 56. b.

CAP. XCVIII.

De Lupanaribus & Fornicibus, &c.

Brothel-houses, Stews, Bordelloes.

The keeping of them is against the law of God, on which the Common law of England in that case is grounded. Non offeres mercedem prostibuli, nec pretium carnis in domo Dei tui, &c. Quia abominatio est utrumque apud Dominum Deum tuum.

Numb. 25. Deut. 23. 18. Ezek. 16. 24, 31, 39. Joel 3. 3. 2 Mach. 4. 12. Hospes meretricium Lenæ. Lenæ, unde Lenocinium.

And the keeper, he or she, of such houses is punishable by indictment at the common law by fine and imprisonment: for although adultery and fornication be punishable by the Ecclesiastical law, yet the keeping of a house of Whoredom, or Stews, or Brothel-house, being as it were a common nuisance, is punishable by the Common law, and is the cause of many mischiefs, not only to the overthrow of mens bodies, and wasting of their livelihoods, but to the endangering of their souls. For the mischiefs ensuing hereupon, see 11 H. 6. cap. 1. 1 H. 7. 46. 12. 13 H. 7. 6. 27 H. 8. Rot. Parl. 14 R. 2. nu. 32.

King H. 8. suppressed all the Stews, or Brothel-houses which long had continued on the Bankside in Southwark, for that they were (as hath been said) prohibited by the law of God, and by the law of this land. And those infamous women were not buried in Christian burial when they were dead, nor permitted to receive the rites of the Church whilst they lived.

* By Proclamation under the great Seal 30 Martii, 37 H. 8.

The word Stews or Stews is French, we having no English word for it.

Before the reign of H. 7. there were eighteen of these infamous houses, and H. 7. for a time forbade them: but afterwards twelve only were permitted, and had signs painted on their walls; as a Boars-head, the Cross-keys, the Gun, the Castle, the Crane, the Cardinals Hat, the Well, the Swan, &c.

Fabian. Chron. Stowe.

Many wicked and common women had seated themselves in a lane called Water-lane, next to the house of the Friars Carmelites in Fleet-street: this being an open and known wickedness, King E. 3. to the end these Friars might perform their Vows, one of which was, to live in perpetual chastity, took order for removing of these women. The Record saith, Rex præcipit Majori Civitatis London quod amoveri faciat omnes mulieres meretricies in venella prope Fratres Carmelitarum in Fleetstreet inhabitantes.

In Dorf. Clauf. 21 E. 3. part 1. m. 6.

Read 1 Regum cap. 14. verse 24. eodem lib. cap. 15. verse 12. & 2 Regum cap. 23. verse 7.

Fratres beatae Mariæ de Monte Carmeli, called White-Friers.

And by the Common law it appertaineth to the Marshall of the Kings House to free or protect the Court from Femmes puteins, which is more particularly explained by Fleta, who saith, Marechalli interest virginitatem a meretricibus omnibus protegere & deliberare, & habet Marechallus ex consuetudine pro qualibet meretrice cõi infra metas hospitii inventa 4^o primo die; quæ si iterum in balliva sua inveniatur, capiatur, & coram Seneschallo inhibeat eci hospitium Regis, Reginae, & liberorum suorum, ne iterum ingrediatur, & nomina earum imbrevantur;

7 E. 3. fo. 23, 24. Fleta lib. 2. cap. 5. Lib. 10. Le case de Marshallsea, fo. 77.

E c

quæ

quæ si iterum inventæ fuerint hospic' sequutrices, tunc aut remaneant in prisona in vinculis, aut sponte prædict' hospicia abjurentur quæ si autem tertio inventæ fuerint, considerabitur quod amputetur eis tresforia, & tondeantur; quæ quidem si quarto inveniuntur, amputentur eis super labia, ne de cætero concupiscantur ad libidinem.

14 R. 2. It is enacted that no Houses or Brothel-houses should be kept in Southwark, but in the Common places theretofore appointed.

So odious and so dangerous was this infamous vice (the strict end whereof is beggary) that men in making of Leases of their houses did add an express condition, that the lessee, &c. should not suffer, harbour, or keep any Feme-petite within the said houses, &c.

See the case of 1 H. 7. the custom of London for entering into an house, and arresting of an Adulterer, and carrying her to prison. In ancient times adultery and fornication were punished by fine and imprisonment, and inquirable in Tunes and Lets by the name of Letherwite. We find in Domesday De adulterio vero per totum Chent, habet Rex hominem (i. amerciammentum hominis) & Archiepiscopus mulierem, (i. amerciammentum mulieris,) &c.

Vidua, si alicui se non legitime commiserit. 20. s. emendabit, puella vero 10. s. pro consimili causa.

Adulterium faciens 8. s. & 4. d. emendabit homo, & foemina tantundem. Rex habet hominem adulterum, Archiepiscopus foeminam.

But now these offences belong to the Ecclesiastical Court.

Legrewita, or Logrewita, Legergeld, or Logergeld, of Legre or Logre for a bed and Wite amerciamment by common speech Letherwite or Læterwite, Læterwite, Lotheswite.

Childewite is for the Lords to take a fine for his bondswoman defiled and begotten with child.

Bawdry, Lenocium, unde Ribawdry & Ribaude, i. Impudius rabala. See Parliam. 50 E. 3. nu. 61. of Ribauds and Robertswen.

Rot. Par. 14 R. 2.
nu. 32.

35 H. 6. Barre 162.

1 H. 7. fo. 6, &c.

Domesday,
Chent. Dover.
Ibid. Cestria ci-
vitas.
Ibid. Sudsex
Lewes,
Domesday,
Hunedoies.

Bracton.
Fleta.
Rastall term. leg.
Stat. de expofit.
vocab.

CAP. XGIX.

De Assentatione, Pucologia, Pseudologia, Flattery.

WE find a law befoze the conquest against Flatterers, in these words, *W*illiamus, p[er] Gregorium papa[m] Gregorius, Goson, sp[irit]u[m] Habban, &c. *L*ambardus, mendaces, predones, & rapaces officiorum Dei gravissimam incurunt, &c.

The ancient Manuscripts translate thus, Seductores, Mendaces, Rapaces & Raptores Dei gravissimam incurunt. And these translations do in effect agree, for a Flatterer is a seducer for some private end, by fained praise and humouring of another, whereby he hath an overguidance of himself, his state and actions, *I*lli ducunt & seducunt.

The addition of something this law says, that King Canutus had been seduced by Flatterers, who had he wet him his face and state in a false glass, making too great a show of his own merits, actions, and state, to the end to make him conceit himself to be better and greater than he was, and his adherentes lets them in truth they were not, by this being he wished Flatterers assumed to him Divine power and honour, as coming from God, he set his feet on the sea strand, as the Sea was boiling, and commanded the sea not to rise to wet his Lozels and speckles his nequitie. The sea having on his accustomed course, both wet his feet and his clothes; whereas being sea amazed, he repented his presumptuous (which he had undertaken by wicked flattery)

And well by the Flatterers marshalled in this law, with Liers, Whishes, and Mahomers, for the which he described Flatterers to be those, *Q*ui colunt aliquem, & alicuius ab eo aliquid boni proferri honi. *Q*ue res. it is peccatum vulcatum, it getteth away much, and gberthittles.

And the Holy Ghost hath called Flattery *oleum peccatoris*, that is, the oyl of the sinner, *et* *caput*, that is, of him that exceedeth others in sin, and doth affect greatness: that is, the head, making it greater and more prosperous then it is, as you may read in the Prophet David, *C*orripiet me justus in misericordia & increpabit me, *oleum autem peccatoris non impinget caput meum.* Whereby he being both King and a Prophet, preferreth the reproof, nay the sharp rebuke of the just and bestious, before the smooth humouring of the Flatterer (per nouns) of the sinner. *I*tem *oleum peccatoris* is mel venenatum & venenum mellicum, and commonly affecteth greatness, and is called *Lozbane*.

And again, David speaking of the Flatterer, saith, *H*is words are smoother then oyl, and yet are they very swords. *H*ec dicit Dominus Deus, *V*z qui confiant pulvibus sub orna[m]to manuum, & faciant cervicalia sub capite univ[er]se statim ad rapiend[um] animas, &c. Thus saith the Lord God, *W*ho to them that sow pillows under all ambles, and put baychiefs upon the heads of every age to hunt souls. They make the King glad with their wickedness, and the Princes with their lies, *I*n malitia sua lætificaverunt Regem, & in mendaciis suis Principes.

The flattering mouth wogeth ruine. And more Kings and Kingdoms have been overthrowen by the means of Flattery, then by publick hostility. And this is the cause that we have mentioned the said ancient law for their punishment, they be lawfully banished from Princes Courts, and Subjects houses.

Ut videat, cævo fit firmia præda leoni:

Rex cæsus cernit, cum lycophanta perit.

Int. leges Cantii, fo. 106. c. 7. *L*am. *F*atidis magistrum potestatum pestis, adulationis. *S*emper assentor id, quod is ad cuius voluntatem dicitur, esse magnum; ut in Terentio, magnas vero agere gratias mihi, &c. factis erat respondisse magnas ingentes inquit.

Plal. 141. 5.

Plal. 55. 21. *E*zek. 13. 18.

Osec. 7. 34.

Prov. 26. 28. *Q*u. Curtius.

What

Nota, enemies to laws punished by the laws.

4 Rot. Pat. Anno 17 H. 3. Nos integre & firmiter tenebimus iudicium de Huberto de Burgo per Barones datum. Speed 18 H. 3. 520.

b Rot. Parl. 7 E. 2. Ne quis occasione tur per mortem Pet. de Gaveston. Hil.

318. a. & ib. 321. 7.

c Vet. Magn. Chart. 2 part 44. ib. 50.

exilium Hugonis, & 54. Ne quis occasione tur pro felonis in prosecutione d' Spencer patris & filii.

d Rot. Parl. 11 R. 2. na. 8, &c.

e Rot. Parl. 28 H. 6. nu. 19. until 47.

f Hollinsh. 713. a. 30.

g Hollinsh. 723. 748, 767. a.

h 2 H. 7. 10. Coram Rege,

An. 1 H. 8. In information vers. D. Peter & alios.

What fearful ends flattering favourites, corrupters of their Sovereign Liege Lords, abusing their labours in subversion of their laws, have had, appeareth in our Parliament-Rolls, Records and Histories.

a King H. 3. had Hubert de Burgo Chief Justice and Earl of Kent, and many others: but this was his safety, that upon just occasion without any great grief he could forgo a Favourite. See in the Preface to the second part of the Institutes, his counsel to H. 3. to burn Magna Charta.

E. 2. had b Pierce de Gaveston, the c Spencers, &c. and the Spencers proceedings against the grand Charter by name (amongst other things) tending to the subversion of laws, &c.

R. 2. d had Sir Robert Tresilian Chief Justice, &c. and Robert Earl of Oxford, and Duke of Ireland, &c.

H. 6. had e William de la Pole Duke of Suffolk, &c. who endeavoured to have brought in the Civil laws, which was the occasion that the Chief Justice Fortescue wrote in the commendation of the Laws of England, preferring them for the government of this land before the Civil Laws. This Duke with others plotted the death and destruction of Humfrey the good Duke of Glouc. who ever stood in his way.

E. 4. had f William Lord Hastings the Kings Chamberlain, and Captain of Calice. All these came to fearful and untimely ends.

R. 3. had g Sir John Caresby one of the Justices of the Common Pleas, and Henry Duke of Buck. &c. by his plotters and counsellors with R. 3. for the most execrable murder of his Nephew, E. 1. and Richard Duke of York. Whose a miserable end the Duke had, you know: and Justice Caresby in his Journey to London, in the Kings high way, had a sudden & unprovoked murder.

H. 7. had h Sir Richard Empson, Earl of Dudley, &c. Sir Richard Empson was indicted, Quod ipse, consiliarius excellentissimi principis Henrici, imperatoris Regis Angliæ, septimum, Deum pro oculis non habens, sed ut alius diabolicus factus esset imaginans honorem, dignitatem & prosperitatem dicti imperatoris regis, ac potentiam regni sui Angliæ minime valere, sed ut ipse magis singulares favores dicti imperatoris Regis adhiberet, unde magis fieri potuisset, ac totam regnam Angliæ secundum ejus voluntatem gubernaret, falso, deceptivo, & proditorie legem Angliæ subvertens, diversos leges ipsius nuper regis, ex sua falsa covina & subdolo ingenio, contra communem legem regni Angliæ, de diversis felonis, &c. iudicari fecit, &c. per quod plures & diversi populi dicti imperatoris Regis suis gravaminibus & indebitis exactionibus multipliciter torquebantur, in tantum quod populi dicti imperatoris Regis versus ipsam nuper Regem multipliciter murmurabant & malignabant, & in magnam periculum ipsius nuper regis, regni sui Angliæ, ac subversionem legum & confusum eorum ejusdem regni, &c. And the like indictment was against Dudley.

H. 8. had Thomas Woolsey Cardinal. Ipse intendens subverti antiquissimas Angliæ leges penitus subvertere & enervare, universumque hoc regnum Angliæ & ejusdem regni populum legibus Imperialibus, vulgo dictis Legibus Civilibus, & eorumdem legum Canonibus subjugare & subducere, &c.

we will for some causes descend no lower: Quæ eorum vestigia insistant, eorum exitus perhorrescant.

But that right be done to him who was a faithful favourite and counsellor to this King, we have seen a Manuscript that relateth, that Charles Brandon Duke of Suffolk, a wise and warlike person, was for many years before his decease the greatest favorite the King had, upon whom he chiefly relied in all his weightiest affairs. This noble Duke deceased in August in the 37 year of the reign of King H. 8. After whose death the next time the King sat with his Counsel, missing the good Duke, he grievously lamented for him, and said, when I was offended with any (as often I was) and acquainted him therewith, that he ever endeavoured to mitigate my displeasure, and never spake to me evil of any of them. And the King looking upon the Lords of his Council one after another, said, and so (my Lord) cannot you say, perusing them all throughout. A royal commendation of this great Duke, and a great argument of his piety and honour,

The like indictment against Ed. Dudley.

Tr. 23 H. 8. coram Rege. Rot. 14.

honour, that no Subject had ever the indignation or displeasure of his Sovereign by any private whispering of his.

We will conclude this chapter with one of our own Histories. Generaliter Anno 5 R. 2. Th. Wall. p. 281: cunctorum habitatorum terre peccatis inclusive, ordines sumendo Mendicantium ad cumulandum causas malorum, &c. illi possessionatis invidentes, procerum crimina approbantes, commune vulgus in errore foventes, & utrorumque peccata comedentes, pro possessionibus acquirendis, qui possessiones renunciaverant, pro pecuniis congregandis, qui in paupertate perseverare juraverant, dicunt bonum malum, &c. Read the story, and see the most lamentable estate of those times. Note that the full heap of the causes of Gods vengeance in those dates was made up by those flattering preaching Friars. But Parliaments, Palaces of Princes, and Pulpits should be free from adulation and flattery.

CAP. C.

Of false Imprisonment.

See the Second part of the Institutes the fourth de A. 4. de frangentibus prisonam, and the exposition upon the same.

See the Petition of Right, 2 Ch. Regis, and Mag. Chart. cap. 29. It is to be observed that before the conquest it was thus provided, Qui tamen nem Paganum immencentia vinculis contraxerit, 30 solidis noxiam solvet, cum si verberibus affectus, 20 solidorum poena esto; si suspensus in sublimi fuerit, 30 solidis culpa penfatur; si contumeliose capillum ejus motus in iudicium totonderit, 10 solidi prestati; si caput in iudicium sacerdotis traserit, nec ipsum ligaverit, 30 solidos numerato; si barbam illi refecerit, 20 solidorum compensatio sequitur; si deniquei vinculis confusus capillos in iudicium sacerdotum abraferit, 60. solidos pendito.

Int. leges Alveredi cap. 31.

By way of addition, here it is necessary to be known how and by what means one that is in prison may be discharged. Every man that is in prison, either is imprisoned without lawful Miceimus (whereof we have spoken before ubi supra) and how he may be freed from imprisonment in that case) or with lawful Miceimus. He that is lawfully imprisoned, is either imprisoned by lawful commandment, and order of warrant, or by the Kings writ. By commandment and order of any Court of Record; and this commandment, warrant, or writ is either for causes not being treason or felony, misprision of the same, nor other publick offence or cause, or inferior causes to these, as contempts, private actions or suits. If any Court of Record commit a man for a contempt done in Court, they may discharge him by like order at their pleasure; but if they having authority, do commit him for treason, felony or other crime, or for suspicion of the same, they cannot discharge him until he be inquired of, and either indicted and acquitted, or an ignozamus found, and delibered by proclamation. And so it is if any be taken and imprisoned by lawful warrant, or the Kings writ for treason, felony or other crime, &c. he cannot be discharged by any without legal proceeding, but by the King only.

For bailment, See the statute of Mag. Chart. ca. 29. W. 2. cap. 15. and the exposition thereof. 1 & 2 Ph. & Mar. cap. 13.

2 & 3 Ph. & Mar. cap. 10.

14 H. 6. 8. FOR. B. 167. b.

See 12 H. 6. 31. Mich. 13 Jac. in banke le Roy, Int. Withers & Herly, adjudge accord.

27 H. 8. 28. B. 1 R. 2. cap. 12.

10 H. 7. 3. a per Vavafor.

13 E. 3. Bar. 253. Kape,

b If a Warrant, refusing to serve, had been committed to prison upon the statute of 23 E. 3. of Labourers by the Lord of the town, or Justice of Peace, they might have discharged him, even as the Chancellour, &c. may commit a man for a contempt before him in Court, and discharge him again at his pleasure. c If a man be taken by the Kings writ in an action of debt, or another private action, the Plaintiff may discharge the Gaoler of him, and set him at liberty, though he be in execution: but if he be taken in an Appeal of Death, Kobbey,

may, &c. the Plaintiff cannot discharge him, because it is a public offence wherein the King hath an interest, and he may after Non-suit by the Plaintiff be arraigned at the Kings suit.

There are two great adversaries to the due execution of these laws (as before hath been shewed) especially in criminal causes, viz. Præcipitatio & morosa cunctatio. Præcipitatio; as a man or woman to be committed to prison, and within so short time to be indicted and arraigned, as it is not possible for them to find out or procure their witnesses: this certainly is præcipitatio, for the law both in personal and real actions doth give the party, Tenant or Defendant, a convenient time without respect of persons to answer, &c. much more it ought to be in case of life. Nec unquam in iudiciis tantum committitur periculum, quantum in processibus terminatis: and again, Credo in deliberationibus iudicia maturefcunt, in accelerato processu nunquam: and especially in case of life. As for morosa cunctatio, forward or backward delay, see the Second part of the Institutes Glouc. ca. 26. And we will conclude this chapter with the rule of law, Quod in criminalibus probationes debent esse luce clariores.

Forfeiture cap. 33. fo. 127. b.

OF JUDGEMENTS AND EXECUTION

Of Judgements and Execution.

Judicium is defined a Jus ad iudicium, & est quasi imperium, and therefore if the judgement be erroneous, both the judgement and execution thereupon, and all the former proceedings shall be reversed by writ of Error: but if the former proceeding and judgement be good, if the execution be erroneous, the execution shall only be reversed. And because the judgement is the guide and direction of the execution, we shall treat principally of the judgement, and incidently of Execution.

Of Judgements, some be by the Common law, and some by Statute law, and some by Custom.

Of Judgements by the Common law, some be in criminal causes or Pleas of the Crown, concerning the life of man (whereof we are principally to treat) and of these some be offences, and some inquests. Other Judgements at the Common law be in actions real and mixt, of which some be iudicia inter locutores, and some ultima seu principalia: and again, de principalibus, quedam sunt finalia, & quedam non sunt finalia. Of Judgements by Statutes, some be in criminal causes, and some in Common Pleas: but Judgements by Custom are only in Common Pleas.

All Pleas of the Crown, concerning the life of man, are divided into treason and felony; and treason into High treason and Petit treason, and felony into all the several branches above said. And as in the case of High treason, (as is hath before appeared) some be far more heinous and odious then others, yet (as we have seen) as before hath appeared) some and the same judgement is given for all: so in cases of Petit treason, one judgement is given in all, nay in all the several cases of felony, though some be far more heinous then others, yet all being but felony, one and the same judgement is given. And the judgement and forfeiture in cases of treason, felony, &c. in the several titles thereof shall we will add.

Judgement in High Treason.

Et super hoc visis, & per curiam hic intellectis omnibus & singulis præmissis, consideratum est, quod prædictus R. usque furcas de T. 1 trahatur, & 2 ibidem suspendatur per collum, & vivus ad terram prosteratur, & 3 interiora sua extra

6 Bl. Diet. 230. See before in the chapter of treason.

Pl. Com. 387. b. See Stanford 182. d. e. Lib. Int. Co. 361.

* See the Book of Judges cap. 19. vers. ult. Consider, consult, and give sentence. 19 H. 6. 47. Trahe, pendre, & disloze, Bract. lib. 3. fo. 118. b. Crimen lese majest. ut si contra personam ipsius regis sit præsumptum, quod quidem crimen omnia alia crimina excedit quoad penam. Item l. 7. fo. 104. b. maketh mention of execution l'aque & fieri, Parliam. 21 R. 2. inter placita Coron. m. 50.

ventrem

ventrem suum capitatur, ipsoque vivente comburantur, & 5 caput suum amputatur, quodque 6 corpus suum in quatuor partes dividatur, ac 7 quod caput & quarta illa ponantur ubi dominus rex ea assignare vult.

Implied in this Judgement is, First, the forfeiture of all his Mannors, Lands, Tenements and Hereditaments in fee-simple, or fee-tail, of whomsoever they be holden. Secondly, his wife to lose her Dower. Thirdly, he shall lose his children (for they become base and ignoble.) Fourthly, he shall lose his posterity, for his blood is stained and corrupted, and they cannot inherit to him or any other Ancestor. Fifthly, all his goods and chattels, &c. And reason is, that his body, lands, goods, posterity, &c. should be torn, pulled asunder and destroyed, that intended to tear and destroy the Majesty of government. And all these several punishments are found for treason in holy Scripture.

1 Reg. 2. 28, &c. Joab tractus, &c.

Esther 2. 22, 23, Bithan suspensus, &c.

Act. 1. 18. Judas suspensus crepuit medius, & diffusa sunt viscera ejus.

2 Sam. 18. 14, 15. Infixit tres lanceas in corde Absolon cum adhuc palpitarret, &c.

2 Sam. 20. 22. Abcissum caput Sheba filii Bichri.

2 Sam. 4. 11, 12. Interfecerunt Baanan & Rachab, & suspenderunt manus & pedes eorum super piscinam in Hebron.

Corruption of blood, and that the children of a Traitor should not inherit, appeareth also by holy Scripture.

Psal. 109. 9, 10, 11, 12, 13. Mutantes transerantur filii ejus, & mendicent, & ejiciantur de habitationibus suis, & deripient alieni labores ejus, & dispercat de terra memoria ejus.

a The judgement of a woman for High treason is to be drawn and burnt.

b Sir Andrew Harkley Earl of Carlisle, convicted, degraded and attainted of treason.

Judgment in Petit treason, where he is convicted thereof by verdict or confession.

Super hoc visis, &c. ut supra, Consideratum est, quod predictus R. usque furcas de T. trahatur, & ibidem suspendatur per collum, quousque mortuus fuerit.

But a woman is to have judgement to be drawn and burnt as well in case of Petit treason as High treason, and ought not to be beheaded or hanged. De morte mariti si compertum est uxorem, &c. igne Britanni interficiunt.

Bracton lib. 3. fo. 105. a. Igne concremantur qui saluti dominorum suorum insidiaverint: idem fo. 104. b.

Judgment in felony, where he is convicted thereof by verdict or confession.

Ut super hoc visis, &c. ut supra, Consideratum est, quod predictus R. suspendatur per collum, quousque mortuus fuerit. Bracton lib. 3. fo. 104. b. speaketh De laqueo.

And it is a maxim in law, that execution must be according to the judgement, Ea que in curia nostra rite acta sunt, debet executioni demandari debent: * and for express authority, non licet felonem pro feloniam decollare; and yet some examples are to the contrary.

True it is that the Lord of Hungerford of Wyntersbury was in 32. H. 8. attainted of Murther, and had judgement to be hanged by the neck untill he was dead; and yet on the twenty eighth day of July in the same year was beheaded at the Tower-hill. But as true it is, that Thomas Fines Lord Sacres of the South, in anno 33 H. 8. was attainted of murder, and had judgement to be hanged by the neck untill he was dead, and according to the judgement was hanged at Liborn the twenty eighth of June in the same year. And true it is that Edward Duke of Somerset was attainted of felony in anno 5 E. 6. and had judgement to be hanged by the neck untill he was dead, and on the twenty se-

35 H. 8. Br. Forfeiture 99.

Drawing.

Hanging, Bowelling. The heart, &c. while he lived.

Beheaded.

Quarters hanged up. Damnable memoria.

a 25 E. 3. 42. b. Coron. 130. Brit. cap. 8. f. 16. b. accord.

b Degradation. Hil. 18 E. 2. Coram Rege, Rot. 34, 35. Walsingham. p. 118.

19 H. 5. 47. * Com. Cesar. ante Christum natum, 1600 annis, what the Judgement was for Petit treason.

1 R. 3. f. 4.

25 E. 3. 42.

12 Ass. 30.

6 E. 4. 4. a & b.

See the Preface to the sixth part of Reports, what the law was before the

Conquest, Anno Dom. 995. in case of felony.

* Palch. 20 R. 2.

Coram Rege, Rot. 1. Lincoln.

See before cap. Murder.

cond of February in the same year was beheaded at the Tower-hill. And as true it is, that 3 & 4 Ph. and Mar. the Lord Stourton was attainted of murder, and had judgement to be hanged by the neck untill he were dead, and according to the judgement, the first of March in the same year was hanged.

In case of High treason, beheading is part of the judgement, and therefore the King may pardon all the rest saving beheading, as is usually done in case of Nobility. But if a man being attainted of felony, be beheaded, it is no execution of the judgement, because the judgement is, that he be hanged untill he be dead. In this case the judgement both belong to the Judge, and he cannot alter it; the execution belongs to the Sheriff, &c. and he cannot alter it. And if the execution might be altered in this case from hanging to beheading, by the same reason it might be altered to burning, stoning to death, &c. To conclude this point, Judicandum est legibus, non exemplis; and Judicium est juris dictum, & Executio est executio Juris secundum judicium.

The forfeiture in case of Petit treason and felony (which is implied in the judgement) is all one, which you may read in the First part of the Institutes, Sect. 747.

Quando peccaverit homo, quod morte plectendus est, & adjudicatus morti appensus fuerit in patibulo, non permanebit ejus Cadaver in ligno, sed in eadem die sepelietur. And the reason that Divines yield hereof is, for that by the execution of the judgement by death, the law is satisfied, and abhorreth cruelty, and in that case, Mors dicitur ultimum supplicium.

And herein this is observable, that in Treason and Felony the judgement is only of the fatall and corporall punishment, and nothing of the forfeiture, which is implied; but in Common Pleas the judgements are more particular.

Judgement in Appeal, when the Defendant joyning battel is vanquished in the field, &c.

If the Defendant in Appeal be vanquished in the field, the Record reciteth the vanquishing in the field. Ideo consideratum est quod sul. per coll. and so it is when the Defendant is vanquished and slain in the field, yet the judgement is ut supra. Otherwise there should be no escape. See the Second part of the Institutes, W. 1. cap. 14.

Judgement in Treason or Felony, wherein neither any corporall punishment nor forfeiture is expressed.

In case of Treason or Felony, if any person be outlawed, the judgement upon the Exigent at the sith County Court upon default of the party is, Ideo, &c. per judicium Coronatoris Domini Regis Comitatus predicti utlagatus est. Which writ being duly returned of Record by the Sheriff, the party shall have the like corporall punishment, and shall lose and forfeit as much as if he had appeared, &c. and judgement had been given against him in case of treason or felony respectively. And note that in these words (ideo utlagatur) both the corporall punishments and forfeiture also are implied: and if the proceeding therein, or the judgement be erroneous, and upon his appearance upon the Capias utlagatum, if it appear to the Court (whereof any man, as amicus curie, may inform the Court) that the party may either avoid the outlawry against him by writ of error, or by plea, the Court ought not to award execution against the party, but assign him or her counsell learned, and require him or her by their advice either to bring a writ of error or plead: but if the party refuse to bring his writ of error or plead after convenient time be given, if the outlawry be erroneous and not bold, the Court may award execution. And so it was resolved, Termino Hil. Anno 3 Jacobi Regis, by the whole Court in the Kings Bench, and others precedents thereof shewed in the reigns of H. 6. E. 4. and one in the reign of Queen Eliz. which we saw; for as long as the attainder by outlawry standeth in force, the party outlawed cannot be drawn in question by any new indictment or appeal for the treason or felony for the which he was outlawed, for Anteriorit' attaint

Deut. 21. 22, 23.
Vide Hil. 1 H. 5.
Rog. Actions case.

3 E. 3. Judgement
225.

Regist. 164. b.
Fecit feloniam pro
qua utlagatus fuit.

19 H. 6. 2. 2.
Error Fi. 26.
28 E. 3. 91. 2.
6 H. 4. 6.
9 H. 7. 19. b.

Hil. 3 Ja. Coram
Rege per curiam:

Anteriorit' attaint do
mysme le offence.

attaint for the same offence is a good plea to free him from answer in that cause, albeit the Record be erroneous. But if the Attainder or Outlawry be void against him, then may he be either arraigned upon the former indictment, or appeal, or newly indicted, &c. if there be cause. And therefore the Judges are to take due consideration of the whole Record of the Attainder or Outlawry, that they may be truly informed of the true state of the cause, before they award execution of death against him upon the Outlawry. *Read Bracton lib. 3. Tract. 2. cap. 14. and Britton cap. 13. fo. 20, 21. excellently treating hereof, and Fleta lib. 1. cap. 27.*

Vide 6 E. 3. 55. in A. Jel.
12 E. 2. Esch. 14.
19 E. 2. Cor. 387.

Bract. lib. 3. f. 131.
Britton fo. 20, 21.
Fleta lib. 1. cap. 27.

And by the Common law Auterfoitz attain, &c. of the same felony was a good plea as well in an indictment as in appeal by the Common law. By the statute of 3. Hen. 7. cap. 10 concerning appeal of death: so as in an appeal of death at the suit of the party Auterfoitz attain de meisme le mort, is no plea at this day, but in case of an indictment of death at the suit of the King, Auterfoitz attain de meisme le mort in appeal is a good plea. Auterfoitz attain de murder is a good plea to an indictment, &c. of Petit treason of the same death, for in effect it hath the same judgement, and the self-same forfeiture. So likewise if a man be attainted of man-slaughter, it is a good bar to an indictment of murder of the same death, &c. converso.

By the Common law if a man were attainted of a felony done by him, and admitting he were after pardoned, he cannot at the suit of the King be impeached for any felony whatsoever before his said attainder by him committed, for by the Attainder he was mort in ley; and in that case he had the judgement due for felony, viz. Sul. per coll. But the party may have his Appeal of Robbery, for a robbery done before the felony whereof he was attainted, because in the Appeal he is to have restitution of his goods, besides judgement of death. And if the party attainted of felony had committed High treason before his Attainder, he shall answer to the treason notwithstanding his Attainder of felony, because the King by the treason was intitled to have the forfeiture of all his lands, of whomsoever they were holden. Also for High treason there is another judgement, being an offence of an higher nature: but being attainted of felony, if he commit treason afterwards, he shall answer thereunto, because it is of higher nature than the felony, but it shall not defeat the right of Escheat, which lawfully was by the felony vested in the Lords, contrary to the opinion of Justice Stanford in that case, for the act and offence of the party shall not defeat the lawfull Escheat of the Lords: but if a man be attainted of treason, he cannot be after attainted of a former treason, *causa qua supra.*

*Auterfoitz attain
dus auter offence.*
28 E. 3. 90. b.
Dier 4 Eliz. Stoies
case.
6 H. 4. 6. 10 H. 4.
Coron. 237.
6 E. 3. Cor. 394.
22 E. 3. Cor. 471.
Stanf. f. 107, 108.
See 44 E. 3. 44.
7 H. 4. 31.
4 E. 4. 11.
* 1 H. 6. fo. 5.
Rot. Parl. 3 R. 2.
nu. 18. Jo. Imper-
rials case.

Where a little before it is said, that a felon by his Attainder is mort in ley, it is to be understood of such former offences as require poenam mortis: for notwithstanding the Attainder, his body remains subject to arrests and execution for debts, &c. *Vide hic paulo post, Truffells and Prestals case in margine.* Albeit for felony a man be adjudged to his penance, Pain fort & dure, yet he may be impeached for any former felony, because the judgement is not given for the felony, but for his contumacy.

Dier 14 El. 308.
Cobhams case.

If a man be attainted of Petit Larceny, he may be after attainted of felony, for the which he shall have judgement of death, because it is an higher offence, and is to have another judgement.

Auterfoitz acquite, and the Judgement thereupon.

But Auterfoitz acquite must be of the same felony, and albeit he be acquit of the latter felony, yet may he be arraigned of any former felony: and so it is in case of treason, Auterfoitz acquite of treason must be of the same treason, for it acquitteth no other, because he ever remained a person able.

See Stanf. 105. a.
& b. &c.

And albeit at this day in an appeal of death, Auterfoitz acquite upon an indictment of the same death is no bar, yet in an indictment of death, auterfoitz attain de meisme le mort in an Appeal is a good bar.

3 H. 7. cap. 2.
15 E. 3. Tit.
Coron. 116.
15 Ass. p. 7.

In an indictment or Appeal of death, if it be found that he killed him in his

ff

his

his own defence, he is acquitted of the felony forever:

It appeareth in Vauxes case, that if a man be erroneously acquitted of felony by verdict and judgement thereupon given, yet if the Indictment, &c. be insufficient, he may be indicted again for the reasons and causes in that case reported, which you may read there at large, and need not here be repeated: And thereunto this we will add, that the reason wherefore upon an erroneous judgement of condemnation, the party (as hath been said) is given to his Writ of Error, and in the case of an erroneous judgement of an acquittal, that no Writ of Error needeth to be brought by the King, but the offender may be newly indicted, &c. is this, That in the case of condemnation, the judgement is, *Quod suspendatur, &c.* which is the judgement of law due for the offence, and ought to be given therefore, and can have no other interment: but in the case of Acquittal the judgement is, *Quod eat sine die, &c.* which may be given as well for the insufficiency of the indictment, as for the parties innocency or not guiltiness of the offence. And the Judges of the cause ought before judgement to look into the whole Record, and upon due consideration thereof to cause it to be entered, *Ideo consideratum est quod eat sine die*; which upon that report, and this addition implied therein, we hold may satisfy the studious reader.

Auter foits conviçt de mesme le felony devant judgement.

Lib. 4. fo. 45, 46.
Holcrofts case.
Second part of the
Institutes, Art. super
chart. cap. 3.
Lib. Intr. Co. 53,
54, &c.
Lib. 4. fo. 40. We-
therels case.
Stanf. lib. 2. cap. 37.
* *Auter foits conviçt.*
dem auter felony.
25 E. 3. cap. 5. pro
Clero.

For this division of Holcrofts case before in the Chapter of Murder, and Lib. 4. fo. 45, 46. where the statute of 3 H. 7. cap. 1. is well expounded; and the second part of the Institutes Artic. super Chart. cap. 3. & Lib. Intr. Co. fo. 53, 54, &c. and Lib. 4. fo. 40. Wetherels case; and Stanford Lib. 2. cap. 37. in pl. coron.

* Before the statutes of 8 Eliz. cap. 4. and 18 Eliz. cap. 6. if a man had committed divers felonies, if he had been indicted of the last, and had benefit of his Clergy, he could not have been impeached for any of the former felonies, albeit for the same he could not have had his Clergy: by that Act it is provided, that notwithstanding the allowance of such Clergy, he may be impeached for any former offence, for which he could not have had his Clergy.

Judgement to reverse an outlawry for treason or felony.

Vide Pasc. 39 E. 3.
Rot. 99. Scire fac.
Dominis mediatis &
immediatis.

The judgement to reverse an outlawry of A. B. in case of treason or felony in a Writ of Error is, *Ideo consideratum est quod utlagaria prædicta ob errorem prædictum & alios in recordo & process. prædict. compert, revocetur, annulletur, & penitus pro nullo habeatur, & quod prædict. A. B. ad communem legem & omnia quæ occasione utlagariae prædict. amisit, restituantur, &c. & quod ipse eat sine die.*

If the outlawry be avoided by plea, then the judgement is, *Ideo consideratum est quod prædictus A. B. de utlagaria prædicta exoneretur, & quod ipse ad communem legem, & omnia quæ occasione utlagariae prædict. amisit, restituantur, & ea occasione non molestetur in aliquo, nec gravetur, sed sit, & eat inde quietus.*

If A. B. be indicted of treason or felony in the Kings Bench, or if he be indicted before Commissioners of Oyer and Terminer, or any other, and the Indictment of treason or felony is removed into the Kings Bench, and by Process out of the Kings Bench he is erroneously outlawed and so returned, a Writ of Error may be brought in the Kings Bench for reversal thereof.

And where it is holden by some, that if any person be attainted of High Treason by the Common law, that no Writ of Error should be brought for the reversal of that attainder, by reason of these words of the statute of 33 H. 8. cap. 20. viz. And if any person or persons shall be attainted of High Treason by the course of the Common law, &c. that every such attainder by the Common law shall be of as good strength, value, force and effect, as if it had been done by authority of Parliament: But the contrary hereof was resolved at a Parliament holden Anno 28 Eliz. that a Writ of Error should be maintained for the reversal of erroneous attainders of High Treason by the Common law: for that statute of

33 H.

Stanf. pl. cor. 18: k. l.
33 H. 8. cap. 20.

33 H. 8. is to be intended of lawfull attainders by the due course of the Common law, and not of erroneous or void attainders. And thereupon at that Parliament holden anno 28 Eliz. an Act was made, That no Record of attainder of any person or persons, of or for any High Treason, where the party so attainted, * is or hath been executed for the same treason, shall be, &c. in any wise hereafter reversed, undone, avoided, or impeached by any plea, or for any error whatsoever.

* And albeit judgement be given against a man in case of treason or felony, yet his body is not forfeited to the King, but untill execution remains his own. And therefore before execution, a if he be slain without authority of law, his wife shall have an Appeal; for notwithstanding the attainder he remained her husband. And after such attainder his body may at the suit of a Subject be taken in execution upon a judgement or statute, &c. And he may be executed for treason or felony, notwithstanding such execution had against him. And in an Action of debt, or other Action brought against a person attainted, he cannot plead the attainder, and demand judgement, if during the attainder he shall be put to answer: b for upon consideration had of the books in 11 Ass. 27. 2 E. 4. 1. 4 E. 4. 8. 6 E. 4. 4. 6 H. 4. 6. 8 Eliz. Dier 245, &c. c it was adjudged that the person attainted should not plead the said plea, but should be put to answer. And there is a great diversity between an attainder of treason or felony, and an entry into Religion; for he that is attainted of treason or felony hath capacity, and d may purchase lands to him and his heirs, e but so cannot he that is entered into Religion. And it is against a rule in law, that any man of full age should be received in any Plea by the law to disable his own person, g or take advantage of his own wrong. And if the person attainted be beaten or maimed, or a woman attainted be ravished, after pardon they shall have an Action of battery, Appeal of mayme or Rape. See Lib. Intr. Co. 247, 248.

h In ancient time a man indicted or appealed of life or member, or imprisoned, &c. should not be compelled to answer at other mens suits: but (as before it appeareth) these opinions have been justly changed.

i There was a notable case adjudged in the Kings Bench, Mic. 26 & 27 Eliz. wherewith I was well acquainted, concerning the matters of outlawry and errors before spoken of, which was in effect as followeth.

Ninianus Melvine nuper de Stedwich in Com' Dunelm' at Anno 1 & 2 Ph. & Mar. was indicted in the Kings Bench of High Treason, and upon Process he was outlawed, and so returned; and his daughter and heir brought a Writ of Error in the Kings Bench, wherein two errors were assigned. 1. That before the Exigent the 2. Capias with a Proclamation was awarded to the Sheriff of the County Palatine of Durham, where it ought to have been directed to the Chancellor of that County. k For that point see 30 H. 6. 6. 36 H. 6. 35. 1 E. 4. 10. the book of Entries Rast. fo. 52. Stanf. pl. cor. 68, 69, & 70. Vid. 19 H. 6. 2. 31 H. 6. 11. But the Court gave no opinion concerning this Error. The other Error that was assigned, was, that the Sheriff returned upon the said Capias, that at his Court holden at the City of Durham the eighth day of July in the second and third years of the reign of King Philip and Queen Mary, he made the Proclamation, &c. and there were no such years: for Queen Mary began her reign the 6 day of July, and the 25 day of July in the 2 year of her reign she married King Philip; so as between the 2 day of July, and the 25 day of July, the Queen wrote two years before the King. And therefore there could be no such years as 8 July Anno 2 & 3. but it should have been 2 & 4. And so was the clear opinion of the whole Court. But then it was objected, that by the said Act of 35 H. 8. and Stanfords opinion thereupon, that the attainder by outlawry being an attainder by the Common law, it could not be reversed by Writ of Error, for that the said Act of 35 H. 8. was to be intended of lawfull attainders: And after great deliberation the outlawry of treason was reversed. And I take it, it shall not be altogether impertinent, sure I am it shall not be unprofitable, to report the consequent of this reversal. In the next Term, sc. Term. Hil. anno 27 Eliz. for that Queen Eliz. had the lands whereof the said Ninian was seized in fee; his wife

* Nota, this Act extends only to attainders of treasons before the Act of 28 El. where the party hath been executed, and not to attainders of treasons afterwards.

* What interest the King hath in the body of the attainted before execution.

435 H. 6. 63.

b See Britton, cap.

122. Fleta lib. 6.

cap. 6, 7.

c Mich. 38 & 39 El.

in communibus

Int. Banister &

Truffel attaind de

felony.

Vide Mich. 33 &

34 Eliz. coram Rege,

Rot. 532. Int.

Ognel & Truffel.

Mich. 32 Eliz. inter

Wade Plaintiff &

Prestal Defendant

attaind de haut treason,

coram Rege.

Vide sup.

d See the first part

of the Institutes,

Sect. 1.

§ Car si homine purchase.

e Ibid. Sect. 199,

200. mort in ley.

f First part Instit.

Sect. 405.

§ 45 E. 3. §. 2.

18 E. 4. 25.

15 E. 4. §. 2. &c. lit.

b Britt. cap. 122. a.

§ Encusement de

crime.

Fleta lib. 6. cap. 6, 7.

i Mich. 26 & 27 El.

Ninian Melvins case

in the Kings Bench

in Bre de errors.

k See the Stat. of

8 H. 6. cap. 10.

Hil. 27 Eliz. in

Filacius Cancellar. &c.

by petition of right, which comprehended the title of the wife, and the title of the Queen, claimed her dower, which in effect was this: That her husband was seized of certain lands in fee, and took her to wife; and before his treason committed Anno 1 Maria leided a Fine with Proclamation to another, whose estate the Queen had by lawfull conveyance therein expressed; and that afterward her said husband was attainted of High Treason by outlawry, ut supra, and died in anno 4 Eliz. which outlawry was the last Term reversed in a Writ of Error, as is abovesaid. Which Petition being indorsed by the Queen, Soit droit fait al partie, and delibered into the Chancery, Sir Thomas Bromley, a man of great gravity and judgement in law, then being Lord Chancelor of England, by advice of all the Judges resolved these Four points following. First, that the petitioner need not to have any office to find her title, because her title standeth with the title of the Queen, and the Queen is not intitled by office (which she might traverse, or contest and avoid) but by conveyance, which she affirmeth. Secondly, that a Fine with Proclamations, and five years past after the death of the husband doth bar the wife of her dower, and that the consue shall take advantage thereof, and of the attainder also. Thirdly, that albeit five years and many moze in this case were past since the death of her husband, yet the said fine with Proclamations did not bar her; because as long as the said attainder of treason stood in force, she was barred of her dower, and could not have any remedy, or pursue her title, untill the outlawry were reversed, and then her title of dower did first grow due unto her, and therefore she might within five years after the reversal of the said outlawry, pursue her title by the express words of the saving of the Act 4 H. 7. Fourthly, albeit an attainder reversed by a Writ of Error, is as concerning restitution to the party by relation from the beginning become of no force, and the Record so annihilated thereby, as Nul tiel Record may be pleaded thereunto: yet this relation shall never work a bar, and consequently a wrong to a stranger, but that the truth of the matter may be shewed, viz. the Record, and the reversal of the same: and the rather (as some said) because the wife could not have any Writ of Error to reverse the outlawry, so as she had no mean to pursue her right so long as the outlawry remained in force, which it did, untill it was reversed by error. But admit the wife had been (in a remote degree of consanguinity) heir to her husband, so as she might within five years after the death of her husband have had the Writ of Error after the death of her husband to reverse the outlawry, and to enable her self to pursue for her dower, and reverse the outlawry within the five years: I hold in this case that she shall have five years after this reversal, and that within the said saving of the statute of 4 H. 7. for then did her title of dower (as hath been said) first grow unto her, and as it was not in her power to reverse the outlawry when she would. And in this Term of S. Hillary, Popham Attorney Generall, according to the said resolution of the Lord Chancelour and Judges, confessed the Petition to be true; and thereupon Judgement was given, that he should be indowed, and was indowed accordingly.

c By the statute of 26 H. 8. and 5 E. 6. it is enacted, that all Proses of outlawry against any offenders in treason, being out of the Realm, or beyond the Seas, at the time of the outlawry pronounced, shall be as good and effectual as if the offenders had been within the Realm at the time of the outlawry pronounced. See the said Statute of 5 E. 6. cap. 11. that if the party outlawed shall within one year after the outlawry pronounced, yield himself to the Chief Justice of England, and traverse the said indictment, &c. and thereupon be found not guilty by verdict, he shall be clearly discharged of the said outlawry.

Judgement in case of abjuration for felony, whiles it was of force.

After the flying of a felon for any kind of felony, whatsoever, Sacrilege excepted, (but in case of High Treason or Petit Treason a man could never abjure, because the Coroner is not allowed by law to be a Judge of those heinous crimes) into a Church, for safeguard of his life, and upon his prayer of a Coroner,

Vide Lib. 2. fo. 93.
Bingham's case.
See the first part of
the Institutes,
S. ct. 55.

4 H. 7. cap. 24. the
first saving.
4 25 E. 3. 75.
4 H. 7. fo. 22. &
11, 12.
38 H. 4. 4. & 12.
21 E. 4. 23. Dier 29.
H. 8. fo. 32. pl.
idem.
6 Eliz. 228. pl. 45.
3 Eliz. fo. 188.
pl. 8. a.
Lib. 8. fo. 42, 43. b.
Dr. Druryes case.
b 34 H. 6. fo. 2.

* Nota.

c 26 H. 8. cap. 13.
5 E. 6. cap. 11.
These statutes not
only extend to all
treasons by the sta-
tute of 25 E. 3. by
the Common law,
but by another sta-
ture.

Vid. Dier 12 Eliz.
fo. 287. accord.
First part of the In-
stitutes, Sect. 479.

Coroner, a and his voluntary and particular confession of the felony befoze the Coroner, naming the certain time, the judgement was, Idem A. petit de præfato Coronatore regnum domini Regis Angliæ abjurare: Super quo tradito bei libro p præfat' coronatorein, idem A. regnum prædict' coram præfato coronatore prædict' die, &c. in ecclesia prædicta abjuravit, in idem regnum nunquam rediturus absque speciali licentia, & reconciliatione regis Angliæ; & assignatus est eidem A. pro transitu suo extra regnum prædictum Portus de Yarmouth, c Cruce in manu sua dextra posita, prout lex Angliæ est & consuetudo. Nothing is expressed in this judgement but abjuravit regnum, but therein is implied, that all his lands which he had at the time of the felony committed, d (and therefore the time of the felony was set down in his confession particularly) or at any time after, escheated to the Lords of the fees, and forfeited to the King all his goods which he had at the time of his attainder, e the time whereof also was expressed certainly, and his blood corrupted, and other incidents, as in other attainders of felony, only by his voluntary and particular confession. In this case for the offence of felony, he saved his life so long as he kept himself extra regnum, but if he returned, then under this word [abjuravit] is implied *Suf. per collum.* Mich. 1 R. 2. Rot. 1. Bedf. redit & suspend. See the first part of the Institutes, Sect. 200. fo. 132, 133. and the Second part of the Institutes, W. 1. cap. 20. verbo, f [Forejure le Realm.] Artic. Cler. cap. 10 & 15. And the law was so favourable for the preservation of Sanctuary, that if the Felon had been in prison for the felony, and befoze attainder or conviction g had escaped and taken Sanctuary in Church or Church-yard, &c. and the Bailiffs or others had pursued him, and brought him again to prison, upon his arraignment he might have pleaded the same, and should have been restored again to the Sanctuary. See more concerning Abjuration, Mich. 9 E. 3. Coram Rege, Rot. 14. extra legem politus, &c. To conclude this Judgement of Abjuration, we take it, that for felony h Abjuration is utterly taken away. For abjuration of Recusants and of Hunters in Parks, &c. we have given but a light touch, because they belong not to our treatise of the Pleas of the Crown; nor have we spoken any thing of Abjuration in case of Heresy, *Quia spectat ad aliud forum.*

Thus have we spoken of judgements and attainders in cases of high treason upon verdict, confession, or nihil dicit, and by outlawry; in case of Petit treason upon verdict, confession, or by outlawry; and in case of felony, upon verdict, or confession, or by outlawry, or by abjuration: for none can be attained of Petit treason or felony upon a nihil dicit, or refusal to answer, but in that case the Defendant is to have his punishment of *Peine fort & dure*, which next falleth to be handled.

b. pl. 6. g Lib. Inr. Rast. 532. b. Sanct. 2. Hil. 43 E. 4. Rot. 115. Buck. William Attewels case. h For all Sanctuaries are taken away by 21 Jac. cap. 18. Note a Sanctuary in the statute of 1 H. 7. cap. is called a hidel or hydle, because it hideth and protecteth the party, &c. Vide Deut. cap. 19. 3, 9, 10. Numb. 35. 13. Joshua 20. 8. See 2. part of the Institutes, Glouc. cap.

Peine fort & dure.

In case of Petit treason or felony, i when the offender standeth mute, and refuseth to be tryed by the Common law of the land; See *Peine fort and dure* in the Second part of the Institutes, W. 1. cap. 2. but this holdeth but in case of Petit treason and felony. In case of High treason, upon standing mute, or a nihil dicit, the judgement aforesaid shall be given against him, as if he had been convicted.

And in doing of execution, both in treason and felony, two things are to be observed. First, that it be done by the right Officer, as the Sheriff, or Marshall, for if any other execute the offender, it is felony. Secondly, execution must be made by him that is the right Officer according to the judgement: for example, k where the judgement is, that the offender shall be hanged, he cannot behead him, &c. as befoze is said, Bracton lib. 3. fo. 104. b. Non alio modo puniatur quis, quam se habeat condemnatio. P. 20 R. 2. Coram Rege, Rot. 58. Lincoln. Non licet felonem pro feloniam decollari.

lib. 9. fo. 124. the Lord Zachers case. rily above the number of 36. viz. three whole Juries. 4 35 H. 6. 57, 58. Vide lib. 9. fo. 124. the Lord Zachers case.

Judgement.

a 6 E. 3. 53. in A jell Mallons case. 12 E. 2. eschete 14. Tr. 21 E. 1. Coram Rege 42. simile. b Hereupon it was called abjuration, because he was sworn to depart the Kingdom. See the Oath. Vet. Mag. Chart. 1. part f. 197, 168. c That he might be known to be an abjured person, and not be let or hindered in his journey: Et Crux fuit signum servatæ vitæ per ecclesiam, and is sometime called vexillum Sanctæ Ecclesiæ. Hil. 26 E. 3. Coram Rege, Rot. 20. d Pl. Com. f. 262. a. in Dame Hales case. Regillar fo. 164. b. Fecit feloniam pro qua regnum nostrum abjuravit. e Stant. Pl. Cor. 117. E. 6 E. 3. 55. in A jell Mallons case. 12 E. 2. Esch. 14. 6 E. 2. Forf. Br. 121. 6 H. 4. 6. f Eorejure in French is taken for abjure, in Latine abjurare. 1 E. 3. 17. lib. Inr. Rast. fo. 246.

i First part of the Instit. Sect. 545. Verb. Attaint. 2. part of the Instit. W. 1. cap. 12. Dier 3 El. 205. 2. 13 El. 300. b. See before in the chapter of Treason. See after in the next chapter of Forfeiture, for when the party arraigned challengeth perempto-

Judgement in case of Petit larceny.

The judgement herein was in ancient time referred to the discretion of the Judge. As in Bractons time, Per fustigationem, & sic calligatus dimittitur. In Bractons time, sometime by the Pillory, sometime by the loss of the ear: and Fleta saith, Est enim furtum de re magna & parva, pro minimo tamen latrocinio 12 denariorum & infra, nullus morti condemnatur; pro hujusmodi modicis delictis inventa fuerunt judicialia Pilloria, & deformitates corporum, ut scissio auricularum.

But in and since the reign of E. 3. no person lost any member for Pett larceny, but were sometime punished by imprisonment, and sometime by other penance, as whipping, &c. If the Delinquent sayeth for Pett larceny, and so be found by the Jury, he forfeiteth his goods.

Judgement in case of misprision of High Treason.

That the offender by the Common law shall for this concealment forfeit all his goods, and the profits of his lands during his life, and suffer imprisonment during his life. Vide Stanford Pl. Coron. fo. 38. 1 & 2 Mar. cap. 10.

Judgement for striking in Westminster Hall, &c. sitting the Courts.

That the offender shall be imprisoned during his life, forfeit all his lands, tenements, goods and chartels, & quod manus sua dextra amputaretur (apud talem locum:) and this judgement is given by the Common law. Bracton lib. 3. fo. 104 b. Poenarum quedam adimunt membrum, & corporis coercionem, sc. imprisonmentum, vel ad tempus, vel perpetuum.

Judgement for striking and drawing, blood in the Kings Court, &c.

The offender shall have his right hand stricken off, be imprisoned during his life, and be fined and ransomed at the Kings will: and this judgement is given by the statute of 33 H. 8. cap. 12. 33 H. 8. Paine Br. 16.

We cannot omit to touch by the way an Act made in 1 & 2 Ph. & Mar. intitled, an Act against seditious words and rumours; *by a branch of which Act, he that should set forth any book, ryme, ballad, letter or writing containing any false matter, clause or sentence of slander or reproach, and dishonour of the King and Queens Majesty, or either of them, &c. should have his or their right hand stricken off: which Act being but a Probationer at the Parliament in 4 & 5 Ph. & Mar. was continued untill the end of the next Parliament. And by the Act of 1 Eliz. (which was the next Parliament) the said Act of 1 & 2 Ph. & Mar. was enacted to extend to the Queen Elizabeth, and to the heirs of her body, Kings and Queens of this Realm; so as by the demise of Queen Eliz. that Act hath lost his force, as it was well worthy, being a dangerous Act, as some had felt in anno 23 Eliz.

Judgement in a Premunire at the suit of the King.

If the Defendant be in prison, Quod predictus R. sit extra protectionem domini Regis, & terras, & tenementa, bona & catalla domino Regi forisfaciat, & quod corpus ejus remaneat in prisona ad voluntatem Regis, as in the book of Entries, Rast. Judgement 465. And this Judgement is given by the statutes of 25 E. 3. cap. 22. 25 E. 3. de Provisoribus, 27 E. 3. cap. 1. 16 R. 2. cap. 5. And if he be not in prison, Quod pred. R. sit extra protectionem domini regis, & terras et tenementa, bona et catalla domino regi forisfaciat, et quod capiatur.

Judgement in case of Theft.

That the offender be fined. And it is to be observed that whensoever the Delinquent or Defendant is to be fined, the Judgement is quod capiatur, that is, to be imprisoned untill he doth pay his fine: but when the Defendant is to be amerced, and not fined, then the Defendant is in misericordia, whereof you may

Bracton lib. 3.
fo. 131. b.
Britton fo. 24. a.
Fleta lib. 1. cap. 36.
Bracton lib. 3.
fo. 104. b. maketh
mention of punish-
ment verberibus &
virgis.
* 18 Ass. p. 13.
8 B. Cor. 130.
41 E. 3. Cor. 451.

Tr. 4. E. 4. Coram
Rege, Rot. 3. 19 E. 3.
Judgement 174.
39 Ass. p. 1. 41 Ass. 25.
22 E. 3. 13. a.
41 E. 3. Coron. 280.
42 Ass. 18. Stanf.
Pl. Cor. 38. c.
3 Eliz. Dier 188.

1 & 2 Ph. & Mar.
cap. 3. obtruncatio
manus dextræ.

1 El. c. 6.

See the first part of
the Indit. § 159.

44 E. 3. 36.

5 E. 3. Cor. 353.
29 E. 3. 9.
27 Ass. 69.
42 Ass. pl. 5.
Stanf. fo. 40. b.

may read at large, Lib. 8. fo. 38, 39, &c. & 59, 63. & 130. Lib. 11. 43, 44.

Pillory.

Pillory is a French word, and it is deribed of the French word Pilastre a Pillar, columna. Et est lignea columna, in qua collum insertum premitur, and thereupon in law it is called Collistrigium, quia in eo collum hominum constringitur. This punishment is very ancient, for the Saxons called it Heultrauz, so called for straining the neck. Britton fo. 24. saith, that those that have been adjudged to the Pillory, or Tumbrel, are so infamous, Come ilz ne sont receivables al serement faire in juries, enquests, ou en testmoignants; and herewith agreeth Bracton: Vet. Mag. Chart. 2. parte, fo. 23, 24, 45.

Saxonice Heilsfang, or Halsfang; Hals collum fang pressio. It is also called an amerciament for commutation of such a punishment; 51 H. 3. Judicium Collistrigii &

Pillorii, Vet. N. B. 1. parte, 116, 117. Britton fo. 24. Mirror cap. 4. 5 De paines en divers manners. Kelway Temps E. 3. 145. b. Fleta lib. 2. cap. 8. By the statute of 51 H. 3. & 31 E. 1. Vet. Mag. Chart. 2. parte, fo. 23, 24, 45.

Tumbrell.

Tumbrell is a word in use at this day for a Dungcart. Bracton calleth it Tymboralem.

Bracton lib. 3. fo. 104. b. 129. b. 151. b. 138. Mirror ubi supra, Temps E. 3. Kelway 139, 140. b. 149. b. 152. Fleta li. 2. c. 11. S. Item si dñus. Li. Int. Rast. 494. a. in Quo Warr. 7 E. 2. in eodem 260. b.

Infigitur poena corporalis, sc. pilloralis vel tumberalis cum infamia, secundum regni statuta. It is called tumbrellum, there being no proper Latin word for a Dungcart.

Furce, Pillot & Tumbrel append al View de Franckpledge. And every one that hath a Let of Parbet, ought to have a Pillory and Tumbrell, &c. to punish offenders, as Whetters, Sakers, Fozestakers, &c.

Trebuchet.

De castigatory, named in the statute of 51 H. 3. signifieth a Cucking-stool, and Trebuchet properly is a pitfall or downfall, and in law signifieth a stool, that falleth down into a pit of water, for the punishment of the party in it. And Cuck, or Guck, in the Saxon tongue, signifieth to scould or brawl, (taken from the Cucubato, or Cucubato, a bird qui odiose jurgat & rixatur) and Inge in that language [water] because she was for her punishment sobosed in the water; and others fetch it from Cucusean, i. pellex.

Stat: de 51 H. 3. ubi supra. Vet. Mag. Chart. part 2. fo. 44, 45. Stat. de pane & cervisia.

Now for that the judgement of the Pillory or Tumbrell (as it hath appeared before) doth make the Delinquent infamous, and that the rule of law is, Judicium de majore poena quam quod legibus statutum est non infamum facit, sed per breve de errore adnullare potest; and again, poena gravior ultra legem posita estimationem conservat, that the Justices of Assize, Oier and Terminer, Gaol-delivery, and Justices of Peace, would be well advised before they give judgement of any person to the Pillory or Tumbrell, unless they have good warrant for their judgement therein; Fine and imprisonment for offences fineable by the Justices aforesaid, is a safe and sure way.

Judgements to be given by Justices of Assize, of Oier and Terminer, of Gaol-delivery, of Justices of Peace.

And it is to be observed that those kinds of punishments of Pillory, &c. have been given by Acts of Parliament in cases of enormous and exorbitant offences, as by the statutes of 51 H. 3. 31 E. 1. De pistoriis, &c. 31 E. 1. De forestaliis, 11 H. 7. cap. 4. 33 H. 8. ca. 1. 1 & 2 Ph. & Mar. cap. 10. 2 E. 6. cap. 15. 5 E. 6. cap. 6, & 14. 7 E. 6. cap. 7. El. c. 7. 5 El. ca. 9. 16. 18 El. cap. And therefore the safest way for them, is to follow those Acts of Parliament in cases provided by the same: But of the Court of the Kings Bench, (the highest Court of ordinary Justice) in respect of the multitude of the judicial precedents (which we have seen) we say with the Poet, Huic nec metas rerum, nec tempora pone, (for judicial precedents of grave and reverend Judges are good guides to direct men in the right way) we will enumerate some of them.

Vet. Mag. Chart. part 2. fo. 24, 25.

21 E. 1. Coram Rege, Rot. 2. Eustachius de Porles Case, for standing of Justice Berisford, imprisonment in the Tower, ad voluntatem regis.

Exemplary punishments adjudged in the Kings Bench.

Mich. 33 E. 1. Coram Rege, Rot. 75. William Brewces case for standing, &c. of Roger

Roger Hgham Justice. Tr. 3 E. 2. Int. Mem. Scaccarii for standing of Foxeley, a Baron of the Exchequer. Mich. 18 E. 3. coram rege, Rot. 151. for standing of the Justices of the Kings Bench, by a Letter of Tho. Bulbroke, a Clerk of the same Court. 30 Ass. p. 5. 19. 19 Ass. i Pasch. 10 E. 3. Rot. 87. Thom. Twyce Hazarder cois ludens ad falsos talos adjudicatur quod per sex dies in diversis locis ponatur super collistrigium. Mich. 10 E. 3. Rot. 92. coram rege, Adam de Ravensworth. Mich. 21 E. 3. coram rege, Warw. Verff. Attornat' apparent' sine Warranto. Hil. 25 E. 3. coram rege, Rot. 13. versus Robert' Hadham Commissionarium pro venditione Bladi in garbis, adjudicatur prisona, & quod ab omni officio Domini Regis amoveatur, & finem faciat. Tr. 2. H. 4. coram rege, Rot. 4. Suffex. Mich. 4 & 5 Eliz. coram rege, Hugh Bakers case, for a Libell againt certain of the inhabitants of Cherise, punished by imprisonment, Pilloze, and good behabour, &c.

Ancient rules of law in corporal punishments. Bracton lib. 3. fo. 105. a. Ibid.

See the fourth part of the Institutes, Cap. Star-Chamber, for punishment by Pilloze, &c. for enormous and exorbitant offences, which require more exemplary punishment than an ordinary course of the Laws of the Realm doth inflict. Nobiles magis plectuntur pecunia, plebei vero in corpore; which is observable in all the said statutes. And Bracton saith, Quelibet poena corporalis, quamvis minima, major est qualibet poena pecuniaria. Carcer ad continendos, non ad puniendos haberi debet, &c. Poena potius mollienda quam exasperanda sunt. Respiciendum est judicanti, ne quid aut durius aut remissius constitutur quam causa deposcit; nec enim aut severitatis aut clementiae gloria affectanda est. Aliter puniuntur ex eisdem factionibus servi quam liberi; & aliter qui quidem aliquid in dominum parentemve commiserit, quam in extraneum; in magistratum, quam in privatum.

Ibid.

Death of a man per infortunium.

Marlb. cap. 25.

Bracton ubi sup.

Judgement implied, or in law. 24 H. 8. cap. 5.

Of this mischance there is no express judgement to be given, but the offender is to sue out his pardon of course, as it appeareth in the second part of the Institutes, Glouc. cap. 9. And hereof Bracton saith, Casu, cum per infortunium, ut si aliquis venando per telum in feram missum hominem interfecerit, & similia perpetraverit, &c. But althet there be no express judgement given upon such a verdict, yet the law giveth a judgement thereupon, viz. that he shall forfeit all his goods and chattells, debts and duties whatsoever, as in the second part of the Institutes, *ubi supra*, it appeareth.

Of the death of a man se defendendo.

Judgement implied, or in law. See cap. 7. fo. 95. b. 43 Ass. p. 31. Rot. Parl. 3 R. 2. nu. 18. John Imperials case.

Upon such a verdict given the Court giveth no express judgement, for he is also to be pardoned of course: but the law hath given a judgement, that he shall forfeit all his goods and chattells, debts and duties, as in the second part of the Institutes, *ubi supra*, it appeareth. But the Jury cannot find that the party killed him generally se defendendo: but they ought to find the case specially, so as the Court may judge whether in law it be se defendendo, or no. See Stanf. fo. 15.

Of the death of a man that offereth to rob, &c.

43 E. 3. cor. 305. b 3 E. 3. cor. 330. 26 Ass. 23. Exod. 22. Si effringens vir domum five suffodiens fuerit inventus; & accepto vulnere mortuus fuerit, percussor non erit reus sanguinis. c Not^d, declared, &c. and so was the common law, as by the Books aforesaid it appeareth.

If it be found by verdict, that the party indicted or appealed for the death of A, A attempted to have murdered or a robbed him in or nigh any common High-way, Cart-way, Horse-way, or foot-way, or in his mansion or dwelling-house; or for the killing of him which attempteth Burglary to break his dwelling-house in the night; the judgement upon such a verdict shall be, that he shall be acquitted of the death of such a person paying his fines, and he shall forfeit nothing. And so it is declared and enacted by the statute of 24 H. 8.

And if all the circumstances be proved to the Jury in evidence required by this Act in these cases, the Jury may find a generall verdict of not guilty. And where it is rehearsed in the said Act of 24 H. 8. that before that Act it was a question and ambiguity whether evil-disposed persons so attempting, *ut supra*, should forfeit their goods and chattells; the reason of that question and ambiguity was in none

none of these cases mentioned in that Act, no Robbery, Murder, or Burglary was done, but an attempt only to do it. But it was no question at the Common law, that if a Robbery, Murder, Burglary, or other felony was done, and pursuit made after the offender, who either by resistance or flight could not be apprehended without killing of him by inevitable necessity, the party so pursuing and killing should not forfeit his goods or chattels; for in those cases every man may arrest the felon by a warrant in law. But there is a diversity between a warrant indeed, and a warrant in law, in this, that if a man be indicted of Murder, Robbery, Burglary, or other felony, and the Sheriff by virtue of a Capias offer to arrest him, and he resisteth, and fly, ut supra, the Sheriff may kill him, if otherwise he cannot arrest him, although in truth the party be not guilty, nor any felony done. But in the case of the abovesaid warrant in law, there must be a felony done, and this diversity appeareth in our Books: * and so it is, if after arrest for felony the party arrested resisteth or flyeth, and in pursuit is slain by inevitable necessity, they so killing him forfeit nothing.

An Approver that kills the party accused in battel, or a Champion that killeth the other Champion in a Writ of Right, or the Plaintiff or Defendant in an appeal that killeth the other in duello, according to the Common law, or in combat awarded by the Constable and Marshall in the Court of Chivalry, the party killing shall forfeit nothing: for these combats or duels are such trials as the law appoints in such cases. For, saith Fleta, Duellum est singularis pugna inter duos ad probandum veritatem litis; & qui vicerit, probasse intelligitur: & quamvis iudicium Dei expectatur. ibid. quicumque tamen monomachiam, i. singularem pugnam, sponte susceperit, aut obtulerit, homicida est, & mortale contrahit peccatum. But before we leave these Champions, it is to be observed that whosoever taketh upon him to be a Champion for another (the form and oath whereof you may read in the Second part of the Institutes, W. 1. cap. 40. & Glanvil lib. 2. cap. 3) if he become recreant, that is, a criping Coward or Craben, he shall forfeit his perjury & lose liberam legem. d Craben is derived of the Greek word κραυνην, a vociferation: others nearer home, of criping and crabbing of mercy and forgiveness. And recreantia is derived of the French word recreance, of gibing back or cowardize. And sometime it is called creantia e per antiphrasin, because he that useth it is not faithfull, but breaketh his oath. And so if the Appellant join battel, and cry Craben, he shall also lose liberam legem for the cause aforesaid, but if the Appellee cry Craben, he shall be hanged: * but if they combat until night come, and stars appear, the Defendant in the appeal goeth quit, and the Plaintiff in that case loseth not liberam legem. f Amittere liberam legem is to become infamous, and of no credit, never to be witness or Juror: for when he is of fame and credit, he is called Liber & legalis homo; and such men ought to be of Juries and Witnesses, because they do enjoy liberam legem. g And a Champion ought to be liber homo, and so is the Entry, per corpus liberi hominis. Et quam infamiam victus incurrit. See Glanvil lib. 2. cap. 3. & lib. 14. cap. 1. And he further saith, Talis debet Campio petentis esse, qui sit, esse & possit inde testis idoneus. So as no man by the ancient Common law could be a Champion but he that knew the right, and was a witness thereof: and therewith agreeth the statute of W. 1. cap. 40. wherein observe what the oath was by the Common law: Aliquando patria stat pro campione, & aliquando in bñe de recto campio stat pro patria. Campio is derived a campo, because it is publicly stricken in the field, and is called Camp-fight: and is taken in the Common law for one that striketh a legal Camp-fight or Combat in another mans quarrel: in Latin he is called Pugil, a pugna. But the Defendant in an appeal that is to combat, is not called a Champion, because he fighteth for himself. And these combats in cases whereof the consance belongs to the Common law, are to be directed by the Judges of the Common law secundum legem & consuetudinem Angliæ, and not by the Constable and Marshall by the Civil law, as all our ancient Authors and Books abovesaid do agree, which also is apparent by the statute of 13 R. 2. cap. 2. Lib. 9. cap. 1. & lib. 14. cap. 1. 9 H. 4. 3. 17 Aff. 3. 17 E. 3. 2. 9 E. 4. 25. Fleta ubi sup. Lib. Int. Co. fo. 282. 55 H. 3. ubi sup.

23 Aff. p. 55.
 22 E. 3. cor. 261.
 3 E. 3. Cor. 328.
 3 E. 3. ibid. 288,
 289, 290.
 * See in the Chap. of Hue and Cry.
 4 Rot. pat. 3 H. 4. part 2. Duellum petustum.
 13 H. 4. 4.
 37 H. 6. 20, 21.
 See before in the Chapter of Approver.
 Fleta lib. 1. cap. 32. b 4 E. 3. 41.
 30 E. 3. 20.
 29 E. 3. 12.
 13 Eliz. Dier 301.
 Mirror cap. 3.
 § Combat & § Juramentum duelli, & § Ordinatio pugnantium.
 c Judgement in law against a Recreant and Craven Champion is perdere liberam legem.
 See a notable Record hereof R. pa. 55 H. 3. m. 3.
 Glanvil li. 2. c. 3. lib. 14. cap. 1.
 d Mirror cap. 3.
 § Ordinatio pugnantium, L'horrible mort de Cravent.
 e 41 E. 3. cor. 98.
 Creant for recreant.
 Bract. lib. 3. f. 141.
 Brit. fo. 42. 81.
 Fleta lib. 1. cap. 32.
 19 H. 6. fo. 35.
 21 H. 6. 34.
 * Mir. c. 3. § ubi sup.
 f Glanvil lib. 2. cap. 19. Legem terre amittentes perpetuam infamiz notam indemerito incurunt.
 See the first part of the Inst. Sect. 514. 27 Aff. 59. liberam legem qui, &c.
 g 1 H. 6. 6.
 3 H. 6. 55.
 See the oath in appeal, Bracton lib. 3. fo. 141. b. Britton fo. 42. Fleta lib. 1. cap. 32. Glanvil lib. 2. cap. 3.

Judgement in an Indictment of Conspiracy, &c. where the party indicted is legitimo modo acquietatus.

4 H. 5. Indict. 220.
Tr. 18 E. 3. coram
Rege, Rot. 148.
Wilt. judicium red-
dit. cont. Conspira-
tores Pasch. 32 E. 3.
Rot. 58. Somers.
27 Aff. 59.
24 E. 3. 34.
43 E. 3. 33. b.
Vide Artic. super
chart. cap. 10.

Nota, The judgement in this case is, as in case of attaint against a Jury, (whereof we shall speak hereafter) viz. Quod committantur Gaolæ Domini Regis, & quod omnia terræ & tenementa præd. R. & C. capiantur in manum Domini Regis, & devastentur, & extirpentur, & uxores & liberi eorum amoveantur, & omnia bona & catalla eorundem R. & C. forisfaciant Domino Regi, & amodo amittant liberam legem imperpetuum.

Nota in this judgement five severe punishments. 1. That their bodies shall be imprisoned in the common Gaol. 2. Their wives and children removed out of their houses. 3. That all their houses and lands shall be seized into the Kings hands, and the houses wasted, and the trees extirpated. 4. All their goods and chattels forfeited to the King. 5. That they together shall lose the freedom and franchise of the law. That is, First, they shall never be of any Jury or Recognitors of Assise. Secondly, nor ever be received for a witness in any case. Thirdly, that they shall never come into any of the Kings Courts, but make Attornies, if they have any thing to do there. And this is called a * villainous judgement, because of the villainy and infamy which they deserve against whom it is given: And all is inflicted by the Common law, for that the offenders by false conspiracy under the pretext of law, by indictment of treason or felony, and legal proceeding thereupon, sought to do the greatest injustice by false conspiracy to shed his blood, who afterwards is thereof legitimo modo acquietatus.

* 24 E. 3. fo. 33.
27 Aff. 53.

But in a Writ of Conspiracy at the suit of the party grieved, the Judgement is, damages to the party, fine to the King, and imprisonment. And the reason thereof is, First, for that when they are indicted at the suit of the King, the judgement is so severe, for that they falsely conspired in the Kings name, and at the Kings suit, by indictment, &c. to do so horrible injustice: therefore at the Kings suit they shall be heavily punished. Secondly, for that as it is said in 15 E. 2. De exilio Hugonis, &c. the law which was instituted for the maintenance of peace and of good men, and the punishment of the evil, is turned to the disheritance of the great men, and destruction of the people. Thirdly, for that then judgement at the Kings suit is by the Common law, and the Action of the party is given by statute, which giveth no such punishment: but the party in his action, in respect of the danger of his life, is to recover answerable damages. Of Conspiracy see the Register fol. 134. a & b. & 188. F. N. B. 114, 115, &c. Stanf. pl. cor. fo. 172, 173, 174, 175, &c. and in the new Book of Entries, fol. 109. a precedent of a conspiracy upon an indictment of felony.

4 H. 5. judg. 220.
24 E. 3. 34. 27 Aff. 59.

43 E. 3. 33. b.
Tr. 32 E. 1. Rot.
15 Eborum.

Parl. 17 E. 3. nu. 50.

It is enacted, that such as be attainted of Confederacy or Conspiracy, shall have no office of the grant of the King, Queen, or other Noble, neither shall be Sheriff or Cheatoz.

Judgement in an Attaint.

1. That the Plaintiff shall be restored, &c. and the Defendant party to the Record, shall be fined, in respect the false verdict was given for him (cui bono) by the Common law.

The judgement against the Petit Jury is, as it is in case of Conspiracy at the suit of the King, as is abovesaid, and in no other but in those two cases that villainous judgement is given. See 8 E. 2. Aff. 396. and 42 E. 3. 26. b. Judgements given in Attaint, & nota bene 16 E. 3. tit. Judgement, 109. 21 H. 7. 83. Kelway. a good precedent of a judgement given in an attaint. Fortescue cap. 26. Concerning Attains, see the second part of the Institutes, Marlb. cap. 14. W. 1. cap. 37, &c.

Lib. Inst. Rastal.
fo. 92. a.
9 E. 4. 51.
4 H. 5. ubi sup.
15 Aff. 2. Kelway
130. b.
Glanvil. lib. 2.
cap. 19.
Brafton lib. 4.
fo. 129.
Brit. fo. 237, 238.
Mirror cap. 3. S. de
attaint.
Het. lib. 5. cap. 31. Apud Northalverton in Com. Eborum coram Hen. de Guildford & aliis Just. assignatis Anno 35 E. 1. attainctæ. See the first part of the Institutes, Sect. 514. Verb. [en attainct.] Vide Mich. 3 H. 4. Rot. 149. judgement en
attaint. Kanc.

But now by the Statute of 23 H. 8. cap. 3. the severity of the punishment is moderated,

derated, if the Writ of Attaint be grounded upon that statute: but the party grieved may at his election either bring his Writ of Attaint at the Common law, or upon that statute: but all attaints either at the Common law or upon the statute are to be taken before the King in his Bench, or before the Justices of the Common Pleas, and in no other Courts.

This Act of 23 H. 8. prohibiteth for divers mischiefs which were at the Common law, and giveth to those of the Petty Jury divers pleas which they could not have at the Common law, and hath been well expounded. 7 E. 6. Dier 81. b. Sir John Ailifs case. 3 & 4 Ph. & Mar. 129. b. Heydons case. 3 Eliz. 201. Clovils case. 3 Eliz. 202. Aultens case. 7 Eliz. 23. b. Stephens case. See the Record thereof upon the statute of 23 H. 8. for it is an excellent precedent.

And generally of Attaints, see Lib. fo. 111, 112. Lib. 3. fo. 4. Lib. 6. fo. 4. 14, 25, 26, 44, 80. Lib. 8. fo. 60. Lib. 9. fo. 12. Lib. 10. fo. 119. Lib. 11. fo. 6, 43, 62. See also the new Book of Entries, 63, 66, 68, 70, 73, 76, 77, 81, 83, 85, 86, &c.

Fudicium de corrupto Judice.

We could not pass over a strange judgement of Suspendatur, &c. as in case of felony (which we have touched before in the Chapter of Hierarchy) given against Sir William Thorpe, lately before Chief Justice of England, which we find of Record in these words. Processus factus An. 24 E. 3. contra Willielmum Thorp chivaler nuper capitalem Justiciarium coram Ricō Comite Arundel, T. de Bello-campo Comite Warw. Willielmo de Clinton Comite de Hunt Joh. de Gray de Rothersfield Seneschallo hospitii Regis, & Barthol. de Burghers Camerañ Regis Pro eo quod idem Willielmus Thorp nuper capitalis Justiciarius Domini Regis ad placita coram ipso Rege tenenda, dum stetit in officio, cepit munera contra juramentum suum, viz. de Richardo Saltley 10 li. de Hildebrandō Boreward 20 li. de Guilberto Hollyland 40 li. de Tho. Darby Sancti Botulphi & de Roberto Dalderby 10 li. qui pro diversis felonis, falsitatibus, & transgressionibus coram ipso Willielmo in sessione sua apud Lincolne Anno 23. fuerint indictati, & per ipsum Willielmum bñe de exigendo vers. eos respect' fuit; quæ omnia & singula dedicere non potuit: ideo ad judicatum fuit prout sequitur, viz. Consideratum est per dictos Justiciarios assignatus ad judicandum a secundum voluntatem Domini Regis, & secundum regale posse suum, quod quia prædictus Willielmus de Thorpe Sacramentum Domini Regis quod erga populum habuit custodiendum fregit b maliciose, false, & rebelliter in quantum in ipso fuit, & ex causis supradictis per ipsum Willielmum, ut prædictum est, expresse cognitis, suspendatur. Et quod omnia c terræ & tenementa, bona & catalla sua Domino Regi remaneant forisfacta. Et postea Dominus Rex mandavit bñe suum sub privato sigillo, all in French, and there entered de verbo in verbum. Ideo consideratum est quod executio Judicii prædicti de suspensione ejusdem Willielmi omnino cesset & ei pardonetur. Et quod idem Willielmus remittatur prisonæ Turris prædictæ ad gratiam Domini Regis expectandam, &c. Et non est intentio Domini Regis quod hujusmodi judicium in consimili casu versus quemcunque alium ex quacunque causa se teneat vel extendat, sed solummodo versus eos qui prædictum d Sacramentum fecerunt, & fregerunt, & habent leges regales Angliæ ad custodiend'.

We have also found, that at a Parliament holden at Westminster in Octabis Purificationis beatæ Mariæ Anno 25 E. 3. holden before Lionel Duke of Clarence by force of the Kings Commission, &c. Commandment was given, that the Record of the said Judgement against the said Sir William Thorpe should be brought into the Parliament, and there to be openly read before the Nobles of the Parliament to hear every of their advices; which was done accordingly, and there the Nobles affirmed the judgement.

And these words in the said judgement, Ad judicandum secundum voluntatem Domini Regis, & secundum regale posse suum, and that his lands should be forfeit to the King, & prædict. Sacramentum, were grounded upon the oath of the Kings Justices in Anno 18 E. 3. the conclusion of which Oath is, [upon pain to be at the Kings will, body, lands and goods, thereof to be done as pleaseth him.]

Rot. par. Anno 24 E. 3. part 3. m. 2. in d. & Rot. par. Anno 25 E. 3. part 1. m. 17.

In toto 80 li.

a The effect of the words of the oath hereafter mentioned. b Nota, here is neither felonice nor pradorie in this Indictment, but rebelliter.

c According to the said oath, for otherwise the King had no colour to have the forfeiture of all his lands for felony, but every Lord of whom they were respectively holden, &c.

d Nota, prædictum sacramentum.

e Rot. Parl. in Oct. Pur. An. 25 E. 3. nu. 10.

was desirous to satisfie our self herein, searched for the Record of this oath: and albeit there is a Parliament Roll of this Parliament, and other Acts, then passed by Authority of Parliament, be entred into the said Roll, yet this is not; for that it had not the warrant of an Act of Parliament. It ought to have been printed amongst the statutes of the Realm, and the title of them is, Here followeth the oath of the Justices made in the same eighteenth year, but saith not at the Parliament, &c. but after it came to be printed: and that which is printed in anno 20 E. 3. cap. 1. is but a recitall made by the King alone, and no Act of Parliament; for it appeareth by that which precedeth, and by the oath it self, that it was the Act only and commandment of the King, for it beginneth, First, we have commanded all our Justices, &c. which former part was but a recitall of some precedent Act: and then followeth, We have ordained and caused our said Justices to be sworn, &c. so as the oath was devised by the King, and the Justices sworn before this Parliament. Lastly, it is there said, and concludeth, And for this cause we have increased the fees of our said Justices, &c. which the King of himself did before this Act also.

And we have an ancient Manuscript of the Acts of Parliament in Anno 18 E. 3. and the oath is not within it.

Fleta lib. 1. cap. 17.
§. Cum igitur non sit, &c.

Vet. Mag. Chart.
1. part. fo. 165. Vide
Bract. lib. 3. fo. 109.
Sacrament' Justic'
itiner', and that
then was the effect
de sacrament' Justic'
residentium.
Vide Fleta l. 2. c. 7.
§. Item atroc est
injuria, &c.

And it appeareth by Fleta, that the punishment of a corrupt Judge, that receiveth gift or reward, was, Si inde convictus fuerit, quod imp. perpetuum a concilio regis excludatur; terraque, res, redditus, & proventus bonorum suorum amittat per unum annum: qui si proventus non habuerit, puniatur per discretionem regni & consiliariorum regis. And that which Fleta calleth Sacramentum Justic', in Vet. Magna Charta is named Juramentum consiliariorum regis: for the Judges of England are of the Kings Counsell (as elsewhere hath appeared) for, in, and concerning the laws of the Realm, in which oath also the said fatal clause is omitted.

See the Mirror cap. 4. §. de faux Judges, & cap. 5 §. 1. of the law in the time of King Alfred, how many Justices were in one year hanged, as homicides, for their false judgements: but that law hath been long since delete and antiquated, and yet may serve for a memorial of the time past.

The offence of Bribery was punished by fine, and ransome, and loss in the reign of E. 1. as in the Chapter of Croxtton and Bribery before appears: only Sir Thomas Weyland Chief Justice of the Common Pleas took Sanctuary, and before a Cozoner confessed himself guilty of murder, and according to the course of the Common law abjured the Realm, so as indeed he was attainted of felony, (which case hath been vehemently urged) but it was not for bribery, but for murder, as any other man might have been.

But to winde up the thread of this discourse with these Acts of Parliament. First, with the statute of 8 R. 2. wherein it is recited, that whereas in the time of King E. 3. it was ordained, that Justices as long as they should be in office, should not take gift or reward, and so forth, as in Veteri Magna Charta, (without the said fatal clause.) That Act prohibiteth, that the oath without that fatal clause, should extend as well to the Barons of the Exchequer, as to the Justices, and expressed the penalty of all to be (according to the Common law) viz. loss of office, fine and ransome. But at the next Parliament, viz. 9 R. 2. the said Act of 8 R. 2. for that it was a very hard, and needed declaration, was made of no force till it be declared in Parliament. Afterwards at the Parliament holden 11 H. 4. it was debated what punishment great Officers there named, Counsellors of the King, and Judges, &c. should have, which should take any gift, reward or brocage for doing of their offices or services: in the end it was declared and enacted by Authority of Parliament, in these words following. Item que nul Chancellor, Treasurer, Gardien del Privy Seal, Counsellier du Roy, Servientes a Counsell du Roy, ne nul autre Officer, * Juge ne minister du Roy, prennent fees ou gages de Roy pur lour dites offices ou service, preigne en nul maniere en temps avenir aucun maniere de c done ou brocage de nulluy pur lour ditz offices & services affaire, sur peine de 1 responder a Roy de la treble de ceo que

1 R. 2. cap. 3.
Vide Vet. Mag.
Chart. fo. 165. a.
ubi supra.

1 R. 2. cap. 1.
(In respect of the
recitall.
) Ro. Par. 11 H. 4.
bu 28, not hereto-
fore printed.

Vide 1 H. 4. nu. 99.
* Nota.

c This is agreeable
to the law of God,
Deut. 16. 19. Non
accipies personam,
nec munera, quia
munera excæcant
oculos sapientum, &
mutant verba ju-
storum.

Exod. 23. 8.

que illi preignont, 2 & de satisfier la party, 3 & puis al volunt le roy, & 4 soit discharged de son office, service, & counsell pur tous jours; & que chascun que verra pursuer en la dit mattier eit la sute cibien pur le Roy come pur lui mesme, & eit la tierce part del summe de que la partie soit ducment conviã. *Respons.* Le Roy le voet.

Nota four punish-
ments.
1. By the Court of Justice where the matter shall depend (as hath been often observed) by fine and imprisonment.
2 In the oath of the Justices in Wales, that fearful clause is omitted, neither is it in the oath of the Barons of the Exchequer of England.
3 Veritas nihil veretur nisi abscondi.

a This Act being by Authority of Parliament, hath limited the punishment (amongst others) of corrupt Judges, of whom now we entreat, so as the former example of Sir William Thorp is not now to be followed, which we affirm not in favour of forbid bribery, (which we hate, as in the proper Chapter there of before appeareth) but in advancement of Justice and right, which is the end of our labour in this and other of our works; b and therefore have caused that good Act that hath lied so long in obscurity, for the better notice and observation thereof, to be put to the press, which never was yet printed; and the cause thereof was, for that in the Argent of the Parliament Roll of this Act, it is written, *Respectuatur per dominum Principem & Concilium*: A strange presumption, without warrant of the King his Father, and of the Parliament, to cause such a *respectuatur* to be made to an Act of Parliament.

The like he did to another Act in the same Parliament, nu. 63. concerning Attorneys, the like whereof was never done in any former or latter Parliaments. This was that Prince Henry, who keeping ill company, and led by ill Counsell, about this time assaulted (some say) and stroke Gascoign Chief Justice sitting in the Kings Bench, for that the Prince endeavouring with strong hand to rescue a prisoner, one of his unthriftly minions indicted and arraigned at the Kings Bench Bar for felony, was prevented of his purpose by the persuasion and commandment of the Chief Justice; for which the Chief Justice committed the Prince to the Kings Bench, whereof some of his followers instantly complained to the King his Father: who informing himself of the true state of the case, gave God infinite thanks, that he had given him such a Judge as feared not to minister justice, and such a Son as could suffer semblably and obey justice. And this is that Prince, who abandoning his former company and counsell, and following the advice of grave, wise and expert men, whom he made choice of to be of his Counsell, became a victorious and vertuous King, and prosperous in all that he took in hand, at home and abroad.

* See Sir Tho. Eliot in his Governour, &c. Hol. Chron. 543. a.

For the duty of Judges, it is truly said (as before hath been said) that *Judex debet habere duos sales, viz. saltem scientiã, ne sit insipidus, & saltem conscientiã, ne sit diabolus.* And what persons should be Judges, see Bracton lib. 1. cap. 2. & lib. 3. fo. 160. & Fleta lib. 1. cap. 17. §. caveat, and the Mirror cap. 2. §. 2. de Judges, & Rot. Parl. 17 E. 3. nu. 3. 10.

To these we will add, that upon the conclusion of a marriage then to be had between Philip the son of the Emperour, and Prince of Spain, it was nobly and wisely provided by the Queen, the Lords Spirituall and Temporal, and the Commons by authority of Parliament (amongst many other excellent provisions worthy of observation) that the said Prince should not promote, admit or receive to any office, administration or benefice in the Realm of England, and the Dominions thereunto belonging, any stranger, or persons not born under the dominion and subjection of the most noble Queen of England: and that the said most noble Prince should do nothing whereby any thing might be innovated in the state or right, either publick or private, or in the laws and customs of England, or the Dominions thereunto belonging, but shall contrariwise confirm and keep, to all estates and orders, their rights and privileges.

Anno 1 Mar. 1542. cap. 2. in print. See the Articles of Concord, 21. Maii Anno Dom. 1420. & Anno 8 H. 5. between King H. 5. and Char's the French King, whereby the Crown of France after the death of the said Char's was established to H. 5. and his heirs. Artic. 7, 8, &c.

And it is there further provided for the future, &c. that if the said Prince should have issue male or female, the order of succession is there declared, but with this proviso; Prohibited nevertheless, and expressly reserved in all and singular the above-declared cases of succession, that whatsoever he or she be that shall succeed in them, they shall leave to every of the said Realms, Lands and Dominions whole and entire their privileges, rites and customs, and the same Realms and Dominions shall administer and cause to be administered by

by the naturall bozn of the said Kealms, Dominions and Lands.

By this, Philip (after King of Spain) could not prefer any stranger bozn to any office of Judicature, &c. within the Kealm of England, or Dominions of the same, noz all the time he was within this Kealm did he eber attempt the same.

Vide Camden
El. 322. Artic. inter
reginam Eljz. &
Franciscum Ducem
Alanson ann: 23 El.
Populo superimport-
tune ut nuberet sua-
dente in comitiis.
44 Ja. Regis c. 1.
about the middl.
* That case being
then in question.

And in the Articles, De matrimonio prælocuto inter Reginam Elizabetham & ducem de Alanson, amongst others it was expressly provided, Quod dux nullum extraneum ad aliquod officium in Anglia promovet, & nihil in jure mutabit, &c.

A Also King James wisely provided by Authority of Parliament, by the advice of the Lords Spiritual and Temporal, and Commons in that Parliament assembled, that whereas in regard of some difference and inequality of the laws, trials and proceedings* in case of life, between the Justice of the Kealm of England, and that of the Kealm of Scotland, it appeareth to be most convenient for the contentment and satisfaction of all his Majesties Subjects to proceed (with all possible severity) against such offenders in their own Country according to the laws of the same, whereunto they are bozn and inheritable; and by and before the natural bozn Subjects of the same Kealm, if they be there apprehended. And by the next clause it is provided, that felonies committed by Englishmen in Scotland shall be enquired of, heard and determined before Justices of Assize, or Commissioners of Oyer and Terminer and Gaol-delivery, being natural bozn Subjects within the Kealm of England, and none other. And the like in another clause, with an addition of Justices of Peace to be natural bozn Subjects within England: and God blessed and prospered this Act with happy and desired success.

But contrariwise, Petrus de Rupibus, or of the Rocks, being a Gascoign bozn, preferred to the Bishop of Winchester by King John, and being a principall Counsellor about King H. 3. both in his young years, did after in his riper age prefer to offices about the King such Gascoigns as were of his blood or alliance, (whereof one of his kindred, some say his son, Peter de Orival, Treasurer of England) to the great grief and discontentment of the Nobility of England to have a Gascoign bozn in place above them. And what heavy event ensued thereupon, let Historians inform you, for it is grievous to me to remember it.

If you desire to see somewhat concerning Ecclesiastical offices, promotions and benefices; first what petitions have been made in Parliament against Aliens or Strangers, look in the Parliament Rolls of 50 E. 3. nu. 96, 97, 120. 13 E. 3. nu. 23. 17 E. 3. nu. 59, 60. 18 E. 3. nu. 38. 2 R. 2. nu. 6 H. 4. nu. 48. 4 H. 6. nu. 29, &c. And what laws have been made that Aliens or Strangers should not be advanced to the same, Vide 35 E. 1. Statut. de Carlisle. 3 R. 2. cap. 3. 7 R. 2. cap. 12. Rot. Parl. 13 R. 2. not in print. 1 H. 5. cap. 7. 4 & 5 Ph. & Mar. cap. 6.

Matth. Par. pag.
363, 380, 383, &c.
Hol. Chron. pag.
231. 1071. a. b.

Vide 50 E. 3.
nu. 165.
for the keeping of
the Castle of Not-
tingham. Vid. 18 E. 1.
Rot. Parl. nu. Solo-
mon de Rolles case.

CAP. CII.

Forfeiture, Confiscation, &c.

NOta, confiscare & forisfacere are Synonyma, and bona confiscata are bona forisfacta. Fiscus properly signifieth a **Panier** or **Hamper** of **Ollers**, wherein the **Romans** kept their treasure, and by the figure of **Metonymia** continentis pro contento, it is taken for the treasure it self, unde confiscare, and bona confiscata; and thereupon it is said, **Quod non capit Christus, capit Fiscus**.

For the derivation of forisfacere. See the First part of the Institutes, Sect. 74. fo. 59. a. 3. B. 3. fo. 24.

Of forfeiture of lands and tenements, and other hereditaments for high treason, petit treason, felony, misprision of treason, premunire, and in some cases of misprision, and what hereditaments which be not holden shall be forfeited for high treason, and shall not escheat for petit treason or felony, we have spoken before in their several chapters, &c. now let us speak of forfeiture of goods and chattels in these and some other cases.

a Of these the forfeiture of some of them must appear or be found of Record, and therefore these cannot be claimed by prescription; of other some the forfeiture need not appear or be found of Record, and therefore these may be gained by prescription.

b Of the former sort be bona & catalla proditorum, felonum, utlagat, in exigend, positorum, fugitivorum, deodand, annus, dies, & vatum, &c. and all other forfeitures which must appear or be found of Record.

Of the latter sort be Treasure Trove, bona, & catalla waviat, extrahur, wreccum maris, &c.

c If a Traitor or Felon either rescue himself, or will not submit him to be arrested, but resisteth, and in resistance is slain; upon presentment hereof he forfeiteth all his goods and chattels.

d If a Felon in pursuit take his own goods, they are forfeited, yet are they not bona waviata.

If in appeal of robbery the Plaintiff omit any of the goods stolen, they are forfeit to the King for the favour which the law presumeth the Plaintiff beareth to the Felon: and for that he cannot have restitution for more then is in his appeal.

An appeal of robbery of goods, if the Jury find that the Defendant found them in the high way, in this case the Plaintiff for his false appeal in seeking the blood of the innocent, shall forfeit his goods to the King.

If one arraigned for treason or petit treason, challengeth peremptorily above thirty five, he forfeiteth his goods, and judgement of Pain fort & dure shall be given against him, as one that refuseth the tryal of law, by challenging thre full Juries, and like unto one that standeth mute, and will not put himself upon the tryal of the law.

By the statute of 22 H. 8. it was provided that no person arraigned for any petit treason, murder or felony, shall be admitted to any peremptory challenge above the number of twenty: but at this day in case of high treason, notwithstanding the statute of 33 H. 8. cap. 22. 23. and petit treason, notwithstanding the Act of 22 H. 8. he may challenge thirty five according to the Common law, for it is enacted by the statute of 1 & 2 Ph. et Mar. cap. 10. that all tryals hereafter to be awarded, or made for any treason, shall be had and used only according to the due order and course of the Common law, so as to petit treason the Act of 22 H. 8. is abrogated: but in cases of murder and felony he cannot challenge peremptorily above the number of twenty, and if he challenge above twenty,

* See before cap. High Treason, Verbo [De tres & tenements, &c.] fol. 18 & 19. Et cap. de Petit treason, Verbo. [Et de tiel maner de treason, &c.] fo. 28. See the 1. part of the Institutes, of both these branches. See the 1. part of the Institutes, ubi supra, both the former and latter fort. c 3 E. 3. Cor. 290, 312.

d 29 E. 3. 29. 45 E. 3. Cor. 100.

3 E. 2. Cor. 367, 368.

3 H. 7. 12.

22 H. 8. cap. 14. 32 H. 8. cap. 3. See before Peine fort & dure in the next preceding chapter. See before in the chapter of Petit treason, fo. 26.

ty, and under thirty sh, he forfeiteth not his goods and chattels, for no law giveth forfeiture for challenging above twenty; but the Court ought to over-rule the challenge: neither is he convicted by the challenging above twenty, as he was by the Common law by challenge of three Juries, for the Act of 22 H. 8. extendeth not to any conviction, but to the challenge only.

8 E. 2. Forfeit. 17.
23 E. contumac.
17. 7 H. 6. 9.
26 H. 6. Attachment 4.
28 H. 6. 9.
34 H. 6. 29, 49.
32 H. 6. ibidem.
9 H. 7. 6. Broke Tit. forfeit. 4.
3 El. Dier 199. pag. 54.
First part of the Institutes, § 745.

If the party Defendant be attached or distrained by process out of any Court of Record, County, by force of a Justices, or hundred Court, or other Court Baron, and make default, the goods or issues are forfeited, and upon the attachment the Sheriff or other Officer may take the goods with them: and this is the reason that upon the attachment the Sheriff or other Officer ought to return the certainty of the goods, and the value; and it is not sufficient to return that he hath attached or distrained the Defendant by goods to such a value, and so upon the distress the issues must be returned in certain, because they are upon default to be forfeited.

What a person convict of Felony before attainder shall forfeit, see the First part of the Institutes, Sect. 745. Verb. Attainr, fo. 391.

See Supra in the Chapter of Deadlands, and in the Chapter of Wreck. Vid. Stanford Pl. Cor. fo. 183, 184, &c.

CAP. CIII.

Of the seizure of goods, &c. for offences, &c. before conviction.

1. Regularly the goods, &c. of any Delinquent cannot be taken and seized to the Kings use, before the same be forfeited.

2. The same cannot be inventoried, and the Town charged therewith, before the owner be indicted of Record.

3. It is to be observed, that there are two manners of seizures, one verbal without taking, removing, or carrying away, only to make an Inventory, and to charge the Town; and the other an actual seizure and taking away the same.

As to the first, the same is manifest by Bracton and all our ancient Authors: and let Bracton speak for them all.

Prisones imprisonii, antequam convicti fuerint, de terris suis disseisrat non debent, a nec de rebus suis quibuscunque spoliari; sed dum fuerint in prisona debent de proprio in omnibus sustentari, donec per iudicium deliberati fuerint vel condemnati, &c. And so. 136. he saith thus, Qui pro b crimine vel feloniam magna, sicut pro c morte hominis, captus fuerit & imprisonatus, vel sub custodia detentus, non debet spoliari bonis suis, nec de terris suis disseisrari, sed debet inde sustentari donec de crimine sibi imposito se defenderit, vel convictus fuerit, d quia ante convictionem nihil forisfacit; & si quis contra hoc fecerit, fiat Vicecom' tale bfe. e Rex vic' salutem. Scias quod f provisum est in curia nostra coram nobis, quod nullus homo captus pro morte hominis, vel pro alia feloniam pro qua debeat imprisonari, disseisretur de terris, tenementis vel catallis suis, quousque convictus fuerit de feloniam de qua g reatus est, sed quam cito captus fuerit per visum custodum placitorum coronæ nostræ, & per visum tuum & legalium hominum, apprecientur catalla ipsius capti, & imbreventur, & salvo custodiantur per h ballivos ipsius qui capitur, & qui bonam inveniant securita-

a Note this reason extends to treason as well as to felony. *e* This writ is in the Regist. *f* That is, by Magna Chart. cap. 29, and that Act extends to treason as well as to felony. *g* E. 3. cap. 9. Fleta lib. 2. cap. 26. accord. *g* Id est, indictatus, for before Indictment no verbal seizure can be made, or Inventory taken. Stat. de 4 E. 1. de offic. Coronatoris, & aliquis culpabilis invenitur, &c. Britton f. 4. b. accord. *b* So was it in Bractons time, but afterwards the Township was charged, and answerable for the same. Britton fo. 18: Mirror c. 2. §. 13. Fleta lib. 1. c. 25, 26. 43 E. 3. 18. a.

tem

tem de respondendo coram Justiciariis nostris cum ab eis exigantur: salvo tamen eidem capto & familiae suae necessariae, quoad fuerit in prisona, rationabili estovorio suo, &c. i. rationabili victu & vestitu. 3 E. 3. Coron. 336. 13 H. 4. 13.

By the statute of 1 R. 3. cap. 3. it is enacted and declared, That neither Sheriff, Escheator, Bailiff of Franchise, or nor other person take or seize the goods of any person arrested or imprisoned, before he be convicted or attaint of the felony, b according to the law of England, or before the goods be otherwise lawfully forfeited, upon pain to forfeit double the value of the goods so taken to the party grieved.

So as (super tota materia) these two conclusions are manifestly proved. First, that before Indictment, the goods or other things of any offender cannot be searched, inventoried, or in any sort seized; nor after indictment seized, and removed or taken away, before conviction or Attainder. Secondly, that the begging of the goods or state of any Delinquent accused or indicted of any treason, felony, or other offence before he be convicted and attainted, is utterly unlawful, because before conviction and attainder, as hath been said, nothing is forfeited to the King, nor grantable by him. And besides, it either maketh the prosecution against the Delinquent more precipitate, violent and undue, then the quiet and equall proceeding of Law and Justice would permit; or else by some underhand composition and agreement, stops or hinders the due course of Justice for exemplary punishment of the offender. And lastly, when the Delinquent is begged, it discourageth both Judge, Jury and witness to do their duty.

It was an Article of Inquiry, De hiis qui aliquid agunt per quod veritas & justitia suffocantur. Cap. Itineris.

See Lib. 7. f. 36, & 37. the case of penall statutes, & nota bene: See also the statute of 21 Jac. cap. 3. a fortiori in case of life. Placitum coronae ought not to become in effect placitum privatum. And if it fall out that the party accused be legitimo modo acquietatus, let such as begg him and prosecute against him be terrified by the villainous judgement against Conspirators, which you may read before cap. Judgements and Execution.

a Note the generality of these words.
b Mic. 18 E. 1. Coram Rege, Ro. 34. Norff. Nisi quis appellatus indictatus vel cum manu opere captus fuerit, non competit regi secta contra ipsum

Begging of lands and goods before conviction, &c. unlawful.

CAP. CIV.

Of Falsifying of Attainders.

Syers case, Anno
31 Eliz.

AT the Twelfth Sessions of the Peace holden at Norwich for the County of Norfolk, Anno 23 Eliz. one Syer was indicted of Burglary, supposed to be committed 1 Augusti Anno 31 Eliz. whereunto Syer pleaded not guilty. And upon the evidence it appeared that the Burglary was committed 1 Septemb. Anno 31 Eliz. so as at the time alledged in the Indictment there was no burglary done: and it was conceived that the very true day in the Indictment was necessary to be set down in the Indictment, for that the Judgement doth relate to the day in the Indictment, and so avoid Feoffments, Leases, &c. for that (as it was also conceived) the Feoffment, Lease, &c. when the attainder is upon a verdict, should not falsifie in the time of the felony: and thereupon the Jury found Syer not guilty. And at the same Sessions Syer was again indicted for the same burglary done 1 Septembris Anno 31 Eliz. when in truth it was done. And he that gave the charge at that Sessions doubted, whether upon this matter Syer might plead Autrefois acquite for the same burglary, (for seeing the offender is allowed no counsel, the Court ought to do him justice, and assign him counsel in favorem vite, though he demand it not, to plead any matter in law appearing to the Court for his discharge;) and thereupon he stayed the proceeding against him, and the Assizes being at hand, he acquainted the Justices of Assize, Wray Chief Justice, and Justice Periam, with this case, and with the doubts conceived thereupon: who answered him, that the like case had then been lately propounded by Justice Periam to all the Justices of England; and by them these points were resolved. 1. That the Crown was not bound to set down the very day when the treason, felony, &c. was done, but the day set down in the Indictment being before or after the offence done, the Jury ought to find him guilty, if the truth of the case be so; and if it be alledged before the offence done, to find the day when it was done in rei veritate, for they are sworn ad veritatem dicendam, and then the forfeiture shall relate but to the day in the verdict, which was the day of the offence done, and not to the day in the Indictment. 2. That if the triers finde the offender guilty generally, yet the Feoffment or Lease, &c. if the offence be alledged in the Indictment before it was done to their prejudice, may falsifie in the time, but not for the offence. For seeing the Crown is not bound to set down the very just day when the treason or felony, &c. is done, and that the Triers have chief regard and respect of the offence it self, God forbid but that the Subject might falsifie as concerning the time of the offence. 3. If the offender be found not guilty, he in that case might plead upon a new Indictment, Autrefois acquite: and so Syer in the case aforesaid did, and was thereupon discharged according to the said resolutions. Nota these notable points resolved, that never were resolved in any Book that we have read and remember.

If a man infeoffeth another of his Land, and after is indicted of a felony supposed to be committed before the feoffment, and thereupon he is outlawed; the party himself is bound hereby, and cannot traverse the felony, but the Feoffment, &c. may, because he is an estranger thereunto: for a false indictment without any triall by verdict shall not binde the Feoffment, but that he may falsifie, either by traverse of the felony it self, or of the time of the Feoffment.

And

At the Assizes in
Lent, 32 Eliz. in
Com. Norff.

Nota, The resolution
of all the
Judges.

49 E. 3. 11.
7 E. 4. 12.

And so it is if a man maketh a feoffment of his land, and after taketh Sanctuary, and confesseth the felony befoze the Coroner by him to be done befoze the feoffment, and abjureth the Realm; the feoffe shall falsifie the attainder by tra-berking of the felony. And so it is if a man be indicted of felony, and is attained by his own confession, the feoffe shall falsifie the attainder by denying the felony. But otherwise it is if he be attained upon a verdict given by twelve men, soz then the feoffe shall not falsifie by traberking of the offence, but of the time only.

Where the case in effect is, that 19 Januarii Anno 1 Mariae, a Commission of Oier and Terminer in London was directed to Sir Thomas White the Lord Mayor of London, and to others others, reciting, that where Sir Robert Dudley Knight, 9 Januarii Anno 1 Mariae, was indicted of High Treason befoze Thomas Duke of Norfolk. and 14 others Commissioners of Oier and Terminer in the County of Norfolk. (where in truth that Commission was directed to so many, but the indictment was taken but befoze 8 of them only) granting to them oz any 4 of them authority to receive the indictment taken befoze 15 Commissioners, and to proceed thereupon as special Justices of Oier and Terminer, &c. by pretext whereof they proceeded, and upon the confession of the said Sir Robert Dudley, gave judgement against him in case of High Treason. a In this case it was adjudged, that Sir Robert Dudley, then Earl of Leic. might falsifie the said attainder by plea, because it was void, and Coram non iudice; soz that the said latter Commissioners b had no power to proceed upon an Indictment taken befoze 8, but befoze 15, and so the judgement was void, and coram non iudice: soz wheresoever the judgement is void, oz coram non iudice, the party is not dzib- ben to his Writ of Error, but may falsifie the attainder by plea, shewing the special matter which probeth it void, oz coram non iudice. In which case the party sozleiteth neither lands noz goods. By which case it appeareth how necessary it is soz Judges, especially in cases of Treason and Felony, to look into the whole Record, and the proceedings thereupon, befoze they give judgement, lest they give an unlawfull and unjust judgement, by means whereof the party may lose his life, &c.

c A and B were indicted, A as principal of felony, and B as accessory soz re- ceiving him. A fled and was attained of the felony by outlawry. B the accessory (being seized of lands in fee holden of C) was arraigned upon the indictment, and found guilty by verdict, and had judgement, and was hanged. C the Lord en- treth as Lord by Escheat. A the principal reberseth the Outlawry, and to the felony pleaded not guilty, and by verdict was found not guilty, and thereupon was by judgement acquitted. The heir of B brought an Assise of Mortdancesoz against C the Lord by Escheat, who pleaded the outlawry of the principal, and the attainder of the accessory, his seisin in fee, and the execution, and his entry as Lord by Escheat. d The Plaintiff shewed the reversal of the outlawry by the principal, and his acquittal by verdict and judgement: whereupon the Lord de- murred in judgement. And it was adjudged that the Plaintiff in the Writ of Mortdancesoz should recover against the Lord by Escheat. Upon which judge- ment we observe these five conclusions. 1. e That the attainder of the accessory hath a kind of dependency upon the attainder of the principal. For it is a Maxim in Law, That the accessory ought not to be put to answer befoze the principal be attained; and by the reversal and acquittal of the principal, the dependent judgement against the accessory cannot stand. 2. f That this attain- der of the accessory may be falsified and avoided by the Heir by plea, and is not dziben to his Writ of Error; soz that the attainder of the accessory is by matter in-law avoided by Record of as high nature as the attainder of the principall was. For in this case it is impossible that there should be an accessory where there was no principal, of the same felony. 3. That the Escheat of the land lawfully once bested shall by this matter ex post facto be debested. 4. Though there were no immediate descent to the Heir, yet upon the judgement of the acquittal of the principal the Writ of Mortdancesoz was maintainable. Lastly, that albeit the attainder of the accessory is avoided by judgement of law, yet the

11 H. 4. 49.
2 H. 5. Eitop. 91.
7 E. 4. 1, 2.
Vid. Rot. Parl.
23 H. 6. nu. 32.

Pl. com. f. 390.
Le Countee de
Leic. case.

a Trin. 3 El.
b V. for this point
22 Ass. p. 64.
39 E. 3. 33; 34.
41 Ass. p. ult.
27 Ass. p. 55.
39 Ass. p. 6.
7 H. 4. 3. 9 H. 4. 1.
10 H. 6. 13.
36 H. 6. 32.
31 H. 6. 10.
4 H. 6. 24.
22 E. 4. 3 & Co-
lynys case.
2 H. 3. 10. 4 H. 7. 18.
2 H. 7. 60.
Vide Rot. Parl.
18 E. 1. Rot. 11.
Mountgom. Bogo de
Knowl, &c.
c See this case temp
E. 1. tit. Mordanc. 46.
but not fully there
reported.
Vid. lib. 9. fo. 119.
Lord Zanchers case.
d Where the ancestor
of the accessory was
lawfully and in due
form attained of
felony, and yet the
heir shall inherit by
matter ex post facto.
e V. li. 5. fo. 119. b.
Lo. Zanchers case.
Debili fundamentoz
fallit opus.
2 R. 3. fo. 12.
f 26 E. 3. 57.
7 H. 6. 44. 43 E. 3. 3.
4 E. 3. 36.
11 H. 4. 4. 6.
9 H. 6. 38. b.
8 H. 4. 4. 10 H. 6. 6.
6 E. 4. 8. 8 H. 7. 10.
13 E. 4. 4.

13 E. 4. 9. b.

Lord by Cheate remains tenant of the land, untill it be evicted from him by action of entry. And so it is if the principall be attained of felony, and after the accessory is also attained, if the principall reverte by his attainder by Writ of Error, the attainder of the accessory dependant thereupon is reverted.

Dier 20 Eliz. 135.
lib. 6. fo. 13, 14. in
Arundels case.

A man commits treason or felony, and is thereof attainted in due form of law, and after this treason or felony, is pardoned by a general pardon; hereby the foundation it self, viz. the treason or felony, being by authority of Parliament discharged and pardoned, the attainder (being builded thereupon) cannot stand, but may be falsified and avoided by plea, for he hath no other remedy by writ of Error or otherwise.

In the County of Warwick there were two brethren: the one having issue, a daughter, and being seized of lands in fee, devised the government of his daughter and his lands, untill she came to her age of sixteen years, to his brother, and died. The Uncle brought up his Niece very well both at her Book and Needle, &c. and she was about eight or nine years of age: her Uncle for some offence correcting her, she was heard to say, Oh good Uncle kill me not. After which time the child after much inquiry could not be heard of. Whereupon the Uncle being suspected of the murder of her, the rather for that he was her next Heir, was upon examination Anno 8 Jac. Regis committed to the Gaol for suspicion of murder, and was admonished by the Justices of Assize to find out the Child, and thereupon they bailed him until the next Assizes. Against which time for that he could not find her, and fearing what would fall out against him, he took another child as like unto her both in person and years as he could find, and apparelled her like unto the true child, and brought her to the next Assizes; but upon view and examination, she was found not to be the true child: and upon these presumptions he was indicted, found guilty, had judgement, and was hanged. But the truth of the case was, that the Child being beaten over-night, the next morning when she should go to school ran away into the next County, and being well educated, was received and entertained of a stranger: and when she was sixteen years old, at what time she could come to her land, she came to demand it, and was directly proved to be the true Child. Which case we have reported for a double caveat: first to Judges, that they in case of life judge not too hastily upon bare presumption: and secondly, to the innocent and true man, that he never seek to excuse himself by false or undue means, lest thereby he offending God (the author of truth) overthrow himself, as the Uncle did.

Falsifying concerning goods.

If A be indicted before the Coroner for the death of another, and that A fled for the same; hereby are all the goods and chattels of A forfeited which he had at the time of the verdict given: and this cannot be falsified by traverse. For if the party be arraigned upon the same indictment before Justices of Gaol-delivery, and is by verdict acquitted of the felony, and that he did not flee for the same, yet he shall forfeit his goods and chattels, but yet a such a fugam fecit may be falsified by matter in law; for if the indictment be void or insufficient, there is no forfeiture. But if a man be indicted before Justices of Oyer and Terminer, and is acquitted by verdict, and they find further that he fled for the same, his goods are forfeited which he had at the time of the verdict given; and it being also found in particular what goods he then had, that may be traversed by any that had property in those goods.

There is also a fugam fecit in law. d As if a man be indicted or appealed of felony, and Process continued against him, upon his default of appearance, and an Exigent awarded against him, whereupon he appeareth, albeit he be after acquitted of the felony, yet all his goods and chattels are forfeited by the awarding of the Exigent upon this fugam fecit in law. e But this may be falsified by matter in law: for if the Indictment or Writ of Appeal be insufficient, or error be in the Process or Exigent, the same may be avoided by exception, and no forfeiture of goods. And there is no Book to warrant the opinion of Justice Stan-

ford

Bracl. lib. 3. f. 128,
129. a. Brit. cap. 12.
fo 20.
3 E. 3. forfeit 25.
22 Aff. 96.
13 H. 4. 13.
44 H. 7. 18.
b 3 E. 3. cor. 296,
& 344.
c 47 E. 3. 26.
13 E. 4. fo. 8. 2.
Travers de chattell
al common ley.
d 27 Aff. p. 50.
41 Aff. p. 13.
44 Aff. p. 16.
Lib. 5. fo. 111.
Foyles case.
e Bra. li. 3. f. 129. a.
43 E. 3. 18.
7 E. 4. 17. a. per
Cheke. 45 Aff. p. 9.
Scanf. pl. cor. 284 d.

ford in this case: for in 43 E. 3. the original writ was good. Quod adnoto, non ut arguam, sed ne ipse arguar. And also by matter in deed or record he may excuse his absence, as if he were in person, or beyond the sea, at the time of the writ awarded, or if the king before the writ doth pardon him.

30 H. 6. tit. forfeit.
31. 19 E. 1. ibid.
19. 223.
45 E. 3. Aff. 9.

A is indicted of Petit Larceny, and upon his trial is found not guilty, and that he did fly for the same; he shall forfeit his goods. And so it is if an writ be upon such an indictment awarded against him: but he may falsifie the same to free him of the forfeiture of his goods by such means as is aforesaid. See the first part of the Institutes, Sect. 745. fo. 391. a.

8 E. 2. cor. 406.

Hæ leges vitam vestram (generosa Juventus)
Instituunt, quæ sunt fugienda sequendaque monstrant.

CAP. CV.

Of Pardons.

We have spoken of the royal and establishing vertue of Justice: royal and establishing I say, because Justitia firmatur solium, by Justice the Royal Throne is established. We are now to speak of his Mercy: for the same Holy Spirit saith, Misericordia & Veritas custodiunt Regem, & roboratur Clementia Thronus ejus. Mercy and truth preserve the king, and by clemency is his Throne strengthened. And hereupon is the law of England grounded. Non solum sapiens debet esse Rex, sed & misericors, ut cum sapientia misericorditer sit justus, &c. Quibus tamen & qualiter est miserendum, doceant eum merita vel immerita personarum, &c. Of this Royal vertue we shall speak the more willingly, for that (as it hath appeared before in the Chapter of Sanctuary) all Sanctuaries and places of Refuge for safeguard of life are taken away. And where Bracton in the same place, speaking of the Kings mercy, saith, Nihil tam proprium est imperii quam legibus vivere, it is to be observed, that the laws of this Realm have in some sort limited and bounded the Kings mercy, as shall appear hereafter. And forasmuch as his mercy is conveyed unto his Subjects by his pardons, we shall now speak thereof, being led thereunto by the Book in 9 E. 4. where it is holden A chescun Roy appent per reason de son office a faire justice & grace; justice in execution des leyes, &c. & grace de granter pardons, &c.

Prov. 16. 12.

Prov. 20. 28.

Bract. lib. 2. fo.

a A Pardon is a work of mercy, whereby the King either before attainder, sentence or conviction, or after, forgiveth any crime, offence, punishment, execution, right, title, debt or duty, Temporal or Ecclesiastical. b All that is forfeited to the King by any attainder, &c. he may restore by his Charter: but if by the attainder the blood be corrupted, that must be restored by authority of Parliament.

9 E. 4. 2. 2.
4 Seneca lib. de
Clementia, cap. 24.
Remissus imperanti
melius pascitur.
b See the first part of
the Instit. Sect. 1.
fo. 8. & Sect. 646,
647. See after cap.
Restitutio.
* Rot. Par. 17 R. 2;
nu. 11, &c.
c 27 H. 8. cap. 4.
Hil. 29 E. 1. coram
Rege, Heref. Jo. fil.
Philippi Perpoint.
1 H. 4. fo. 37.
17 H. 6. protect. 57.

we call it in Latin Perdonatio, and describe it a per & dono: per is a possession, and in the Saxon tongue is for or vor; as to forgive is throughly to remit, and forgethink is to repent, and forbear is to bear with patience, as it is said, Leve est ferre, perferre grave.

c All pardons of Treason or Felony are to be made by the King, and in his name only, and are either general or special. All pardons either general or special are either by Act of Parliament (whereof the Court in some cases shall take notice) or by the Charter of the King, (which must alwaies be pleaded.) And these again are either absolute, or under condition, exception, or qualification: for

for some of those pardons last mentioned the party may have a writ of allowance, or take an averment in certain cases; in others the party may be aided by averment only, where no writ of allowance doth lie.

And first of general pardons. General pardons are by Act of Parliament: if any of these pardons be general and absolute, the Court must take notice of them, though the party plead it not, but would waive the same. But in these daies the general pardons have so many qualifications and exceptions of offences and things, and of persons also, that the Court cannot take notice of them, neither can the party take benefit or advantage thereof, unless he plead it. And for that it may concern the safety and quiet of many a Subject, we have expressed the form of the pleading of a general pardon, and have set it down here in Latin: but if the offence be objected in the Star-Chamber, or any other English Court, then it must be pleaded in English.

Et præd' A. per B. Attornatum suum venit, &c. (or in propria persona) & dicit quod dominus Jacobus Rex nunc ipsum A. occasione præmissa impetere seu occasionare non debet: quia dicit, quod per quendam Actum in Parlamento dicti domini Regis nunc tent' apud Westm' in com' Mid' nono die Februarii anno regni sui septimo, inter alia, inactat' & stabilitum existit autoritate ejusdem Parliamenti, * quod omnes & singuli subditi dicti domini regis, tam spirituales quam temporales, hujus regni Angliæ, Walliæ, Insularum Jernsey & Garnsey, & villæ Barwic. hæredes, successores, executores & administratores sui, & eorum quilibet, ac omnia & singula corpora aliquo modo corporata civitat', burgi, comitat', Riding, Hundred, Lath, Rape, Wapentag', vill', villat', Hamlet & Tithing, & eorum quilibet, ac successor & successores eorum, & cujuscumque eorum, autoritate ejusdem Parliamenti acquiescantur, perdonarentur, relaxarentur, & exonerarentur versus dictum dominum Regem, hæredes & successores suos, & quemlibet eorum de omnibus prodicionibus, felonis, offensis, contempt', transgress', intrationibus, injuriis, deceptionibus, malegesturis, forisfacturis, penalitatibus, & summis pecuniæ, pœnis mortis, pœnis corporalibus & pecuniariis, & generaliter de omnibus aliis rebus, causis, querelis, factis, judiciis, & executionibus in prædicto Actu non exceptis, neque surpris', quæ per ipsum dominum regem aliquo modo, seu per aliquem modum perdonari potuerunt ante & usque nonum diem Novembris tunc ultim' præterit' ante editionem Actus prædicti, cuilibet, aut alicui suorum subditorum, corporum, corporat', civitat', burgorum, comitat', Riding, Hundred, Lath, Raparum, Wapentag', villæ, villat', & Tithing, vel aliquorum aliorum, prout in Actu prædicto plenius continetur. Et idem A. dicit quod * offensa prædicta versus ipsum in forma prædicta objecta non est in Actu prædicto excepta, neque surprisata; & quod ipse est, & tempore editionis Actus prædicti fuit subditus & ligens dicti domini regis nunc natus sub obedientia sua, videlicet apud Westm' prædict', quodque ipse non est aliqua persona in Actu prædict', except', neque surprisat'. Et hoc paratus est verificare: unde non intendit quod dictus dominus rex nunc ipsum A. occasione præmissa impetere seu occasionare velit, unde petit judicium, & quod ipse de præmissis prædict' exoneraretur, & quod generalis perdonatio prædicta ei allocatur, &c. *See before cap. of Falsifying of Attainders.*

By the generall pardon of 28 El. all felonies are pardoned, Burglary excepted. Hil. 29 El. it was resolved by all the Justices, that a man being attainted of Burglary was excepted, for the Burglary remains, and is made more apparent by the attainder, and the offence of Burglary is the foundation.

The most beneficial general pardons for the Subject were those of the fifth and thirteenth years of the reign of Queen Elizabeth, as by comparison of those with others will to the judicious Reader easily appear. The best general pardon in all King James time, was that of the 21 year of his reign, as by comparison of that with any of his former will evidently appear, and were too long here to be rehearsed.

And now of particular pardons. No particular pardon, be it at the Coronation or any other, of any offence or offences whatsoever, that is absolute without any

11 H. 4. fol. 41.
28 H. 8. Dier 28.
3 Mar. ibid. 200.
26 H. 8. fol. 7.
There is a very general and absolute pardon.
Rot. Parl. 15 H. 6. nu. 31. 33 H. 6. nu. 29, &c.

* This is put but for an example; but care must be taken, that what general pardon soever be pleaded, the first clause of the pardon of discharge, &c. be truly alleged. For the exposition of general words, See L. 5. fo. 47. Littletons case. Ibid. fo. 46. Frandjns case. Ibid. fo. 48. Drywoods case. Ibidem 49. b. Witrals case. Lib. 6. fo. 79, 80. Sir Edw. Fittons case. Lib. 6. fo. 13. b. Lib. Kelw. 8 H. 8. 187 Ibid. 10 H. 8. fo. 198. a. ter.
* These averments (as you perceive) may be taken without any writ of allowance.
8 E. 4. 3. 4 H. 7. 8. Lib. 8. fo. 68
Trollops case.

Vid. lib. 6. fo. 13, 14. in Arundels case, A case of Burton.

Hil. 29 El. the resolution of all the Justices.

Hil. 26 E. 3. Coram Rege, Rot. 21. Wiltes.

any condition, &c. had any writ of allowance; but when the pardon is conditional by force of the Act of 10 E. 3. cap. 2. there a writ of allowance out of the Chancery, testifying that the condition is performed, viz. surety found according to that Act, may be had, or the party may plead the finding of surety, &c. and bouch the Record.

The most large and beneficial pardons by Letters Patents that we have read and do remember, were that to William Wickham Bishop of Winchester (for good men will never refuse God and the Kings pardon, because every man doth often offend both of them) and that other to Thomas Woolsey Cardinal which are learnedly and largely penned.

But let us turn our eye to ancient Charters of pardon, and consider well of them.

Edwardus Dei gratia Rex Angliæ, Dominus Hiberniæ, & Dux Aquit', Omnibus balivis & fidelibus suis, ad quos presentes literæ pervenerint, Salutem. Sciatis quod pro bono servitio quod Johannes Chaumprona de Thorton in Pickering in partibus Scotiæ nobis impendit, perdonavimus ei sectam pacis nostræ, quæ ad nos pertinet * pro morte Isabellæ, quondam uxoris suæ. unde indictatus est, & firmam pacem nostram ei inde concedimus. Ita tamen quod stet recto, si quis versus eum inde loqui voluerit. In cujus rei testimonium has literas nostras fieri fecimus patentes. Teste me ipso apud Roukesburge, nono die Febr. anno regni nostri tricesimo.

Edwardus Dei gratia Rex Angliæ, Dominus Hiberniæ, & Dux Aquitan', Omnibus balivis & fidelibus suis ad quos presentes literæ pervenerint, Salutem. Sciatis quod pro bono servitio quod Galf. filius Warnum in partibus Scotiæ impendit, perdonavimus eidem Galf. sectam pacis nostræ, quæ ad nos pertinet de homicidiis, roberniis, latrociniiis, fractionibus domorum, feloniiis & aliis transgressionibus contra pacem nram in regno nro factis, unde indictatus est, & similiter transgressionem quam fecit ab Ecclesia de Watford, in qua aliquamdiu pro timore inimicorum tuorum se tenuit fugiendo, & se secundum legem & consuetudinem regni nostri Justiciar' non permittendo, & etiam utlagariam, siqua in ipsum ea occasione fuerit promulgata, & firmam pacem nostram ei inde concedimus. Ita tamen quod stet recto in curia nostra, si quis versus eum loqui voluerit de homicidiis, roberniis, latrociniiis, fractionibus, feloniiis & transgressionibus prædictis. In cujus rei testimonium has literas nostras fieri fecimus patentes. Teste me ipso apud Linumscu vicetimo secundo die Januarii, anno regni nostri tricesimo, per breve be privato sigillo.

It appeareth by this Record, that the said Jeffry was indicted for the death of a man, and of divers Burglaries and Felonies, and being thereupon arraigned prayed his Clergy, sed salvo sibi privilegio clericali posuit se super patriam, and was found not guilty, &c. in the proceeding whereof there was manifest error, and obtained the pardon. Herein divers things are observable: First, that the pardon is de * homicidiis, and not de murdris, neither have we seen any pardon of murder by any King of England by express name. Secondly, by these ancient words the King doth pardon sectam pacis nostræ, quæ ad nos pertinet de homicidiis, &c. & firmam pacem nostram ei inde concedimus. This secta pacis is by indictment; which is the Kings suit, and as it were his declaration. Thirdly, that the King of ancient time did not pardon homicidium, &c. but sectam pacis nostræ quæ ad nos pertinet de homicidiis, &c. yet when he pardoned and released the suit or mean. viz. sectam pacis, &c. the offender was discharged of the homicide it self, in diebus illis, but at this day the offence it self is pardoned, which is the surest way.

The King brought an action of debt upon an obligation, the Defendant pleaded non est factum, and at a Nisi prius it was found the debt of the Defendant; and before the day in bank, the King pardoned the Defendant all debts, querels, &c. and after the King had judgement, and sued out execution, and the Defendant came and pleaded the pardon, and it was adjudged that in the Kings case he might plead the same, though he had no day in Court, because he could not have an Audita querela, or a Scire fac' against the King, and there-

H. 7. 7. 2. this statute expounded and this Act extend to felony, and not to treason. Rot. Pat. 21 Julii Anno 1 R. 2. Rot. Pat. 12 Feb. 21 H. 8. great offences need great pardons, little offences are soon forgiven. Hil. 29 E. 1. Coram Rege, Hereford. Johannes fil. Ph. Perpoint, &c. * It appeared by the Record that he killed her per infortunium.

Delib. Gaolz de Windesflore, coram Hugone de Braund, & Johanne Neprunt, die Jovis proximo post claus. Pasch. Anno 25 B. 1.

* For this word Homicide see in the Chapter of Murder. See Hil. 31 E. 3. Coram Rege, Rot. 7. Northumb. 9 E. 4. 28.

8 H. 4. fo. 22. Lib. 6. fo. 13. b.

34 H. 6. 3. a. 35 H. 6. 1. a. 11 H. 7. 10. Li. 6. f. 79. l. 8. 68. Lib. Keylw. 8 H. 8. fo. 187. 2 R. 2. 4. b. similes

foze

foze if he could not plead it, he should be without remedy; but against a common person he could not plead it, because he ought to have an Audita querela, or a Scire fac. And in this case it is observable, that albeit by the judgement a new title to the said debt is ascribed to the King of Record after the pardon, the obligation at the time of the pardon being but a matter in fact, yet for that the obligation was the foundation of the debt, and the matter whereupon judgement was given, and by the pardon the debt due by the obligation was extinct, the judgement thereupon cannot binde, but is to be avoided by pleading the pardon.

What things the King may pardon, and in what manner, and what he cannot pardon, falleth now to be treated of.

a In case of death of man, robberies and felonies against the peace, divers Acts of Parliament have restrained the power of granting Charters of pardons. First, that no such Charters shall be granted but in case where the King may do it by his oath. **b** Secondly, that no man shall obtain Charters out of Parliament; and accordingly in a Parliament Roll it is said, [For the peace of the Land it would much help, if good Justices were appointed in every County, if such be let to mainprize do put in good sureties, as Esquires or Gent. and that no pardon were granted but by Parliament.] **c** Thirdly, for that the King hath granted pardons of felonies upon false suggestions, it is provided, that every Charter of felony which shall be granted at the suggestion of any, the name of him that maketh the suggestion shall be comprised in the Charter, and if the suggestion be found untrue, the Charter shall be disallowed. And the like provision is made by the statute of 5 H. 4. cap. 2. for the pardon of an Approver.

d Fourthly, it is provided that no Charter of pardon for murder, treason, or rape, shall be allowed, &c. if they be not specified in the same Charter.

Before this statute of 13 R. 2. by the pardon of all felonies, treason was pardoned, and so was murder, &c. At this day by the pardon of all felonies, the death of man is not pardoned. These be excellent laws for direction, and for the peace of the Realm. **e** But it hath been conceived, (which we will not question) that the King may dispense with these laws by a non obstante, be it general or special, (albeit we finde not any such clauses of non obstante, to dispense with any of these statutes, but of late times.) These statutes are excellent instructions for a religious and prudent King to follow, for in these cases, *Ue summæ potestatis regis est posse quantum velit, sic magnitudinis est velle quantum possit.* Hereof you may read more in Justice Sturford, lib. 2. cap. 35. In divers places of that Chapter, of his grace Justice in that behalf. Most certain it is, that the word of God hath set down this indisputable general rule, *h Quia non profertur cito contra malos sententia, filii hominum sine timore ullo perpetrant mala.* And thereupon the rule of law is grounded, *i Spes impunitatis continuum affectum tribuit delinquendi; Et veniæ facilitas incentivam est delinquendi.* This is to be added, that the intention of the said Act of 13 R. 2. was not that the King should grant a pardon of murder by express name in the Charter; but because the whole Parliament conceived, that he would never pardon murder by special name for the causes aforesaid, therefore was that provision made, which was (as in other cases I have observed) grounded upon the law of God. *Quicumque effuderit humanum sanguinem, fundetur sanguis illius; ad imaginem quippe Dei creatus est homo. Nec aliter expiari potest, nisi per ejus sanguinem qui alterius sanguinem effuderit.* And the words of every pardon are after the recital of the offence, *Nos pietate moti, &c.* See before in the Chapter of Murder; and in the Second part of the Institutes, Stat. de Glouc. cap. 9. and the Register fo. 309. pardon of the King, *De morte per infortunium, se defendendo, vel per lunaticum, vel per furiosum.*

By the ancient and constant rule of law, *Non poterit Rex gratiam facere cum injuria & damno aliorum: quod alteri alienum est, dare non potest per suam gratiam.*

* Pl. com. f. 401.

Coles case.

37 H. 6. fo. 21.

Quartermains case.

Lib. 5. fo. 49.

Vaughans case.

Lib. 6. fo. 13. Cases

dei pardon.

20 El. Dier 135.

Exod. 21. 12, 13, 14.

Deut. 19. 13.

Nb. misericordias

ejus, &c.

42 E. 3. c. 2.

14 E. 3. c. 14.

10 E. 3. c. 2.

b 2 E. 3. c. 2.

4 E. 3. c. 13.

Rot. Par. 13 E. 3.

nu. o.

c 27 E. 3. c. 2.

Trin. 30 E. 1.

Ret. 2. Coram Rege,

London Anno

29 E. 1. A pardon

of death, ad instan-

tiam Johan. Buce-

court. Mic. 33 E. 1.

Coram Rege,

Ro. 65. a pardon ad

requisitionem H. de

Bohun, Count. He-

ref. & Essex.

d 13 R. 2. sta. 2. c. 1.

16 R. 2. cap. 6.

9 E. 4. fo. 26. b.

e 1 E. 3. f. 24.

f 8 H. 6. 20.

4 E. 4. fo. 10.

g Lib. 6. fo. 15.

9 E. 4. 26. b. per

Billing Chief Justice.

b Ecclef. 8. 11.

i Regula.

Maledicte est qui

peccat sub spe.

Genef. 9. 6.

Num. 35. 33.

Bract. l. 3. fo. 132.

In an appeal of death, robbery, rape, &c. the King cannot pardon the Defendant, for the Appeal is the suit of the party, to have revenge by death: and whether the Defendant be attainted by Judgement; &c. or by outlawry, the pardon of the King shall not discharge the Defendant. * In an Appeal, the Defendant wages battel, the Plaintiff counterpleads, for that the Defendant brake prison; if the King pardon the breaking of prison, the counterplea fails. Note the breaking prison is a collateral act: and yet in divers cases at the only suit of the party, when the Defendant either by the Common law, or by any statute (besides the restitution, or damage of the Plaintiff) is thereby also to have an exemplary punishment, the King may pardon the same. For example, In an attainr by A against the party, and the Petit Jury; against the party, to have restitution, this the King cannot pardon: against the petit Jury, by the Common law that they should lose liberam legem, their wives and children cast out of their houses, their houses wadded, their trees prostrated, their meadows plowed up, their goods and chattels seized, and their bodies taken; this the King may pardon, because it is a punishment exemplary to deter others, and tendeth not to the restitution or satisfaction of the Plaintiff.

11 R. 2. Chrē 17.
2 R. 3. fo. 8.
See 4 Mariz.
Dier 133.
* 2 E. 3. Cor. 134.

Now to take an example upon a statute. De pueris masculis five femellis (quorum maritragium ad aliquem pertineat) raptis & abductis, si ille qui rapuit non habet jus in maritagio, licet postmodum restituat puerum non maritatum, vel de maritagio satisfecerit, puniatur tamen pro transgressione per prisonam duorum annorum. In this case the party being satisfied, the King may pardon the imprisonment by two years, for that was added as a punishment exemplary, puniatur, &c. And this doth notably appear by a Charter of pardon to which King E. 2. made after this statute. Rex de gratia sua speciali perdonavit Godithæ, quæ fuit uxor Roberti de Waldisch, id quod ad ipsum pertinet, de transgressione quam ipsa Goditha fecit Agathæ, quæ fuit uxor Johannis de Waldisch de Ellam, rapiendo & abducendo Johannem fil' & hæredem Johannis de Waldisch infra ætatem existentem, cujus maritag' ad ipsam Agatham pertinet, unde ipsa Goditha coram domino E. quondam rege Angliæ patre ipsius regis convicta fuit, & per considerationem Cur' dicti patris prisonæ adjudicata per biennium ibidem moratura, & etiam tempus imprisonmenti quod adhuc restat de biennio prædicto. Ideo vult idem Rex quod præfata Goditha * de eo quod ad ipsum pertinet pro transgressione prædicta sit quieta, & quod a prisona prædicta, si pro eo quod ad ipsum regem inde pertinet, & non alia de causa detineatur in eadem, deliberetur. Teste Rege apud Westm' 8. die Maii anno regni sui primo. Ideo ipsa Goditha inde quieta quoad hoc, quod ad dominum regem inde pertinet, &c.

13 E. 4. §. 1.

W. 2. cap. 35.
Anno 13. E. 1.

Palch. 34 E. 1.
Coram Rege. Rot.
30 Kanc. in Ravishment de gard.

See the first part of the Institutes.

W. 2. cap. 35.
* Noti de eo quod ad Regem pertinet.
Anno 1 E. 2.

See more of this matter, 3 El. Dier 201, 202. 9 El. Dier 261. Mulgraves case. 16 El. Dier 323. Taverners case.

The Defendant in an Appeal of murder upon not guilty pleaded, was found guilty of man-slaughter: and it was resolved by the Justices upon conference between them, that the Queen might pardon the burning of the hand, for that is no part of the judgement at the suit of the party Plaintiff in the appeal, but it is a collateral and exemplary punishment inflicted by the statute of 4 H. 7. cap. 13.

Trin. 40 El. coram Rege in appeal de murther, Inter Shugborough & Bugings.
Li. 5. fo. 50. & 110.
b. 15. H. 7. 9.
4 H. 7. cap. 13.

In some actions wherein the subject is sole party (as appeareth by that which hath been said) some things the King may pardon: so on the other side, where the King is sole party, yet some things there be that he cannot pardon: As for example, For all common nuisances, as for not repairing of bridges, high-wates, &c. the suit (for abolding of multiplicity of suits, which the laws abhor, and that nulli magis tueri rempublicam creditum est quam regi) is given to the King only, for redress and reformation thereof: but the King cannot pardon or discharge either the nuisance, or the suit for the same; for, as Bracton saith, Non poterit Rex gratiam facere cum injuria & damno aliorum. See Glanvill lib. 7. cap. 17. vers. finem.

3 E. 3. Aff. 445.
16 E. 3. Grant. 52.
35 H. 6. 29. per Fortescue.
37 H. 6. 4. b.
Pl. Com. 487. in Nichols case.

4 E. 4. fo. 4. 12.

11 H. 4. 43.
37 H. 6. 4. b.
1 H. 7. 10. b.

1 H. 7. 3.
37 H. 6. 4.
See before cap. 88.
Against vexatious
Relators, &c. in fine.
* 3 H. 8. c. 12, &c.

Lib. 5. fo. 50.
Buggins case. Eo-
dem lib. fo. 51. Halls
case.
a Prov. 20. 28.
Misericordia & ve-
ritas custodiunt re-
gem.
b 9 E. 4. 28.
19 E. 3. Cor. 124.
6 E. 4. 4 per Cheke.
11 H. 4. 16.
c Lib. 6. fo. 13.
F.N.B. 225. c.

9 H. 5. 14, 15.

F.N.B. 269.
20 El. Dier 135.
Lib. 6. fo. 13, 14.
Lib. 5. fo. 51.
Halls case.
Regist. 67.
Mich. 37 & 40 El.
Resolution of the
Justices concerning
Pardons and Licen-
ces of Alienation
and the pleading of
them, &c.

29 Aff. pt. 38.
46 E. 3. 33.
Pl. Com. 398.
7 E. 6. Tit. Estoppel.
Br. 222.

The Customer, albeit the bond and surety be made to him for the importing of Wulleon according to the statute of 14 E. 3. cap. 1. yet cannot be release it, quia pro bono publico. If one be bound in a recognisance, &c. to the King to keep the peace against another by name, and generally all other Lieges of the King; in this case, before the peace be broken, the King cannot pardon or release the recognisance, although it be made only to him, because it is for the benefit and safety of his subjects.

After an action popular be brought, tam pro domino Rege quam pro scipso, according to any statute, the King can discharge but his own part, and cannot discharge the Informers part, because by the bringing of the action he hath an interest therein: but before action brought, the King may discharge the whole, (* unless it be provided to the contrary by the Act) because the Informer cannot bring an action or information originally for his part only, but must pursue the statute: and if the action be given to the party grieved, the King cannot discharge the same.

All suits in the Star-chamber though exhibited by the party, are Informations for the King, and the King may pardon them; but after judgment (and damages, if any be given) and costs taxed, the King cannot pardon them.

a And that party which informeth not the King truly, is not worthy of his grace and forgiveness, and therefore either suppressio veri or expressio falsi doth avoid the pardon.

b A man commits felony and is attainted thereof, or is abjured for the same, the King pardoneth him the felony without any mention of the attainder, or abjuration, the pardon is void. c But if a man be attainted of burglary, and by the general pardon all felonies, &c. are pardoned (except all burglaries) the attainder and burglary be excepted, as before is said.

The King pardoneth to A a felony whereof he standeth indicted, or indicted and attainted, &c. and in truth he is not indicted, nor attainted, &c. this is expressio falsi, and maketh the pardon void. A is outlawed, and the King pardons him the outlawry, and all his goods; it is void for the goods, for he must have a grant of them.

If a man be indicted of felony, and the King reciteth the same, and pardoneth the felony contained in the indictment, and all outlawries thereupon, if any be, this is a good pardon of the outlawry, though it be doubtfully alledged, and the King not certainly informed.

The King may pardon one convict of heresie, or of any other offence punishable by the Ecclesiastical law. In all proceedings in the Ecclesiastical Court ex officio, the King may pardon the offence. The King may also pardon Piracy upon the Sea; but by what word, and in what manner, see before in the Chapter of Piracy.

All the Justices of England being assembled at Serjeants Inn in Fleet-Street, when I served Queen Eliz. as her Attorney general, I moved this case unto them. A man seized in six of two Mannors, the one holden of the Queen by Knights service in Capite, and the other holden of a common person, alieneth both, and the Alieneth sueth out a pardon for both, in which pardon the words are, que de nobis tenentur in capite per servic' militare, ut dicitur; and after this pardon being transcribed into the Exchequer, proces goeth out against the Alieneth, who pleadeth the pardon, beginneth his plea thus, Quibus lectis & auditis, idem A. queritur & colore premissorum graviter vexatum & inquietat' fore, & hoc minus iuste; quia dicit quod eadem domina regina per Literas suas Patentes, &c. and pleadeth the Letters Patents of pardon, as they be with the said clause of ut dicitur; and after he alieneth the Mannor which in pari veritate was not holden. The question was, whether the second Alieneth may plead the truth of the matter, or ought to be concluded by the pardon and plea of the first Alieneth. And first the Justices had consideration of the books in 29 Aff. pt. 38. 46 E. 3. 33. Pl. Com. 398. 7 E. 6. Tit. Estoppel. Br. 222. And in the end it was resolved by all the Justices, that the pleading of the pardon or

of a licence, as it is, is no conclusion, for no more then the pardon or licence being not positive or affirmative, but (ut dicitur) is a conclusion, no more is the pleading of them with the clause of (ut dicitur) any conclusion. And conclusions shall not be wrought by inference or implication of a thing that is not directly alledged. But if the pardon or licence had been affirmative and direct without the clause, ut dicitur, it had been a conclusion, and so had the pleading thereof been also. Lastly, it was resolved, that in case of the pardon or licence with the clause, ut dicitur, if the party confess the tenure that pleads the same, as to say, Bene & verum est, that the land is holden by Knights service in Capite, and plead the pardon or licence, this shall conclude: and some of the Barons said, that according to these resolutions it hath been used in the Exchequer, and many precedents be there accordingly: and by these resolutions the Books abovesaid shall the better be understood.

If the King release to A all debts, and in truth A and B be indebted, this shall not discharge B: but otherwise it is in the case of a Subject, for in that case the release to one discharge both.

34 H. 6. 3.
21 E. 4. 46.
2 R. 3. 4. lib. 5.
fo. 56.

If one be indebted to the King, if the King pardon or release the debt, the action and suit for the debt is discharged; and if he pardon or release the action and suit, the debt is discharged: and so it is in both these cases in the case of a Subject.

A man is indicted of trespass, and outlawed at the suit of the King, Rex pardonavit utlagariam in eum promulgat, & quicquid ad eum pertinet: notwithstanding the Defendant shall make fine, for it seemeth that these words, quicquid ad eum pertinet, without any reference, are too generall to dispense with the fine.

22 Ass. pl. 37.

We finde also a discharge of further proceeding directed to the Judges of the Court, &c. not by any pardon of the offence, but by the Kings acknowledgement under the Great Seal of the parties innocency, with commandment to the Judges, that in the former proceedings and Proces, &c. they shall altogether surcease: whereupon the Court will award that the party shall go sine die, and that there shall be no further proceeding against him. As taking one example for many: William de Melton Archbishop of York was accused in the Kings Bench coram Rege & consilio suo, in Anno 3 E. 3. for adherency to Edmond Earl of Kent in his treasons; whereunto the Archbishop pleaded not guilty: and after two Writs of Venire fac. awarded, the King directed his Writ under the Great Seal to the Judges of the Kings Bench, to this effect: Licet venerabilis pater Willielmus Archiepiscopus Eborum, & Stephanus London Episcopus, per diversa scriba nostra coram nobis ad scdam nostram implacitentur de eo quod ipsi Edmundo nuper comiti Kantie adhæsisse debuerant: Quia tamen prædicti Archiepiscopus & Episcopus de adhæsione prædicti omnino immunes reputamus, Vobis mandamus, quod placitis prædictis coram nobis ulterius tenen' omnino supersedeatis. Teste me ipso apud Westm. 12 die Decembr. Anno Regni nostri 4. The award of the Court that is given thereupon is hereby observable, viz. Cujus brevis prætextu, consideratum est, quod prædicti Archiepiscopus est inde sine die, &c. Et ulterius non procedatur versus eum.

Palch. 4 E. 3. coram Rege, Rot. 38.

Stephen Gravesend Bishop of London was charged with the same offence in Parliament, Anno 3 E. 3. whence by order of Parliament the matter was referred to the Kings Bench to be tried, where he pleaded not guilty, & after was discharged ut supra, by the same writ. These men (it may be) thought that the taking of the pardon should be an implied confession of the fault, & therefore went a new way: but no man that is wise and well advised will refuse God and the Kings pardon, how often soever he may have it; for there is no man but offendeth God and the King almost every day, and the pardon is the safest and surest way.

Palch. 4 E. 3. coram Rege, Rot. 53.

If a man be indicted of felony, and found guilty, and being in prison, the King may under the Great Seal reciting the offence, &c. retain him to serve in his wars on this side or beyond the Seas: this Charter he may plead, and the Court ought to allow it. As for example: Quidam indictatus de feloniam, & inde culp. dicit quod Rex eum conduxit, & inde producit chartam, quod Rex eum con-

Palch. 12 E. 3. tit. cor. 139. coram Rege.

47 E. 4. 29. a. acc. 30 H. 6. 3. See the first part of the Institutes, Sect. 199. b 26 Aff. p. 46.

c 5 E. 3. cap. 12. d Pasch. 8 E. 1. in banco, Rot. 79. Abbas de Burton, &c. e Vid. Rot. Par. 21 R. 2. nu. 12, 13, &c. f 36 E. 3. cap. ult. 4 R. 2. nu. 30, 31, 32. 1 H. 4. cap. 20. 2 H. 4. ca. 13. 5 H. 4. ca. 15. 4 H. 5. ca. 8. a short and effectual pardon, and many others. Deut. 19. 21.

duxit in Vasc. in exercitu, & dicta charta allocata fuit per curiam. But a Protection lyeth not in that case: because a Protection is a forged writ, and cannot have such a trial of the truth of the case; and a Writ of Protection lyeth not in case of felony, nor is it to be allowed to any that is prisoner to the Court.

b One indicted of felony, without any learned Counsel, shewed forth a Charter of pardon which was discordant to the Indictment, and also to his name; and because the Court perceived that it was the Kings meaning he should be pardoned, he was remanded to get a better pardon.

c What things be requisite to a pardon of outlawry, see the statute of 5 E. 3. cap. 12.

d When the parties defendants appeared to the Court to be poor, and were to be amerced or fined, the Entry of ancient time was, Perdonantur per Jutic' quia pauperes.

e It is observed that Repells by Parliament of Pardons lawfully and duly obtained, have been causes of great discontentment, and of evil event.

f General pardons have been often granted at the Petition of the Commons, for they know best where the sinners are, and wherein, and how they are to be pardoned.

g Do not think as perjury, that by the law of God it was not to be pardoned: Non miseraberis ejus, &c.

CAP. CVI.

Of Restitutions.

There is another work of grace and mercy, that is, when any man or woman being attainted of High Treason, Petit Treason, or Felony, (whereby the blood is corrupted, &c.) or his or her heirs is restored.

And being we have formerly spoken how far, and to what intent in those cases the King of his grace may by his Charter of Pardon restore the party: we shall now treat of the restitution of the Delinquent, or of his or her heirs by Parliament. Attainders ought to be had upon plain and direct evidence, (as before is said) for if the party be executed, restitution may be had of his lands, &c. but not of his life. Generally, Restitutio nihil aliud est quam in pristinum statum reducere.

Of restitutions by Parliament, some be in blood only, (that is, to make his heirs as heirs in blood to the party attainted, and other his ancestors, and not to any dignity, inheritance of lands, &c.) and this is a restitution secundum quid, or in part. And some be general restitutions, to blood, honours, dignities, inheritance, and all that was lost by the attainder: and that is restitutio in integrum, with an addition sometimes, that it shall be lawful for the party restored and his heirs to enter, &c. Of the first you may read in Dier 10 Eliz. fo. 274. in Petition 3. and Rot. Par. 23 Eliz. of the Earl of Arundel, &c. Of the second you may read 15 E. 3. tit. Petition 2. 3 H. 7. fo. 15. a. 10 H. 7. 22, 23. pl. com. fo. 175. Rot. Par. 13 H. 4. nu. 20, &c. Of both of them you may read plentifully in our Books, and Parliament Rolls, and in divers of them with addition of Entry, See 1 H. 8. Kelw. 154. Sir William Odehals case, 4 H. 7. 7. Lo. Ormonds case. Rot. Parl. 11 H. 4. nu. 42. Rich. de Hastings case, and Rot. Parl. 14 E. 4. nu. 4. Sir John Foreseuts case, attainted of treason in 1 E. 4. &c.

And the reason wherefore the King may by his Charter pardon the execution, and restore the party or his heirs to the lands forfeited by the attainder and remaining in the Crown, is, for that no person hath thereby any prejudice; but to make

See the first part of the Institutes, Sect. 1. fo. 8. a. & 646, 647, 745. Vid. cap. Pardon, fo. 233. * Gen. 40. 13. Job 12. 23. 42. 10. Restitutio secundum quid, seu in partem. Restitutio in integrum.

Brit. ca. 13. fo. 23. 10 Eliz. Dier 274.

3 E. 3. tit. Restitutio. Br. 37.

make restitution of his blood, he cannot do it but by Act of Parliament, because it should be to the p^r judgment of others.

In chartis benigna facienda est interpretatio; in foundationibus domuum religiosarum, hospitalium, & aliorum operum charitatis; benignior; in testamentis magis benigna; in restitutionibus benignissima. For it is holden in our books, that in restitutions the King himself hath no favour, nor his prerogative any exemption, but the party restozed is favoured.

King H. 3. was intituled, &c. to the lands of William de Albo Monasterio by his attainder, and granted the same to Robert de Mares and his heirs, donec eas reddiderit rectis hæredibus per voluntatem suam, vel per pacem. And altho' at the making of this grant William de Albo Monasterio (being dead) could have in respect of the attainder and corruption of blood no right heir; yet because it was to make restitution, it had a most benign interpretation.

William Lo Zouch of Mortimer and Elianor his wife prayed to be restozed to their land of Glannor and Morgannon in Wales, the Mannor of Havelley in the County of Worcester, the Mannor of Tewkesbury in the County of Gloucester, being the inheritance of the said Elianor; who by the extort means of Roger late Earl of March, were enforced to pass the same to the King by fine, in consideration of ten thousand pounds: the King restozed them thereto as in their former estate.

Henry Courtney Marquess of Exeter, and Earl of Debon, having issue Edward Courtney, his only Son, was attainted of High Treason by the course of the Common law in Anno 31 H. 8. and in the same year was also attainted by Act of Parliament. Queen Mary by her Letters Patents bearing date 18 Sept. Anno 1 Regni sui granted the Mannors of P and O &c. in the County of Debon, &c. to the said Edward Courtney and his heirs: and afterwards 5 Octobris in the same year, at a Parliament then holden, the said Edward and his heirs were from thenceforth by Authority of that Act restozed & enabled only in blood, as well as Son and Heir of the said Lord Marquess his Father, as to all and every other collateral and lineal ancestor and ancestress of the said Edward; and that the several attainders against the said Lord Marquess for the attainder of the said Lord Marquess, be not in any wise prejudicial or hurtfull to the said Edward or his heirs, for the corruption of the blood only of the said Edward; but that the several attainders, and either of them be against him and his heirs for the corruption of blood only, utterly void. Prohibited alwaies that the said Act, ne any thing therein contained, should not in any wise extend to give any benefit or advantage to the said Edward, ne to his heirs, to demand, claim, or challenge any Bonds, Castles, &c. ne any other hereditaments whatsoever, whereunto H. 8. and E. 6. or either of them was intituled, or ought to have and enjoy by reason of the said several attainders of the said late Lord Marquess, or of either of them. Edward Courtney died seized of the said Mannors without issue; 18 Septemb. Annis 3 & 4 Ph. & Mar. and Reinold Mohun, Alexander Arundell, John Vivian the younger, John Trelawny Esq; and Margaret Buller Widows, were his collateral Cousins and Heirs: and whether the said restitution extended to the Heirs collateral of the said Edward, was by the Queens commandment referred to the consideration of the two Chief Justices Popham and Anderson, Peryam Chief Baron, and to Egerton Attorney, and to the Solicitor General. And it was resolved, that by reason of the attainder of the Lord Marquess, if there had been no Act of restitution, the Heirs collateral of the said Edward could not have inherited to the said Edward, in respect of the corruption of the blood wrought by the said attainder only. Hereupon it was objected, that when it was enacted by the said Act of restitution, that the said Edward and his heirs should be restozed and enabled in blood only as Son and heir to his said Father, as all his ancestors lineal and collateral, that the said restitution extended only to his heirs lineal, for other heirs he could not have as long as the said attainders of the Marquess stood in force, and the words of the Act of Restitution to Edward and his heirs might be satisfied with the heirs lineal. And upon due consideration

See the first part of the Institutes, Sect. 6 46, 647, 745. fo. 392. verb. *Le sank est corrupt,* &c.

a See 10 El. Dier. ubi sup.
41 E. 3. 5. b.
27 Aff. p. 48.
17 E. 3. 40.
5 E. 3. 66.
29 E. 3. 7.
20 Eliz. Dier 360.
Pl. Com. 252. a.
16 E. 3. Livery 30.
44 E. 3. 45.
18 E. 3. 21, 22.
24 E. 3. 29.
40 E. 3. Grant 56.
6 Mich. 8 E. 1. in Banco, Rot. 62. Nord.
Rot. Par. Anno 4 E. 3. nu. 18. on the backside of the Roll.

* An example of restitution in blood only.

11 H. 4. nu. 42.
13 H. 4. nu. 19, 20.

Mich. 35 & 36 El.

consideration had of the case, it was (una voce) resolved by them all, that corruption of blood is a distinct penalty inflicted by law; and that the said Act of restitution did extend to the heirs collateral of the said Edward, (having no heirs lineal) as to the clearing and restoring of the blood, and abiding of the corruption thereof: and that it had been sufficient if the Act had restored and enabled him in blood only as heir to his Father; thereby he and his heirs, as well collateral as lineal, might make their descent or resort from the Parquets (for there was the stop and corruption) and from all other the ancestors of the said Edward, lineal or collateral, and ex abundanti the other clause also is added, for the more manifestation hereof.

Margaret Plantagenet was Daughter to George Duke of Clarence attainted of High Treason by Act of Parliament 17 E. 4. and Sister of Edward Earl of Warwick, only Son of the said George, and Isabel eldest Daughter of Richard Nevil Earl of Warwick and Salisbury, which Edward was attainted of High Treason in Anno 15 H. 7. before John Earl of Oxford then being High Steward of England. The said Margaret was by Act of Parliament Anno 5 H. 8. restored to the title, state, name, title, honour and dignity of the Countess of Salisbury, (she was the last of the surname of Plantagenet) which Act is very well penned, and worthy the reading for many respects, and the Preamble thereof, inter alia.

Bills of restitution may begin in the Parliament, either in the House of Commons, or in the Lords House.

a There be also other kinds of Restitutions to be treated of amongst the Pleas of the Crown, as Restitution of goods upon an Appeal, whereof you shall read in Stanford with this addition. Vide lib. 5. fo. 110. a. 21 E. 4. 10.

b And by the statute of 21 H. 8. cap. 11. Restitution is to be granted upon an Indictment, &c. For by the Common law the party should not be restored to his goods upon an Indictment (because it is the suit of the King) albeit the enquest found that the party had made fresh suit. But Restitution was to be made upon an Appeal, which is the suit of the party.

See Stanford also fo. 167. a. b. whereunto you may add Lib. 5. fo. 110. a. & lib. 6. fo. 80. where you shall finde, that though this statute of 21 H. 8. speaks only of the party robbed, yet his Executors are within the statute, and so are his Administrators. For it is a beneficial law, and giveth a more speedy remedy to the party robbed, &c. then the Common law gave by way of appeal, and therefore ought to be construed beneficially.

Vide the Register 68. b. that in some cases when the King ought ex merito justitiæ to make restitution to the party, yet for the honour of the King the King saith, sine dilatione restituas de gratia nostra speciali; which derogates nothing from the right of the Subject, when right is accompanied with grace.

Lastly, there are other laws concerning Restitutions of another kind. c As by the statute of 8 H. 6. restitution is to be made, when he that hath an estate of inheritance or freehold is disseised by forcible entry or forcible detainer. d By the statute of 31 Eliz. there shall be no restitution by the statute of 8 H. 6. upon an indictment of forcible entry, or forcible detainer, where the Defendant hath been three whole years together before the day of such indictment in quiet possession, and his estate not ended, according to the true meaning of a Proviso in the said statute of 8 H. 6. as it is declared by the said Act of 31 Elizabeth.

By the statute of 21 Jac. Regis, such Judges, Justices, or Justice, as are enabled to give restitution of possession unto tenants of any estate of freehold, &c. shall by reason of this Act of 21 Jac. have the like and the same authority upon indictment of such forcible entries or forcible withholdings before them duly found, to give like possession unto tenant for years, tenant by copy of Court-roll, guardians by Knights service, tenants by Clegit, Statute Merchant, or by Statute Staple.

And

Statute de 5 H. 8.
not in print.

14 R. 2: nu. 36.
4 Rot. Par. 18 E. 1.
nu. 11. of Liberties.
Stanf. pl. cor.
fo. 165, 166, 167,
186, 66, 105, 107.
F.N.B. 66. a.
b 21 H. 8. cap. 11.
22 E. 3. cor. 460.

Stanf. 167. a. b.
Lib. 5. fo. 110.
Lib. 6. fo. 80.

F.N.B. 66. a.
8 E. 2. tit. forfeiture
34.
3 E. 3. cor. 3. 65.
Vid. 40 E. 3. 42.
Lib. 5. fo. 110.
Hoffens case.
e 8 H. 6. cap. 9:
See the second part
of the Instit. cap.
8 H. 6. cap. 9.
d 31 Eliz. cap. 11.
Vid. 4 Mariz.
e Dier 141.

21 Jac. cap. 15.
By the statute of
8 H. 6. cap. 9.

And forasmuch as it hath been said, no restitution ought to be made where the Defendant or party indicted in case of freehold hath been in possession by the space of three whole years, &c. they having the like and same authority in case of tenant for years, tenant by copy of Court-Roll, and other the tenants above-named, cannot give restitution or possession, where the party indicted hath been in quiet possession by the space of three whole years. Nota, this Act of 21 Jac. extends not to a guardian in socage, nor to a Guardian or Keeper of a Park: neither (as some hold) doth it extend to him that by a last Will hath an interest in lands or tenements, untill debts and legacies be paid, because certain tenants be particularly nominated, and this is casus omissus. But this being a beneficial law to restore him that right hath to his possession of lands, &c. whereof he was wrongfully by force dispossessed, or by force withheld, &c. and being in like case and equal mischief, others do hold, that this Act extendeth to this case of such a devise, &c. and so it is for a tenant for a year, or for an half, or three quarters of a year.

See the statute of 32 H. 8. cap. 3. where the particular tenant charged with more then the Land is worth, may after his term expired hold over untill he be satisfied, &c. in equal case with such a devise.

* Nota, there be divers precedents in the Chancery for restitution by writ to be made after execution upon a statute Staple.

Anno 25 H. 6. Execution was sued upon a Statute Staple, and for that no Certificate of the statute, &c. appeared of Record, the Conuser had a writ of Superfedas out of the Chancery with restitution to be made; and the form of this Writ appeareth in a Register M. S. in the Chancery.

In the case of Sir Robert Gardner in the time of Sir Thomas Bromly Lord Chancellor, after a Superfedas granted, execution was done upon a statute Staple, whereupon a Superfedas was granted with restitution recting the special matter.

There is another precedent in 33 Eliz. in the case of one Carrant, (but there the writ recited no special cause, but pro diversis causis & considerationibus) a Superfedas with restitution was awarded.

* Restitution of another kind, whereof we remember no book case.

F I N I S.

F I M I E



THE EPILOGUE.



Thus have we by the great goodness of Almighty God, *Per varios casus, per tot discrimina rerum*, brought this work concerning High treason, and other Pleas of the Crown, or Criminal causes, and of Pardons and Restitutions, to a conclusion; wherein (as we are verily perswaded) we have made it apparent from the lively voice of the Laws themselves, that no Country in the Christian world hath in criminal cases of highest nature laws of such expresse and defined certainty, and so equal between the King and all his Subjects, as this famous Kingdom of England hath, being rightly understood, and duly executed, to the great honour of the King, and of the Laws, and the happy safety of all his loving and loyal Subjects.

Now seeing *Justitia est duplex, viz. severe puniens, & vere preveniens*, that is, Justice severely punishing, whereof we have spoken, and truly preventing, or preventing Justice, (*que adhuc desideratur*) for we have spoken only of the former; we will therefore at this place (for a conclusion) point at the other with a direction how it may be effected.

Justice divided:

True it is, that we have found by woeful experience, that it is not frequent and often punishment that doth prevent like offences, *Mellior est enim Justitia vere preveniens, quam severe puniens*, agreeing with the rule of the Physician for the safety of the body, *Præstat cautela quam medela*: and it is a certain rule, that *Videbis ea sepe committi, que sepe vindicantur*, Those offences are often committed, that are often punished; for the frequency of the punishment makes it so familiar as it is not feared. For example, what a lamentable case it is to see so many Christian men and women strangled on that cursed tree of the gallows, insomuch as if in a large field a man might see together all the Christians that but in one year, throughout England, come to that untimely and ignominious death, if there were any spark of grace or charity in him, it would make his heart to bleed for pity and compassion. (But here I leave to Divines to inform the inward man, who being well informed *verbo informante*, the outward man will be the easilier reformed *virga reformante*.)

Regula.

Sta, p. rige, p. ora.

Seneca lib. 1. De Clem. cap. 24.

Non minus principi turpia sunt multa supplicia, quam medico multa suæva.

Regula.

Non morbus plerisque, sed morbi neglecti curatio corpus interficit.

* Deut. 15. 4:

Non erit omnino indigens & mendiculus inter vos, ut benedicat tibi Dominus.

This preventing Justice consisteth in three things. First, in the good education of youth; and that both by good instruction of them in the grounds of the true religion of Almighty God, and by learning some knowledge or trade in their tender years, so as there should not be an idle person, or a * beggar, but that every child, male or female, whose

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Parents

The Epilogue.

Parents are poor, might at the age of seven years earn their own living: for *Ars fit quod a teneris primum conjungitur annis*: and this, for the time to come, would undoubtedly by preventing Justice avoid idleness in all, (one of the foul and fatal chanel that lead into *mare mortuum*;) and by honest trades cause them to become good members in the Common-wealth.

Secondly, in the execution of good laws. True it is that there be good laws already to punish idleness, but none of sufficient force or effect to set youth or the idle on work.

Thirdly, that forasmuch as many do offend in hope of pardon, that Pardons be very rarely granted, for the reasons in the Chapter of Pardons expressed.

But the consideration of this preventing Justice were worthy of the wisdom of a Parliament, and in the mean time expert and wise men to make preparation for the same, as the Text saith, *ut benedicat eis Dominus*. Blessed shall he be that layeth the first stone of this building, more blessed that proceeds in it, most of all that finisheth it, to the glory of God, and the honour of our King and Nation.

Otiosus nihil cogitat nisi de ventre & venere.

See before Cap. of Pardons, fo. 236.

Psal. 59. 10. Misericordia Domini praeveniet me.

1 Macab. 6. 27.

Nisi praevenieris illis, majora quam haec facient, & non poteris eos obtinere.

3 & 4 E. 6. cap. 5.

in the Preamble, *Imprimis interest republicae, ut pax in regno conservetur, & quaecunque paci adversantur provide declinentur.*

11 Mar. cap. 12. 32 H. 8. cap. 9. See the fourth part of the Institutes, fo. 312. b.

Et pergrata Deus nobis haec otia fecit.

Optimus est patriae jura referre labor.

Deo gloria & gratia.

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