THE LAWRENCE S. FLETCHER
MEMORIAL FUND

STANFORD SCHOOL OF LAW
Vera Effigies Viri claris EDOARDI COKE Equitis aurati nuperad Placita coram Capitalis Iusticiariij Rege tenenda assignati

R. White sculptit
The Third Part of the Institutes of the Laws of England:
Concerning High Treason, and other Pleas of the Crown, and Criminal Causes.


Eccles. 8. 11.
Quis non profertur cito contra malos sententia, absque timore ullo filii
bominum perpetrant mala.

Inercis est nescire quod sibi liceat.


Hac ego grandéus posui tibi, candide Leâtor.

London,
Printed for A. Crooke, W. Leake, A. Roper, F. Tyton, T. Dring, T. Collins,
J. Place, W. Place, J. Starkey, T. Basset, R. Pawlett, S. Heyrick,
and G. Dawes, Bookfellers in Fleetstreet and Holborn. 1669.
THE
THIRD
PART
OF
THE
INSTITUTION
OF
the
Academy
of
Geometry

The

Author,

W. C. Cullen,

Sir,

In

the

Year

1800

Digitized by Google
# Table of the Several Chapters of the Third Part of the Institutes, of the Pleas of the Crown.

Multi mulca, nemo omnia novit.

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Vera Effigies Viri
Equitis aurati nuper
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Capitalis Iusticiarij
Rege tenenda asignati

R. White sculptor
THE THIRD PART
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OF THE
Laws of England:
Concerning High Treason, and other Pleas of the Crown, and Criminal Causes.


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Hac ego grandum posui tibi, sandle Lector.

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THE
THIRD
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INSTITUTES
OF THE
PRINCIPLES
OF
PHYSICS.

BY
M. DE LAMARCHE.

LONDON:
PRINTED BY JAMES ELLIOT, IN
GRAND-STREET, FLEET-STREET.

1794.
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Several Chapters of the Third part of the Institutes,
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Deo
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, (Mens and Tuum).

In this Third part of the Institutes we are to treat De male, 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, Reliquae leges privatorum hominum commodi prosperitati, regis majestati, subditorum virtute, publica tranquillitati consulat. And that in these Cases the ancient Maxim of the Law principally holdeth, Miseris serviris est, ubi jus est vagum, aut ignoratum. 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. 10.27.) 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 helden, 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 arduous.
A Proemae.

arduous and full of such difficulty, as none can either feel or believe but
be only which maketh trial for it. And although it did often terrify 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 Country, to pass
through all labours, doubts and difficulties, prevailed with me.

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 alleged, which we presume may satisfy 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 Holcsh an English-
man, 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 hisrorie quod cum Willielmus dux Normannorum regnum An-
gliae conquistasset, deliberavit quomodo linguam Saxoniacam posset describere,
& Angliam & Normanniam in idioma secundum, & idem ordinavi quod nullus in curia regis placuisse esse in Gallico, et iterum quod paucis pos-
scendis ad litteras addisset Gallicam, & eum Gallicam Latinam, ut duauaque
hostie observaretur. Hec igitur. But the statute of 35 E. 3. c. 15. made not
long after Holcast wrote, hath taken these effects of a Conqueror away,
and given due honour to our English language, which is as copious
and significant, and as able to express anything 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 Maud daughter of Malcolm King of Scot-
land surnamed Cunoer, and of Margaret his wife, who was the granddaughter
of Edmond Ironside King of England, &c. 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 virtue: she had issue Maud wife of King H. 2. who by her
had issue Maud, of whose English blood by Geoffrey 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. Bradion, Britton, the Mirror of Judiches, Flota,
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 in-
structed what the Common Law was before the making of those statutes,
whereby he shall know whether the statutes were introducitory 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 hazardous crime of High Trea-
son, Crimen lese Majestatis; and of the rest in order, as they are greater
and more odious than others.
CAP. I.

Of High Treason.

By the Statute of 25 E. 3. De probationibus, as declared in certain particular cases, whatsoever shall be taken to be treason, with this restriction, That if any other case supposed to be treason should happen before any Justices, the Justices should tarry without going to judgement of the treason, till the case be heard before 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 propriis idiomatibus enferth.

Auxint pur cœ quod divers opinions ounct estre eins ceux beures quen cafe doit estre dit treason, & en quel cafe nemi, le roy a le requens des seignours & commons ad fait declairisment que enuiest. Cetassavoir, quon bome fait composer ou imaginer la mort nostre seignior le roy madame sa compaigne, ou de leur fitzaigne ou beire. Ou si bome violast la compaigne le roy, ou leigne file le roy nient marie, ou la compaigne leigne fitz ou beire le roy. Ou si bome leve guerre encontre nostre seignior le roy en son realme, ou soit aistant as enemies nostre dit seignior le roy en son realme, donnant a eux aid ou comfort en son realme, ou per eylours, & de cœ provablement soit attaint de ouvert fait per gens de leur condition. Et si bome counterface le grand ou privie Seal le roy, ou sa mony. Et si bome apport fault money en cet realme counterfait al mony danglerre, si come la mony appelle * Lausheburgh, ou auster sembleble a la dit mony danglerre, sachant le money estre fault, pur merchander ou paynment faire en discreite nostre dit seignior le roy & de son people. Et si bome tuaus Chancelor, Treasurer, ou Justices nostre seignior le roy del un Banke ou del auter, Justices in Eire & distilles, & toute auters Justices assignes de Dieur & Terminer * e leasants en leur places en fensants lour offices. Et soit a entendre que les cafes suifgenes doit estre adjudge treason, que se extent a nostre seignior le roy & sa royall Majestie. Et de sœl manner de treason la forseture des escheates appertenont a nostre seignior le roy, cibien des terres & ténements temus des auters, come de luy mesme.

(b) Item,
WHereas divers opinions have been before this time, in what
Cafe 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 matter as hereafter followeth. That is to say: When a man doth
depose 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 attained 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 Lytheburgh, or other like
to the said money of England, knowing the money to be false, to mer-
chandize or make payment, in deceit of our said Lord the King and of
his people. And if a man pay 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 estates pertained 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 Crimes late Majestatis, High Treason: yet as the request of his Lords
and Commons, the blessed King by authority of Parliament made the Decla-
rations, as is before said: and therefore, and for other excellent labours made
at this Parliament, this was called Benedicin Parliamentum, as it is 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 Com-
mons of the Realm for the time being in full Parliament, then this Act concern-
ing Treason hath had. For by the Statute of 1 H. 4. c. 10. reciting that where
at a Parliament holden 21 K. 2. divers pains of Treason were ordained by Stat-
utes, in so much as there was no man did know how to behave himself, to do
Snares, or Cag, or how 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 honoe is given to it by the
Statute of 1 E. 6. c. 12. and by the Statute of 3 Ma. c. 4. different times,
but all agreeing in the magnifying and extolling of this blessed Act of 25 E. 3.
But this Act of 1 Mace 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 Drigo Anno 42 H. 3. was called Insanum Parlia-
mentum: 12 E. 3. the Parliament of Charleian, Albamnium 57 Metel-
hamiae 5 E. 3. Parliamentum boom, 10 A. 2. Parliamentum quod citat mirabilis, that
bought borders, 21 R. 2. Magnum Parliamentum, 6 H. 4. Parliamentum indoe-
bum, Lach-learning Parliamentum, 4 H. 6. Parliamentum Fulftum, the Parliament
of State. The Session of Parliament in An, 14 H. 8. called the Black Parlia-
ment, The Act of 5 E. 6. was called Parliamentum pium, the Blank Parliament.
And the said Act of 1 Mar. Parliamentum proptum, the Special Parliament.
The Parliaments of Queen Elizabeth titled Pia, julfa, & provide. The Parlia-
ment helden An. 28. of King James, called Felix Parliamentum, the happy Parlia-
ment,
Cap. 1. High Treasons.

ment, and the Parliament bolden in the third year of our Sovereign Lord King Charles, Reginam Parlamentum, the blessed Parliament. The several reasons of these former Appellations appear of Record and in History, and the latter are set forth in memory. At the making of the Statute of 25 Eliz. the High Courts of Justice were furnished with excellent men, viz. Sir William Shardelowe Knight, (shortly Witten in Books Shad.) Lord Chief Justice of the Kings Bench, and his Compaginious Judges of that Court; Sir John Stower Knight, commonly Witten in books Stone, Lord Chief Justice of the Court of Common Pleas, and his Compaginious Judges of that Court; and Serenatus de Wilford, Lord Chief Baron of the Exchequer; men famous in their profession, and excellent in the knowledge of the Laws. At the making of the Statute of 1 H. 8. were Sir Walter Clapton Knight, Lord Chief Justice of the Kings Bench, and his Compaginious Judges of that Court; and Sir William Terning Knight, Lord Chief Justice of the Court of Common Pleas, and his Compaginious Judges of that Court; and Sir John Calke Knight, Lord Chief Baron of the Exchequer, men equal to any of their Predecessors in the knowledge of the Laws. At the making of the Statute of 1 Edw. were Sir Richard Lutter Knight, Lord Chief Justice of the Kings Bench, and his Compaginious Judges of that Court; and Sir Edward Montague Knight, Lord Chief Justice of the Court of Common Pleas; and his Compaginious Judges of that Court; and Sir Roger Cholmley Knight, Lord Chief Baron of the Exchequer; men of that excellence, as they were worthy of the name of the Magnates 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 Compaginious Judges of that Court; and Sir Richard Morgan Knight, Lord Chief Justice of the Court of Common Pleas, and his Compaginious Judges of that Court; and Sir D. Brook Knight, Lord Chief Baron of the Exchequer; men renowned for their great knowledge and judgment in their profession. All these we have named in honour of them, and of their Families and Posterities, by that they in their several times were great furtherers of these excellent Laws concerning Treason. In memoria verum est jus. But all this was done in several ages, that the said Lutates and Notes of the Crown might flourish, and not be stained by severe and languidary statutes. But let us come to the Act itself, 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 several Classes of Heads, and then prosecute the same in order.

By compassing or imagining the death of the King, or Queen, and declaring the same by some other hand.

The first concerned Head.

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

The second concerned Head: The King's Comfort, or Queen; that is to say, Elizabeth, or The King's Elder Daughter unmarried.

The third is Leaping war against the King.
High Treason.

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The fourth is adhering to the King's enemies within the Realm of without, and declaring the same by some outward.

The Great Seal.
The fifthy is counterfeiting of the Privy Seal.

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

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

[ Treason ] is derived from [ 'trahir' ] which is treacherously to betray.

Trahue, Betrayed; and Trahilion, per contra tionem, Treason, is the betraying it self.

Detegit imbellis animos nil fortiter audens.

Proditio.

Inter leges Canuti sec. 118. cap. 61. Proditiones hætoppapyce numerabantur inter fœdora jure humano inexplicabilus.

Treason is divided into two parts, viz.

High Treason, Alta proditio, and into Petit Treason, Proditio parva. The Latin word used in Law is Prodito (a Prodero) and thereof cometh Proditorum, which of necessity must be used in every Indictment of Treason, and cannot be expressed by any other word. Periphrasis, or Circumlocution.

[ Ad fa [i.e. Declarament. ] This Law is for the most part Declaratory of the ancient Law, and therefore this word [ Declarament ] is used. But the judicious Reader shall observe, that in divers Classes it is added to the former Law, wherein this word [ Declarament ] will sufficiently extend.

[ Quante home, &c. ] This extended to both sexes, Homo including both Man and Woman. This Art is general, and therefore extended to some persons which claimed a privilege to be exempted from secular jurisdiction. (For example) Adam de Orleton Bishop of Hereford was indicted of High Treason for aiding the Mortimers, &c. with Men and Arms against King E. 2. &c. Whereupon he was arraigned, and alleged, &c. abisse of the Ecclesiastical, & abisse licentia Domini summi Pontificis, non posse nee debere respondere in hac parte. And thereupon the Archbishop of Canterbury, York and Dublin, and their Suffragans came to the War, claimed his privilege, and took him away; and he was far from punishment, as he was far from transferred to Winchester, and after to Winchester. But this privilege (to clear all doubts) extended to all persons, &c. well Ecclesiastical as Temporal, and to both it ever since been put in execution, as hereafter in divers Cases it appeareth; see hereafter Cap. 59 & 60.

A man that is non compos mentes, 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 Treaty; for the principal end of punishment is, That others by his example may fear to offend. Ur poena ad paucos, multos ad omnem perveniat: But such punishment can be no example to God-men, or Infants that are not of the age of discretion. And God forbid that in Cases to penal, the Law should not be certain; and if it be certain in case of Murder and Felony, a fortified, it ought to be certain in case of Treason.

If a man commit Treason or Felony, and consider the same, or be thereof otherwise convic; if afterward he become De non face memorie (qui patitur eulium mentis) he shall not be called to answer; & if it afterward he become De non face 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 Soveraigns
High Treason.

There is no natural text representation for this document.
that compaining, conspiring, machinating, counselling, &c. to kill the King, though it had no actual execution thereof but by words, was High Treason by the Common Law; and as it is in this Act, viz. per overt act, &c. &e. p. provable; &c. &c.

Fait comporier ou imaginier."

Fait comporier ou imaginier. So as there must be a comporier, or imagination, for an act done in secretum, without comporier, or imagination, is not within this Act, as it appeared by the words thereof. It appears not by factum, but mens rea. And if it be not within the words of this Act, then by force of a clause hereafter, viz. &c. per e. &c. plaid in Acts &c. it cannot be added, unless, 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 comporier, or imagination, though it be not expressed by the Acts, and so be discovered by Circumstances precedent, subsequent, and subsequent, and so end about heretage for the Benefit of the King: This was the case of Sir Walter Titre a French Knight, who was the first-day of August, Anno 12. Willel. 1. Anno 1109. being a hunting with the King in the New Forest, was commanded by the King to that at a Part: Exercitium voluntare, & obtinere ab ore in obliquum extegam facere, per sequenti congressu reusscari, qui subito molem consuerit."

It appeared also by the Custome of Normandy treating of treason and the composition of the same; that this act was not treason. To calculate thereto to know by setting of a figure by witchcraft, how long the King shall reign or live, is no treason, for it is no comporier or imagination of the death of the King, within this stature of 23 E. 3. And this appeared by the omniscience of the Parliament in 22 Eliz. whereby this offence was made strict during the life of Edward Eliz. which before was displeased by fine and imprisonment.

The ancient law was that if a madman had killed a man, he was hanged for treason, and so it appeared by *Wills* Alcide's law before the Conquest, and in lib. 4. in Beverles case. But now by its nature, and by force of these words, Fait comporier ou imaginier is mort, that it is non compos mentis, and totally described of all compositions and imaginations, cannot condemn High Treason by comporier or imagining the death of the King, for such is not a mere presentiment: But it must be an absolute madness, and a total cessation of mind and soul. And this appeared by the statute of 33 H. 8. for thence it is provided, that if a man being Compos mentis commit High Treason, and after accitation, or, fall to madness, that he might be tried in his solitude, or, and further death, as if he were of perfect memory for this statute of 33 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 knoweth himself he should be executed: Which if a man did not imagine it, he had no other way but to be hanged, but was repealed, in that point also it was against the Common Law, because by intent of law the execution of the offender is for example, ut perambulauit, mutauit ad omnes perveniat, ab iure is said; but if it is not when a man is executed, but should be a meagre spectacle, both against law, and of cruel and inhumanity, and can be no example to others.

Mort: He that declared by overt act to depose the King, being a sufficient overt act to prove that be comporier and imaginary the death of the King. And to it is to imprison the King, or to take the King into his power, and manifest the same by some overt act, this is also a sufficient overt act for the intent so declared. But peruse addes the statutes of 13 Eliz. cap. 2. & 14 Eliz. cap. 1.

Nec seignior le Roy. These words extend to all his faction, as it hath been always 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 nominal King, as it was resolved in the case.
the office of a King, but the name, and not the office and dignity, was not within this Act of 25 E. 3. And therefore, an Act was made, that, in the death of King Philip, to prevent the Queen, in her marriage with the Queen, was treason.

King Philip, therefore, was put to death the office of a King.

The Act is to understand, as a King in possession of the Crown and King

of King Philip, the marriage Queen Mary, and was put a unnatural the King, for Queen Mary had the office and dignity of a King, so as the that the name of a King, but the office and dignity, was within this Act of 25 E. 3. And therefore, an Act was made, that, in the death of King Philip, to prevent the Queen, in her marriage with the Queen, was treason.

This Act was made against a King de facto, & non de jure, and after the King de jure came to the Crown, he shall punish the treason done to the King de jure, and a pardon granted by a King de jure, that is not also de facto, is void.

The Crown defends to the rightful heir, he is Rex before Coronation: for by the laws of England there is no interregnum; and Coronation is but a Cinque or solemnity of honour. And so it was reified by all the Judges, viz. if in the case of Watton and Clark Seminary Priests: for by the laws there is no King, in whose name the laws are to be maintained and executed, otherwise Judges should fail. And the Kings before the Conquest voluntarily renounced their Kingship, and so did King H. 2. in the 16th year of his reign, and Henry his son was created and crowned.

It appeared by Britton, that to commit the death of the father of the King, is treason, and so was the law helden long after that: for after King E. 3. had dismissed himself of his Kingship office and state, and his son by the name of E. 2. was crowned, and King regnant, those subjects, after, Thomas Gourney and William Ocke and others, were attainted of High Treason for murdering the King, father, who had been King by the name of E. 3., and had judgment to be, death, hanged, beheaded, and quartered.

The like judgment was given against Sir John Matevers, Knight, and others, as being guilty of the death of the King's uncle, Edmond Earl of Kent, which at that time (being to year of the blood royal) was by some held treason. But now this Act of 35 E. 3. had restrained High treason in case of death, al fce leignor le Roy, & compagnie, & alien hir, & heiz le Roy.

Nicholas de Segrave was charged in open Parliament in prelentia ddi Regis comitum, baronum, & alrorum de conffio Regis tunc ibi exitent, that the King in the war of Scotland being among his enemies, Nicholas Segrave his liege man, and holding of the King by homage and battle, turres him for his aid in that war, did maliciously make convention and did work without cause, with John de Cromwell, 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 which he did himself from the Kings Court, and from the Kings aid, leaving the King among his enemies, in perilous hollium locum, and accompanied the said John to defend himself in the Court of the King of France, and pressed him a certain day. As he quantam proiecto, subjiciens & submissuros dominium regis & regni subjictionem ddi regis Francie, ad hoc factendum ut suum arripit utque Dovoriam, ad transferendum, &c. All which he ddi Nich. contrectata, & voluntari ddi regis de alter & bello inde et subsitibus, &c. super hoc ddi Nich. volens habere avilamentum Comitum, Baronum, Magnatuum, & alrorum de conffio suo, injuriat idem in homaggio, fidelitate, & lignibus suis et equequor; quod plurima fideltas confimum, quia poena profana fide & cegnior fuerit infligenda; qui omnes, habitus super hoc diligentissimans & avilamentum, confederatis & intelidelibus omnibus in praedicto factum contentiam, &c. dicens quod hujusmodi factum meretur amissionem vitae & membrorum, &c. So as this office was then solemnly in Parliament adjudged High treason. But this is,
High Treason.

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

So piracy by any of the King's subjects upon another, was taken to be treason under this Act, by to is the book to be intended, because a piracy by flattening, & plundering by this Act, & to this still many other purpuses he is a distinct person by the common law. And to be a Queen wife of a King regnant, is to be the Queen, and declare the same by obvert act, to be guilty of treason, and punishable by this Act, as is the Queen wife of the King, and declare the same by obvert act, and punished by this Act, so as that we may speak it once for all, by these many others that might be cited, none hereof shall hereafter be touched. The substance of this Act appeared to be true, but others opinions had been before the making of this Act, what offences should be judged High treason, and what not.

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. 3. 2 Citizens of London, John Kerby Serrer, and John Algier Scoote, combining matter against John Imperial Janeway of S. Mary in Grana, that came as an ambassador from the state of Grana to the King, under the King's letter, was found in the city of London, and in the bank of the Thames, from whence he was henceforth to be kept in the Bastard, for punishment of this Act, for counterfeiting the said ambassador, he was killed by them, as more at large appears by the records. And albeit the said John Imperial was an Ambassador under the King's letter, and the killing of him was justly lawful, yet the killing of him was no treason, because it was not under any of the said classes of treason, until it was at that time declared by Parliament in these words, Quel cas examinez, & dispute inter les cuisines & communs, & puis mae au Roy en pleine Parliament, estoit monseigneur de ne suis ignorance le Roy declare, determiner, & assister, que tels, & tels a treazon, & crime de royall majestie, il y a en quoi il ne doit assurer aucunes privilège del religione: and accordingly the said Kerby and Algier were attainted of High treason in the Kings Bench, Hil 3 R. 2. &c; supra. But this Declaration is taken away by the statute of 1 Marie, &c. supra. And yet of this Declaration we shall make much hereafter.

In the 22 year of E. 3. which was about 2 years before the making of this Act, one John at Hill was murdered, A. de Walton the Kings Ambassador, muniment dii regimini ad mandatum regis eadem, &c. this was an adjudged High treason, because he was a man, armed, and defended, &c. for true it is, quod legis inquinat, & tu quoque male, &c. et honos unus est, ille eum vicem gerit, & legatus violare contra jure non vires. But by this Act of 25 E. 3. it is restrained to the heard of the King's treason, and therefore is no treason this statute.

Sa Compaigne. This word compaigne, which is all one with conduct and office, was used, that compassing, &c. must be during the marriage with the King, the after the Kings death he is not a compaigne, and therefore it extended not to a Queen dowager, and for this cause this word compaigne was used in this Act.

Le Seigneur & 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 A. is retained to the Prince, the Kings son, being heir apparent to the Crown for the time being: this he is not to be the first begot son, but
the second attested decade of the 15th and 16th of 5th, 16th, 17th, and 18th centuries. If the king appears on the part of the Common Law, if the judge is not cognizant of the nature, it shall be declared in the evidence made in court. If the judge is not cognizant of the nature, it shall Be declared in the evidence made in court. If the judge is not cognizant of the nature, it shall be declared in the evidence made in court.

Roger Mortimer. King of France. Long. 5th, 16th, 17th, 18th century. The king is not cognizant of the nature, it shall be declared in the evidence made in court.

A. H. 8. 9th, 10th, 11th century. The king is not cognizant of the nature, it shall be declared in the evidence made in court.

The king is not cognizant of the nature, it shall be declared in the evidence made in court.

Heirs.

Oui la compagne de l'archévêque.

Oui la compagne de l'archévêque.

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Oui la compagne de l'archévêque.
Parch. 39, Eliz. by all the Judges of England, I being Attorney-General, and present.

Put in particular, 1. He was tried in the Court of Richard Bland, Esq., Robert Davenant, Esq., and others, of East India Company's affairs. After they confuted and argued the allegations preferred against them, and could procure at Edwife Ho. in the Old-Court, and there tried, and there tried, to go from East India Company's judges to Westminster Hall, and to be tried by the House of Commons as a means to make them sign the Armistice and Mediation, as was agreed by the House of Commons, under the threat of being brought to Justice and punished, if the parties sufficient for 1. and 2. was not composed by the said parties? And in the Act so passed, there was a compelling and intention to levy war against the Queen, because the pretences were publicly written in the Act himself. In consequence, and the offenders were attained and executed at Edwine Ho.

And this liberty was passed by a letter in the Act.

Ou foi adherent as enemies, nonre [signeant le rey, a

cue donant aide & comfort en son roialm & aux,]

[Adherent,] A Eto de be explained, viz., in giving aid and comfort to the Kings enemies within the realm by without; delivery of instruments of the Kings Enemies by the Kings Captain thereof to the Kings enemy within the realm, and consequently treason declared by this Act. b A. is out of the
Cap. 10

High Treason.

The Realm at the time of a Rebellion within England, and one of the Rebels is out of the Realm, whom a knowing his Treason both told of to some person, not knowing it himself, is Treason in B. by this helped to be carried to the treason, is sufficient for Treason, an Accuser who is told, and this Commonly is taken notice of.

As when there's a legal understanding is made, for the subject of the Kings, though they be in open part of Rebellion against the Kings, whereby they execute Kings Enemies, so it happens, for examples be those that be under the negligence of the Assembly. If a subject join with a foreign Enemy, and some into England with him, he shall not be taken prisoner here, and be tarred, as proceeded with an Enemy's hall, but, he shall be taken as a treacherous to the King.

An Enemy coming in open botchipt into England, and taking that's either executed by Partial Law, or tarred, or be cannot be taken of treason, on the that be not by the protection or liceage of the King, and the Injunction of treason said, Contra legiam Iuris Deamtabil.

If a Prince of Wales, lebbid war against E. 1. This was Treason, for that he was within the bosome and liceage of the King, and had judgment gone against him as a Tyrant, and not as an Enemy. And albeit in many presidents of judgments being, subjects that do rebel and molest, etc., he called proctors & militaries, yet within this statute they are not immi.

In the Duke of Norfolk's case the question was, a league being between the Queen of England and the King of Scots, the Lord Heres and other Estates upper to peace and union, and putting others Subjects in England without the consent of the King were enemies in law with this statute, and reduced that they were. See more hereafter in this third part of the Injunctions, cap. 49. of Whoso set the statute of 28 H. 8. cap. 55.

[Ou per alios. This is 10 cap. out of the realm of England, that then it may be demanded, who shall at this time this foreign treason be tried.

And some of our Books do suppose, that the offender shall be indicted and tried in this Realm where he is born, and so it was as judged in 2 H. 4. But now by the statute of 35 H. 8. cap. 3, (which we remain in force) all offences made or declared, or heretofore made or declared treasons, misprision of treason, and concealments of treason, committed out of the realm of England, shall be inquired of, heard and determined, either in the King's Bench, or before Commissions in such Shires as shall be assigned by the King. If it be before Commissions, it is more commonly used, that the King shall write his name in the upper part of the Commission. But if in the Case of Patrick O'Connell an Irishman, the Queen did put her signature to the Warrant to the Lord Speaker, and not to the Commission, and it was held by the Judges, that the one way and the other was a sufficient assignment by the King within the statute of 35 H. 8.

It was resolved by all the Judges of England, that 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 as it was resolved in Sir John Parrots Case. And our words here [per alios] is as much as out of the Realm of England. See Paroch 2 H. 4. c. 2. and C. 6. 17. 12. in Docket for the Case 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 Commissioners, in like form and condition as if the same had been done upon the land, or after the common course of the laws of this land. And by the preamble it appeared, that it could not be tried by the Common Laws, but by the Civil law before the Lord Admiral. See hereafter in the exposition of the statute of 28 H. 8. cap. 15. and infra, cap. 49.

See hereafter, 35 H. 8. cap. 1.

Art. 39. 49.


E. 1. c. 1. 16.

Mar. Trench.

2 H. 6. c. 1.

R. 3. c. 3.

El. Dir. 4. 7.

Ex libro de Giff. de Perkin.

Mar. Trench. 4. 4.

Calum. Col. 3. 16.

Vita. 5. c. 1. 25.
High Treason.

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It is de cec provably soit attaint per over fair per gens de leur condition. In this branch four things are to be observed. 1. First this word [provably] probably, that is, upon direct and manifest proof, not upon casuistical presumptions, or inferences, or straining of words, but upon good and sufficient proof. And hence the word [provably] probably hath a great force, and lightens a direct and plain proof, which would be the King, the Lords and Commons in Parliament did use, so that the offence was in evidence, and was to be proved and severally punished, actions other the first, and therefore the offender must probably be attainted, which words are as absolute as upon direct and manifest proof. Note, the word is not [provably] for they commute argumentum might have been set, but the word is [provably] be attainted. 2. This word [attaint] necessarily implied that he be proceeded with who is attainted 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 be adhered to the enemies of the King, or be slain in open war against the King, or otherwise die before the attainder of creation, be excommunicated, nothing, because [as this Act faith] he is not attainted: wherein this Act altered that which before this Act, in case of Creation, was taken for Law. And the stature of 34 E. 3. cap. 12. labors wishing to the King, but that which was in use, and pertaining to the King as the making of that Act. And this was appeared by a judgement in Parliament in Anno 39 H. 6. cap. 1. [That] Jack Cade being slain in open rebellion could not be punished, or disabled any thing, and thereby was attainted by that Act of High treason.

3. [Per overt fair], per asperum saeculum. This word also strengthens the former exposition of the word provably that it must be probably by an open act, which must be manifestly proved. As it diders to confine the death of the King, and the manner how, and thereupon proceed weapons, poison, etc., as the like, for execution of the conspiracy. This preparation by some overt act, to depose the King, or take the King by force and strong hand, and to imprison him, until he be brought to certain demands, this is a sufficient overt act to prove the compounding and imagination of the death of the King: for this manner is to make the King a subject, and to depose him in his holy office of royal government. And it was resolved by all the Judges of England, Hil. 1. Jac. Regis, in the case of the Lo, Cobham, Lord Gray, and Watton and Clark Seminary Priests: And to have been resolved by the Justices, Hil. 43 Eliz. in the case of the Earls of Land of 9, 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 Council, and for that end did assemble a multitude of people; this being raised to the end aforesaid, was a sufficient overt act for compounding the death of the Queen. And to be lawful experience in former times it had fallen out, in the case of King E. 2. R. 2. H. 6. E. 5. there 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 alleged according to this Act. And [proctor] compasstavit & imaginalitut fuit mortem & destructionem dini regis &cup dom. regem interfecerit, &. In the second part of the indictment is alleged the overt act, & ad ilam nephandam & proctoriam compasionem, imaginam, & propitium suum pericilum & temptament, and then certainly to set down the overt act for preparation to take and imprison the King, or any other sufficient overt act, which of necessity must be set down in the Indictment. Whereby it appeared how insufficient many indictments were of High treason, where in it was generally alleged, that per asperum facium compasstavit & imaginalitut fuit mortem dom. regis, &. For example, Ternio Mic. anno 5 E. 6. Edward Duke of Somerset was indicted before Commissioners of Oyer and Terminer in London, quod ipse deum prae oculis suis, non habens, sed injigatione diabol.
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hca seductus; apud Holborn in parochia Sancti Andreas infra civitatem London,
vs. 22 die Aprilis anno regni dominii Regis Edw. sexti quinto, & diversis diesbus
& vicibus antea & polecta fale, maliciose, & proditorie * per apertum factum
circumvavit, compasivavit, & imaginavit cum diversis aliis personis predictum dominim
Regem de facto suo regali deponente & deprivante, &c. Which Indictment,
and all others of like form were against Labo, as hath been said: and of the mat-
ter of this Indictment that noble Duke was by his Plena found not guilty. But
then it may be demanded, for what offence he had judgement of death, and 2dly
Labo made it an offence. The offence appeared in this Indictment, for the for-
mer part thereof contained High treason, whereas he was acquitted, and the lat-
ter part contained one only offence of felony (whereof he was found guilty) in
these words, Ex uterius Jurateses præ dicti, declaras, quod praestat Edwardus dominus
Sancti Petri Deo proculis suis non habens, sed inquisitione diabolica seductus, 2o
sub Anno regni dicti Dom. Regis Edwardi sexti quinti supradicto, ac diversis aliis
diebus & vicibus antea & polecta, apud Holborn in praed. paroch. Sancti Andreas in
civitate London, & apud diversa alia loca infra civitatem London praed. felonie ut
tibü dicit Dom. Regis per aperta verba & facta procuravit, movit & imaginavit com-
plurimos fabulos ipsius dominii Regis ad injurationem, & apertam rebellionem &
in usurrationem iuxta regnum Angliae movend per ipsum dominum Regem,
& ad tunc & ibid. teneone ad capiendum & imprisonandum prenobilum Johan-
num comitem Warwick de privato offenderi dominii Regis ad tunc existit, contra
pacem dicti dominii Regis, coronam & dignitatem suam, & contra formam statui in
injuustum cada elici & provar. The statute whereupon this Indictment was
intended to be grounded, was the statute of the nature of 3 & 4 E. 6. by
which it is provided, That if any person or persons by ringing of any bell, or
by malicious speaking or uttering of any words, or making any outcry, 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, com-
mitt, and put in use any of the acts or things aforesaid mentioned (whereof to take
and imprison any of the Kings most honourable Privy Council was one) and
the persons to the number of 12 or above so raised and assembled after request
and commandment (in such sort as the Act is prescribed) shall make their
assemblies contiguous together, as is observed (in the Act) or unlawfully perpe-
trate, do commit, or put in use any of the acts or things aforesaid, that then
and singular persons, by words speaking, deed, act, or any other the means
above mentioned, any persons to the number of 12 or above shall be raised or as-
tembe for the doing, committing, or putting in use any of the acts or things
aforesaid mentioned, shall be adjudged for his or speaking or doing a felon, and ful-
ter execution of death as in case of felony, and shall lose his benefit of Sanctuary
and Clergy. [Hereby is it manifestly appear, that the truth concerning
this nobleman's arraignment and execution in other things is contrary to the
bulgar opinion, and some of our Chronikers, and in some points contrary to law.
First, that for the felony made by the said henchman of the said Act he could not
have had his Clergy, for Clergy in that Case is expressly voided by the said Act.
2. That he was not indicted for going about, or, the death of the Earl of War-
wick, then of the Kings Privy Council, but only for the taking of imprisonment,
and therefore could not be indicted upon the nature of 3 H. 7. as some have imagined. 3. That the Indictment is altogether insufficient, for it pur-
ports not the words or matter of the said branch of the said Act, and by comparing
of them it manifestly appear, which (we being destitute that truth may ap-
pear in all things) we must thought good upon this occasion to add for advance-
ment of truth. 4. That being put attained of felony, he could not by law be
deprived, as elsewhere we are heard. And this Act that created the felony,
that such a felon shall suffer execution of death, as in case of felony. 5. Lab-
by this whole Act was fully intended to be a doublefull and dangerous nature,
and therefore was distinctly repealed. And after the fall of this Duke, the the
præambule of the nature of Subsidies of 7 E. 6.
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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 judgment, and incur such infamity, as if he had been convicted by verdict. For this standeth well with this word provableness, for he gives facinus qui judicium fugit: but otherwise it is in case of Petit Treason, Murder, or other Felony.

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 capit in alti Regis peritidinis vitae solus, servit aut facinus mercede condit disipatus, indictitur, vita et fortuna eum omnibus privator. So as thereby an overt act was required.

The composition and connexion of the words are to be observed, viz. therefor be attained by overt act. * This relateth to the several and distinct treasons before expressed, (and specially to the compounding and imagination of the death of the King, &c. for that it is in secret in the heart,) and therefor one of them cannot be an overt act for another. As for example, a conspiracy is had to levy war: this (as hath been laid, and so resolved) is no treason by this Act until it be leived, therefor it is no overt act or manifest proof of the compounding of the death of the King within this Act; for the words be (de coo, &c.) that is, of the compounding of the death. For these were to confound the several Clauses, &c. membra dividenda, &c. de capitis, &c.

Piper's latter Acts of Parliament had ordained, that compounding by bare words of sawing should be High Treason, but all they are either repealed or expired. And it is commonly said, that bare words may make an Horrety, but not a Treason, 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 sentences 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.

Cardinal Pole, albeit he was, a subject to H. 8. and of the King's blood, (being descended from George Duke of Clarence, Brother to King E. 4.) yet be in his Book of the Supremacy of the Pope, &c. wherein about 37 H. 8. invited Charles the Emperor, then preparing against the Lurk, to bend his force against his natural Sovereign Lord and Country; the writing of which Book now's sufficient overt act within this statute: and to made the Emperor the rather in that Book, he made H. 8. Almost as ill as the Lurk, in these words, In Anglia spatium nunc et hoc fecerunt, ut vix a Turcico internocci quiet, iisque authenticae usius codicis.

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 unjustly made for the perpetration of the Common wealth without extrem punishments, are more often obeyed and kept, then laws and statutes made with great and extreme punishments; and in special, such laws and statutes are made, whereby not only the ignorant and rude unlearned people, but also learned and expert people mingleth bounty, are oftentimes trampled and snared, sometimes, for words only, without other act, 32 died and 32 perpetrated; therefore this Act of 25 E. 3. doth prohibit, that there must be an overt act. But words without an overt act, are to be punished in another degree, as an high misprision.

[Per gents de lour condition.] That is, per partes, in their equals, whereas we have spoken before in the exposition of the 29 Chapter of Magna Charta, Verb. per judicium pauperius, and more shall be said hereafter. This Branch (per gents de lour condition) extendeth only to a conviction by verdict, whereas the statute particularly speaketh, but yet where the party indicted confesseth the offence, or standeth mute, he shall have judgment as in case of High Treason. For this branch being affirmative, is taken conclusive and

23 Eliz. Dier. 398.
22 Eliz. cap. r.
Note here, Vide apud
verbo Moro.
* Muter leges Alvere-
dis, cap. 4.

So resolved by the Justices Patch.
37 Eliz. which we heard and observed.
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and not privative. And therefore being upon confession, or standing mute, the judgment in case of high treason was given at the Common law, this Act being, as it hath been said, affirmative, taken not to stop the fame: And (to cap once for all) the clause hereafter of restraint of like cases, &c. extends only to offenses, and not to trials, judgments, or executions.

Si home counterface le grand Seale. All our ancient Authors agree that this was High treason by the Common law, and for this offence, his judgement was to be beheaded, hanged, and quartered, at the Common law, as in other cases of high treason, the counterfeiting of the King's money excepted.

The second part of the Institutes. W. 1. cap. 5.

In ancient times every counterfeiting was comprehended under the name of felony, but not of treason. 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 felony, and not countenable: (for the King may suffer the offence, if he please him) then the pardon of felons is good at this day, for no indictment can be of high treason without this word prodiorie: and in all quarrels of grievous offenses, quia in quidem brevi de exiendis quibus indulgentiis de prodione proclamator facit, I. B. An act.

The texts of treason and felony.

A compounding intent, or going about to counterfeite the great seal is no treason, but there must be an actual counterfeiting: and this must be in the likeness of the King's great seal; the words be, Counterfeiting the great seal is treason.

Now it is to be seen what will be said of 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 is said by Britton, fol. 10. 8. that he was treason at the Common law, and of that opinion is Fleta, fol. 207. 2. but it is no treason now (without question) by the negative clause of this Act.

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

In 40. Act, which was about 15 years after the making of this Act, it was not the great seal alone, but a great misprison, for that it is no counterfeiting of a new, but an abuse of the true great seal.

In 42. E. 3. The Abbot of Ely caused Rob. Riche his Commaigne to take a Charter of R. 1. and put out the name of Fuscesta, and in place thereof put Eche. And this offence was heard, and sentenced before the King and his Council in the Star-chamber as a great treason, and misprison; for if it had been high treason, it should have had another trial, and per this was a great abuse of the great seal.

2. H. 3. The taking of the great seal from one patent, and using it to a Comission to gather money, &c. was adjudged to be such an offense, as the offender had judgement to be dazon 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, wherein he pleaded not guilty: and the King found him not guilty of the counterfeiting of the great seal, as was thought by the indictment, but further specially, that he took the great seal from one patent, and put it to the commission, that the party put the same in execution: and the judgement was given, that he should be dazon and hanged. It is observable the Queen's Law ought not to be thus given upon this behalf, the King finding him not guilty of the offence alleged in the indictment: And besides the judgment is made as is given in case of Petit treason, and not of high treason. Hereby it appeared him dangerous it is to any to report a case by the ear, specially concerning treason, unless he had distinctly read the record: for (as I take it) the mistranscription of this case hath hatched errors, and he mistook the judgment: if it had been high treason, for then it should have been dazon, hanged, and quartered.
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A Chaplain had fixed such a great seal to a patent of dispensation with non-refract; and this was helden a misprision, and not High treason, for it was an abuse of the great seal, and no counterfeiting of it. Stanford said that it was adjudged in his time according to the book of 2 H. 4. Et sic ex errore sequitur error.

6. Leak a clark of the Chancery joined two clean parchments at fo letters patents to close together with mouth-gles, an they were taken for one, the uppermost being very thin, and did put one label through them both, then upon the uppermost he put a true patent, and got the great seal put to the label, for the seal and the label were united to both the parchments, the one written, and the other blank: he cut off the glazed sheets round about, and took off the uppermost thin parchment (which was written, and was a true and perfect patent) from the label, 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. Whereupon two questions were asked: 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 (sitting a very few) upon the authorities afore-said, 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 liveth in this bag. As to the second 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 affair kill a Contable that comes to keep the Kings peace without any express malice prevented, this is murder in law, and yet the delinquent may be generally indicted of murder by malice prevented.

And a Fleta, who wrote before this Act, told us, that Crimen falsi dicitur, cum quis illicitus (qui non fuerit ad hoc datae authores) de ligillo regis rapto vel invento, & brevia charta sequitur consignavit. But what other offence it was before the making of this statute, it is after this statute no High treason, because it is no counterfeiting of the great seal, but a misprision thereof.

Qui &c. convicibus aequi pro falsitatis ligillorum accuratam tradatur Episcopo. Sunt, qui cum petitit clericum suum sub poena & in forma quae decet, quiuidem concilio quod in talibus non admittenda est purgatio, &c. Hereby it should appear that in those cases a man might have had his Clergy for this offence; and therefore, as some hold, it was not then helden to be High treason, but herein also in the preamble of this Act, concerning divers opinions in case of treason, heretofore.

This statute naming the great seal and psip seal, the forging and the counterfeiting of the psip signet, 02 of the sign manu, was not within this nature. 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 sidera and contravers to this counterfeiting, yet they are within the purview of this statute, for there be no necessaries in High treason.

40 All. 37.
37 H. 8. Br. dev.


fo. 3. 8.

Bradford agree with it, &c.

Leak's Caf. Hill.

Ja. R.

On sa "monye." 4. This was treason by the Common law, as it appeared by all the old ancient authors, ubi supra (verbo, Si home punctell etc.) grand scale), and therefore the opinion in 3 H.L.is bolden 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. &c. Thoro. Walingham. Hypodpigna Neuftriz. An. Dom. 1078. Judaei pro tonum a monetar magna multitudo ubique per Angliam suspendorunt, &c.

Si plic qui facit monetam authoritate regis, &c. illam facit minus in pondere vel
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vel alliantia, et. Alcumino vel alicio almo metallo contra ordinationem. etc. This is there bolden to be High Treason, and by that Book taken for a counterfeiter of the Kings money within the Puritans of this Act. And hereinafter aforesaid Britton, who 16th. October, 1633, no other money to counterfeit, 2. place 3. al- layne mife in our monye 4. nytter, ne ferret folyng, le forme du usage de notre Realm.

b Ordeine fuir qu adroy de sa realmne ne puet changer sa monye, ne impairer, ne amendere, auter monyer faire, que de l'argent, fues tantent de tous les Countrie. This was ordered, that no King of this Realm might not change his mony, my impair my amend the same, no other mony make then of Gold or Silver, without attente of Parliament.

c Clipping, balking, and fining of the money of this Realm, was no counte- feiting of it within this Act. And therefore being a like Cafe, it was declared by Parliament in Anno 5. H. 5. cap. 6. to be High Treason; but that Act being repealed by 1. Mariz, the statute of 5 Eliz. cap. 1. also declared, that clipping, balking, rounding, 2. fining, do wickedly luke and gain, 3. to be High Treason. And by the statute of 6 Eliz. it is declared, that if any person for wickedly luke, or gains take, shall, be any art, wayes, or maner whatsoever, impaire, diminish, falsifie, luke, or luyen the Kings monye, 4. to be High Treason, or being a like cafe, it was to be declared by Parliament.

Fogging, 5 or counterfeiting of foreign mony, which is not current within the Realm, is misprision of Treason, and the offender shall forfeit as for concealment of High Treason.

I. As monye.

This is only to be the Kings monye coined with in this Realm; and by hereinafter the statute, if a man had counterfeited the monye of another Kingdom, though it were current within this Realm, it was no treason, until it should be declared by Parliament, but in Ano. 1. Mariz, and in Ano. 1. Elziz. and the said Act of 5 Eliz. cap. 12, to extend to foreign coin current within this Realm. And it is bolden, that at the making of this statute of 25. E. 3. there was no monye current within this Realm, but the Kings own coin.

The statute declared Statutum de moneta magnae, et statutum de moneta parvum. And it is to be bolden, 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 Creations, that is, to be hanged and hanged till be hanged, but the forfeiture of his lands is in other cases of High Treason: for this statute is but a declaration of the Common Law, and the reason of his capital punishment is, that in this case he was only hanged, and hanged at the Common law, but a woman in that case was to be burned.

The Abbess of Stratford in the County of Buckingham, for counterfeiting and refusen of the Kings monye, was adjuded to be hanged, and hanged, and not quartered. The want of observation of the said statute made some to err in their judgement. Now, this Act of 25. E. 3. made an Hypocri the judgement, therefore 2. Judgement as was at the Common law either in case of High Treason or Petit Creation must be given.

But if one can be straffed for diminishing of the Kings monye, what any of the causes made in Rome Maries time, in the time of Ann Elizabeth, because it is High Treason newly made, the offender shall have, judgement as in case of High Treason, which judgement yow may be in the first part of the Institutes, sect. 47. and nolle.

And when a common counterfeiter of High Treason, and is with child, he cannot upon her arraignment plead it, but the mutt either plead not guilty, or confess it: and if upon her plea be found guilty or confess, she cannot al- legue it in her defence; but judgement shall be given against her; and if it be found by an inquest of Stratford that she is in child with child, the prov- edence entitmill for profits. In that case you shall execution shall be de- livered, but the shall have the benets of that. but once, though the be again quared...
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with child: so as this repit of execution for this cause is not to be granted only in case of felons, whereas Justice Stanford speaks, but in case of High Treason and High Treason also.

[Si home port faux money en cest roialme, counterfeit au money danglittere, & sachar le money ellre faux, &c.] By this branch of things are to be observed, First, that the bringing in of counterfeit money, and not the counterfeiting, is expressly 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, to have are Judges so expand this nature concerning Treason, and that in such a case the King, and one of the Realm of England to some purpose, as to Bewitching and Kings be said, 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 statute of Error is maintainable here in the King's Bench of a judgment given in the Reign of Ireland, as the Judges did construe this nature not to extend to false money brought out of Ireland. Thirdly, it must be to the magnitude 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 liberty of the crown of England, is no treason within this nature, unless he bring it from a foreign Nation, for the word is, if home apport false money en cest roialme. But if money false or clipped be found in the hands of any that is suspicious, he may be imprisoned until he hath found his warrant, per Declarione de moneta magna vet. Mag. Chart. fol. 38. a parte. Sixthly, he must merchandise such with, or make payment thereof, specified in these statutes, per merchanizant ou payement fair de son propre noms, de monnaie de monnaie de monnaie de monnaie de monnaie de monnaie.

(Si home real Chancour, Tresaurer, ou Justice nostre signorie le roy eti del altar, huissier en seure, ou du fille, et servis aures, justiciers alignes- doyer, & terminer efiefant en leur place realisant hure office.)

In this case, alias-wise, the King to kill any of these here named in their place and doing their office, and they upon thirst or wound any of them, this is no treason: For all these fall into the same and Chancour, &c. If a man kill the Chancour, &c. Upon the occasion, death must ensue. And the reason whereof it is treason in these cases is, because acting judicially in their places, (that is, in the King's Courts, and doing their office in administration of justice), they represent the King's person, who by his High and bountiful grace, 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-High-Treasurer, or to the Court of the Comptroller, or any other, nor to any Ecclesiastical Court; for if 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 thus omitted, and not mentioned in this Act. But in all these cases it is, usulfal murder, for the Law impliedly makes it.

(L'offroi fais vaine qui les semens nonnes doit, se advisable et se extendait a notre signorie le roy & la roy Majestie: & de tiel treason le forester des English saurit et se extendre a notre signorie le roy, signifie de ses & commandement des autres, comme de lay mien.)

[La Destins & enemistez, tenus des autours, come de lay crienne. This is an allowance of the Common Law; and the reason, therefore, for that the sentence is committed against the Subterane Lord the King, who is the Light, and the Life of the Common-wealth; and therefore the Law
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Both give to the King in satisfaction of his offence, all the lands, &c. which the offender hath, and that no subject should be privy to any part of the forfeiture for this offence.

And where the words be [Lands and Tenements holden, &c.] see the forfeiture extends to, rents charges, rents reck, Commons, Cozobides, 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 b to lands in

...
Petit treason.

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faith and obedience. And of such treason the executors ought to present to every Lord of his own see, &c.

It was called High or Grand treason in respect of the royal Majesty against whom it is committed; and comparatively it is called Petit treason (whereof this statute speaks) in respect it is committed against Subjects and inferior persons, whereas this Act both enumerate those kinds.

Quantum un servient una non Maiater. This was Petit treason by the Common Law, for it appeareth by the a bord of 12. Ali. that a woman first killed her mistress, wherefore the bad judgment to be burnt, which is the Custom at this day of a woman for Petit treason. And hereunto agrees 21 E. 3, where the Reader must know, that instead of Mercy in that case you must read Maiater.

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, drink or apparel, for that it is none of these three kinds specified in this Law. And yet the杀害 is so far more horrid and impious in a child than in a servant, for Pecora contra naturam tune gravillima: but the Judges are restrained by this Act, to interpret this Act, a simili, as a minor ad insulam e hereafter, shall be said. And same case 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 while he was his servant, and did not tell a year after he was out of service; and it was adjudged Petit treason within this Act.

Un seruient una non 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 be both in accordance, in this case the wife being absent at the murder, and shall be hanged and not burnt, because the accessory cannot be guilty of Petit treason, whereas the principal is not guilty but of murder, and the accessory must follow the nature of the principal. But if he be that did the murder he must be a servant of the husband; he had been treason there done, 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, as it shall appear illum dominii sui de cujus familia fut. Britton agreed herewith. But there are taken away by this Act, and all other cases that are here expressed.

Quantum hominum seu de religione una non prelata a que il doet sey & obedience. This clause comprehendeth only an Ecclesiastical person, he be secular or regular; if he kill his Prelate or Superiors, to whom he obeyeth and obedience, it is Petit treason, and so it was in the Common Law. And Petit treason must be prosecuted as a treachery and obedience the offender, either Civil, as in the bills and servant, or Ecclesiastical, as in the Ecclesiastical person.

Adoro, spectato, and pedetres, of any of these Petit Treasons, and taken by this Law.

If the servants kill his Master, viz. his mother's wife, this is treason (as hath been said) not by equity, for that is denieth as well in Petit treason as High treason, but it is within the letter of this statute, for she is a Master.

In High treason there are no executors, but all be principals, and they
Petit Traison:

Parce qu'auoient l'art de content laissé à son maint avant le fait dû, la dame laissait en lui a principe en cas de petit Traison. Mais en cas de petit Traison, on peut se soumettre, soit avant, soit après le fait dû, en cas de mort ou de sidérite.

Here it appeared that Act of Parliament may bind to the Church, a particular or a regular, and no benefit of clergy allowed unto them in case of treason; but a heretic, you shall read at large in the exposition of the 15th chapter of Article in the.

Et de tel manière de treason forfedure des Escheats apporteint a chelcun (seignior de son feee proper). We hereafter in the chapter of Forfeiture. b A man killed in the cause, Parker, Common, rent-charge, rent-deed, Warren, Copyhold, or any other inheritance that is not holden, and is straitened of felony, the King shall have the profits of them during his life; but after his decease, being the blood is corrupted, they cannot descend to the heir, *not can they escheat, because they are not holden, they perish and are extinct by Act in Law: For in Escheats for Petit Traison or Felony a tenure is requisite, as well in the case of the King as of the Subject.

An appendix in case of felony refunding the combate with the Appellee, shall have like judgment that is for Petit Traison; Probator reculans duellum adjudicatur suspensi & triah, in omni statu ac accisionibus: but yet it is not Petit Traison, because it is none of the kinds specified in this Act.

The case which Shad recited in 40. Hist. that a Hoqman 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 Hoqman he was but felony (because Hoqmandy was lost by King John, and was put out of the liguez of E. 3) and as to the English he was adjudged treason, and the offenders beaten and hanged, which was the judgment of Petit Traison; but this must be intended to fall out before this statute of E. 3, for it is none of the Petit Traison mentioned in this Act.

Et que de plus aux autres cas de semblable treason purront a cecy que plusieurs autres cases, de semblable treason purront a cecy que plusieurs autres cases, de semblable treason purront...
Petit Treason.

[Que nee specific paramount.] This word [specific] is to be specially ostended, so it is as much to say as particularized, or ten below particularly: so as nothing is left to the construction of the Judge, if it be most specified and particularized before this Act. A happy sanctuary of place of refuge for Judges to fly into, that no man's blood and ruin of his family be upon their consciences against law. And if that construction by arguments a limiting a minorad major had been left to Judges, the mischief before this statute would have remained, viz. liberty of opinions what ought to be accused, wherein this statute hath taken away by express words: and the nature of the statute hath repeat all treasons, or, but only such as be declared and expressed in this Act of 25 E. 3. whereas this word [expressed] is to be ostended.

In the Parliament ordinado 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 names, for gathering of Power and gling of Liberties, wheresof he proffered pardon: and the which, that upon the King's Letters be yielded himself, and came to the King unto York, where he might have kept himself away. The which Petition the King delivered to the Judges, by them to be considered. Whereupon the Lords made resolution, that the other thereof belonged to them as great of the Parliament, to whom such judgement belonged in weighing of this nature of 25 E. 3, &c. and they judge the same to be no treason, but only proceed against the King's will. And the opinion this 27 Act is declared, that if one of the Indicters do the counsel 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.

Tangue per devant le Roy & son Parliament. By this it is apparent, that the like as other case ought to be declared by the whole Parliament, (and not by the King and Lords of the upper house only, as by the Lords and Commons, or by the Commons,) and to be done by the whole Court of Parliament in 3 R. 2, ubi supra. 5 Eliz. ubi supra, and many other Acts of Parliament.

John Duke of Guen and of Lancast, Steward of England, and Thomas Duke of Gloucester, Constable of England, the King's Enemies, 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 fact; (which Petition was just and according to this branch of the statute of 25 E. 3.) But the House added further: whereupon the King and Lords in the Parliament adjudge the same fact to be open and High Treason; which judgement wanting the consent 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.

Soit le case monitre & declare, &c. The Act of Declaration may be absolute, so the mob have no time.

By this Act which had then laid it manifestly appears, what demonstrable and damnable opinions those were concerning High Treason, of Gabriel Chief Justice of the King's Bench, Sir Robert Bulknap Chief Justice of the Common Bench, Sir John Holt, Sir Roger Fulkhorne, and Sir William Brache, Knights, flying of the said Sir Robert Bulknap, and of Sir John Locke, both of the Kings Serjeants, that were given to the King and these said Serjeants, by the Edreden year of his reign. But that demonstrable were the opinions of the Judges in 21 R. 2. and of Bankford and Brinley the Kings Serjeants, and the other because they took no example by the punishment of the King's Serjeants, which affirmed the said opinions to be true and lawful, according to the William Township Chief
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Petit Treason.

Chief Judge of the Common Bench gave this answer, that petit treason of treason not being declared belonging to the Parliament, but to please God, said, if he had been a Lord of the Her g of Parliament, if it had not been demanded of him, he would have made the like answer. These Justice and Judges, being called as witnesses to the Parliament, done, anno 1. H. 4. for their said opinions, disapproved (as others Long, Spiritual and Temporal did) that they were no otherwise so as for the fear of death, it was thereupon enacted, that the Lords Spiritual and Temporal, or Judges, be not, even thenceforth, accused so cap, that they shall not be fear of death to say the truth, which opinions tending to manifestly against our said Act of 25 E. 3. afterwards in the Parliament holden, 1 H. 4. it is enacted by authority of Parliament, that in the said Parliament of 25. R. 2. divers Statutes, Judgments, Ordinances and Statutes were made, and those and other erroneous and doleful, in great dishonour and final destruction and undoing, of many honourable Lords and other lige people of this Realm and of their heirs for ever. And therefore not only that Parliament of 25. R. 2. and the circumstances, and dependences thereupon were wholly rebuked, reprobated, undone, repealed and annulled for ever, but also the Parliament holden in 11. R. 2. by authority of, which Parliament, loyal, belov'd, and the rest of those false Judges and perturbants, being to be taken, is confirmed, as it was (as there the Parliament affirmed) for the great honour and common profit of this Realm.

Et per eae actum home de certa rostam chivalre armas, &c. And it per ceate any man of this Realm ride armed, &c. For exposition herein, is the Chapter hereafter against riding or using arms, &c.

For the better instruction of the Heber, to discern what offences be High Treason or Petit Treason at this day, it shall be necessary to add wherein the nature of this Act whereby it is enacted, [That no Act, Zed or Divine, being by Act of Parliament or Statute made, Petit Treason, or misappision of Treason, by words, writing, scribining, deeds, or otherwise whatsoever, shall be taken, had, named, or adjudged to be High Treason, Petit Treason, misappision of Treason, but only such as be declared and expressed to be Treason, Petit Treason, or misappision of Treason, in or by the Act of Parliament or Statute made in the 25 year of the reign of the most noble Henry of famous memory, King Edward the third, touching or concerning Treason, of the Declaration of Treason, and none other, &c.] Any Act or Acts of Parliament, Statute or Statutes, had or made at any time before or after the said 25 year of King E. 3. or any other declaration or matter to the contrary in any wise notwithstanding.

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 wise penned, as not only the ignorant and unlearned, but also learned and expert men were many times trapped and many times 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 was not became to be so frequent and dangerous, as the safest and surest remedy was, by this excellent Act of 13 Mar. to abrogate and repeal all, but only such as are specified and 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-wealth is wisely and sufficiently provided for, in such certainty, as much relied on et abtricio Judicis. And certainly the two Rules recited in the preamble of the said Act of 1 Maria are sufficiently, true.

The first [That the state of a King's banish and confine more auctured by the laws and favour of the subject towards their Sovereign, than in the head and fear of Laws made with rigorous pains and extream punishment for not obeying their Sovereign.] And the other, [That Laws justly made for the preservation of the Common-wealth without extream punishment or penalty, are more often, and for the most part better obeyed and kept, than Laws and Statutes made with]
with great and extreme punishment. Thus it is proved that it is not a treason to be the perpetrator of a libel, since the law of treason was made by the Act of Parliament, and it does not mention treason for libel without a specific act. 2. It is evident that the perpetrator of a libel cannot be tried in the same way as a criminal, since the law of treason was made by the Act of Parliament, and it does not mention treason for libel without a specific act. 3. It is evident that the perpetrator of a libel cannot be tried in the same way as a criminal, since the law of treason was made by the Act of Parliament, and it does not mention treason for libel without a specific act.
man's manner of an accusation, by the statutes of 1. E. 6. and 5. E. 6. two lawful witnesses are requisite. The bounds of the nature of 1. E. 6. in the last branch be, "That none shall be indicted, arraigned, convicted, or accused for any Treason, Petit Treason, misdemeanor of treason, or for any words before occurring to be spoken, after the first day of February, for which the same offense or matter shall be in any bills, issue pains of death, imprisonment, loss of reputation or goods, chattels, lands or tenements, unless be be accused by two sufficient and sufficient witnesses, or shall willingly, without violence, confess the same."

And by 5. E. 6. 11. it is an offense by the law above referred. "That none shall be indicted, arraigned, convicted, or accused for any of the Treason, or other offenses referred to, as any other offenses that now be, or heretofore shall be, which shall hereafter be perpetrated, committed or done, unless the same offence be thereon accused by two lawful accusers, &c. unless the said party arraigned is willingly, without violence, confess the same." Here two things are to be observed. 1. The particular meaning of both these Acts, viz. indicted, arraigned, convicted, &c. and the words of 1 & 2 Ph. & Mar. extend expressly only, and not to the indictment. 2. Two lawful accusers in the Act of 5. E. 6. are taken for the two lawful witnesses of, by two lawful accusers, &c. and accused by two lawful witnesses as in every 1. E. 6. is all one; whereas words [1 & 2 Ph. & Mar. 9 & 10] because two witnesses might directly accuse, that is, charge the prisoner, for other accusers have none in the Common Law and therefore a lawful accuser must be such accusers as Law allows. And so this rule is still in the Lo. Lumley's case by the judges. For if accusers should not be in taking, then there must be two accusers by 5. E. 6. and two witnesses by 1. E. 4. And the Strange answer, in 2. Mar. that one may be an accuser by itself, was expressly admitted by the judges in the Lo. Lumley's case. And this was admitted in the nature of 1 & 2 Ph. & Mar. extended to the trial upon the arraignment, and not to the indictment, for that is not said to be awarded. And it was resolved by all the judges in a Rolls case. upon the rebellion in the North, that these words [1 & 2 Ph. & Mar. 11. supra] 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, which is never pleading at any torture, neither upon his arraignment was ever any torture offered. And here comes another nature made in 1 & 2 Mar. to be considered, by which it is said, that treason for the countering and impairing of the coin current in this Realm, viz. the offender therein, shall be indicted, arraigned, tried, convicted or 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 meaning of this Act is to be observed, which in case of treason concerning the countering or impairing of coin, viz. barb by particular words or by such evidence required by the Common Law, before the date of 1. E. 6 as well upon the indictment as the trial. But the Act of 1 & 2 Ph. & Mar. 10. extends to trials only in other cases of High Treason, and therefore that Act extends not to the indictment of other High Treasons. Also it is most necessary (as much to hold) that there should be two lawful accusers, that is, two lawful witnesses at the time of the indictment, for that it is commonly found in the evidence of the party accused, and it may be when the party suspected, is beyond seas, 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 proof.
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See Magna Charta, c. 19, and the exposition thereupon.


Rot. Parl. 3 Edw. 6, cap. 6, the Earl of Ormonde's cade.

Rot. Parl. 3 H. 6, part 2, m. 7, between Upnor and Dover, vide the 4 part of the statutes, viz., the Court of Chancery, &c.


12 Ric. 1, c. 2, &c.

A shadow cast by the sun is not sufficient to confer any High treason; for, in that case, there is but one accuser, it shall be tried before the Constable and Marshall by Comittee, as by may records appear, &c. But the Constable and Marshall have no jurisdiction to hold plea of any thing which may be determined or decided by the Common Law. And that two witnesses be required, appears by our books, and I remember no instance so to 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; TV Speculum, non sunt quibus qui inter se dissident, Nemo occidatur uno contumice, sed deinceps testis testimonium.

And this is come to the most clear in the case by the Person of the King, because they commit de aliquo vicinio, to whereby they might take notice of the lad in respect of vicinage, as other jurors may do.

Habere now rebated what others have laid and gotten, by due indictment bad of the whole matter, will let down upon your opinion and reading, and the truth of the statute of E. 3, c. 11, a general Law, and extends to all High Treasons, as well by the Common Law declared by the statute of E. 3, c. 13, as to any other statute made, to be made, the negative words of which statute be, [So person shall be indicted, arraigned, convicted, condemned, and punished for any treason that which is, or be and committed;]-$\text{a.}\$ Which words without all question are general, and so to be taken. The words of that statute be further, [Whereas the whole offender be accused by two lawful accusers.] These two lawful accusers are in judgment of Law taken for two lawful witnesses, and that for two causers. First, they must be lawful, that is, allowed by the Laws of the Realm; and by the Law, upon the arrangement of the Prisoner upon the indictment of treason, no other accuser can be heard but witnesses only. Secondly, the words of the nature are, [Which said accusers at the time of the arrangement 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 confesse the same,] as by that Act it appeared. How to abide and maintain that which they have to say to prove him guilty of the treason, to the proper office and duty of witnesses, and to it is laid in the nature of the statute of E. 6, c. 11, in the last clause (two lawful witnesses), be the statute of E. 5, c. 1, where it is said [acused by god and sufficient testimony: and to the same intent, the statute of E. 1 & 2 Ph. & Mar., c. 11, for the lord, &c.]

I Puniantur accutatores pene dominum regem, quod amando Rex eas de seali non credat: & tali poena fieri eis, qualis deberet si illis qui iuvenilis non restituidens daret rei exheredari & destruere feecerunt, &c.

2. What this Act of E. 6, c. 11, extends as well to Petit Treason, as High Treason, for the words be [Any treason:] and so both the nature of E. 6, c. 11, and the statute of E. 1 & 2 Ph. & Mar., c. 10, doth not abridge the said Act of 1 & 2 Ph. & Mar., c. 10, extends only to treas, by the verdict of twelve men de viicinio, of the place where the offence is alleged, and the indictment is no part of the treas, but an information for declaration for the thing; and the evidence of witnesses to the Nap is no part of the treas, by law the treas in that case is not by witnesses, but by the verdict of
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... and to a man's liberty between the evidence to a jury, and a trial by jury. And the words [awarded] in that statute both pains that that Act extended only to the Venire facias for trial, and besides the indictment was the evidence can be laid to be awarded. Whereas quam minime debarante, opportunitur, & qui non improbavit, approbat. Et si libere omnibus meam liberavi.

4. b. That a trial in a foreign Count upon examination before those of the Council, by the nature 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 to have it tried by Jurors of 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 Act of the Common Law. And although the Term begins, all Commissioners of Oyer and Terminer in the County where the Kings Bench at Westminster is held during the Term, for if it be 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 hear the Term before the beginning of the Term. For 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 be there.

... where it is provided by the nature of 33 H. 8. c. 23, that a peremptory challenge should not from thenceforth be admitted as follows in cases of High Treason as misprision of treason. 0. This immunity is abrogated by the said Act of 1 M. for the end of challenge to have an individual character, and which is required by Law, and to bar the party interested in his individual challenge, so to bar him of a principal matter concerning his trial; and all Acts of Parliament concerning incidents to trials commissarii of the Common Law, are abrogated by the said 33 H. 8. c. 23, [and so all therein and hereafter, &c.] But all which is to be understood of peremptory under the degree of Mattibility, &c. in case of a trial of any noble man, Lord of Parliament, he cannot challenge at all after his Peer, 29 El. 6. c. 23.

... Henry, Governor of the Judges in England, upon his imprisonment by the Lord Treasurer, his challenge was heard before the Council of London, and he was allowed to be heard by the election of all the Judges. So the case of a man accused of High Treason, 0. misprision of High Treason, 0. may be challenge 0. peremptorily, which is understood to include, that which is ultimate.

... If a man be accused of High Treason, 0. may be heard by the election of all the Judges, and shall be heard in the King's Council, but his challenge is abrogated by the said 33 H. 8. c. 23. See 33 H. 8. c. 23. See 1 M. 1. c. 2. and 23 H. 8. c. 2. pleading, &c. for being taken out of the jurisdiction in a foreign County in case of murder or felony. See hereafter, &c. for being taken out of the jurisdiction generally, and that the Act of 23 H. 8. c. 23, extend only to Indictments, and not to Appeals.

...
1. The Noble Peer of the Realm must be indicted before Commissioners of Oyer and Terminer, or in the King's Bench, if the treason, misprision of treason, felony, or misprision thereof be committed in that County where the King's 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 Jurors of the said County where the offence was committed.

2. When he is indicted, then the King by his Commission under the Great Seal constitute some Peer of the Realm to be the Vice Steward of England: As his able in the Commission is, [Senechallus Angliae] who is Judge in this case of the treason of felony, or of the misprision of the same committed by any Peer of the Realm. This Commission returneth the Indictment generally as it is found: and power given to the Lord Steward to receive the Indictment, etc., and to proceed Secundum legec & cum jurisdicin Angliae. And a commandment is given thereby to the Peer 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 Certiorari is awarded out of the Chancery to remove the indictment to the Steward of England: indurate, which may either bear the same day of the Steward's Commission, or any day after.

4. The Steward directs his peremptory his seal to the Commissioners, etc., 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 shall appoint.

6. The Lord Steward maketh a peremptory under his seal to the Lieutenant of the Tower, etc., and therein expresseth a day and place where he shall bring the prisoner before him.

7. The Steward maketh another peremptory under his seal to a Serjeant at Arms, totum Impe & eum domino, magnate & processe juris regni Angliae prodehi. R. Comitis E. parce, quos quos rei veritates mei. qvocips ipse personaliter comparent coram passibili ad locum, tali die & hora, ad facade. etc., ex parte domini Regis forensi facienda, etc., et in quinque décessit, that all these peremptories must commonly bear at a day in one day. Secondly, that no number of peremptories is named in the peremptory, and yet there must be done of all these. Thirdly, that the peremptory is awarded for the return of the Peer, before any assignment or plea pleaded by the prisoner. Fourthly, that in this case the Lords are not de voto, 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 King's Bosom.

8. At the day, the Steward with the peremptory to Arms before him takes his place under a Cloth of Gold, and then the Clerk of the Crown delivereth unto him his Commission, who subscribe the same unto him. And the Clerk of the Crown delivereth a peremptory to Arms to make the Peer, and commandment is given in the name of the Lord Steward of England to keep silence: and thereby the Commission read. And then the other delivereth to the Steward a White Rod, who subscribe the same to the serjeant, who delivers it before the Steward. Then another a peremptory is made, and commandment given in the name of the High Steward of England to all Justices and Commissioners to certify all Assignments and Verdicts, etc., which being delivereth into court, the Clerk or the Crown reads the before. Another a peremptory is made, and the Lieutenant of the Tower, etc., returneth the Oath of Peremptory, and do bring the prisoner, etc. The Peer, which being done, the Clerk reads the return. And this a peremptory is made, that the peremptory at Arms receiveth this peremptory with the names of the Serjeant and Peer, etc., who subscribeth the same as before, and the return of the aforesaid read. Another a peremptory is made, that all Clerks, etc., subscribeth the commandment of the High Steward be taken in (ante) 10th to the names, and then they take another places
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places and sit down, and their names are recoged: and the names of the prisoner, that they appear. Ad faciendum ex quae ex parte Domini Regis et injungement. Then when they are all in their places, and the prisoner at the Bar, the High Steward declares to the prisoner the cause of their assembly, and peremptories 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 arraignment is, Et de hoc de bono & malo ponti & super Pares fios, &c. Then the High Steward gives the charge to the Jury, exhorting them to try the prisoner indifferently according to their evidence.

9. The Jures are not sworn, but are charged Super sedicitibus & ligeantibus Domino Regi debitis: fo 2 the record spoken.

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

11. But the prisoner when he pleaded not guilty, whereby he denieth the fact, he needs have no advice of Counsel to that plea. But if he hath any matter of law to plead, as Humberley Stafford in 1 H. 7. had, viz. the priblage of Sanctuary, he needs have Counsel assigned 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 Counsel learned assigned to him to answer the Kings Counsel learned, nor to defend himself. And the reason thereof, is, because it concerned matter of fact, &c. Ex. 5 &c. just is: but the true reason of the law of this case is, first, that the testimonies and the proofs of the offence ought to be to clear and manifest, as there can be no defense of it. Secondly, the Court ought to be in need of Counsel for the prisoner, to see that nothing be urged against him contrary to Law and right: now, 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 Par and another Subject. And to the end that the trial may be the more indifferent, seeing that the safety of the prisoner consisteth in the indifference of the Court, the Judges ought not to deliver their opinions before-hand of any criminal case that may come before them judicially. And we read, that in the case of Humberley Stafford that arch-tragarz, Hulsey Chief Justice besought King Henry the Seventh, that he would not desire to know their opinions before-hand for Humberley Stafford, for they thought it should come before them in the Kings Bench judicially, and then they would do that which right they ought, and the King accepted of it. And therefore the Judges ought not to deliver 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 deterre to fatal and exasperating punishment. For how can they be indifferent who have delivered their opinions before-hand without hearing of the party, when a small addition of information may alter the case? And how doth it stand with their oath, who are sworn, That they should well and truly serve our Lord the King and his people in the office of a Justice? and they should do equal law, and execution of right to all his subjects, &c. See more of this matter in the 13 Section here following.

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

13. After all the evidence given for the King, and the prisoner answered, and proofs at large, and with patience heard, then is the prisoner withdrawed from the Bar to some private place under the custody of the Lieutenant, &c. And after that he is withdrawed, the Lords that are tryers of the prisoner go to some place to consider of their evidence: and if upon debate thereof, they have doubts of any matter, and therefore 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 pres-
Petit Treson.

Cap. 2.

Once and bearing of the Prisoner; as it was referred by all the Justices of England in the reign of King H. VIII. in the case of the Lords Dares of the North, reported by Juecet Spilman, which we have seen.

Mag. Chart. ca. 29.

* Resolved by all the Judges.

1 H. 4. fol. 1.
1b E. 4. 6. b.
17 H. 8. fol. 2.


11 E. 3. br. 473.
12 R. 3. proos. pl. ultimo.
20 E. 4. 6.
50 El. Die 360.

Seignior Sanctus cafe.

Rex. Roman.
15 E. 3. 6. Adam Orleton B. of Hereford.
27 Hen. li. 3. ca. 62. fo. 153.


11 E. 3. br. 473.
12 R. 3. proos. pl. ultimo.
20 E. 4. 6.
50 El. Die 360.

Seignior Sanctus cafe.

27 Hen. li. 3. ca. 62. fo. 153.


11 E. 3. br. 473.
12 R. 3. proos. pl. ultimo.
20 E. 4. 6.
50 El. Die 360.

Seignior Sanctus cafe.

27 Hen. li. 3. ca. 62. fo. 153.


11 E. 3. br. 473.
12 R. 3. proos. pl. ultimo.
20 E. 4. 6.
50 El. Die 360.

Seignior Sanctus cafe.
21. A. Per of the Realm being indicted of Treason, or Felony, or of mis-
position, as is aforesaid, and only transferred to the Lords may be arraigned
therein in the upper House of Parliament, as frequently in Parliament Rolls
it said appear; but then there must be appointed a President of England, who
shall put him to either: and if he pleas not guilty, he shall be tried by Par-ers
there, and then the Lords Spiritual must witncss, and make their posse: but
no Appeal of Treason can be in Parliament, but is settled by the Nature
22. And as the beginning of the finding of the indictment by a Charles
is equal to them both: to the most extreme and deadly judgement, if they be
found guilty, is equal to both: so, which you that read in the first part of
the Indictments, sect. 147.
23. And though the Commission of the Lord President be only in these lat-er
times has vice, per may the same be adjourned, as other Commissions
has vice may. And so it was held by the Lord Deane's Case. And so it was
done by the President of England in the case of R. Earl of Sillyand of F. his wife
who adjourned his Commission untill the next day.
24. If execution be not done according to the judgement, then the High
President in the case of a Per of the Realm, as the Court or Commission in
case of another subject, may by their precepts under their seals command execution
to be done according to the judgement but in case of High Treason, as all
the rest of the judgement falling (the preceding which is part of the judgement)
be pardoned, this ought to be under the Great Seal of England.
25. And when the verdict is pronounced, then an act must settle the distri-bu-
ting of the punishment, and then it is the W. to do, which has been done, and
be done as was before the President, by him taken by both his hands, and been
over his head.
Lastly, the Judicatures, together with the History of the arrangement, trial,
and judgement, shall be delivered into the King's Bench, there to be kept un-
married.
After that the three orders: one a Noble man such appear, and plead not
guilty; and put himself upon hisPers: Both for so we know that he is not
against himself when he is indicted, and appears not, and cannot be taken and
assumed by him be held and used by the President in Council. But both they stand
with Magna Charta, Nee super sustentatias, Nee supernum mitemur, nisi per legis
Judicium parum licet: That is to be intended, when he appears and pleads
not guilty, and puts himself upon his Pers: but when he declarers himself, and
shall not plead himself to the true extent of his Pers, then he shall be outlawed by
judicium Coronation, or else he should take advantage of his own contumacy
and be delivered from judgement. For the proceedings to be admitted upon the indictment
of Treason, or Treasons, either against a Noble man as any other, by
the nature of H. 6. and 8 H. 6. and if the proceeds and other precluded by
the satisfactions be not added, the outlawry may be arrested by writ of Error, which
ought to be granted to him according to Justice, as it was judged in Nunius
Menwyl's Case: and those actions do extend also to the king's Bench, as in
other Courts holding by commission power to hear and determine the case, and
give new outlawries of treason or Treason are of force and validity in law, for
that the Acts are not-pursued.
Thus those Acts are well examined of our own, and therefore they shall
not need to be repeated at large. Thus is necessary to be added, that the opinion
of Stat. Pl. Cor. 521. upon the nature of 32 H. 2. c. 20. is, where the arraigned
is notorious, but lawful by the Courts of the land: and it was recal'd by
Mr. 38. Eliiz. and thence the statute of 38 Eliiz. 2. was made, but no attains
that then was for any High Treason should be reitered. For error where the
party was executed. But that Actextended only to arrainers before that Acts
and where the party retained different pains of death, as hath been said:

Sut
But admitting the process be awarded according to these statutes, and the truth be, that the party indebted of High Treason (be he noble or other), at the time of the outlawry pronounced, be out of the realm, or, whether he be abroad the same by secret abjuration: I say, if the act be such as that he might take abjuration the same by being at any of the common laws; but not, in case of High Treason, be barred of his birth of seven by the statutes of 20 Eliz. 8. and 3 Eliz. which, having been supposed no special abjuration, be to all Treasons, but those nature strict, are in any jurisdiction that High Treason only, and therefore all other offenses remain as they did at the common law, for that point.  

Nor, that all the indictment for any offense whatever, as well of Noblemen as of any under the degree of nobility, be sought by the common law of the Realm to be by persons duly selected, and by lawful undergone, indifferent, as they stand unsworn, and without any denomination of any good and sagacious lawman made in the same, as the Parliament, holden in 11 H. 4. in three marches, which, because that, now of late, the brokers were taken at Westminster of persons, conversed to the Juries, without due return, of the Sheriff, of which persons some were outlawed before the said Juries, and some fled to sanctuary for Treason, and some for felony; there to have refuge; by whom, as well, many others were indicted, as other, lawful subject people of our Lord the King, not guilty, by conspiracy, insubstantial, and iniquitous-suspicion of other persons for their special advantage; and singular shame, against the course of the common law, still and accustomed before this time: Our Lord the King has the greater rule, and command of his people, will and granteth, that the same indictment be made in the same manner, with all the dependance thereof, as revoked, annulled, void, and held for none for ever, and that none henceforth no indictment be made by any such persons, but by inquest of the king's lawful and subject people, in the manner it was in the time of his noble progenitors, and in the course of the sheriffs or bailiffs of franchises, without any denomination to the sheriffs or bailiffs of franchises before made by any such persons, which should be impossible, except by the officers of the said Sheriffs or Bailiffs of franchises sworn, and known by 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 henceforth in any point to the contrary, that the same indictment be also void, revoked, and such hearing for none:

The body of this Act consisted upon two distinct punishment or branches, the one to remedy a mischief past, the other to provide for the time to come. The first branch consisted of a preamble and a penalty: and the preamble contained six these eight parts. First, it declared the General mischief, how the same hath at Westminster by persons named the brokers, secondly, therein was not and remains of the matter. Thirdly, of which some were outlawed before the said Juries of record. Fourthly, some fled to sanctuary for Treason, and some flew; Fifthly, by whom many others were indicted. Sixthly, came not guilty, by conspiracy, or 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 followed the second branch of punishment for the time to come, and this punishment consisted of nine parts: First, in declaring what persons indictment ought to be found, and therein was a privative, that, as not to any such persons, shall pass sentence to the preamble, which persons we hope before particularly distinguishing a positive, that all indictment must be found by persons of these qualities. 1: They must be the kings lawfull subject people. 2: Return by sheriffs of franchises, and other officers to whom it pertaineth. 3: Exclude any denomination to the sheriffs, bailiffs or other officers: and this punishment to in appearance, and declaracion of the common law.

The second part of the punishment or branches 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 held for none. Wherein these two things of
be brought 1. That this is a general bane, and extends to all indictments for any crime, deathly or offense under which he [at any unkindness] generally without naming of any Court, as being done. 2. If the indictment be found by any person that are unjaundiced, or not the kings lawful personal people, or not voluntarily returned or denominated by any, or by all of any of them, then these indictments must be for the words they have unjustly been made in any point, to the contrary. etc. Upon this statute, the cases of Robert Scarter before the Judges of Pittie, or by the Judges of the fullness, in summer Magister, 1211, 12. These points were restated and disposed. First, where at the sessions of the peace holding in the said County of Suffolk: Robert Scarter by conspiracy between him and the Clerks, that was to read the name of the Crown, was accused by the Sheriff, accused by the two names, albeit he laboured the Sheriff to have returned him, that the Clerks should read him name of the Crown, which was some regularly, that where the rule of the great unjust giving faith to him induced the tenant honest and good men upon others, penalties, which was found by the said Robert Scarter, unless truly it was. It was restated and estimated that what he has done may imply the return of the Sheriff. And all the not duly required, etc. Thus this case was within this statute, and all the circumstances found by him, and the relation both by this statute for which it is to be seen, thus such, one might do. Thirdly, that Robert Scarter upon that day had a speeder against the said Act, and might be held an accuser and accordingly be held upon suspension of all the facts, as in effect, to induce upon the said Act. And although not guilty, the said John, and other persons, and accordingly be held upon suspension of all the facts, as in effect, to induce upon the said Act.

Thus, accordingly, that the Act required not such a judgment as to the generating of the words. Fifthly, consideration was had of the Act of 3 H. 4, 12 and wonderfully clear, that this statute had not altered the Act of 11 H. 4, in any thing concerning the sheriffs of Scarter, as upon that which shall be said of the Act of 3 H. 4. shall appear. And upon hearing of the sheriffs learned that they could say in any judgment, as to judgment in that matter, that he should be heard and impeached, and ordered by the Court that no speeder should go out upon the said indictment found by the late great inquest. Where Scarter was when.

Where notwithstanding this good law, through the sheriffs and untrue handles of sheriffs and their sheriffs, great wrongs and oppressions by and had been committed and done to many of the kings subjects by persons of reputed and popular societies, and Councils and officers, by the body of the state, the names of such persons as for the singular advantage of the said sheriffs and their sheriffs, will be justly bestowed and preserved by the officer labour of the said sheriffs and their sheriffs, by reason whereby many substantial persons, the kings true subjects, have been improperly involved of murder, felony, and misdemeanours; and sometimes by labour of the said sheriffs and their sheriffs, others great estates and interests have been canceled, etc. For remedy of which mischief it is enacted by the said statute of 3 H. 4, E. 12, That the Justices of Goal-Deliver, or Justices of Peace, where one to be the Queen, in their open Sessions may return the panel returned by the sheriffs and inquire for the King, by putting to, and taking out the names of the persons so panelled, by the discretion of the said Justices, etc., and that the sheriffs shall return the panels so returned, This Act extends only to Justices of Goal-Deliver, and of the Peace. The body of the Act for Sheriffs in general and other. See 11 H. 7, c. 24.
general proceed, as they were not probi & legales homines to inquire as the law bitteth, and if after the party had pleaded not guilty to the felony, it was avouched, that all the instruments by them found were admitted and made bold, herefore against Stanford in his pleas of the Crown, fo. 97, & 88. Vide F. t. indictment 24. & Coron. 89. and Brook cit. indictment 2. Note the Act saith, that they were sentenced before convictions, so the Court may take knowledge thereof of the parties, by any other, as amicus curiae; but the said party for the party indicted is to plead, upon his arraignment, the special matter given unto him by the nature of 11 El. 4, for the obtaining of the indictment, with which he is acquainted, to whom he is required, (agreed to the opinion of the Lord Brook, ubi supra), and evocado to the Crown, 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 note Laws made for indigence of Indictors, ought to be continued advantageously, so that the indigence of the party is commonly found in the absence of the party, and yet it is the foundation of all the rest of the proceeding.

Lloyd in an emb 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 33 H. 8. treasons and misprisions of treasons committed against the King, &c. shall be heard and determined before the Judges of the King's Bench, &c. Yet, as both fall upon this nature to be true; so doth not attend, before the Judges of the King's Bench, at the Term held at Bermondsey, by a Jury of the County of Bermondsey, for divers high treasons that committed out of this Kingdom, after the Term was adjourned to Westminster in the County of Middlesex. The question was, by which of the Counties the Party indicted should be tried: by H. was answered, that he should be tried by each of the Counties where the indictment was taken. But otherwise it is upon the nature of 5 El. 7. the case being, that the Bishop of Winchester, came to Edward Bonge, late Bishop of London, in the County of Bermondsey, within his diocese, the oath of supremacy according to the Act of 33 El. which Commerce relied upon, and this was certified by the Bishop of Winchester, to the King's Bench, then sitting at Westminster, in the County of Middlesex. So by the nature of 5 El. by that returned the oath, is to be heard and determined, the question upon the nature of 5 El. was, shall be decided by the King's Bench, by a Jury of 12 men, as another should appear and plead not guilty, so the King's Bench should be tried, whether by a Jury of 12 men, for the indictment taken, or by a Jury of 12 men, where the venue is, by 5 El. to try the indictment, only, and lead the trial to the Common Law, which appointed the trial to be where the venue is committed, and to a manifest disorder between the two cases: so regularly by the Common Law in all pleas of the Crown, Debet quis sit subjacerit, ubi delictum.
which shall be taken the many by rescript in 1522 or 1523, as which be
found in a register upon account, and we doubt that otherwise they shall not
be printed nor togmented. 20. Omnes autem atque titillantes liceat vicinum
pro prinsa felicissim. 21. Non loquor ad partem, sed va cuidadiss. 22. It is an abso-
lute the Prisoner be charged with Roys, or put to any pain before he be
togmented.

23. Osiadam solonam super patriam, & dicit ad bar-
nam inferius, sed per totum Jus libertat a fessam. And there is no dif-
ference in Law as to a Priest and a Layman, as to Aros.

24. Presbiter quod nisi quidam Robertus Baynes de Trenchby rupus suit, & in
prisona in Lincolni detenus pro quodam debito Statui, mercanatis in Cambo-

da. The Boleyns Controllabiliu carci de Lincolni ibi prece. Tho. le Boleyn poquit ipsum
Robertum in prouido Gaoliste lenones in vili prisona, contra formam Statui
s. & codem prouidio detinet, quosque idem Robertus fecit finem cum co. de
40. X. quos evitavit ex horribilis molesti.

So as hereby it appeareth that whereas the Law requireth that a Prisoner
should be kept in Jus & acuidadis, yet that must be without pain or
toggement to the Prisoner.

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

1. To the first, John Holland Earl of Huntingdon was by King H. 6. created
Duke of Greiter, and Aro 29 H. 6. the King granted to him the office of the
Controllability of the Tower. He and William de la Poole Duke of Suffolk,
and others, intended to have bought in the Civill Law; for a beginning
whereof the Duke of Gteter being Controllable of the Tower, first brought into
the Tower the Rock or Stake allowed in many places by the Civill Law; and
thereupon the Rock he called the Duke of Gteter's Daughter, because he first
bought it thither.

2. To the second upon this occasion, Sir John Fortescue Chief Justice of Eng-
land, wrote his Epistle in commendation of the Laws of England, and therein
preserved the same for the government of this Country before the Civill Law;
and particularly that all tortures and torment of parties accused were directly
against the Common Laws of England, and the intent and intelligence thereof
by full example: to whom I refer you, being worthy your reading. So as
there is no Law to warrant tortures in this Land, nay can they be justified by
any prescription, being to lately brought in.

And the Pope in describing the iniquity of Rhadamantus, that cruel Judge of
Hell, saith,

calligatur, additque dolos, subigitque fateri.

First, he was punished before he heard, and when he had heard his denial, he
compelled the parties accused by torture to confess it. But for otherwise both Au-
ismy by God proceed, postquam reus dissimulat eff. 1. Vocat. 2. Interrogat. 3. Juri-
dicat. To conclude this point, it is against Magna Charta, cap. 29. Nullus liber
homo, &c. aliquo modo dettruitur, nec super eum ibimus, nec super eum mittimus
nisi per legale judicium parium suorum, aut per legem terrae. And accordingly all
the said ancient Auros are against any pain or torment to be put upon the
Prisoner before arraigned, nor after arraigned, but according to the
judgment. And there is no one opinion in our Books, of judicial Recog (that
we have seen and remember) for the maintenance of tortures and torment, &c.
And now, to conclude this Chapter of Treason. It appeared in the holy
Scripture that treason never prospered, what good soever they pretended, but
were most feebly and exemplarily punished. As a Coroll, Dathan and Abi-
ram, by miracle: Dinupta est terra sub pedibus corum, & aperimus os suam de-
voravit illos, &c. 2 Athalia the Daughter of Amri, interdicit gladio. 2 Bag-
tha and Thata against Ailuces: Appendectus uteque corum in parihulo. d Ab-
solon against David: Subipnus in arbore, & Josab inexit tres lanciae in corde
ejus. e Achitophel with Abislon against David: Suspendio interiit, he hanged
himself.
Misprision of Treason:

Of Misprision of Treason.

Misprono, in the French word Mespris, which properly signifies neglect or contempt; for [mes] in composition in the French signifies mal, as one both in the English tongue, as mischance, for an ill chance; and in mespriso is ill apprehended or known. In legal understanding it signifies, when one knoweth of any treason or felony, and concealeth it; this is misprision to call, 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 suffer 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 both the law nature of 1 & 2 Ph. & Mar. speaks, when it saith, Be it declared and enacted by the authority aforesaid, that concealment or keeping secret of any High Treason be deemed 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 appeared in the case of the Lord Scope, A.N. 3 H. 5; and by Brayton lib. 3. 1. 1. 8. & 119. a. It is misprison of High Treason, for concealing or concealing, which neither is the money of this Realm of England, nor current within the same.

II. Misprison of High Treason in concealing of a Bull, &c. is the statute.

It is laid in 2 R. 3. that every treason or felony included in it is a misprison of treason or felony. Therefore if any man knoweth of any High Treason, he saith with as much heed as conveniently he may to reveal the same to the King, or to any of his Chief Council, or to any other Magistrate. And misprison in this sense is taken for many great offences which are neither treason not felony, whereas we shall speak more hereafter, being in this place restrained to misprison of treason.

As John Conyers, Calf. Dec. 206. That the receiving of one that hath counterfeited the Kings Coin, and compounding of him, knowing him to have counterfeited the Kings Coin, is but misprison.

As most of misprison of Treason in the Chapters of High Treason, and of Principal and Accesory.
Felony by compassing or conspiring to kill the King, or any Lord, or other of the King's Councill.

Next before we come that he goes to read of the statute of 3 H. 7, the letter of which two letters.

Forasmuch as by remembrance made to such as have been in great authority, office, and of council 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 bad, the destruction of the Prince was imagined thereby; and for the most part it hath grown and been occasioned by envy and dislike of the King's 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 such deeds be not hasted, there is no remedy for such false compassings, imaginations, and confederacies had against any Lord, or any of the Kings Council, or any of the Kings great Officers in his household, as Steward, Treasurer, and Comptroller; and so great inconveniences might ensue, if such ungodly demaning should not be strictly 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 King's house for the time being, or one of them, shall have full authority and power to enquire by Twelve Just men, and discreet persons, of the Chequer Roll of the King's household, if any servante admitted to be his servante sworn, and his name put into the Chequer Roll of his household, whether 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 King's Council, Steward, Treasurer, or Comptroller of the King's house; that if it be found before the said Steward for the time being, by the said twelve Just men, that any such of the King's servants as is above said, hath confederated, compassed, conspired, or imagined, as is above said, that he be found by that Inquest, be put thereupon to answer. 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 trial, that then it be tried by other twelve Just men of the same household, and that such midloters have no challenge, but for malice. And if such midloters be found guilty by confession, or otherwise, that the said offence be judged felony, and they to have judgement and execution, as felons attained ought to have by the Common Law.
Compelling to kill the King, &c.

This Act didthethit itself into two general parts, viz. the Preamble, and the body of the Act. In the Preamble three things are to be observed.

1. That by quarrels made to rage as to the great Authority, office, and of Council both the Kings of the Realm, have caused the destruction of the Kings, and the bodies of the Realm, as in the Records of Parliament, and History of King E. and King M. in which year was King William Rufus slain in the field. For by the decree of so solemn, to the destruction of the Kings, and followed by plagues and conccquences, when the body of destruction was not aimed at the destruction of those who were in great Authority nor about, and dire to the King, nor in direct manner to aim at the King himself. Therefore the first conclusion is, that when the coming of the death of the said King true Subject, had had the destruction of the Prince was imagined thereby.

2. That for the most part, it hath grown by envy and jealousy, by the Kings own household. So that the second part is, for that they being of the Kings household, the greater and tenderer enemies, either by loyalty or to destroy them of all the greater Authority, and not about the King, yet such an attempt with so strong a law belonging to the Parliament made. Whereof this Kings household deserveth al great hate, and God shouleth to have the punishment of this Act, and the most part thereof as it didheth to the Kings household, and to the subject thereof as usual.

In the body of this Act, the things are said that, if God shouleth to have the punishment of this Act, and the most part thereof as it didheth to the Kings household, and to the subject thereof as usual.

Secondly, Against what persons the death of the persons is to be committed; and in number they are seven. 1. To destroy or murder the King. By this Act it expressly appears by the judgment of the whole Parliament, that by destroying the composition, conspiring, or any other thing, he be of the King household, and to the subject of this Act, as it appears by the words of the Act.

3. To destroy the same. And therefore the same composition, conspiring, or any other thing, he be of the King household, and to the subject of this Act, as it appears by the words of the Act.

4. To destroy the same. And therefore the same composition, conspiring, or any other thing, he be of the King household, and to the subject of this Act, as it appears by the words of the Act.

38 E. 3. 17
35 H. 6. 8
97 H. 14.
Cap. 5. Of Herefie.

they will stick themselves for their direction with some grave and learned men in the laws. But if the heare 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 lettereth forth, first, how the inquiry, and after the trial shall be made, that is, that the inquiry must be made by twelve sober men and discreet persons of the Cheque Hall of the Kings household: and when the offender hard pleased not guilty, the trial shall be by the like persons. And here though this Act limited the inquiry to be by twelve, yet if it be inquired of by more then twelve, the presentment is good, but the trial must be by twelve only.

Firstly, no challenge shall be made but for malice.

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

The offender against this statute shall have the benefit of his clergy: for wherein ever felony is made by any statute, and the benefit of clergy is not expressly taken away, the offender shall have his clergy.

As 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 Privey Council, or from which felony the benefit of sanctuaries and clergy was taken away; but these treasons and felonies are repeated by the statute of 3 Mar.

CAP. V. Of Herefie.

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

Touching the first, an herefick may be convicted a before the Archbishops 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. rebased by 1 Eliz. cap. 1.

And the Bishop of every Diocese may convict any for herefie, and to might be done before the statute of 3 H. 4. cap. 13. as it appeared by the preamble of that Act in these words:

Whereas the Diocesan 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.e. hereticks, named herefie) because the said false and perverse people do go from Dioceses to Dioceses, and will not appear before the said Diocesan, but the same Diocesan and their Jurisdiction spiritual, and the keys of the Church, with the censures of the same, do utterly concern 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 prison 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 Diocesan
Of Heresie.  

Cap. 5.

cessan both jurisdiction of Heresie, and so it had been put in use in all Queen Elizabeth's reign: and accordingly it was resolved by Fleming, Chief Justice, Tanfield, Chief Baron, Williams, and Crooke, Justices, Hil. 9, j. R., in the case of Legate the Portichich, and that upon a conviction before the Ordinary of Heresie, the bishop of Dr. Hereticus complied both lie. Secondly, that without the aid of that Act of 9 H. 4., the Diocesan could imprison no person accused of Heresie, but was to proceed against him by the curtesies of the Church. And this being 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 before those Statutes, by the curtesies of the Church, as it appeared by the said Act of 2 H. 4. cap. 5. Likewise the supposed Statutes of 5 K. 2. c. 5. and the Statutes of 2. H. 5. c. 7. 25 H. 8. c. 14. 1 & 2 Ph. & Mar. 6. are all repealed, so as no Statute made against Heresie is stood on now in force: and at this day no person can be indicted or impeached of Heresie before any temporal Judge, or other that hath temporal jurisdiction, as upon present of the said Statutes appeared.

Every Archbishops of this Realm may cite any person dwelling in any Bishop's Diocese, within his Province for cause of Heresie, if the Bishop or other Ordinary or immediate thereof consent; or if that same Bishop, or other immediate Ordinary of Judge do not his duty in punishment of the same.

2. Touching the second point, if any person be charged with Heresie before the High Commissioners, they have no authority to adjudge any matter as cause of Heresie, but only such as are heard to adjudge 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 exponents and plain words of the Canonical Scripture, so that it shall hereafter be determined to be Heresie by Parliament, with the consent of the Convocation: so that it is expressly prohibited by the said Act of 6 El. And albeit this Proviso extended only to the said high Commissioners, yet in the high Commission there be to many Bishops, and other Wise Men, and Learned men, it may serve for a good direction to others, especially to the Diocesan, being a sole Judge in to weight a cause.

No manner of Oyer, Act or Determination for any matter of Religion of Oyer Ecclesiastical, so as by the Authority of the Parliament in Anno 1 El. shall be accepted, deemed, or Judges Heresie, Schism, or Schismatical opinion, any order, decree, sentence, constitution, or law (whether the same be) notwithstanding.

There was a Statute supposed to be made in 5 R. 2. that Commissions should be by the Lord Chancellor, 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 stubs, maintainers and defectors, and to hold them in strong prisons until they will justify themselves to the law of holy Church: By colour of this supposed Act, a certain person that held that image was not to be woful, and more bold in Canon law, unless they (to redeem their heresie,) under colour of the said supposed Statute, so, not only in regard of the said opinion, but in regard also that the said supposed Act was in truth never an Act of Parliament, though it was curtesies in the hands of the Parliament, so that the Commons never gave their consent thereto. And therefore in the next Parliament the Commons preferred a bill rectifying the said supposed Act, and constantly affirmed that they never assented thereto, and therefore declared that the said supposed Statute might be nullified, and declared to be void, so they pretended that it was never their intent to be published, and to bind themselves or their successors to the Prelates, more than their ancestors had done in times past: by which the King gave his royal assent in these words, y pleased au Roy.
Cap. 5. Of Hereze.

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

It is to be hypon that of ancient time, when any Acts of Parliament were made, to the end the same might be published and understood, especially before the use of printing came into England, the Acts of Parliament were ingressed into parchment, and banded 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 diaylyck, as well within liberties as without. And this was the course of Parliamentary proceedings before printing came in use in England, and yet is continued after the said Act, till the reign of H. 7.

Now at the Parliament bidden in 5 R. 2. John Braibrook Bishop of London being Lord Chancellor of England, caused the said Ordinance of the King and Lords to be inserted into the Parliamentary writ of Proclamation to be proclaimed among the Acts of Parliament; which writ I have seen, the purport of which writ, after the recital of the Acts directed to the Sheriff of N. is in these words, Nos volentes dicatas concordias live ordinationes in omnibus & singulis suas Articolis inviolabiles observari, tibi precipimus quod praeclarae concordia live ordinationes in locis infra bulivam tuam, ubi melius expedire volueris, tam infra libertates quam extra, publice proclamari & tenere facias juxta formam praestamtern. Telle Rege apud Welfin. 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 held, is omitted; and afterwards the said supposed Act of 5 R. 2. was continually printed, and the said Act of 6 R. 2. by the Prelates then ever from time to time kept from the print.

Certain men called Lollards were indicted for hereby, upon the said Statute of 2 H. 4. for these opinions, viz. Quod non est meritorium ad Sanctum Thomam, nec ad Sanctam Mariam de Wallingfim egerginaria. 2. Nec imagines Crucifixi & aliorum Sanctorum adores. 3. Nulli faciendos conscriberi nisi soli Deo, &c. Which opinions were far from hereby, as the matters of the Statute of 1 Eliz. had great cause to limit what hereby was.

And afterwards they thought not good to contain these opinions in an Indictment, but indicted them in general words: one of which indictments as in Lollardy and Heresie followeth. Jurati dictum super eorum Sacramentum, quod A. K. D. Lollardi & falsi Heresici die Jovis post hebdomadam Pasthe, Anno regni Regis H. 6. post conventum nono, apud Abendon in Corn Berks infra virg. fallo & proctorie ut communis proctoris & insinuatores confiperaverunt, imaginari fuerunt, & ad invicem confederaverunt cum quamplurimis proctoribus illis associatis, & felonibus de eorum comitatu, & eorum falsa multa praecogitata, ut communis Insidiatores altarum viaram, ad fidem catholicam desistendam, & ibidem fallo & proctorie, ut communis proctoris & solici dii domini Regis, ferrerunt & scripturam diverteras falsas bilias & scripturas sediciosas, & nonnulla fidei & doctrine Christianae contra continentem, & eas populo domini Regis publicandas &credendas fallo, damnable in diversa locis, viz. in civitatibus London, Sarum, & villis de Coventria & Masteburgh, requiter postuerunt, ferrerunt & scripturam, ac judicis in ecclere, affigere & projiceri & ponere non essent, nec formidans, in gravissimam majetatis & corons dignitatis Regis nostri officinam, & Christianae fidei ludibrium, & pacis dii domini regis perpetuationem, & omnium Christi denominationi iurarii & contemplationem. Which general indictment, and all other of like form, were utterly insufficient in Law: For albeit the words of the Statutes be general, yet the indictment must contain certainty, whereunto the party indicted may have an answer. Also where the partes are indicted ut communis mandato viaram, that also is insufficient, as it appears by the Statutes of 1 H. 4. &c. 2.

John
Of Herefie.

Cap. 5.

John Keyster was excommunicated by the greater excommunication before Thomas Archbishop of Canterbury, and Legate of the Apostolick See, at the suit of another, for a reasonable part of goods, and to remaine eight months. The said Keyster openly affirmed, that the said sentence was not to be feared, neither did he fear it. And albeit the Archbishop of this Consistorie hath excommunicated me, yet before God I am not excommunicate; and he said that he spake nothing but the truth. And it to appear; for that he left hard to excommunicate, had as great plenty of wheat and other grain as any of his neighbours, saying to them in sum (as was urged against him) that a man excommunicate should not have such plenty of wheat. The Archbishop denying these words to be within the said Act of 2 H. 4. did by his warrant in writing comprehending the said cause, by pretent of the said Act commit the body of the said Keyster to the said Gaol at Maidstone, for that (faith be) in respect of the publishing of the said words, sic transit Johannis non immerso habemus de herei suspicium. By reason whereof the said John Keyster was imprisoned in Maidstone Gaol, and in prison detained under the custody of the Keeper there, until by his counsel be moved Sir John Markham, then Chief Justice 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 cause and special matter, and writball, according to the writ, had his body there. The Court upon mature deliberation perusing the said Statute, and upon conference with Dibneys, resolved, that upon the said words Keyster was not to be suspect of herefie within the said Statute, as the Archbishop took it. And therefore the Court first basised him, and after he was delivered: so that the Archbishop had no power by the said Act for those words to commit him to prison.

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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 take
his action of false imprisonment, and recover his damages. Fourthly, that when
an Act of Parliament be made concerning matters merely spiritual; as the Act
not yet being part of the Laws of the Land, the same shall be construed
and interpreted by the Judges of the Common Law, who usually consider
with those that are learned in that profession—But let us now descend to the
third point.

In the third, it appeared by Dracton, Basset, etc., that in
the Book of Job, that he that is true and holy shall be blessed in the
world, and that the righteous shall be exalted. B. R. 11.

In the fourth, it is said in the Sermon of the Judges, that that which
is ordained to be burnt, shall be burnt, but must be done by the King, and De
heretics be burnt. And the reason, because the destroyers of the
commonwealth, must be destroyed. It is said, that the King, and
the Judges of the Land, must destroy the heretics. And here be catt lepra anima. c. The party
shall be punished, if he deny his opinion, and thereby live his life, but if he
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Of Felony, by Conjunction, Witchcraft, Sorcery or Incantation.

The first Act of Parliament that made one of these offences, Felony, was the statute of 33 H. 8, which was repealed by the statutes of 1 E. 6, cap. 12, and 14. 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 repeals 5 Eliz.

A Conjuror is he that by the holy and powerful names of Almighty-God invokes and conjures the Devil, to contumble with him, 9999 times so.

A Witch, is a person that hath conferences with the Devil, to contumble with him, so to do some act.

An Incantator, is he that carminibus aut cantumans Daemonum adjuvat. They were of ancient times called Carminia, because they sang them their charms were in verses.

Carminibus Cinguntur Mysteria, Idyllia.

By Charms in Rhyme (Drumel Rhetos).

Cantus transubstantiatur Idyllis muros.

And again, Carmine-De Cælo potius stipulates Lamiae.

By rhymes they can pull down full towers.

From lofty say the bounding Son.

A Sorcerer, Sorleucus, quia uturus fortibus in cantationibus Delumina. He shall not suffer a Witch to live. Non est ignarium in Jacob, nec divinus in Hagar. And the Holy Ghost hath commanded the great offence of Rebellion to the kings of Witchcraft.

And here it judicem may be demanded, what punishment was against these debilitated and debellated offenders, which were made of very base time.

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

Le fiero faith, Quæ sorcery & devilia, long members de Heresia. And there he described Bresil. Heerica et un unavocal & faux creance sordant de errore en la diat for Christian: and after faith, Le jugement de Heresia et des arme en juridic.

And here with agreed Britton: Sorcerers, Sorceresses, &c. and miscreants sojourned. And Fleta: Christiani autem Apocata, fortis, legi, & huymo distria.

And burning them was, and yet the, the punishment of Hereticus. So as the constance of these offenders, if they be branches of herey, as the law was then taken (as to this day hereby done) to Ecclesiastical Judges. In which case when they have given sentence, there lieth a Writte De heretico comburoendo.

I have seen a report of a case in an ancient Register, that in October Anno 20 H. 6. Margery Gudman of the County of Suffolk was for Witchcraft and conjuration, with the Devil, after sentence and a relapse, burnt by the kings Writ De heretico comburoendo. And this Aggredya 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 Pale, and was brought into the Kings Bench before Sir John Knevet then Chief Justice; but being no indictment was against him, the Clerks did swear him, that from thenceforth he should not be a Sorcerer; so he was delivered out of prison, and the head of the dead man, and the book at
Cap. 6. Conjunction, Witchcraft, &c.

of Sorcery were burnt at Tuthill at the coals of the prisioner. So as the head and his baصل of Sorcery had the same punishment that the Sorcerer should have had by the ancient law, if he had by his own power in aid of the Devil.

The Holy Bible hath a most remarkable place concerning the reprobation and death of King Saul. Mortuus eie ergo Saul proper iniquitatis suas, co quod pravariatus sit mandatum Dominii, nec non custodierit illud, sed iniquus PythoΝus confutavit, nec speravit in Domino; propter quod interficit eum et transtulit regnum ejus ad David filium Hai. 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 Hai.

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

But now let us perceive the statute made in the First year of King James, which only handed in force, and divided it fell into five general branches.

1. If any person or persons shall use, practice, or exercise any Invocation or Conjunction of any evil and wicked Spirit.

Here the Devil by the holy and powerful names of Almighty God is invoked (as hard ben fait;) and this Invocation or Conjunction of a wicked spirit is felony without any other act or thing, take only the apparition of the spirit. See W. i. cap. 1. in the Day of the Champion, &c.

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

By this branch, if any conspire, &c. (bothes for the wicked spirit appeared and cometh) these actions (here mentioned) with 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 any part of a dead person, to be employed or used in any manner of Witchcraft, Sorcery, Charm, or Incantation.

Albeit the offender that committeth these barbarous and inhuman dealings with the bodies of the dead, do not actually employ or use them in witchcraft, sorcery, charm or incantation: 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. If shall use, practice, or exercise any Witchcraft, Incantation, Charm or Sorcery, whereby any person shall be killed, destroyed, wasted, consumed, pinned or lamed, in his or her body, or any part thereof.

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

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

These accoutrements besides be here specially named, yet accoutrements after may be of this felony, as afterwards is said upon the nature of the same case and upon the nature of the several degrees; and the branches thereof are also innumerable.
Conjunction, Witchcraft, &c.  

Cap. 6.

1. If any person or persons taken upon him or them, by Witchcraft, Enchantment, 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 confounding them of their money or other goods. Therefore was this part of the Act made, wherein these words [take upon him or them] are very remarkable. For if they take upon them, &c. though in truth they do it not, yet can it be done, &c. 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 word, viz. [to provoke]. So as the statute is, If any person or persons shall take upon him or them by Witchcraft, Enchantment, Charm or Sorcery, to the intent to provoke any person to unlawful love.

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

The Letter of this branch is this: If any person shall take upon him by Witchcraft, Enchantment, Charm or Sorcery, whereby any cartel 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 mood, as the rest be; for then it satisfies not the meaning of the makers: for a taking upon them to destroy cartel, &c. 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 cartel 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, &c. to hurt or destroy any person, &c. within this branch.

Being therefore lawfully convicted.

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

Shall for the said offence, &c.

Here are expressed the punishments inflicted upon these Impostors, Scoundrels, and Cheats, viz. 1. To suffer imprisonment by the space of a whole year without bail or mainprice. 2. That every quarter of the year these Scoundrels shall be taken in the Pillory, and to stand thereupon in some Market-town six hours, and there to confess his or her errors and offence.

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

Here is also [condemned] taken for attained, for he shall not be drawn in question for the second offence, to make it obvious, till judgment be given against him for the first, for the indictment of felony written the same attained, and the second offence must be committed after the judgment. And so it is in the case of forgery, upon the nature of 3 Eliz: and in case of compounding of subversion out of this Realm, and taking others.

Saying to the wise of such person as shall offend in anything contrary to this Act, her title of dower, and also to the heir and judg-
Of Murder.

Murder is the act of taking away the life of man, by an unlawful act. See the 1st part of the Infl. for the word murder. Sect. 152, & 153. See the 2nd part of the Infl. for the word murder. Sect. 315, & 316. For the definition of murder. Sect. 317, & 318. See the 3rd part of the Infl. for the word murder. Sect. 429, & 430. See the 4th part of the Infl. for the word murder. Sect. 531, & 532. See the 5th part of the Infl. for the word murder. Sect. 633, & 634. See the 6th part of the Infl. for the word murder. Sect. 735, & 736. See the 7th part of the Infl. for the word murder. Sect. 837, & 838. See the 8th part of the Infl. for the word murder. Sect. 939, & 940. See the 9th part of the Infl. for the word murder. Sect. 1041, & 1042. See the 10th part of the Infl. for the word murder. Sect. 1143, & 1144. See the 11th part of the Infl. for the word murder. Sect. 1245, & 1246. See the 12th part of the Infl. for the word murder. Sect. 1347, & 1348. See the 13th part of the Infl. for the word murder. Sect. 1449, & 1450. See the 14th part of the Infl. for the word murder. Sect. 1551, & 1552. See the 15th part of the Infl. for the word murder. Sect. 1653, & 1654. See the 16th part of the Infl. for the word murder. Sect. 1755, & 1756. See the 17th part of the Infl. for the word murder. Sect. 1857, & 1858. See the 18th part of the Infl. for the word murder. Sect. 1959, & 1960. See the 19th part of the Infl. for the word murder. Sect. 2061, & 2062. See the 20th part of the Infl. for the word murder. Sect. 2163, & 2164. See the 21st part of the Infl. for the word murder. Sect. 2265, & 2266. See the 22nd part of the Infl. for the word murder. Sect. 2367, & 2368. See the 23rd part of the Infl. for the word murder. Sect. 2469, & 2470. See the 24th part of the Infl. for the word murder. Sect. 2571, & 2572. See the 25th part of the Infl. for the word murder. Sect. 2673, & 2674. See the 26th part of the Infl. for the word murder. Sect. 2775, & 2776. See the 27th part of the Infl. for the word murder. Sect. 2877, & 2878. See the 28th part of the Infl. for the word murder. Sect. 2979, & 2980. See the 29th part of the Infl. for the word murder. Sect. 3081, & 3082. See the 30th part of the Infl. for the word murder. Sect. 3183, & 3184. See the 31st part of the Infl. for the word murder. Sect. 3285, & 3286. See the 32nd part of the Infl. for the word murder. Sect. 3387, & 3388. See the 33rd part of the Infl. for the word murder. Sect. 3489, & 3490. See the 34th part of the Infl. for the word murder. Sect. 3591, & 3592. See the 35th part of the Infl. for the word murder. Sect. 3693, & 3694. See the 36th part of the Infl. for the word murder. Sect. 3795, & 3796. See the 37th part of the Infl. for the word murder. Sect. 3897, & 3898. See the 38th part of the Infl. for the word murder. Sect. 3999, & 4000. See the 39th part of the Infl. for the word murder. Sect. 4101, & 4102. See the 40th part of the Infl. for the word murder. Sect. 4203, & 4204. See the 41st part of the Infl. for the word murder. Sect. 4305, & 4306. See the 42nd part of the Infl. for the word murder. Sect. 4407, & 4408. See the 43rd part of the Infl. for the word murder. Sect. 4509, & 4510. See the 44th part of the Infl. for the word murder. Sect. 4611, & 4612. See the 45th part of the Infl. for the word murder. Sect. 4713, & 4714. See the 46th part of the Infl. for the word murder. Sect. 4815, & 4816. See the 47th part of the Infl. for the word murder. Sect. 4917, & 4918. See the 48th part of the Infl. for the word murder. Sect. 5019, & 5020. See the 49th part of the Infl. for the word murder. Sect. 5121, & 5122. See the 50th part of the Infl. for the word murder. Sect. 5223, & 5224. See the 51st part of the Infl. for the word murder. Sect. 5325, & 5326. See the 52nd part of the Infl. for the word murder. Sect. 5427, & 5428. See the 53rd part of the Infl. for the word murder. Sect. 5529, & 5530. See the 54th part of the Infl. for the word murder. Sect. 5631, & 5632. See the 55th part of the Infl. for the word murder. Sect. 5733, & 5734. See the 56th part of the Infl. for the word murder. Sect. 5835, & 5836. See the 57th part of the Infl. for the word murder. Sect. 5937, & 5938. See the 58th part of the Infl. for the word murder. Sect. 6039, & 6040. See the 59th part of the Infl. for the word murder. Sect. 6141, & 6142.
1. A Killing. As by Doping, Poisoning or blunting Gun, Crossbow, Crushing, Wringing, Smothering, Suffocating, strangling, Deceasing, Burning, Surging, Fumigating, Drawing down, Inciting a dog at, or to bite or hurt, &c., whereof death ensued, laying a lie in the cold, &c.

Doping (venenum, quia a venenum percutit) is, as hath been said, the most detestable of all, because it is most visible and fearful to the nature of man, and of all others can be least prevented, either by manhood or prudence; and that made Falsetta to say, Item etiam perbetril et defendere debet quis de venenum, quia canum corpus suum, co quaemium facti non fuerit ex publicis, ex quod hier potest a patria, &c., but that is not holden for law at this pap.

2. This offence was so obvious, that by Act of Parliament it was made High Treason, and inflicted a more grievous and lingering death than 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 her militia, and some others were hanged to death in Whittington the 17th of March in the same year. But this Act was so severe to the long, and therefore was repealed by 1660, cap. 12, and 1 Mar. cap.

All the ancient authors, ubi supra, of all time defined murder to be Occulta homicida occisus, &c., when it was done in secret, so as the offender was not known; but now it is taken in a larger sense, but this mentioneth another kind of murder (which is not hanged for murder at this day) when he faith, Ceux auçi que, j'ay dit, et je vous ai menti, ou je ne me souviens plus de quoi, &c., per this it murder before God. King David killed Uriah with his men, and these men with their scalp.

Within the County of the Realm. It is two of the kings subjects go, heh, into a foreign country, and fight there, and the one kills the other, this murder being done out of the realm, cannot be the same as real and determined by the Common law. But it may be heard and determined before the Contable and Marshal.

If a. b. c. a mortal wound in a foreign country, has come into England, and died: this cannot be tried by the Common law, because the stroke was given where no Volunteer come, but the same shall be heard and determined before the Contable and Marshal, by the words of the nature of 13 R. 2. be. To the Contable was pricked to have custance of contracts concerning deeds of arms, or of war out of the Realm, and all of the things that pass arms or war within the Realm, which cannot be determined, pricked by the Common law.

A. man is struck with a blow, and death of the same stroke upon the land, this cannot be so called by the Common law, because no stroke came from the place where the stroke was given, (though it were within the jurisdiction to the Realm of England, and within the confines of the king) and therefore is not within any of the Liberty of, the Realm. Rather, it is a civil law, and determining this suitably, because though the stroke was within his jurisdiction, yet the death was in a cause corporis, or where of the body was cut, and therefore the suit of the nature of 13 R. 2. because the murder was not committed on a man, by the said Act of 13 R. 2, the Contable and Marshal may have and determine the same. This before the pricked, pricked of the nature of 13 R. 6. if a man had been, helpingly or otherwise, or perform in our own, and after has been in another country, if some suit shall come that the suit and have been taken in either of the land countries, because by the laws of the Realms, the Jurisdiction of one Country, may not inquire of that which was done in another country. It is provided by that Act that the Indictment may be laid in, and the Appeal brought to that Country where the death does happen, before the courts.
Of Murder.

This Act extends, where the murder of a felon is done in one County, and another shall be accused in another County; whereof you may read at large in the Lord Sancho's case, 1117. 118, &c.

Richard Watson being Sir Thomas Overbury's Servant in the Chancery at London, did poison him in that part of the Outer which is within London. K. C. fol. 5, and his wife, Jane Franklin, and Anne Turner were accessories before the fact in the County of Suffolk, and Sir George Helwys, the tenant of the Upper was accused before the fact in London. This upon this nature of 2 E. 6. cap. 24, others questions were related. First, the accessory be in Suffolk, where the King's Bench was, and the principal is attached in another County, the King's Bench must try the accessory, as it was related in the Lord Sancho's case, ubi supra. 21. If the indictment of the accessory be taken in the King's Bench, the Justice shall not by order of the statute of 2 E. 6. eject in their own names, qua plagi sunt coram Regis & mundanis que Judicaturem, but remove the record by the King's process of Certiorari. 9. Others presented were shown, that where accessories were before the fact were in Suffolk, where the King's Bench did sit, and the tenant of the principal had been an inhabitant also of Suffolk, the Justice of the King's Bench had referred the affair to the King's Bench, and the Lord Sancho's case, ubi supra, and another case where the principal was arrested in the County of Oxford, in the same point of Certiorari, and the accessory was in Essex, where the King's Bench sat. 4. Richard Watson being arrested as principal in the City of London, proceeding was to be had against James Helwys and James Turner, the King's Bench, where they were indicted. What questions was, of the King's Bench should remove the record of the accessory of the principal by Certiorari before them; and after the said case and his wife, should be tried by the other peers before the Lord Steward, whether the Lord Steward might write to the King's Bench for the record of the accessory in the same case? He shall write to the Master of the Rolls, to Certiorari of the court, unless which shall be disposed of by appeal or assize, of 2 E. 6. pleader, of 2 E. 6. what was directed according to the words of the Act as the Common Law.

The indictment of Richard Watson, that by the King's process of Certiorari, was committed to the King's Bench for the City of London, 15. He was called upon to resign his bail; and the King's Bench, 35. the King's Bench, the King's Bench brought the parties of bail, besides 2 E. 6. and 2 E. 6. 2 E. 6. so of bail and the King's process of Certiorari, which Richard Watson and John Cash were indicted in the same point. The indictment of Richard Watson, that by the King's process of Certiorari, was committed to the King's Bench for the City of London, 15. He was called upon to resign his bail; and the King's Bench, 35. the King's Bench, the King's Bench brought the parties of bail, besides 2 E. 6. and 2 E. 6. 2 E. 6. so of bail and the King's process of Certiorari, which Richard Watson and John Cash were indicted in the same point.
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Cap. 72.

Of Murder.

He paged in a certain Mercury sublimate, in a furnace, etc. as printed. Thomason magician called Mercury sublimate, etc. ut prid. Thomason magician called Mercury sublimate, etc. ut prid. Thomason magician called Mercury sublimate, etc. ut prid. Thomason magician called Mercury sublimate, etc. ut prid. Thomason magician called Mercury sublimate, etc. ut prid. Thomason magician called Mercury sublimate, etc. ut prid. Thomason magician called Mercury sublimate, etc. ut prid. Thomason magician called Mercury sublimate, etc. ut prid. Thomason magician called Mercury sublimate, etc. ut prid. Thomason magician called Mercury sublimate, etc. ut prid. Thomason magician called Mercury sublimate, etc. ut prid. Thomason magician called Mercury sublimate, etc. ut prid. Thomason magician called Mercury sublimate, etc. ut prid. Thomason magician called Mercury sublimate, etc. ut prid. Thomason magician called Mercury sublimate, etc. ut prid. Thomason magician called Mercury sublimate, etc. ut prid. Thomason magician called Mercury sublimate, etc. ut prid. Thomason magician called Mercury sublimate, etc. ut prid. Thomason magician called Mercury sublimate, etc. ut prid. Thomason magician called Mercury sublimate, etc. ut prid. Thomason magician called Mercury sublimate, etc. ut prid. Thomason magician called Mercury sublimate, etc. ut prid. Thomason magician called Mercury sublimate, etc. ut prid. Thomason magician called Mercury sublimate, etc. ut prid. Thomason magician called Mercury sublimate, etc. ut prid. Thomason magician called Mercury sublimate, etc. ut prid. Thomason magician called Mercury sublimate, etc. ut prid. Thomason magician called Mercury sublimate, etc. ut prid. Thomason magician called Mercury sublimate, etc. ut prid. Thomason magician called Mercury sublimate, etc. ut prid. Thomason magician called Mercury sublimate, etc. ut prid. Thomason magician called Mercury sublimate, etc. ut prid. Thomason magician called Mercury sublimate, etc. ut prid. Thomason magician called Mercury sublimate, etc. ut prid. Thomason magician called Mercury sublimate, etc. ut prid. Thomason magician called Mercury sublimate, etc. ut prid. Thomason magician called Mercury sublimate, etc. ut prid. Thomason magician called Mercury sublimate, etc. ut prid. Thomason magician called Mercury sublimate, etc. ut prid. Thomason magician called Mercury sublimate, etc. ut prid. Thomason magician called Mercury sublimate, etc. ut prid. Thomason magician called Mercury sublimate, etc. ut prid. Thomason magician called Mercury sublimate, etc. ut prid. Thomason magician called Mercury sublimate, etc. ut prid. Thomason magician called Mercury sublimate, etc. ut prid. Thomason magician called Mercury sublimate, etc. ut prid. Thomason magician called Mercury sublimate, etc. ut prid. Thomason magician called Mercury sublimate, etc. ut prid. Thomason magician called Mercury sublimate, etc. ut prid. Thomason magician called Mercury sublimate, etc. ut prid. Thomason magician called Mercury sublimate, etc. ut prid. Thomason magician called Mercury sublimate, etc. ut prid. Thomason magician called Mercury sublimate, etc. ut prid. Thomason magician called Mercury sublimate, etc. ut prid. Thomason magician called Mercury sublimate, etc. ut prid. Thomason magician called Mercury sublimate, etc. ut prid. Thomason magician called Mercury sublimate, etc. ut prid. Thomason magician called Mercury sublimate, etc. ut prid. Thomason magician called Mercury sublimate, etc. ut prid. Thomason magician called Mercury sublimate, etc. ut prid. Thomason magician called Mercury sublimate, etc. ut prid. Thomason magician called Mercury sublimate, etc. ut prid. Thomason magician called Mercury sublimate, etc. ut prid. Thomason magician called Mercury sublimate, etc. ut prid. Thomason magician called Mercury sublimate, etc. ut prid. Thomason magician called Mercury sublimate, etc. ut prid. Thomason magician called Mercury sublimate, etc. ut prid. Thomason magician called Mercury sublimate, etc. ut prid. Thomason magician called Mercury sublimate, etc. ut prid. Thomason magician called Mercury sublimate, etc. ut prid. Thomason magician called Mercury sublimate, etc. ut prid. Thomason magician called Mercury sublimate, etc. ut prid. Thomason magician called Mercury sublimate, etc. ut prid. Thomason magician called Mercury sublimate, etc. ut prid. Thomason magician called Mercury sublimate, etc. ut prid. Thomason magician called Mercury sublimate, etc. ut prid. Thomason magician called Mercury sublimate, etc. ut prid. Thomason magician called Mercury sublimate, etc. ut prid. Thomason magician called Mercury sublimate, etc. ut prid. Thomason magician called Mercury sublimate, etc. ut prid.
Cap. 7.

Of Murder.

law of God, which saith, Quia unum fideit humanum, sanctum, fundatur
sanguis illius; ad imaginem quippe Dei creatum est homo. If a man committs a
woman to kill the child within her womb, when it shall be born, and after he
is delivered of the child the killeth it; the compellor is an accessory to the
murder, and yet at the time of the commandment of committing murder could
be committed of the child in utero materis: the reason of which case probeth well
the other case.

Malice, precepted.] First let us be ware what this matter is.

Malice precepted is, when one compacts to kill, wounding, or beating another, and
both is in factum animo. This is said in law to be malice forethought, premeditated,
malitia praeconscita. This malice is to obstinacy in law, as though it be intended
against one, it shall be extended towards another: Si quis unum percussit,
casum unam percussit ex illud in illud extenderit. This must be the continuance.

Mandarci recipit interpretationem, sed illicita latam & extendens.

Herein there is a disparity between the principal and the accessory. For if
A command B to kill C, and B by mishitting killed 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 accessory, because his com-
mandment was not suicidal; and his intent, which must make him accessory,
cannot be against it, for he never commanded the death of D. But where death
ensued upon that act which is commanded, though death it self be not com-
manded, there is accessory 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 died: the
commander is accessory; and therefore the disparity is apparent as to the ac-
cessory. Where death is purposed and falleth upon the act commanded, there
the content of the commander may well be joined to it, for that the com-
mandment is the means of the death. But where death ensued upon another distinct
cause, there the content of the accessory cannot be joined to it, & c. de ceteris.

Another disparity there is, when the commandment extends expressly to the
killing of another, and so: the better accomplishment thereof prescribes a mean,
that is, to kill him by mortal; and he killed him with a Gun, he is accessory; for
the commandment was to kill, which ensued, though the mean was not fol-
lowed; & thus no accident ensues: And the substance of the commandment, viz.
[to kill] is purposely, 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 Winters man of Plate; as he is come to a
Gentlemans chamber to his master with loaves, and he breaketh the Lamber in
the platter, and breaketh the Plate there: the commander is not accessory to this
Worship; for this is another service then he commanded, and the content of the
accessory must be hazard to the murder of ontology committed.

2. It must be malice continuing until the mortal wound of the like be given.
When 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 killed the
other: this is Hostile, 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 coun-
termanned his commandment, and charge B not to do it; if B after killed him, A
is not accessory to it: for the malicious mind the accessory ought to continue
do so till the act done.

If two fall out that a sudden quarrell, 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
assail killed the other; here is no malice precepted, for the etching of the
deadly and going into the field, is but a continuity of the sudden falling out,
and the blood was never cooled. But if they agreed to fight the next day, that
is malice precepted.

[Malice implied is in three cases.] First, in respect of the manner
Of Murder.

Cap. 7.

As if one killeth another without any provocation on the part of him that is slain, the Law imputeth malice; whereas you may read lib. 9, fol. 67, Mackallicy's case. Also the poaching of any man, whereas he be dead within the year, imputed malice, and is adjudged wilful murder of malice prevented. One may be poached four manner of ways: Gauh, by taking that is, by eating or drinking, being intu'd into his meat or drink; Asheauta, by taking in of earth, as by a poisonous pernune in a Chamber or other room; Contaxu, by touching; and last, Suppolutha, as by a cliser of the like. Law for the better finding out of this horrid offence, there be others kinds of poisons, as the powder of Diamonds, the powder of Spiders, Lapis cautious, the chief ingredient whereof is Soap Cantarides, Mercury sublimare, Antimony, Kofesacre, &c.

2. In respect of the person slain. As if a Magistrate or unknown officer, or any other that hath lawful warrant, and in doing of offering to do his office, or to execute his warrant, in slain, this is murder by malice implied by law, as the sherif, Justice of Peace, Under-sherif, 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, any that come in aid of the Kings officer, so do his office be slain, it is murder.

3. In respect of the person killing. If a assault B to rob him, and in resisting A killed B, this is murder by malice implied, albeit he never kill him before. If a prisoner by the duces of the Gaoler, come to murder, by death, this is murder in the Gaoler, and the law implied malice in respect of the cruelty. And this is the cause, that if any man die 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 appeared in Brinton: and this string of the Coroner continued till this day.

If the sherif or other officer, where he ought to have the party attended, according to his judgment and his charge, against the law, of his own cognizance, by the hands of the Gaoler, or otherwise, the person killing, it is murder under the Great Seal; after the execution, otherwise then the judgment of law does direct: for it is a maxim in law, Noa ali modo punitur quis quaem sed quid de hodie constituat condemnandum.

And it is to be known, that in case of Creaton and Felony there is not express judgement, and an implied judgement. Express, when upon appearance, &c. an express judgement is given against him, quod judicandum per collum. Implied, when the offender makes default, and is outlawed, where the judgement is, lago ulturate, &c. in case of abjuration, qua abjuravit responso; and so the law must be in case of abjuration, as made of an express judgement: and so it was adjudged in case of a person outlawed for felony, he ought to have been hanged or be dead, and cannot be defended: and the like is in case of Abjuration. But in case of High Creaton, because behaving in part of the judgement, the King may pardon all the residue of the execution except that: for being the King may pardon the whole execution, he may pardon any part, or all taking part. If a Lieutenaunt, &c. either that hath committed any part of their authority, in time of peace, being or otherwise, execute any man by the law of their authority, 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 the law implies malice. Vide pauch. 14 E. 4, in Scaccario the Achat of Rampeur, case in a writ of Erodo in part sediged by Fitz. ther. Scire tit. 122, for time of peace.

a Thom. Counte de Lancaffer being taken in an open inquisition, where judgment of their law but to death, in Anno 14 E. 4. This was changed to be unlawful, so good non est annulatus, sui d. responditionem, points resolution, to quod de Cancellaria & alia Curie Regis fuerunt in case of a febat unicuique, prout fieri convexit, quod contra chartam de libertate, cum dictus Thomas fuit unus, Parrium, &c. Magnatum Regni, fuit honorabile, &c.
Cap. 71

Of Murder.

Nec dicitur Rex super eum ibit, nec super eum mittet, nisi per legale judicium Paradum suorum, &c. tamem tempore pactis ab ipso arrangiamento, legum responsione, legi judicio Paradum 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 popon or be given the first day of January, the year shall end the last day of December; for though the stroke be popon, &c. were given in the afternoon of the first day of January, yet when he shall be accounted a whole day, for regularly the law makes it the first of a year and the day was added, that there might be a whole year at the least after the stroke or popon, &c. as if he were after that time, it cannot be inferred, as the law presumes, whether he died of the stroke or popon, &c. or of a natural death; and in tale of life the rule of law ought to be retained. But where the year and day at the end of the parson and homestead must be accounted apres lait, after the deed, if a man be aries or popon by the first of January, and be died of that stroke or popon the first day of May, whether that year and day be accounted after the stroke or popon given, or after the death, and it shall be accounted after the death, then the man was murdered and not after the stroke or popon given, &c. both in the indictment at the suit of the King, and in the Appeal at the suit of the party. And it hath been often adjudged, contrary to the opinion of Justice Sandle. A murder can a year after the murder be received and aided by another, this accident may be innocent or appealed within the year after when it becomes necessary, thought it to be after the year that the murder was committed, and shall be tried when the principal is apprehended. If a murder be committed in the day-time in a town not a market, and the murder not apprehended, the Township Hall be opened, and the Town Hall be assembled, those that are present when any man in strain, and do not their best endeavours to apprehend the murderer or manifester, shall be fined and imprisoned, and judge the judgment, a felon attainted shall have, and what he shall forfeit, Secund. Gis. part. of the Institutes, Sect. 747, and see cap. Judgement and Execution.

Note, that before the reign of H. I. the judgement was not always one, but King H. I. ordained by Parliament, that the judgment of all manner of felonies should be, that the person attainted should be hanged by the neck till he be dead, which continued to this day. So more for Murder in the chapter of Monomachus.
CAP. VIII.
Of Homicide.

Homicidium, ex vici tum comprehendent Petrus Leasan, Murder, and that which is commonly called Man- slayer; &c. Homicidium et Hominis caedes, and homocidium at hominis occidi, at homines faci. Therefore the right distinction of Homicidium, that of Homicides & Man-slaughters, some be voluntary, and spontaneous forsookthe, as Petrus Leasan, and murder of another, and murder of himself. Of the two former we have spoken; and of Man-slaughter we shall speak hereafter. Of Man-slaughters, some be voluntary, and not of malice forsookthe: of these some be slaying (as shall be showed hereafter) and some be no slaying. Of which, some be in respect of giving back invincible in presence of himself, upon an assault of robbery; 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 officer attended by his Tenathers; some in respect that he is an officer or minister of justice, without any assault in execution of his office, or lawful warfare. And last, some Homicides, that be his thievery, as being forsookthe not voluntary, an upon-slaughter by insufficiency, per infortune, or calum. And some of these that be no slaying, are caused of infortune of a man's good, and some he not: and if these latter be in the order, he being by murder of a man's good, and from thence is called Felo de se.

Felo de se] is a man or woman, which being Compos mensis, or sound mind, and of the age of discretion, killeth himself, which being lawfully found by the oath of twelve men, all the gods and chritians of the party to offending are forfeited.

Felo de se let us pursue the several branches of this description. Majus est delictum factum occidere, quum aliqui.

[Being compos mensis.] a If a man late his memory by the rage of infirmity or otherwise, and kill himself wide, he is not composs mensis, 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 composs mensis, give himself a mortal wound, whereas when he had recovered his memory apert, he is not Felo de se, because the stroke which was the cause of his death, was given when he was not composs mensis: et aequus non factum emerit, nisi mens sit rea. If a man give himself a wound, intending to be Felo de se, and die not within the year and day after the wound, he is not Felo de se.

[Of the age of discretion.] Hereof we have spoken before treating of Murder.

[Kill himself.] c And this is often voluntary, and sometime not voluntary. d If a man give B such a stroke, as he felth him to the ground, B draweth his knife, and doth it up for his own defence: a in bad meaning to fall upon B to kill him, fallth 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.

[Lawfully found.] a No grace is forfeited, until it be lawfully found by the oath of twelve men that he is Felo de se; and this doth belong to the
Cap. 8. Of Homicide.

Homicide is an action, to inquire thereon, and if it be found before the
Coroner super visum corposis, that he cannot do it, and the Executors or Admi-
nistrators of the dead shall have no records thereon. And this is the reason
that no man can prosecute, to have false goods, because they are not forfeited,
until it be found before the Court, that they are false.

b If any man be felon, and is out of the law, by the statute to secrete his
son, the Coroner cannot have the body, but by his consent he cannot inquir
enforce thereof. In this case, he may be asked thereon by the Attorney of
Peace of that County, for the power of the Judge, in the case of the
Laughter of the
Cheques.

And so in the case above said, may the King's Bench enforce thereof, if the felo-
ny be committed in the County, where the King's Bench sit, and the Execu-
tors of Administrators, at the dead may traverse the same.

Are forfeited. The breach was of opinion, that if a man had
that was a particular crime, captus quis pro-codem, ut potest rogue, qui
non habet, qui licet, quod non habet, qui licet, quod non salva,
vis. Furtum, et venale, qui licet, salva, qui licet, quod non
salva, qui licet, quod non salva.

And in case of a crime, the County, nemo poena, nemo mor-
men, nisi in querela secreto, nisi in testis, nisi in procurationem
of the County, nisi in querela secreto, nisi in testis, nisi in procurationem

Felo de se, whatever offence be hath committed (whether he was not in his
life-time arrested) shall forfeit his lands, but his goods and chattels only. And
first instance. En case where felo de se is found, puis the judge judges
in some cases of felo de se, the heritage considerate as his. For
no man can forfeit his land without an act of Parliament.

A man gives himself a mortal wound, the Lord seizes his goods, the
Inquest after death of the wound within the year, and the goods are
forfeited.

And herein there is a diversity between. Chattels perniciosae in action and its
possession: for if a deed be owing to two, unless it be in case of two joint
merchants, and the one is Felo de se, the other are forfeited. But otherwise it is
of goods in possession, for there are forfeited but his part.

A Lease is made for years to the husband and wife, the husband seizes himself, the
Lease is forfeited, as you may read at large in Blowden's Commentaries.

Hence let us pursue the branches into which bloody Homicide did spread and
empty itself.

Some manslaughters be voluntary, and not of malice foreseen, upon
some sudden falling out. Delinquens per turam prostatatus quibus debet minus.
And this for distinction sake is called manslaughter. There is no difference
between murder and manslaughter, and that the one is upon malice foreseen, and
the other upon a sudden occasion, and therefore is called Chastised. As
it two met together and driving the wall the bull the other, this is man-
slaughter 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 hard best
said) had been but manslaughter, and no murder, because all that followed was
but a continuance of the first sudden occasion, and the rest of the blood kindled
by fire was never so still the blood was given & & de limitibus.

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

Some be 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 given back until he come unto a hedge, wall, or other fruit,

A 2.
Of Homicide.

Cap. 8.

beyond which he cannot pass, and then in his own defense and for safeguard of his own life hither the other: this is voluntary, and per se felony, and the Jury that found it was done in defense, ought to find the special matter. And per se such a matter regard the law hath of the life of man, though the cause was inevitable, b that at the common law he should have suffered death: and though the nature of Gloucester take his life, yet he shall forfeit all his goods, and chattels.

Hereof there can be no accession, either before or after the fact, because it is not done felony animo, but upon inevitable necessity is defendendo. If a assault is so fiercely and violently, and in such a place, and in such manner, as if it should give back, he should be in danger of his life, he may in this case defend himself, and in such defense he is hillo, it is defendendo, because it is not done felony animo: for the rule is, when he does it in his own defense, upon any inevitable cause, good quous ob inelam corporis sui fecerit, hee is not incusus.

Some without any giving back to a wall, or of other inevitable cause.

As if a thief offer to rob and murder B either abroad or in his house, and there upon assault him, and B defend himself without any giving back, and in his defense kills the thief, this is no felony, for a man shall neither give way to a thief, or neither shall be forfeit any thing. And so it is declared by the statute of 24 H. 8. In that case if a privater assault the Governor, the Governor is not by law infected to give back; but if in defense of himself he kill the person, it is no felony.

So if any Officer or Minister of justice, that hath lawfully 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 abate it, but in resisting killing him, it is no felony. And in that case the Officer or Minister of Justice shall forfeit nothing, but the party to acquitting or offering to fly away, and is killed, shall forfeit his goods and chattels.

Vicccomes seu bulbus Domini Regis, qui interfecerit duos latrones non permitentes se justicieri in sui definitionem, nol ex solonia, seu malitia, acquiescat.

If at a Hunt or Cursament, or at the play with Dog and Buckler by the King's commandment, one bowkhill another, this is no felony. k In the reign of King H. 1, 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 There is an Homicide, that is neither-false-thought nor voluntary. l As if a man kill another per infortunium, seu calo, that is Homicide by misadventure. De amatoribus arborum, qui cum ramum proceret, inflixio siu transactum: aut cum quis palam percellerit, et ex causis isti 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 rendereth to a mans death.

Unlawful. m If the act be unlawful, it is murder. As if A meaning to steal a Mose in the Park of B, husteth at the Mere, 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 not at his own Mere, and without any ill intent had killed the Boy by the glance of his arrow, this had been Homicide by misadventure, and no felony.

So if one shoot at any wild fowl upon a tree, and the arrow killeth any respectable creature afof, without any evil intent in him, this is per infortunium: for it was not unlawful to shot at the wild fowl: but if he had shot at a Coz or Hen, or any tame fowl of another man, and the arrow by mischance had killed a man, this had been murder, for the act was unlawful.
Cap. 9. Of Deodands.

[Without any evil intent.] If a man knowing that many people come in the street from a hermit, throw a stone over a wall, intending only to

tear them, or to give them a light hurt, and whereupon one is killed, this is

murder; for he had an ill intent, though that intent extended not to death, and

even he knew not the party slain. For the killing of any by misadventure, or by chance, albeit he not being, Qia voluntas in delictis, non exitus specita-

tur, yet he shall forfeit therefore all his goods and chattels, to the intent that

men should be so to direct their actions, as they tend not to the effusion of

man's blood.

Nec venenam effusus languime cadus habet.

Nata, Homicide is called Chancemelle, or Chancemelle, for that it is done

by chance (without preméditation) upon a sudden hasty, hussling or content-

ion; for meddle or melle (as some say) is an ancient French word, and signifies

haste or contentation. But I take it that the French word is melle, which sig-

nifies hussling or contending, and by corruption we changing the S to T, do

call it medle, the S being not pronounced, whereof we have made medietum.

So an killing of a man by chance-medle, is killing of a man upon a sudden

hasty or contentation by chance. For the word [medle or melle] whereof we have

made a Latin word medietum of melletum, see Glanvill. lib. 1. cap. 2. Cognoscere

de medietis, de verbis, de plagis, that is, of hussling or hussling of, bat-

tery, of hussling the first in words, the other two in breakes, q. in ancient

time expressed by these two hussard words, viz. Flit, a Fitan, to hussel; & Fhrr,

which we retain still to fight when it proceeds to blows. Unde Flitwic, Flith-

wic, Fightwic, &c.

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 noiseful thing inanimate, or a beast animate,

is killed, or causes 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 lawful inquisition of these men, being precise

shamans, the price of blood, are forfeited to God, that is, to the King, God's

lieutenant on earth, to be distributed in works of charity for the appeasing of

God's 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 care, horse,

mill, &c. and is within the age of discretion, there is no Deodand, as it is adjudged

in 8 E. 2. in Cor. 389. But otherwise it is of an you, 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. ver. 28. Si bos cornu percussit virum aut mulierem, & mortui suerint,

lapidibus obstruct. See Justice Standaund lib 1. cap. 12. which may not here to

be repeated. If a killed a man with the sword of B, the sword shall be forfeit to

danda. a Mar. ibid. 209. b Kelway. s H. 7. fo. 8. c Lib. 5. fo. 180. Foulc. 5. afo. accord.

And this is the reason they cannot be claimed by prescription. 45 E. 3. Lib. supra. Fleta ibid. cap. 18 E. 3. Cor. 389.

And this is the rea-
Of Buggery or Sodomy.

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 of treason 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, among Christians not to be named, committed by carnal knowledge against the ordinance of the Creature; and of another nature, by mankind with mankind, or with brute beast, or with man-kind with brute beast.

Buggery is an Italian word, and signifies so much as is before described, Pederasty of Pederast; and was complained of in Parliament, that the Lumberd's lust brought into the Realm the basest of all the crimes of Sodomy which is not to be named, as there it is said, 'Our ancient authors do conclude, that it derogates from man, though they differ in the manner of punishment. Buggery is an abominable crime, and is committed by the Mirror, pur the grand abomination; and in another place, they place it faith, Sodomic is crime de Majestie vers le Roy celebre. But (to say it once for all) the judgment in all cases of felony, is, that the person sustained be hanged by the neck until he be dead. But in ancient times in such case, the man was hanged, and the woman was drowned, whereof we have great examples in the reign of K. 1. And this is the meaning of ancient Franciscae granted de Forca & Fosia, of the Gallows and the Pit, for the hanging upon the one, and drowning in the other; but Fosia is taken away, and Forca remains.
Of Buggery.

Cum maleculo non committeris coitus semen, quia abominatio est. Cum omni pecore non coibis, nec maculabis cum co. Mutier non succumbet jumento, nec nuilcebitur ei, quia eclus est. A.

The Act of 25 H. 8. hath assigned it, and therefore the judgment for belonging not belong to this offence, viz. to be hanged by the neck till be dead. He that readeth the Example of this Law, shall find how necessary the reading of our ancient Authors is. We nature both roads away the benefit of Clergy from the Delinquent. But now let us prove the words of the said description of Buggery.

[Deceitful and abominable.] Their sin attributes are found in the 25, 26, 27, and 28.

[Amongst Christians not to be named.] These words are in the usual Judgment of this offence, and in the effect it has in the Parliament Roll of 50 E. 3. this June, no. 5.

[By Carnal knowledge, &c.] The words of the description the.

Contra ordinem, &c. The words, Carnal knowledge, &c. may not be justly known. As for the words, in re, either with man, or with beast, is the least penetration without Carnal knowledge. And so the punishment is infamy, which was ancient by great white, by committing Buggery with a man for which he was attainted and hanged.

The Deodamus came to this abominable, by far, many, as, not carnal, as of diet, intemperance, and contumency of the soul. Prohibiting the carnal, and as a sin and venereal. But the agent and conception are distinct and this in consistant to the Law of God. Qui dormiunt carnem suam copulantem, in toto operatur efl nolens, morte senis mortae. And this punishment with the ancient made in this.

Emilio senum natura. Not Buggery, but in an evidence in case of Buggery of penetration, and so in Begg the house is by carnal knowledge, and therefore there must be penetration, and such Senum without penetration makes no rape. Vide in the Chapter of rape. If the rape buggery be within the age of discretion, it is in these both in the agent only. Whether any evidence is felony either by the Common Law, or by statute, all circumstances both before and after are incidentally included. Also if any be present, abstaining and aiding any to do the act, though the offence be personal, and done by one only, as to commit rape, not only by the act as principal, but also they that be present, abstaining and aiding the midwives, are principals also, which is a proof of the other case of sodomy.

[Or by woman.] This is within the Buggery of this Act of 25 H. 8.

If the word be, if any person, &c. which spends an ass to a woman, and therefore if the commit Buggery with a beast, but in a person that commit Buggery with a beast, quipue and this beast [person] was used, and the rather, so that somewhere before the making of this Act, a great lady had committed Buggery with a sheep, and convicted by 25 H. 8.

Thus he so fine in holy Scripture called Amasan, &c. crying that he of this beast, this sin is first, appear in this Dilemma.

Sunt vox clamorum, vox tamunia, &c. Domus Domum.

Vox opprisit, &c. Decretum, &c. library.
Rape is felony by the Common Law, declared by Parliament, for the unlawful and carnal knowledge and abuse of any woman above the age of fourteen years against her will, or against her wish, and the offender shall not have the benefit of clergy.

A rape since this was at the Common law, and what Acts of Parliament have been enacted concerning the same. See at the Second part of the Institutes, in the exposition upon the nature of W. 1. c. 13. and W. 2. c. 34. and the First part of the Institutes, Sect. 190. 7 H. 6. 2. 22 F. 4. 22. 6 H. 7. 4. b.

The doubt that was made in 14 Eliz. as what age a woman-child might be ravished, was the cause of the making of the Act of 13 Eliz. c. 8. for plain declaration of the law. [That if any person should unlawfully and abuse any woman-child under the age of ten years, every such unholly and carnal knowledge should be felony, and the offender therein being duly punished, shall suffer as a felon without the benefit of clergy.]

Although there be emuilio feminis, yet if there be no penetration, that is receiv'd from a man; for the body of the iniurio dicit, carnaliter cognovit, etc.

In the Parliament Rolls we read, what distraction had been had of this woman's offence. Be the petition of Isabella the wife of John Butler of Bottom in the County of Lancaster Knight, who is Isabella one William Full of the same place in the County of Cumberland, had shamefully ravished; It is enacted by Authority of Parliament, that if William Full do not yield himself after proclamation made against him, that he shall be taken as a traitor attainted, and be in the same manner another petition brought, why the said William by force and violence against her person entreated her to marry him, and by colour thereof ravished her, to the which the said is granted.

Margaret late the wife of Sir Thomas Melfort Knight, made the like complaint against one Lewys Llygad, alias Gethery, a Welchman. Against whom the like order is taken as was for the said Isabella; only where the rape was committed in Wales, it is enacted that the same shall be tried in somersetshire.

Upon complaint of Henry Beaumont son and heir of Sir Henry Beaumont Knight, and Charles Woulford Esquire, against one Edward Lancaster of Ashby in Cranbrooke, 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 Joan against her will, and ravished her.

Against Edward Lancaster and others remedy is given by appeal, and further upon occasions happening the aforesaid, the nature of 21 H. 6. was made, which gave remedy to a woman injured to be bound by nature of obligation, as by the Act it appeared.

It is read in nozy that chile cannabinum is being ravished, he was found in the room beant, and it was delivered of her, 'Kather? the anthered, Quemodo mulier salva cecisti, lata pudicitia? Sibi pet terebra ita trinca, cedat infrunt, & unus committet adiectum.

In the holy History you shall read, Desmis cum vidisset Sichs filius Homerus Hellen, princeps terrae illius, adamavit & rapuit, &c. Observe well what followed thereupon. Likewise Ammon prevales virbus suis oppresser Thamar forremam suam, & cubavit cum ea, &c. quae alpercens cinceras capit suum, Cissa talari turbina, impowit manus super caput suam ibat ingreditas & clamavit, &c. And observe also the end of the offender.

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

We have thought it next after Murder and Rape, to speak of the stealing of women, hence the Apostle says, "after the fashion whereof they that are pilgrims, as called, beloved being led Flavius plagiarius damnatorum. And the will begin the action of 3 H. 7. cap. 2.

Whereas men, as wall maidens, as widows and wives, having such substances, some in goods moveable, and some in lands and remembrances, and some being heirs apparent unto their Ancestors, for the loss of such substances, have been oftentimes taken by misdoers, contrary to their will, and after married to such misdoers, by too other by their agents, or defrauded, to the great displeasure of God, and contrary to the King's Laws, and disparagement of the said women, and utter heaviness and dishonour of their friends, and to the example of all others: 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 shall 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 with the same frauds to taketh against her will, and knowing the same, be felony. And that the said misdoers, takers, and procurers to the same, and receivers, knowing the said offence in form aforesaid, be henceforth presumed 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.

This Act on the offenders part doth extend to all degrees, and in all persons, but extends not to all women: For on the offenders part, Four things are necessarily required to make the offence felony: First, that the said maid, wife or widow being lands or personal, or movable goods, or be in their appearance, Secondly, that she be taken away against her will: Thirdly, that he be married to the said woman, or a common thief by his contents, or be defrauded (that is generally known) For these considerations, the misdoer is in felony within this nature, but otherwise to be punished. And this was referred, 3 & 4 Ph. & Mar. and after reported by all the Judges of England, upon written consideration of this Act of 3 H. 7. and upon conclusion, and conference between them, as the Lord Deane did report under his own hand, which I have seen, and the substance of it is omitted in the point, and the judgment of the House upon this nature. According to this resolution: Fourthly, that he be not ward of bondwoman, to the person that took her, or cause her to be taken only as his ward of bondwoman.

By this Act, not only the taketh, but the procurers, abettors of the felony, and receivers of the said woman wittingly; involving the same, be all adjudged as principal felons; the like发生在avd not in any other nature, that we remember. But by a contravention of the Common Law, they their receive the mis-
Cutting out of Tongues, &c. Cap. XIII.

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

...
Of Burglary.

virilia Johannis Monschi, quem idem Henricus deprehensit, quum praedae
uxore ejus, &c. Fleta fuit, Si quis castratus fuerit, talis pro malumati potest
adjudicari. Fuit igitur ad ultimum annum, & sic in

CAP. XIII.

Of Burglary.

A Burglar being on the part of the commoner Burglar, &c. at the a Common
law's false, that in the night he broke and entered into a dwelling-house
of another, intent to do some reasonable currate, &c. to commit some
other felony within the same, whether his felonious intent be executed or not;
this call it Burglary. Burglars shall be called Burglaries or Burglaries; the offenders
are called Burglarcis or Burglarics. to break and enter, &c. to do

His word is Burglar is derived from the Latin word, Burgher, signifying
an house, and Burgher signifying a householder. The word

INTERLEG. Ed. 6. fo. 70. 3 Deut. 22.

This word Burglar is derived from the Latin word Burgher, signifying
an house, and Burgher signifying a householder. The word


INTERLEG. Ed. 6. 118.co. 61.Lamb.

Britton Collect. Hym. in Magnal. I. Dei. 73. posse perturbum et

Let this be a substance of the description.

[In the night.] 

The word in the judgment in English, &c. a
Camer, id est, nodum. The natural day is divided in two parts, &c. of the
day, &c. into two parts, &c. of the day, &c. of the
day, &c. of the day.

In ancient Peculiarium, was disguised, when it was said, Lord

To, when the night begins, the day, &c. the day off itself.

For to be the end of the sentence, in the beginning.

In placido domo combusse, malitiosos, &c. aequitatis, &c. in placido

domus, &c. aequitatis, &c. in placido
domus, &c. aequitatis, &c. in placido
domus, &c. aequitatis, &c. in placido
domus, &c. aequitatis, &c. in placido
domus, &c. aequitatis, &c. in placido
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domus, &c. aequitatis, &c. in placido
Break and enter. The words of the indictment are, *Femeque a breach and enter*:\n\* and this is understood as an actual breaking of the house, and not of a breach in law. If the thief enters into the house by a breaking of the lock, it is not Burglary, but Trespass. If a Rood, or other engine, be used to open the lock, it is a breaking of the house in law, and not Burglary, because there must be an actual breaking. So if it is the window of the house be open, and a thief with a Rood or other engine breaketh 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 Rood or other engine breaketh out some of the goods of the owner, this is Burglary, for there was an actual breaking of the house. Here we have 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, as in the Sun. If the Sun be broken, or into an hole in the house which be broke made, of intent to murder or kill, as if a bolt were laid, a Rood or other engine in any part of the house, which is broken in, is Burglary. But it is to be noted, that he who breaketh into the house, if in a manner, and breaketh into the house, that is both breaketh the house without any break thereof, or any breach thereof, is Burglary.

[...]

[Into a Mansion-house.] The indictment is, *Femeque a mansion-house*:\n\* and this is Burglary, as it is not in the Act of Parliament.

[...]

[...]

[...]

[...]

[...]

[...]

[...]

[...]

[...]

[...]

[...]

[...]

[...]

[...]
Of Burglary.

Lifewise a Chamber or room, be it upper or lower, wherein any person hath habitation or dwell, in Domus mancipialis infeof.

Our ancient Burglars and old Records did specify Burglary under this word, Hamlyknge, or Hamlocke. As fast as derived from the scroon words, viz. of Ham that signified a scroon-house, Domus insulae, which to this day we call our home; and Suckne or Suinke, that is, Seeken, as much to say as to seek a man in his house to lay on him.

It is to be noted that old-Burglars, and our new Bow-cates do distinguish between the day and the night when the offence should be committed in the house, save only the Misd.

Others derive Hamlocke from Maca, which is the Lord to enclose to be a certain house, and hence which signifies a Court, as much to say as to have jurisdiction. As such plea of others done to a plea in his house.

As is said, this is ipso lege, etc. as ipso interdicendum. This is not felony without an act done, though it were not actual; for the legal and jurisdiction of Habeas Domini is only required to make Burglary. So Burglary may be committed at will to the pillage and robbery, and the wrong and destruction of all sorts of house and whole house, whether the house is inhabited or uninhabited, so he that breaks the interdict.

Of intentio illa. It is more than mover that he in the night time did feloniously break the house of S. and feloniously took therein. This is in Burglary, because it was not in the house and not in the barn. But if it were ad interdictum, it shall be in Burglary, though he did not touch with it; for the intent must be to commit felony, and not trespass, or either thing that is not felony, but the wrong of the house and whole house.

Or to commit some other felony. Every in Burglary which breaks a house or church in the night, and breaks the house and enters it, is of Robbery, and shall be laid before the Grand. 2 Eliz. 19.

The statutes of 29 H. 8. 32 H. 6. & 33 Eliz. do not define what Burglary is; but it was upon the benefit of Clergy from certain sorts of Burglary. As when an actual robbery is done, and when the wicket or dolester, etc., is put in Burglary when the manner of the house, etc., is taking in Burglary within any place within the present of the house, etc., the circumstances do aggravate the Burglary; and besides the benefit of those statutes took away the benefit of Clergy nor in all cases of Burglary, but in those particular cases where a robbery is done. But the nature of 29 Eliz. cap. 6. Dale taken away the benefit of Clergy in all cases of Burglary, and thereby a gross and equal proportion is kept in the said distance. And both Acts of Burglary, and the resolution of Judges so well agree together, which I presume every thing have published matter of evidence, which I will in case of law, are so to be reformed.

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

Having now spoken of Burglaries and Felonies committed in houses, there reflects one other of that kind, and which we will conclude this, and that is, Burnings of houses, which being a felony by the Common Law, let us see what our ancient Statutes and Laws have left us to thereupon.

The ancient article of the Fire was, De incendiaris nocturnis vel diurnis, & combustionibus temporibus et locis necessaribvs. But it begins thus:

Burning of houses, and of works, in general.

The ancient article of the fire was, De incendiaris nocturnis vel diurnis, & combustionibus temporibus et locis necessaribvs. But it begins thus:

<table>
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<th>De incendiaris nocturnis vel diurnis, &amp; combustionibus temporibus et locis necessaribvs.</th>
<th>Britton fo. 16.</th>
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<tr>
<td>Fleta lib. 1. cap. 35.</td>
<td>De combustionibus.</td>
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</table>

Mirror ca. 1. § 8.

De Arduous ca. 2. § 80. du. 51.

Appeal darmon. § 2. & § 12. cap. § 5.

Alarmon. * Oa bienis, W. 1. cap. 15.


Sec. 15 H. 6. num. 43.

All the ancient Authors.

3 H. 7. 10.
11 H. 7. 11.
21 H. 8. ca. 1.
35 H. 8. ca. 2.
78 & B. 6. ca. 9.
4 & B. M. & Mar. cap. 4. lib. 11.
so. 35. Alexander Pothers cæfas.
3 H. 7. sub supra.
Of Burning of Houses.

peace. It was made in a special manner high treason (as before is said) viz. 2 H. 4. cap. 6. 5 H. 4. 10. Per
Brion.

High Treason.

1 E. c. 12 and 1 Mar. but yet the felony remains still for in production (as bard bien fait) implicatur fideles.

[4.12] Maliciously and voluntary. Proceeded also by the topics of the indictment, which be, voluntary and malicious, prae cogitata, &c. felonies. For if it be done by mischance or negligence, it is no felony, as before it appeared.

The law being in action, the house shall be burnt, &c. The house of another, being in action, the house shall be burnt, &c. But if it be done in a malicious and voluntary manner, the house is burnt, &c. The house of another, being in action, the house shall be burnt, &c. But if it be done in a malicious and voluntary manner, the house is burnt, &c.

The attempt to burn a house of another was made by the sentence of 3 & 4 E. c. c. 3 E. 6. but this is repeated by 1 Mar. 1 E. c. 12.

If a house be burnt, the felony is in action &c. But if it be done in a malicious and voluntary manner, the house is burnt, &c. 2 E. 6. 6. 12.

It is by burning the house of another, being in action, the house is burnt, &c. 3 E. 8. cap. 6. and a house of another, as 1 E. 6. 6. 12.

The burning of the house of another, being in action, the house is burnt, &c. 3 E. 8. cap. 6. and a house of another, as 1 E. 6. 6. 12.

In burning the house of another, being in action, the house is burnt, &c. 3 E. 8. cap. 6. and a house of another, as 1 E. 6. 6. 12.

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The burning of the house of another, being in action, the house is burnt, &c. 3 E. 8. cap. 6. and a house of another, as 1 E. 6. 6. 12.
Robbery is a felony by the Common Law, committed by a violent seizure of another person's property in such a manner as to terrify the person from giving up the property. Theft, on the other hand, involves no such terror and is not considered a felony.

Robbery is defined in the statutes as "taking of the goods of another by force,徒手, or threat." The difference between robbery and theft is the use of force or threat to overcome the victim. If the force or threat is not used, it is theft.

Violent assault on the person of another is robbery, and if the property is obtained by such a means, it is considered robbery.

The law states that "violence in the taking of property is robbery.

By putting him in fear.

By taking.

The language of the indictment for robbery is "violently and feloniously." The words "by force" are not necessary, as the element of force is already implied in the term "robbery."
Cap. 17.  

Breakers of prison.

This word [cepit] necessarily implied that the thief must be in possession of the thing stolen. For example, if he had the bag or purse of the true man be taken to his girdle, &c. and the thief the more easily in taking the bag or purse, do cut the girdle, whereby the bag or purse fall to the ground, this is no taking, for the thief had never any possession thereof, &c. de similibus; but if the thief had taken the bag or purse, and in stealing 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 being in the unlawful, for the safeguard of his money, cast it into a bush, which the thief receiving takes it; this is taking in Law from the person, because it is done at one time. If the true man had cast off his surcoat, or other uppermost garment, and the same being in his presence, a thief assault him, &c. and take the surcoat, this is robbery; for that which is taken in his presence, is in law taken from his person: And so it is of the hogue of a true man which stands by him; &c. de similibus.

In ancient Authors and Records, in Pleas of the Crown, you shall read of Sakeber, &c. whom we will derive and explain. Sakeber, Sackere, &c. Sackur. Sack is an ancient French word, and signifies a bag, purse or pouch. So that Sackere 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 agrees with the interpretation thereof by Blachon, viiz. Furtum vero manifestum est, ubi latro deprehensus est, et aliquo loco, viz. 'De profundum, et Sackere, &c. Infeccus fuerit per aliquum cujus res illa fuerit, et dicatur Sacaburth. And hereof agrees Flew, lib. 1. c. 1. b. & Britton fo. 22. b. & 72. b. and forof. 28. term him, which (as we take it) is his right name derived of these two words, Sack and bere, that is, he that did bear the bag, &c.

Of what value soever.  
Though it be under the value of twelvemote pence that is taken, (as to the value of a penny or two pence) it is robbery, but somewhat must be taken: for the assualt only to rob without taking some money, or goods is no felony, and such opinions as these to the contrary, were maintaing by that which then was antiquity helden. Quod voluntas repugnatur pro: \( \text{L} \)  fo. 5. Infinitio viarum.

CAP. XVII.

In what case breakers of prisons are Felons.

W\( \text{E} \) have spoken sufficiently hereof in his proper place, in the expostulation of the statute of 1 E. 2 de Frangentibus priscinum. Only thus it is to be added, that in case of felony, the offender shall have the benefit of Cessing the breach of prison.
CAP. XVIII.

Where escape Voluntary is Felony.

We have also spoken somewhat hereof in the exposition of the said Act of 1 E. a. And the voluntary escape can be no felony in the Statute, unless the Prisoner be under custody by lawful Warrant expressing the offence, which you may observe there at large.

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

CAP. XIX.

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

8 H, 6. cap. 12.

I. aforesaid Record on parcel dices, Brief, Return, Pannell, Proces, on
Garrant D'attorney en les courts le Roy de Chancery, Eschequer, Jun
Banke en dernier, y va Tresorer, soit voluntamente emplir, emporto
frite, en avoide per alsun Clerk ou autre person, a cause de quel asum
Jugement fait reverser. Que siel embleur, emporter, retraber & avoier;
leurs procurators, conceillors, & abettors et adites, & sur proces sur ces
fais, sont duement convict per leur proper confession, ou per enquêtes pren-
der des loyall homes, dont la moitye soit des homes dason court de mesmo
les courts, & lauter moity des auctors, sont adjudges pur felons, & en-
corment la paine de felony & que les Judges de les Courts de son Banke
ou de lauter eyent power de siez & terminer telsz defaults devant eux,
& ent faire punision, come devra ester dic.

If any Record or parcel of the same, Write, Return, Pannell, Proces, a warrant of Attorney in the Kings Courts of Chancery, Exchequer, the one Bench or the other, or in his Treasury, be willingly stolen, taken away, withdrawn or avoided by any Clerk or by any other person, be cause whereof any judgement shall be reversed: That such stealer, taken away, withdrawn or avoider, their procurators, counsellors and abettors, whereby 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,
Selons, and shall incure the pain of felony. And that the Judges of the said Courts, or 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 aforesaid.

The mischief before this statute was, That whereas Records are of such high nature and credit as they impose in themselves absolute verity without contradiction, so that and that there might be no end of contention and controverse, and men might sell in these and repose, certain Clerks and other persons did oftentimes imbrace Records or some parcel of them, and sometime a suit, record, panel, process or warrant of Attorneys, or safe or other initiate the same; by reason whereof others' judgments were avoided, or reverted, whereby no man(as the statute saith) had anything in surety: This was a great mischief, for the which the offenders therein might be punished, either at the suit of the King by judgment, or at the suit of the party by an action upon his case. See the record concerning this matter following. Placita coram Justiciariis, de Banco termino Trinitatis Anno 19 E. 1. Rot. 57. indorfi.

Rudolphus de Grehope, communis Atonarius de com. Waddington, muitios Rotulum excurvant et abidit, & iudicium per annum & diem committitur Turri Londini, &c. Anno 20 E. 3. per mandatum Regis liberatur, & per Justiciarios et alii in his et in eis in conspectu et in consilii, etc. Cursus de aliquibus negotiis et intimis.

Which remedy and punishment were thought to need against Clerks and other persons, which (committing such things) commonly were of small ability; to relieve this Act, considering the danger of the offence, made the same felony, as by the letter thereof appeared.

[Stalun Record.] A Record is regularly a Document or Act judicial before a Judge or Judges in a Court of Record, entered in a Record Book in the right Roll. It is called a Record, for that it recorded or written in the truth, and is of the word Records, whereas the word speaks,

Si rite audit recording.

It hath this sobriety and precision, that it is proved by no other but by itself. Manu clausa (qui non Record vocamus) sunt regulars & veritatis vestigia. And albeit the cause adjudged be particular, yet when it is entered of Record, it is of great authority in Law, and serves for perpetual evidence, and therefore ought to be common to all, even though it be against the King; as it is declared by Act of Parliament in Anno 45 E. 3. which you may read in the Preface to the Third Book of my Reports.

Brief, Return, Panel, Process, et Garrot d'attornie.

All these are sufficiently known, and yet have been created of the same in the first part of the Institutes.

En les courts le Roi. Here are especially named four of the King's Courts, viz. the Chancery, the Exchequer, the Kings Bench and the Court of Common Pleas, and heretofore is added the Kings Treatry: so as this Act extended not to any other Court or place than is here named.

Chancery. This must be understood the Court of Chancery, which proceeded according to the course of the Common Law, as in case of Plead- lige, of suit upon Recognizances, recoveries of offices, and the like; for as to these it is a Court of Record, but as to the proceeding by English Bill in Court of equity, it is no Court of Record, for they are upon the Act of 1661.

Treafterie. The Kings Treatry is called the Treasurier Regis, the place where the Kings Treasurier is kept. This Treasurier is twofold; viz. his moneys of coin; and another that is far more precious and excellent, and
Stealing, &c. of Records, &c.

Cap. 19.

These be the sacred Judgements, Records, and other judicial proceedings under the care 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, with generally, all the Treasure.

[Suit voluntarement embleam, emport, retreat, ou avoide.]

In the Judgement upon this nature before felonies, this [voluntary] must of necessity be used, to agree with this Act. Here be four words used, embleam, etc., retreat carried away, retreat withdrew, out avoide of abandoned. So as the term is, if any Record or part of it, Write, Return, Panell, Proceed, or Warrant of Arretum, etc., be found, carried away, withdrew, or abandoned, etc. But this word [avoided] is a large word, and both include raising, or clipping, or cutting of the side or other part of the Roll, or any other kind of avoiding the same.

[Per alcuin Clerk ou autre person.]

This Act doth not extend to any Judge of the Court, but because it begins with a Clerk, etc., and so from the nature of the Act, a penalty is imposed upon a Judge, etc., for making any false Copy, raising any Roll, or changing any Writ. See the Statute for the preservation 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 Bequests where the matter depended: for the Judges are the King's 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 made in an action of debt at thirteen Shillings four pence, the said Justice moved with pity caused the Roll to be read, and made it the shilling's pence.

This case Justice Southcome remembered, when Carlyn Chief Justice of the Kings-Bench in the reign of Queen Elizabeth would have ordered a nature of Roll in the like case, which Southcome, one of the Judges of that Court, utterly denied to assent unto, and said openly, that he meant not to build a Clockhouse: so (said he) with the fine that Ingham paid for the like matter, the Clockhouse at Westminster was builded, and furnished with a Clock, which continued to this day.

[A cause de quel aucun judgement soit revers.] This Act extends only to Records wherein 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 at actions real, personal or mixed, or of the nature, this Act extends thenceunto, if judgement be afterwards given, and to all actions, for there judgment in given per judicium Coronatorum. For it is not material whether the act be done against this statute, whether before or after judgement, so judgement be given.

[Revers] is here taken, not only where the judgment is made erroneous, and to be reversed by Mrit of Error, but where the judgment is to be abolished and made both as it bindeth not, or may be reversed or avoided by plea. See the Bp in 2 R. 6. 10, which expoundeth well this statute.

[Quel ciel embleam, emporter, &c. Our procurers, counsellors & abettors, &c.] This Act extends generally to Accesories before, and leaseth accesorizes after to the contruction of law, per may there be accesorizes after the fact: so whensoever an offence is made felonly by Act of Parliament, there shall be accesorizes to it both before and after, as it bea fen a felony by the Common Law; and therefore though this Act expresst accesorizes
acceirices before, yet it taking not away accuirices after, but leade them to the Law, contrary to the opinion of Justice Stanford. But before the Expost. 3 H. 7. cap. 2. tion of 3 H. 7. to taking away of women against their will.

Entendites. If the act that make this felony he committed in two Countries, the Judgement sate as made by the lawgiver upon the Nature of 2 & 3 H. 6. cap. 6. And this rule of felony rungh, in two Countries, is not holpen by any statute set made.

Dont lay moity soit des homes daucun court. Vesp is a party Jure, the one half to be of the Officers and Clerks of the Court, & their knowledge, and her better information of the matter.

Et que les Judges des dîts Courts de Inn Bank ou de lauter eygen power de oier & terminer tales defaults devrant eux, & ent faire punishment come est ayant dit. This Clause is in name of a Commission to the Judges of either Bench, if the offence be committed in the Country where the Benches do sit. And the Judges of either Bench have a justement authority, and of which they enquire first half proper; but if the felony be committed in another Country then where the Benches sit (as for example, in Surrey, Berks, &c.) then the Judges ought to have a Commission. But if the Bench sit in Middlesex, and the felony be done in London, in which case a Commission is requisite, as is aforesaid. But then some laws laid, that by the Charters of London confirmed by Parliament, the Mayor of the Bench of the other, and therefore the nature being penal, and to be taken strictly, no proceeding can be. Sed dixit ecclesiae: For the Charters of the City of London extend only to such offences committed in London, whereas the Mayor with others by Commission may inquire, hear and determine, and not to such offences to amended by authority of Parliament to other persons (as in this case to the Judges of the one Bench or the other), as the Mayor is not warrant by the said Act to enquire, &c. And therefore a Commission in this case may be made to the Judges of the one Bench or the other omitting the Mayor, &c. Curia Regis defecerit in justitia exhubenda.

And about this kind of felony is an heinous offence, yet may the offender therein bate 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 Bigamie made in 4 E. 3. it was but an ey position and allowance of the continuation made at the general Council at Lyon 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 Shoulders. Vide 1 & 3. 4 H. 7. cap. 75. 12 H. 7. cap. 66. 7 H. 7. cap. 35. 9 H. 7. cap. 15. 11 H. 7. cap. 17.
CAP. XX.

Of Felony, in such as use the craft of Multiplication.

No man is more voluntary 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 power of Parliament that he remembereth; before the making whereof, divers of the nobility, gentry, and others did work and continue a great part of their inheritances, and wealth about the art of Multiplication, by the subtil and subtle perversion of certain impostures and deceits, which compass them to be skillful 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, Good politic divers this ingentes divitia, & potius penates destruxerat. And Chaucer our English Poet, who wrote about the time of the making of this Art, in the Tale of the Chimney Sweep, p. 63, (in the Poem,) that the end of this finding and curst craft (to full of imposture and effect,) is extrema blegy, To he would the reading, for he discovereth the arts of this Craft, an our at examen is.

Thus being the end of this said Art of Multiplication is, after deceit, and respect to the undoing of kings, at this Parliament the use of this craft of Multiplication is made felony. For the better understanding of which shall be said, to be known that there are six kinds of metals, viz. Aurum, Argentum, Aurius Cuprum, (that is to say, Gold, Silver, Copper,) Tinum, Lead, and Iron; for Calvis Hercul is but the hardest part of Iron; and Orichalcum, Aurichalcum, viz. Latens et Maxille, is confounded 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 Quint essence. Four Essences or Elements we know, Fire, Air, Water, and Earth: but, say they, this Quint essence to a certain, subtle, and spiritual substance extracted out of things by separation from the four Elements, differing really from their essence, as Aqua viva, the spirit of water, by the like, and this is called Elixir, or Philosophorum stone, and it is part of Alchemic of Chymie, in Latin Ars Chymica. The softened therein are called Multipeters, Chemialis, Alchemistas, etc. There may be necessary to this new felony both before and after. King Henry the first by his Letters Patents, Do concilia lui deliberatione deputavit Willian Caurolo & alios cives civitatis London ad investigandam veritatem super his que in scriptis sanctis eis manifesta, pro multiplication Numismatis, tam de aurorum argentum, & quidam in premiis cognition, tum cum opiniones referentes in scriptis et concilio suo.

a The like Letters Patents anno 35 H. 6. pro Thoma Harvie & aliis.

Retex sua regale prerogativa, &c. dedit licentiam Johanni Fascby & alio ad investigandum, prosequendum & persciendum quodam prernouissimam medicamentum, quantum effentiam, Lapidem Philosophorum nuncupatum, nec non potestatem facendi & extrahendi transmutationes metalorum in verum Aurum & Argentum, with a Non obstante of this statute of 5 H. 4. By these Letters Patents this Art is more explained than by any record we have seen.

How these several kinds of metals, as is supposed, proceed originally from sulphur...
Hunters in the night.

Cap. 21.


The text ends with: "...for that they were as parts of the earth."

I could give examples (in Ulricus de sodalitio) 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 Councell, or any of the Justices of the Kings Peace in the Country where any such hunting shall be had, of any person to be suspected thereof, it shall be lawful to any of the same Councell, 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 Council, or his Justices of Peace of the same County. And that the said Councellor, 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 hunting, or any person with him defective therein, that then the same concealment be against every such person to 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 hunting by him done, be against the King our Sovereign Lord, but trespasses unable, by reason of the same confession, at the next general Sessions of the peace to be heloed in the same County by the Kings Justices of the same Sessions there to be seised. And if any recusors 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 recusors and disobedience be felony, inquirable and determinated.
Hunters in the night.

Cap. 21.

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

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

"By night, or with painted faces." That is to say, either by night, or in the day when painted faces, for that such 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 speaks only of painted faces, yet it extended to boids, and other disguisings, for those words are in the mean while reading 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." Perhapply it appeared, that a bare information without showing just cause of suspicion at the least, is not sufficient to ground a warrant according to this Act, for the words do, Of any person to be suspected. And this Act is general, and extends to all persons of what state or degree soever, and as well to women as to men: for the words be if any person. And generally 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.

"Of any unlawful hunting 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. Yet the first part of the Institutes, Sect. 172. What a Forest, a Chase, and a Park, &c. is.

"To any of the Kings Councell." This is understood of the Kings Privy Councell, and any one warp 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 three 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 disagreeable, if he conceal either his own offence, or of the other misdoers with him therein, the latter of this Act is that it is felony, but be con-
Cap. 21. Hunteri in the night.

Huntmen upon the whole statute is no felony, being a hunting without the lighting of any game, is within the danger of this statute.

This Act is to be taken strictly, for this the intenture obstructions, made for the making of any hunting, being against the security and belief branch of Charles de Forester, Nullus diem abivit vel membre prosectione molesta, &c. improper as to the statutes of St. E. 1. R. 3. Stat. 1, cap. 87. R. 3. 1618. Wallis, cap. 5. Regist. fol. 51. P. N. B. 58. 59. 69. 73. N.B. 45. 46. 53. 54. 55. H. 14. 15. 3.

The old statutes concerning the Forester regulate the good laws and customs, and commanded to be observed; and therefore this new Act is to be considered as the same law, because there can be no felony by subsequent laws, that is, if the law of the Forester helps, set of statutes, nothing can be before. And therefore the Judges have made a considerable contradiction, as is evident in this chapter you shall find that.

If he confess the truth, and all that he shall be examined of and knowneth in that behalf.] That is, of his own guiltiness and of other misdoers with him, then this Act makes it no felony, but requires an oath, as it was before. But it must be a written concealment; therefore if he knew the names of the other misdoers, or knew not whether they were there or no, it is no offence, for the concealment must be written. And seeing there is no time limited by this Act, and the concealment ought to be written, it were reason the information should be made in present time after the happening.

And if any rescue or disbeliance be made to any person having authority to execute the justices by any such warrant, by any person the which so should be acceded, to take execution of the same warrant be not had, that then the same rescue and disbeliance be felony. Here it is to be observed that the hunting being as yet no felony, the rescue could not be felony, if this branch had not been. For in these things are to be considered. First, that is extremely material to the whole of disbelieving that is committed by the party hunted, that as to be arrested, and not to apprehend afterwards, that if the party rescue himself, yet if he be pursued, and taken, the execution of the warrant be had, it is no felony, or is to be justified by the letter of this branch.

And over this be it resolved, &c. That if any person or persons hereafter be convicted of any such hunting, with painted faces, violets, or otherwise disguised, &c. Of unlawful hunting in the night, that then the same person or persons to be convicted, to have like punishment as he, or they should have, if they were convicted of felony.

Gerard the Queen's attorney general (who was a grave, and reverend man) said openly in the Kings Bench, that it had been resolved by the Judges 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 concealed it, this is (upon the construction of the whole Act) no felony, for the first clause concerning concealment, and this clause which with we bundle, 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 concealment must be upon not guilty pleaded, which the Judges explained 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, as a Justice of Peace, which may lie in abatement, so as before it be felony, he must be convicted of such hunting, &c. upon not guilty pleaded first, and after they conviction upon it.

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

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

*Concealment of founded.
Imbelling of Armour, &c.  Cap. 22.

Of Felony for Imbelling the King's Armour, Ordnance, &c., or Visual, to the value of Twenty Shillings, provided for Soldiers.

1st El. cap. 4.

Note for Visuals.
tenements or hereditaments, or her action or interest to the same; any thing in this Act contained, or any Attainde 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 virtue of this Act be received and admitted to make any lawful proof that he can, by lawful witness or otherwise, for his discharge and defence in that behalf, any law to the contrary notwithstanding.

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

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

[Habitations of war.] Habitation is properly apparel of clothing: but in legal understanding it doth not only extend to Varnels and Armour, but to all Utensils that belong to war, without which men had not ability to maintain war.

This Act making a new felony, hath the excellent prohibitions, 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 than 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.

In the Statute of Jovis Regis there is also a good precedent, viz. [All which trans(viz. in cases of felony in that Act before mentioned)] is first, for the better discovery of the truth, and secondly, for the better information of the conscientes of the Jury and Justices, there shall be allowed to the party to 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 may be 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 author, Book-case or Records, that in criminal cases the party accused should not have witnesses sworn for him; and therefore there is not so much as custom is against it. And I well remember when the Lord Treasurer Burleigh told Queen Elizabeth, Spada, here be your Attorney General (I being sent for) Quo pro Domna Regina sequitur; he said he would have the form of the Records altered so as it should be Addornatus Generalis qui pro Domna veritatem sequitur. And when the fault is denied, truth cannot appear without testimonies.

Hobelarius (id et, a Light-hogman) electus in Scotiae, recepta armaturas & denarios, ibidem servitutus; polica non proficicitur per mandatum Regis, & reculavit reddere armaturas & denarios, &c. per Juratores et culp. & commissitut Marechallo, & Shinvis Regi 10. li. & inventit securesatem ad armaturas redeliberandas, &c.

Hil. 16 E. 3. commi
Rege.


**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.

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 Cofferer and Comptroller of the Port, Haven or Creek, or of any of them, or of either of their Deputy or Deputies, shall be a Felon.

Some have objected, that the going or passing out of this Realm to serve or be served cannot be tried; for that offences done out of the Realm cannot, without special subscription, be tried within the Realm. And it is a sure Rule, that if the offence be committed beyond the seas, the offender may not be tried there, and be then brought to the country where he is tried and determined. And if this be answered, that the subject of this Realm has given himself up to a foreign prince, that prince, with the consent of the foreign prince, may try and determine the case. Which is not so against this present Act, and may be enquired of, heard and determined before the Justices of the King's Bench, Justices of Assize and Gaol delivery in their several Assizes, and all offences other than Treason, shall be inquired of and determined before the Justices of Peace in their Quarter Sessions, to be held within the Shire, Division, Limit, or Liberty where such offence shall happen. So as by the purpose and meaning of the makers of this Act, this felony shall be tried in the county where it was done, and consequently in the town wherein part of the act was done. And that words [and whereas such offence shall be committed] must be construed in this case, where part of the offence is committed, for, the levys, and other 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 proven to the Jury in evidence. Nor, whereas a foreign treaty by this Act is made, it is enacted to be tried where the offender is taken.

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

To serve. Allbeit 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 extended to any kind of service either in camp or army, or in house or otherwise.

Any foreign Prince. Prince is here taken for the person that is Prinmus, &c. Qui primus locum & gradum obivcet, whether he be King, or any other that hath sovereign authority, by what name or title soever. The
The word hath other significations, but not pertinent to the exposition of this Act.

[State.] The former word [Prince] includes she that is a Monarch, or in nature a Monarch, or an absolute Prince. This word [State] extends State to any State, either Aristocratical, where so be in truth, or Democratical, where the people have the chief government, without any superior, taking such as they elect and chuse.

[Potentate.] This is a large word, and extended to Potentates as well Ecclesiastical as Temporal.

[Or shall pass, &c. and there shall voluntarily serve.] Although he went not for 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 Soldiers, or Conductor of Soldiers, 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.

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 gives light to the understanding of the residue of this Clause.

There is a Provision, that no Strainer of Felony made Felony by this Act, shall take away blood, nor make or draw any corruption of blood, or division to the heir. The offenders in any of the said cases of Felony may have the benefit of their Clergy.
CAP. XXIV.

Of Felony in Purveyors.

SEC the Statutes of Artic, super Chartas, anno 28 E. 1. cap. 2, 18 E. 2. capu. 
G3 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 ilikely may be reduced to these four Heads. First, if any that 
raise upon him to be a Purveyor, or his deputy or factor, make purveyance of any 
thing above twelve pence without Warrant; Secondly, by make purveyance of 
any thing above twelve pence without testimony and appellee of the Con 
table and four honest men, and without Delivery of Cases; Thirdly, to take 
any sheep with their wolves between Easter and Midsummer, and carry them 
to his own house and thence they; Fourthly, to make any takings of buisile, 
or take any carriage in other manner than is contained in their Commissions, 
they shall have punishment of life and member; and this Act remains in force 
without alteration. The offenders may have the benefit of their Clergy.

By this Statute it is enacted, that Purveyors assigned by Commission shall 
purveyance of bials, corn and other things, as well within Liberties and 
Franchises as without, any grant, allowance or other thing to the contrary, to 
let themselves in notwithstanding: but the Purveyors shall observe the Statutes for 
them provided in their behalf, as by that Act appeared. Upon this Act it was 
held, that the discharge of Purveyance were by Letters Patent; this 
Act makes it of no force: but if the discharge were by Statute, then the Purveyor 
was bound to observe the Statute; as by the Statute of 14 E. 3. cap. 4. 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 Burley or his Lieutenant shall take 
Minors, 

as more of Purveyors in the fourth part of the Institutes, Cap. of the Counting-house, or Stain cloth.

See Lib. 8. to. 45. 46. in Evans Case, a Commission for taking up of dogs for 
the Kings Chapel, the general words well expounded.

By an Act of Parliament not in print, it is enacted, that no Purveyor arrested 
for any misdemeanor shall have any delay, but 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 common of the Realm, 
concerning many grievances suffered by his subjects in the execution of a Com 
mmission granted to certain persons for getting of Salt-peter, his Majesty's an 
twer (amongst other things) was, that he had never an intention to make any 
application of his Pryvilege therein further than might stand with the 
laws and necessary use thereof. And further, his Majesty was pleased out of 
his gracious care and goodness to revoke and abdual all Commissions or 
grants made to any person or persons for and concerning digging and work- 
ing 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 appeared. In pursuance where 
of, by the said Kings commandment, Popham Chief Justice, and all the Justices 
of England, and Barons of the Exchequer, were assembled at Westminster, in December, in the said fourth year, to resolve and certify what

When Parliament the King had for rigging, and erecting of Salt-peter in these houses, buildings or grounds within sundries, that thereinupon a new Commission might be made concerning things open to inconvenience, and mature consideration, was given

First, where it was objected, that Gunpowder was imported into Germany, within certain terms, in the reign of King 3., so as the King could not claim it by prescription, and that before 30 years the reign of Queen Annu, (which was the year after the Spanish Invasion) taking part, and made an Act of Parliaments granting to any King 2. Queen of this Realm any for the digging, preparing of Salt-peter, and in the said 31 year, in the last part of it, the Commission of Licences were granted, the one particularly, to George Count CABEAD, or the other, particularly to George Contable, Esquire, to dig, open, and work, during the space of seven years for Salt-peter, within the Counties of Pote, Snowing, Kent, London, Lancaster, Southumberland, Cumberland, and the Bishopric 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 Countries aforesaid, and the consideration of the Grant was, that he would deliver a great quantity of powder to be made by the said George Countable, and provided for the use of the subjects. Subject to a slower rate then was paid for it before, with other further clauses.

And further our wish and pleasure is, that the said George Countable, shall in his own person out and charge heretofore, make up and lose all mudatts, ashes and grounds whatsoever he signed up, whereby it was inferred, that no other buildings could be digged upon that side by such Commissioners, nor any body, the other Commission was general, made unto George Evelyn, Richard Hills, and John Evelyn, and extended throughout the Realms of England and Ireland, and all and 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 satisfaction, as aforesaid, without naming of certain places by express words, and without any prohibition to the subject to dig for Salt-peter in their own building or grounds.

As to the first, it was resolved by all, that what power 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 would not be willing to buy it in certain parts, which were in the Prince's right, and to 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 so 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 the 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, demised, or transferred to any other, but ought to be taken only by the Kings Ministers, as other purveyances ought, and cannot be contracted to any other use then for the defence and safety of the Realm, for which purpose only the Law both gives to the King this purveyance: 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 made by the Kings Ministers begin to decay, as it will be within two or three years, then this ought to be changed for another, or sold, and the money thereby 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
such as so many thousands of gun-powder, which will be made before the King's ... in the building, the King, his wife, or any other necessary provision of the owner be not removed or in any sort impaired. And they may dig and make walls which they use in the walls of any Spaniol-house, and in the ruins and debris of any house which be not preferred for the necessary habitation of men.

4. Fourthly, they ought to make the places as well and commodious for the owner's use as they were before. Lastly, they ought not to work in the positions of the subject but between the rising of the sun and the setting of the same, lest the owner may make the worst of his house, and put it in defence against the owner. Lastly, they ought not to place or by furnaces, or other necessary, in any house or buildings of the subject, without his consent, nor to take any Spaniol as he by it may receive any prejudice or disquiet. Secondly, they ought not to continue in one place more than a convenient time; the return thereof, but after a long time, as long as the owner of the soil cannot be restrained from digging or taking of walls, for the property thereof, to the owner of the soil, and the King hath the purport 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 regulations are agreeable with that Maxim, 'That the Common law hath to measure the Perogative of the King, that they should neither take away nor prejudice the inheritance of any. And these same policies being Malum in Se, and against the Common law, are consequently against the Perogative of the King, for the Perogative of the King is given to him by the Common law, and is part of the laws of the Realm. Which regulations were delivered in, by Popham, Chief Justice unto the King's 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 regulations these consequent do follow. First, a man of his own Authority, or by colour of any Commission, licence or Grant, both take upon them to take any small piece in the buildings or grounds of any other subject, to make thereof gun-powder, in any sort to his pleasure, albeit he be prevented or agreed to forfeit the King to many losses of powder, yet being it is but a purportance, he cannot sell any powder thereof made to any of the King's subjects, or make any private benefit thereof; and if he do, he may be indicted of digging and taking of the Salter-pot at the King's suit, and be grievously fined and imprisoned. For it is a grand trespass with an high hand. Secondly, the part grievous may have his Action of trespass, and recover damages for the trespass, &c. according to the quality of the trespass.

A complaint made against Purveyors in Parliament.

By the Statute of 9 & 12, all statutes made concerning Purveyors be confirmed, and to be put in execution, and that Judges of Peace have power to hear and determine their offences. Be the Fourth part of the Institutes cap. 3. Art. 33, 35, 36. against Cardinal Wolsey.
CAP. XXV.

Of Felony in wandering Soldiers and Mariners.

ALL idle and wandering Soldiers or Mariners, or idle persons wandering as Soldiers or Mariners, shall be reputed felons, and suffer as in case of felony.

1. So as not only be that a Soldier or Mariner indeed, but he that in an idle manner, and takes upon him to be a Soldier or Mariner, though in truth he be none, in great danger of this law, for as the preamble saith, they abuse the name of that honourable profession.

2. Every idle and wandering Soldier or Mariner, which coming from his Captain, from the seas, or from beyond the seas, shall not have a testimonial under the bond of some one Justice of Peace of or near the place where he landed, lettering abode therein the time and place when and where he landed, and the place of his dwelling and birth where he is to pass, and a convenient time therein limited for his passage, is by this Act adjudged a Felon.

3. If he bear such a testimonial, and shall exceed the time therein limited above fourteen days, he is by this Act a felon, unless he shall by the way, to as after his recovery or liberty 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 Soldier or Mariner indeed.

4. If any such idle and wandering Soldier or Mariner, or other idle person wandering as a Soldier or Mariner, shall forge or counterfeit such testimonial, he is by this Act a Felon.

5. If he shall have with him or them any such testimonial forged or counterfeited, 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 Soldier 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 the Peace, Justices of Gaol-delivery, and Justices of Peace, have power by this Act to hear and determine the said felonies.

But if some boned person bailed in the last bondship to ten pounds in goods, or forty shilling in lands, or some boned free-holder, by the said Justices shall be allowed, he 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 Statutes before ssaid, then they shall not proceed any farther against him, unless such person remain depart within the year without the licence of him that do retained him; and then be is to be indicted, tried and judged as a Felon, and not to have the benefit of his clergy.
Of Felony in Soldiers, that depart from their Captains without licence.

This statute is become of little use, as use: for the ancient means of a residence of Soldiers determined that their Captains were entirely allowed of their quiets: so that it was the rule in war, and at great liberties and liberties in their Country, covenanted with the King to be still in his hand for such a time with such a number of Men, and the Soldiers more than their regiment with their Leaders or Masters, and then they were admitted before the King's Commissioners, and entered of Keep, before their hand and that was scrutinized into the Exchequer; and thenceupon they took their wages of the King, as it appeared by many precedents of the Exchequer, and may be gathered by the Acts and body of the Act, and by the Exchequer, where it appears that a Soldier was censured upon that statute directed to the Sergeant at Arms, and the correspondently as conductors of the King, in order to solemnize with this law, that for the sake of the military policy, that the Soldiers, (and the more the part of their own profit,) should be chosen and fed by Knights and Gentlemen of the quality of their own Country, with whom they must fight in war; that the whole their due when they return into their country, in respect that the King is the more cheerfully and accordingly follow his Leaders, and the Peace would be more respected and living among his Ports he given in the form of the statutes in the ancient form of Commissions for asylum of the Military, and that may pass the revenue of the ancient Kings of Castile.

But by this the benefit of Edward was so far taken and continued, the statute of 3 H. 7, and this statute of 3 H. 8, are preserved here. So this word "and" is included to his succession.

Without licence of his Captain. The statute of 3 H. 8, is without licence of the King's Lieutenant there.

That all the Justices in every shire of England, where any such offenders be taken, &c. as its Act of 7 H. 7. extends to all, the Kings Justices, in every shire, viz. Justices of Assize, Gaol-Delivery, and of the Peace. And if the offender be taken in the County where
Departing of Soldiers, 

where the King's Bench sits, he may be indicted, &c. there; but this clause in 3 H. 8. is restrained to Indicts of Peace. This clause in both the said Statutes is cumulative, and for more they proceed 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 privative.

He or they so offending shall not enjoy the benefit of his Clemency. This branch in the Act of 7 H. 7. is general; but in the Act of 3 H. 8. there is an exception; and in the said branch, viz. of men being within orders of holy Church. So as it differed much whether he be indicted upon the one Statute or the other.

For obtaining the benefit of his Clemency. Edgwardi fo. 156. Hovedh. Amal. 35. Pena Herit. 2.

Lamb. inter leges. 2.

For the departure of the King's Bench. Where the said part of the authority. Cap. Court de Chivalry.

Pena Herit. 2.
CAP. XXVII.

Of Felony to marry a second husband or wife, the former husband or wife living.

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. Polygamy is pluralium vivorum uxorumque conjugation.

The difference between Polygamy or Trigamy, &c. and Polygamy is, Quia Egregius est Trigamus, &c. et qui diversis conspondit, &c successivae, uns esse tres, &c. uxores habuit: Polygamus, qui diversae vel plurum habuit uxores.

[If any person.] This Law is general, and extends to all persons of what estate or degree soever.

If the man be above the age of fourteen, which is his age of content, and the woman above the age of twelve, which is her age of content, though they be within the age of one and twenty, they are within the danger of this law; which appeared by this, that this Law extends not to a former marriage made within the age of content, as persons shall appear.

[Being married, &c.] This extends to a marriage de facto, or by reason of a precontract, or of connubium, or of affinity, or the like: for it is a marriage in judgement of law until it be abjured, 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 makes the offender a felon.

And the party or parties so offending shall receive such and the like proceeding, trial 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.


Memorandum, 2. The Statutes of 7 H. 7. and 8. concerning departure of soldiers, &c.

Out of the generality of this law there be Five exceptions. First, it extends 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 abscond him or herself the one from the other by the space of seven years in any parts within his Majesties Dominions, the case of them not knowing the order to be living within that time. Here notice is material, in respect the Commorance is within the Realm.

Thirdly,
Cap. 27. Polygamy.

Civillly, no; to any person or persons that at the time of such marriage be disallowed by any sentence had in the Ecclesiastical Court.

There be two kinds of diobroge; the one that disallowed the marriage, a vinculo matrimonii, as for precontract, consanguinity, &c. and the other a mensa & thoro, as for adultery, because that diobroge by reason of adultery cannot dissolve the marriage a vinculo matrimonii, for that the offence is after the just and lawful marriage. This branch in respect of the generality of the things both publickly the offender from being a sinner as well in the case of the diobroge a mensa & thoro, as where it is a vinculo matrimonii, and yet in the case of the diobroge a mensa & thoro, the bond marriage is void, living the former wife or husband. And if there be a diobroge a vinculo matrimonii, and the adverse party appeal, which is a continuance of the former marriage, and the former husband, yet after such a diobroge the party marrying is no sinner within this statute, in respect of the generality of this branch, although the marriage be not lawful.

Fourthly, no; 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, no; to any person or persons, for or by reason of any former marriage made within age of consent. Whereby it appeared that the makers of the Acts 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 to above the age of consent diobroge to the espousals, as well as the party that is under the age of consent; for the advantage of diobroge must be reciprocal. And so it was reflected by the Lords and Commons, 1 Trin. 42 Eliz. in the Kings Bench, in a writ of error between Habington and Werner. So as if either party be within age of consent, it is no former marriage within this Act.

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 tried by his Peers, albeit there be no prohibition special for it; for of common right, (that he may try 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 tried by his Peers.

And 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 or offending should be burnt alive.


Trin. 43 Eliz. coeas.
reg. Inter Habing- ton & Werner.

Marriage in some for felony by the Common Law.
CAP. XXVIII.

Of Felony for any that having a Plague-foregoth abroad, &c.

If any person infected with the Plague, commanded (by such person) to keep house, shall contrary to such commandment wilfully and contumaciously go abroad, and shall continue in company, having any infectious sore upon him uncurd, such person shall be adjudged a felon.

This is felony, since no other person by such means be infected; for this purpose was made to prevent the most deadly and fearful infection of the plague. The law was general, and extended to all states and degrees whatsoever, and hath none which upon the Law of God and the reason of the Law of the Kingdom, that the body sinful shall be removed from the table. The party offending might have had the benefit of this privilege.

Here is a case Proviso. That no attainer of felony, by virtue of this Act, shall extend to any hereditary or corruption of blood, or forfeiture of goods, chattels, lands, tenements of hereditaments.

In this Proviso these things are to be observed. First, that by the abiding of the corruption without the bars power is impliedly taken: for whereas the body, soul, and estate, the wife, shall be engrossed against the heir. Secondly, that there must be no prejudice of goods or chattels which is rare, and the like, the party not being thereon; and by consequent the offender may make his will and testament, and all he do that; the ordinary ought to grant administration of the goods and chattels, as he ought to do in other cases.

Where words (any attainer of) must be omitted, and the same be, is any corruption of blood, for as it is said, that no attainer of felony shall extend to any attainer, &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 Judges of Peace.
Of Felony in Cases by Duces of Imprisonment, &c. by Statute, and by the Common Law.

If it happen that the keeper of the prison, or under-keeper, by too large a usage of imprisonment, and by pain, make any prisoner ill, and he hath in his ward a justice and a felony, he shall have judgment of life and member. If the keeper of the prison, after he hath imprisoned a prisoner, shall not hear from the prisoner, he shall have judgment of life and member. If the justice or the felony, or the keeper of the prison, shall not hear from the prisoner, he shall have judgment of life and member. If the justice or the felony, or the keeper of the prison, shall not hear from the prisoner, he shall have judgment of life and member. If the justice or the felony, or the keeper of the prison, shall not hear from the prisoner, he shall have judgment of life and member. If the justice or the felony, or the keeper of the prison, shall not hear from the prisoner, he shall have judgment of life and member. If the justice or the felony, or the keeper of the prison, shall not hear from the prisoner, he shall have judgment of life and member. If the justice or the felony, or the keeper of the prison, shall not hear from the prisoner, he shall have judgment of life and member. If the justice or the felony, or the keeper of the prison, shall not hear from the prisoner, he shall have judgment of life and member.
Transportation of Silver.  

CAP. XXX.

Of Felony by bringing in payment, or receipt of certain money.

It is felony to make, coin, buy, or bring in and put in payment, &c. any Guile halfpence, Sack or Dockyn.

The reason of this Law was, that there money were hated, and not of the Alloy of Sterling, which was (amongst others) the cause of the making of the general Law of 9 H. 5. cap. 6. Stat. 2.

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 visit at Agincourt, and league with France, whose style then was, Rex Anglicus, Reginae & heres Franciae. 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 alloy of Sterling; but the Blanks, which were much more common, being each of them valued at eight pence, were not of the alloy 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.

De vendue fuit, quæ null Argent serra transport hors del Realm.

This was the ancient Law of England long before the Conquest.

As the Parliament held on 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 attending 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 neither printed nor translated into English, and that there be other things otherwise enacted thereby, whereby to be known, we will transcribe the same as verbo in verbo in propriis Idioma.
Le Parlement tenus a Westminster. La Quinzeme de Parch.
du raignment Seignior Le Roy Edward Tiens apres
le Conquiert. Dis & septime.

Tem accorde est de faire une Monnoie des bons Esstelings en Angle
terre du Puis & del Alay del sainct Esstelings, que avera fon,
cours en Anglengterre entre les Grandz & la Commane, de la terre &
la quelle ne serra portes hors du royalm de Anglengterre en nulle manere, ne pur
queuncunque cause que ce soit. Et en ca se que les Fleming voivent faire
bome monnoie dargent, grosses ou autres, accordant en aley ou bones esstelings,
que tiel monnoie est cours en Anglengterre entre Merchand & Mer-
chand autres qu la voirdont receivire de bons bone gree, jest que nul
argent soet portes hors de Roialm.

Item est accordes & affentus, que bones, gents & libais soient af-
signes es Ports de merue, & ailleurs, ou mistre serra, de faire la serche
que nul argent soit portes hors de Roialm en monnoie a autrement, for-
pris que les Grandz quant ils rouent per delsa quil pensent aver roeseds
dargent pur servir leur hostels; Et que qui soit ey hardy de portes
fausse ou malvroy monoi en Roialm, sur punie de roesed et de membre,
& a faire echanges a ceux qui afferont la mier d'or pur
leurs bones Esstelings a la value.

Item affentus est accordes que les dits Serchers, per cause qils
ferront leur offices plus diliagament & plus loialment, c iz eient la tierce
partie de toto la fauxe monnoie qils parront trouver portee deins le Roialm
a leur profit de meem: Et en meem la maniere eient la tierce partie de
la bone monoi quels ils trouveront en la mier pasant hors de la terre. Et
en ca se qils soient trovez negligents ou rebalcz a teues serches faire c que
lour terres & tenements biens & chateux soient xefes en la main le Roy,
& leur corps pris, & detenus tante ilz eient fait aux Roy pur leur
disbesance. Et en ca se qils soient d affentants de porter tiels fauxe mo-
nio, & de s'assurer Bachamentment largent ou monnoie autrement, (for
Pris ques lerGrandz quant ils rouent per delsa quil pensent aver roeseds dar-
gent pur servir leur hostels come defaus est dit) estre mesmes hors du
Roialm, eient judgement de reo & de membre.

Item, It is accorrecy to make money of good Sterling in England of
the Weight and Alay of the ancient Sterling, which shall be
current in England between the Great men and Commons of the Land,
and which shall not be carried out of the Realm of England in any
manner, nor for any cause whatsoever. And in case that the Fle-
mings will make good money of silver, gros or other, according in

alay
allay of good sterling, that such money shall be current in England between Merchant and Merchant, and others who of their own accord will receive the said, so that no silver be carried out of the Realm.

Item, It is accorded and attented, 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 as bring fals 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 accorded and attented, 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 same passing out of the Realm. And in case they shall be found negligent or disobedient in making such search, that their lands and tenements, goods and chattels, shall be seized into the King's hands, and their bodies taken and detained until they have made due to the King for their disobedience. And in case they shall be accessory 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 judgment of life and member.

The offenders in case of felony made by this Act shall have the benefits of their clergy.
CAP. XXXII.

Of Felony for carrying of Wooll, Woolefs, Leather or Lead out of the Realm.

No Merchant, English, Welsh, or Irish, shall carry any manner of Wooll, Leather, Woolefs, 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.

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 forecast or buy the same, or in order manner to give eirene upon them, before that they come to the Staple, or to the Port where they shall be discharged, nor enter into the thips for such cause, till the merchandizes be set to land to be sold, upon pain of loss of life and member.

No Merchant privy, stranger or other, shall carry out of our Realm of England, Wooll, Leather, or Woolefs, to Barwick upon Tweke, nor elsewhere, nor into Scotland, upon the like pain; nor that any Merchant nor any other sell his Wooll, Woolefs, or Leather, to any of Scotland, nor to any other to carry into Scotland, upon the like pain.

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 than to the Staples in England, it is felony.

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 Staple, &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 incure the pain of life and member.

Item, ou auter soitz, fait orden en lestatutes de Lastape que nul En- glos passera la mere oue leynes, qui, realz, lanuts, ne per auter, sur peine de forfeiture de vie & member, terres & tenements, biens & chateux: Est accord que la forfeiture de vie & member soit oufse de tout en lestatute de Lastaple.
Transportation of Wooll.  Cap. 32.

Lest Staple, & que nul home soit impecch per tiel forfeiture de vie & membre, cibien in temps passe come arvenir, la forfeiture des terres & tenements, biens & chateau est eftant en fa force. The same in English.

Allo where heretofore it was ordained in, the statues of the Staple, that no Englishman should pass the Sea with Woolls, Leather, Woolens, 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 may be imprisoned by such forfeiture of life and member, as well in first part as to come, the forfeiture of the lands and tenements, goods and chattels, being in his force.

In the original letter of the body of this Law the forfeiture of life and member is ousted of found in the Statute: therefore it is bolden that the felony is taken away throughout the statute, but the forfeiture of lands and goods remains by the original letter of this Act.

By the Statute of 18 H. 6. No man shall carry Wooll, or Woolens, to or from the Realm to other places, then to the Staple at Calais, without the Kings license, upon pain of felony, &c. And that as well Commitments assigned, as the Justices in every County where such Woolls and Woolens shall be so carried out have power and authority to enquire of the premises, and them to hear, and determine, &c.

But this Act extended not to Woolls which shall pass the weight of Marrowke, and this is a perpetual law, and cannot be expired, as it is supposd in the last composition of the Statutes at large, but it extended only to Woolls and Woolens. The offender herein may have his Clergy.

And for the better understanding of ancient Statutes and Records concerning Woolls, 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 four stone, and every stone fourteen pound, where before it was a twenty eight stone.

A pocket of Wooll, unde Pochetrum, that is a little poke or fack containing half a sack of Wooll. Sarples, unde Sarples, is also half a fack, and is derived from the French word Sarpillier, which signifies a Wrapper, within which a wrapper half a fack is contained.

A weight of Wooll, unde Waga, is half a fack.

A load of a stone of Wooll, unde Toddum lane, contained two stone, and is derived from the French word Toile, which is a Wrapper, within which by usage two stone of Wooll is folded: some feed it from the Flemmish word Doddern, which signifies yellow, to weave, because it is woven into cloth. There is a stone of Wooll, so called, because the weight, being a stone, contains fourteen pound.

CAP.
CAP. XXXIII.

Against Transportation of Iron, Brass, Copper, Latten, Bell-metall, Pan-metall, Gun-metall, or Shroofoe-metall, (Tinne and Lead only excepted.)

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 the execution.

And we have observed, that God hath blessed this Realm with things for the defence of the same, and maintenance of trade and traffic, that no other part of the Christian world hath the like, viz. Iron to make Gunnes, as more serviceable and desirable than any other. Secondly, Timber for the making and repairing of our Navy, and especially for the anes of the ships, better then any other. Thirdly, our Fuller's earth is better for the fulling of our cloth then any other. Fourthly, our wool makes better cloth, and more lasting and defensible against wind and weather, then the wool in any Nation out of the Kings Dominions, and many other special gifts of God.

But here we may say, and pray that none of these may be transported, for many inconveniences that will follow thereupon.

CAP. XXXIV.

Of Felony for stealing a Falcon.

Every person that findeth any Falcon, Tacelet, Lanner or Laneret or any other Falcon that is lost of his Lords, that for the same 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.

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 hard whereof, and if not, he shall the longer abide in Prison. This Act of 37 E. 3. maketh the offence Felony.

The new printed book of the Statutes at large, of these words, (of any other Falcon) both, or any other Hawk.

I have seen some manuscripts, in these words, in the original tongue, where in the Statute was published: Que quocunque perdon que trover Facon, Tacelet, Lamer, ou Lanet, Ador ou aulator Facon. And both do differ from the truth of this Law. For the first extendeth this Act to any Hawk whatsoever; and the manuscript to Ador ou Auctor, a Goathawk: 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 s.

See hereafter, cap. Lucency, verb. Personal goods, &c.
Stealing of Hawks. Cap. 34.

Hart-winged Hawk, as the Goshawk, the Tercel of the Goshawk, the Sparhawk, &c. And in the body of the Act this word [Falcon] is ther used, and not this word [Hawk] as hereafter appeareth. We would have been 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 agreeeth with the first impression thereof, and with all succeeding impressions taking the last.

Every person. This is a general law, and extendeth to all persons of what degree or forrocker.

That findeth. Note, by the Common Law the felonious taking of any Hawk, long-winged or short-winged, from the Park, or from the possession of any man, with a mind to steal her, is robbery; but the finding of a Falcon, though be 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 appeared that only Falcons are within this Law, as besides those that are here named, the Goshawk, Goshawke, or Ardearius, and the Tercel, which is called a Turtin, and the Lanner is called Falcunculus. But the Turtin, which is called Turtin, and the Pappy, 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, as hath been said, within this Act.

Tercel. This is the Tercel of the Falcon, called a Tercel gentill, the male of the Falcon, called Tircelus; quatercern parte minor in femella, because the Tercel is a third part less than the female.

Lanner and Lanneret. These, as hath been 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.

Where these Hawks shall be so fast have no Terrers, per quod the finder carry them to the Sheriff, for Terrers are not required by this Act. The only thing that the finder is to do is to take himself from the word in the original, and maintain 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 Seignior, which signifies as well a Proprietary as a Lord.

To prove reasonably. This is not intended according to the general tenor of this word [proof] that is, by a jury of twelve men, but [reasonably] that is, by Terrers, 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, nor bringing the same to the Sheriff according to this Statute, is adjudged a stealing by this Act. And yet if a man find goods, and conceal or deny them, it is no felony.

As a thief that stealith a horse. But yet by the Common Law one hath not as god and absolute a property in Hatoth, being once nature, 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 Hatoth reclaimed, being found
Congregations, &c. by Masons.

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, then that it be adjudged felonious.

The cause whereof this offence was made Felony, is, for that the good course and order of the statutes of Labourers were thereby violated and broken. Now all the statutes concerning Labourers before this Act, and whereby this Act does refer, are repealed by the nature 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 cestante ratione legis cestat ipsa lex. And the Indemnity 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 Justice of Peace taken up by Walter Lambard.

Who shall be a count in law a Gentleman, See the second part of the Institutes, the law of additions, E. 5. c. 7. See before c. 11.
3. Art. cap. 4. Verb. And that if any Gent.

CAP. XXXV.

Congregations, &c. by Masons in their general Chapters, &c.
Of Felony by bringing in of Bulls of Excommunication, &c.

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, assault, 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 lesser estate than a Prelate, &c. make such execution, he shall be taken, arrested and put in prison, and have imprisonment, and make fine and ransom at the discretion of the Kings Council.

By the Common Law, when any person, either Ecclesiastical or Temporal, should by pretense of Foreign power impugne or attempt to frustrate any of the Laws of the Realm, there is a rule called Ad jura regia. If it were by an Ecclesiastical person benefited within this Realm, then the writ is

Rex, &c. Salutem. Tumquam, nec immoritur, nec movetur, dum illos qui sub nostro dignum dominio, & ibidem beneficiis & redditus honorantur, quo pretextu in defensione & tuitione jurium Regae Corone nostrae ipsos nos obligare condescenderet, eadem jura creditis contra nos servicius conspiciscimus at agentes pro viribus impugnare, &c.

The general writ is, Rex, &c. Ad jura Corone nostrae integra & illius pro viribus conferenda, &c. amplius curiam & operam adhibere nos convenit, quod ad hoc ex debito afferimus vinculo juramenti, & alios conspiciscimus ad ipsum jurium conservacionem abhac: & particularly against Provisions. So as Provisions, &c. were, as by these writs it appeared, 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 accommodated 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 laid.

Et ceteris toto orbis orbe Britannios.

If any man.] Though these words be general, yet they extend not to Ecclesiastical persons, because there is special prohibition for them in the Act.

Any Summons, Sentence, or Excommunication.]

Hereby are prohibited the Popes Bulls of any sentence or excommunication, &c. and process of Summons.
Receiving a Jesuite, &c.

It appeared by our Books, that the bringing of any Ball of Concommunication 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 held in the time of E. 1. and E. 3. 41 and 42. and afterwards.

[O reparation of the said statute of Provisors.]

[The pain and member.]

[And if any Prelate make execution, &c.]

[The law and the last preceding branch extend to Ecclesiastical persons.]

[Deeplight in the law.

[And that this offence is made High Treason, &c.]

[And the case of the making, &c.]

[Of Felony in receiving a Jesuite, Seminary Priest, &c.]

Every person which shall, willingly 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) out of the Realm of the Most Holy Roman Empire, &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 case of the taking away of the estate of a Jesuite, Seminary Priest, or other Religious, pontifical, &c. out of the Realm, &c. and the hands, &c. 39, in the case De jure Regni Anglicani.
CAP. XXXVIII.

Offenly in Reculants concerning Abjuration.

If any Reculant (other than a POPISH Reculant 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 hence depart one 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; then every such person as offending shall be adjudged a Felon.

If any offender against this Act before he be by law required to make abjuration, repair to some Parish Church on some Sunday or Festival day, and there 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 a weight of forty shillings, and the heir to inherit. The offender shall not have the benefit of this Clergy.

CAP. XXXIX.

Offenly in Egyptians, &c.

If any outlying people calling themselves, or being called Egyptians, shall remain in this Realm or in Wales, one month, or 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 dialogued with or heret-like to them, shall remain here or in Wales by the space of one month, either at one or severall times, it is felony.

The offender shall not have the benefit of this Clergy.
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 license or warrant, it is felony: the felony to be tried where the offenderes apprehended.

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 tried in the County where the offender shall be taken.

The offender against this branch shall not have the benefit of his Clergy.

Mendicus non est inter vos. There shall be no beggar among you.

Ordinance suit that the poors sufsten suflicium per les Parions, Rectors, & les Parochians, ce que nul ne mouut, per deuit de suffisance.

As an ancient Ordinance in 50 E. 3. concerning Wibrands and sturdy Beggars, that they be driven to their occupations or forberies, 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, etc, conscript or perpetrate any of the said offenses in form in the said Act mentioned, that then every such second offence shall be adjudged felony. But no attainer of this felony shall extend to take away better, nor to corruption of blood, or diversion of the heir.

As 43 Eliz. Markham was adjudged of felony upon this branch in the King's Bench for a second forgery of many of the Sponsors and lands late of Sir Thomas Gresham Knight, and was executed therefor.

This felony is to be heard and determined before Justices of Oier and Terminer, and Justices of Alise in their Circuit. And albeit that Justices of Peace have power to hear and determine felonies, trespas, or, 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 King's Bench are Justices of Oier and Terminer within this Statute.

The offender shall not have the benefit of his Clergy.

As hereafter in the exposition of this Statute for the first offence, where incidently there shall be more fait concerning the second offence.
C A P. XLII.

Of Felony for conveying of any Sheep alive out of the Realm in the second degree.

No manner of person shall bring, deliver, send, receive, or take, or procure to be brought, delivered, sent, or received into any ship's 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, of any of the Queen's Dominions, upon pain that every such person, their aids, abettors, procurers and comforters, shall for his and their first offence forfeit all his goods, and suffer imprisonment one whole year without bail or mainprise; and at the year's end, in some market town, in the fulness of the market have his left hand cut off, &c. And that every person countenancing against this statute shall be adjudged a Felon, &c.

But this Act shall not extend to any extraction of blood, or loss of Power.

This felony is to be heard and determined before Justices of Oyer and Terminer, Justices of Gaol-Deliver, 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. 33. & 34. Stan. 3. p. 6.

C A P. XLIII.

Of Felony in servants that imbezzle their Masters goods after their decease.

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 Lord's or Master's, and the same distrise but amongst them, that upon full information to the Chancellor of England for the time being by the Executors or two of them of such not, 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 to many and such writs to be directed to such Sheriffs as to them shall seem necessary, to make open proclamation in such form 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 be or they making default shall be attainted of felony.

The offenders shall have the benefit of their clergy.
CAP. XLIV.

Of Felony in Servants that imbesfill 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 Mistress 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 Mistress, without the consent and commandment of his Master or Mistress, imbesfill 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.

Concerning the value, (to speak it again for All) Tantum bona vallent, quoniam vendi possint.

This Act extended 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 nature of 27 H. 3. the offender was suited 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.

[Shall be delivered by his or their Master or Mistresses.] If the master neither an obligation to his tenant to receive the money there by due, and the tenant receive the money of the obliger, and goeth away with the same with intent to steal the same, this is no offence within this Act, because he had not the money of the delivery of his master: and if he had gone with the obligation with intent, at first, he had been also out of this Act, because it was a chief in Action. So if the master deliver to his servant wares or merchandises to sell, and selleth the same, and goeth away with the money, as before, this is no offence within this Act, by the cause aforesaid. Vide Stanford 37. b.
**CAP. XLV.**

Of Felony to cut down or break up the Poldike in Marshland in Norff.

Every perverse and malicious cutting down, and breaking up of any part of the new Dike called the Poldike 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 Justices of Peace have power to esquire of, and to hear and determine this felony. The offender may have the benefit of his Clergy.

Some say that this is a pestis Act: but it is publicum in privato, for the danger is public, though the place be private; and great concitae multitudines of people, and the Sea is such an immense creature, so who can withstand it without length of time, infinite damage, and loss, and stream charge and ton?

See the statute of 43 El. cap. 13, whereby in the Counties of Cumberland, Northumberland, Westmorland, and the Isle of Wight, carrying away or detaining any person against his will, or imprisoning him or them to ransom them, or to claim them, upon deadly feud or otherwise, or shall receive, is made felony without the 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 to indicted, &c.

This by some opinion in our books was holden for treason, or felony, and therefore divers reasons were yielded.

First, that such discovery was against his oath: but that could not be treason, for perjury was neither treason nor felony.

Secondly, others did hold, that by this discovery the party's indicted of treason or felony might flee or escape: but that can be no reason; for this discovery without more, can neither, make him principal nor accessory.

Thirdly, others that endeavour to confute and avoid 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 pro fato, and that by this open discovery, he his intent appeared, that they might flee or escape. And now it is agreed on all parts, that at the
Of Larceny or Theft by the Common Law.

Having thus far proceeded, we are now come to Larceny, which consists from Larcinum; and from Latrocinie, by contraction, or rather abridgment of Larcinum.

The Latin word describes Larceny, and then explains it. Larceny is defined in other moase corporelles treacherously against the volant de celuy a qui il est de Larceny.

It male aguana de la poignée, ou du sac. Then both he explains and shows the realisation of the principal points thereon.

"Præcul est dit, car bâil ont l'usage de larum, se livery en le case;"

"Mobile corporel est dit, par ce qui en bien nient mobiles, ou nient corporels, ficome de le, rente, & des Avowans de Elégies, ne se fait null larceny."

"Treacherously est dit, par ce qui est de l'entendre les biens être liens, & qui ils sont bien prendre, en tel cas ne se fait mons. 

"Confusion de l'etrepr le ou l'etreprend, que il plein se figure que les biens qu'il l'entend, mes a coe donc apparent evidence & evidence."

"Exposition, quod fortunam et de secondum leges, contraria rei aliena fraudulentamente, cum animo furandi, invito illo domino cuius res illa fuitur. And then he explains in this: "Com animo dicó, quia sine animo furandi non committitur."

"Breach of the wrong larcinum, but furari, and is both Glanville. & Lib. 14. Chap. 5."

"And Fleta hath it thus. Et autem fortunam contrariam rei aliena fraudulentamente, cum animo furandi; invito Domino cuius res futuri, following Breton tandem verbis. These descriptions are generally of theft, comprehending robbers, burglars; when anything is taken, and all sorts fraudulentamente. 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, in the felonious and fraudulent taking and carrying away by any man or woman of the man personal goods of another, not from the person nor by night in the house of the owner.

Here be set forth the principal parts of this description.

Felonious taking. First, it must be felonious. And, cum animo furandi, as hath before. At last, not fact reum, non mens rea. And this in general shall consist in concealed his hands on possession, or, if he hath the possession of it clandestinely, though he said, cum animo furandi, afterward, and carried it away. It is no Larceny; but this stealthy some distinction, as after shall appear.

Secondly, it must be an actual taking: for an impositions, quod felonie abdusat eum, it is not good, because it is without the taking, and not taking, and therewith agreed Glanville. Lib. 15. cap. 12. Ex. 5. 3. 13.

But hereafter the Law both distinguishes. For if a Sale or Part of merchandise he sold 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 delinquent

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here had taken his effect, and the privilege of the bailment is determined. And to it is of a Fund of wine, as the like, ruining the tenant.

Also there is mischief between a possessor and a charge. For when a reliever goods to a man, he had the possession of the goods, and may have an action of trespass, or an Appeal, if they be taken away from out of his possession. But my Butler of Cook, that in my house have charge of my Wetel or Plate, have no possession of them, but shall have an action of trespass or an Appeal, as the Walsall hall; and therefore if they deal the plate or bottle, it is Larceny. And so it is of a shepherd, for the things he brings, he is in possession from, Coci, Patrons, &c.

If a Caberneet set a piece of plate before a man to brink in it, and carry it away; this is Larceny. And if another man takes him by a trick and carries it away, to a special purpose.

Thirdly, not by Caberneet finding. If any lose his goods, and another find them, though he covert them, anno primo, as his own use, yet it is no larceny, for the first taking is lawful. So if one find treasure trove, as houses, as these, and covert them at supper, it is no robbery, but as finding the finder, and also for that Domini comes non apparet.

Feloniou s. Implied, that though the taking be actual, yet much be done by such persons as may commit felony. A man may be by non-compos mentem, or by intent that is under the age, of discretion, cannot commit Larceny, as in another place he hath said.

A man covert committed not Larceny, if it be done by the consent of her husband; but a man covert may commit Larceny, if the wife, without the consent of her husband, and there appears, that a man may be necessary to the wife's life, but the wife cannot be necessary to her husband, though the husband may be committed, and article says, it is not so by the law. For though she is not bound to discover the absence of her husband.

Felonie came to the house of Richard Day, and Margery his wife, the lady knew them to be felons, but the husband did not, and both of them received them, and entertained them, but the lady constrained not to the felony. And it was done in that, that this may not the fact appear. Also in vita manitul, de aliquo receptamento, in pretiosa viri, non contradicere non potus, occasiante non debet.

UXOR FUTI DESPOSIATA NON REMANENT EX TUTIS VIVI, QUIS VIRUM ACCOLERE NON DEBAT; NEX DETERGENTIS HABET SUIA, NON TELONIAM, SUIA SUI POSTELIAT NON HABET, SED YRA.

La feme inbucede al solan por diue e tont, d Хоопале del mausol o no bas, por ce ne lo pet elo e my enculer, ne devoit, tan comme elo e de lay covert, sed.

UXOR AUTEM SURIE NON TENESTUR PRO DELICTO VIVI, PONEM ANIMOS DEBET REGIS AUTORITATAE: UXOR AUTEM VIVUM ACCOLERE NON DEBET, NON FELONICIA HABET CONFIDENTIA, ETC.

Feloniou s and fraudulent taking. If a man being the benefactor of him, and having a mind to deal him, came to the house, and pretending the house to be his, obtained the house to be delivered him by a Replevin, yet this is a Larceny and fraudulent taking, as it was resisted by the Judges, as Justinian, of Justice reported in the Kings Bench, Pach. 16, Bis for the Replevin was obtained in fraudam legis.

Carrying away. For the judgment, faith, taking copia & apportavit. The removing of the things taken, though he carry not them quite away, satisfies this being apportavit. As if a guest take the cohetes or things of his host, and rising before day, take the cohetes or ficta out of one of the chamber where he lay, into the hall, to the intent to deal them, and went to the table to fetch his bread, and the Witter apprehended him, this was aduantage Larceny; and the cohetes or ficta were particellary, being removed from the Chamber to the
Cap. 47. Larceny or Theft...

the Hall; albeit they were still in the house of the owner, 109
so if a man hath been in his close, and one taketh him, and as he is carry-
ing him away, he is apprehended before he getteth out of the close, yet this is
sufficient to make it Larceny.

1. Of those personal goods. It is not [mole] yet, though they be
personal goods, yet if they be to any thing of the realty, no Larceny can be
committed of them. For any kind of corn or grain growing upon the ground is
a personal chattel, and the owner shall have them, though they be not linseed, but yet the larceny can be committed of them, because they are
 annexed to the land, so it is of grass standing on the ground; or of Apples, or
any such 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 com-
mitted of them.

As is that of a box or chest kept in 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, for it be of the same nature the Charters be of. As mention-
just given, trahit ad Rebus.

Larceny can be committed by taking and carrying away of a board or of a
hullins, because they are in the realty.

It is proved by all our ancient Masons obi supra, and by the nature of W. 1
that parents' grand Larceny and Petit Larceny, distinguished by the value:
for if the personal goods hold amount to above the value of twelve pence, then
it is grand larceny; but 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 punish-
ment, as whipping, etc.

And this was the ancient law before the Conquest, for the Mirror saith, Et
lonts syls que telle no est regard forçable al cures des puechers que se sont limit le
quittance de l'obéissance de larceny en cot manner, celslalors que nul ad judgment
de la mort, lic non larceny, etc. ne passent a 24 deniers de terrors.

It may be that a man's property in many things that are tame by nature, and
yet in respect of the sortes of that sort, a man shall not commit any larceny,
up, great or small, though he deal them, as of cattle, small-bred, of kind of other
kinds of dogs or of cats, or of some things that be wild by nature, and made
 tame, as horses, asses, mules, mambes, seriates, ferrets, and the like, and yet no
manner of stolen can be committed on them, in respect of their wild and
 savage nature, and therefore no pardon shall die for them; and likewise it is of
their whims, of Ca
er, of young, etc. as it is a rule in law, that is no felon can
be committed of any thing that is in natura, and of age being reclaimed, or
makes tame, that no felony be of the young in the nest, himself or den.

As has a man's have proper 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
of nature, being reclaimed, felony may be committed in respect of their no-
gle and generous nature and courage, serving obvite solanum of Princes, and
of noble and generous persons, to make them. It is not a felon, but be shall be impris-
ioned by the space of a year and a day, and fined at the Kings will, the one half
of the King, and the other to the owner of the ground. But larceny may be com-
mitted of the eggs of such as be domestic nature, as of Hen, Luriches, Perhens
and
and the like. And larceny may be committed of fishes in a trunck or pond, because they are not at their natural liberty, but as it were beasts in a pound.

b But if such as he tells, that for the food of man, he made tame, os Deer, wild Boze, Coneyes, Cranes, Pheasant, Partridge, or the like, larceny may be committed of them, so as he that steals them knoweth they became. But the Deer, or being wild, yet when he is killed larceny may be committed of the flesh, and so of Pheasant, Partridge, or the like: And so must the liberty between such beasts as be tame natura, and being made tame for pleasure only, and such as are made tame and borne for food, so that liberty being not observed, hard made many misunderstand.

A man may be indicted, Qui, bona Capella in custodia, &c, and for taking of bereation, bona domus Ecclesiae.

At the Assizes at Leicester, in Lent, Anno 10 Jac. the case was this: One William Hain had in the night digged up the graves of three children, men and one woman, and took the winding- sheet from the bodies, and buried the bodies again: and I advising hereupon for the earnestness of the case, caused the Judges at Sergeant's Inn in Fleetstreet, where we all recalled that, the property of the sheets was in the Executors, Administrators, or other master of them, for the dead body is not capable of any property, and the property of the sheets must be in some body: and according to this resolution, he was indicted of stealing at the next Assizes; but the Jury found it was 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 steal, or lend his goods to another, although he hath the general property of them, yet may be committed larceny of them, by the felonious taking and carrying away these, and in judgement of law he is said he is taken to take the goods of another: for the latter part, he is proprietor, and the latter hard is possession, 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, Duce anime in carne una.

Vide Stanf. II. Coron. fo. 24, 25.

To speak it here once for all, if any person be indicted of treason, or of larceny, or larceny, and plead not guilty, and thereupon a Jury is returned, and found, their verdict must be heard, and they cannot be discharged, neither can the Juries in those cases give a guilty verdict, but ought to give their verdict openly in Court.

Maccraf, feftongers, such as hogs and wild boar, though the same to be stolen. Vid. Lamb. inter leges Edw. Regis fo. 140. b. De Machecariis, derived of macc an old word for hog, and grief, inzang 02 injury.
CAP. XLVIII.

De Anno, Die et Rosta.

Of the Year, Day and Waft.

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 appeared, that at this day the King shall have the profits for a year and a day in lieu and satisfaction of the Waft, which the Common law gave to the King in despite and deteration of the offence, as there you may read at large: and there it appeared how necessary it is, ancient Authors 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 held for none. And therefore if Prerogativa Regis anno 17 E. 2. cap. ultima, be contrary therunto, it is repealed as to the Waft."


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.

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 bath, or pretends to have power, authority or jurisdiction, shall be enquired, tried, heard, determined, and judged in such 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, so 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 coming, &c.

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 attained of any treason, felony, robbery, or other the said offences done upon the land.

The offenders not to be admitted to have the benefit of Clergy.
Of Piracy.

Cap. 49.

The mischief before this Statute was, (as it appeared by the Preamble) that Cruiza, Pirates, Blies, Robbers, Murderers and Confederates upon the sea many times escaped unpunished; because the Common Law of this Realm extended not to those offences, but they were judged and determined before the Admiral, &c. after the course of the Civil laws, the nature whereof is, that before any judgment 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 witnesses indifferent, such as saw their offences committed, or which in those cases cannot be gotten but by chance, or very rarely. For this cause the Commons petitioned in a Parliament in 13 H. 6. that the Judges of Peace might enquire of all Pirates: but the Kings answer was, that he would be abridged.

This Statute requires a confederate and just interpretation, wherein, by this it concerned the life of man, the latter way is, to follow the resolutions of all the Judges formerly had upon our consideration of all the parts of this Act, and upon divers conferences; whereon in the end, when I was Attorney general, it was resolved by them unanimously as followeth:

Where divers died in the reign of the late Queen Elizabeth committed Piracy and Robbery upon the high seas, or divers 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 seas was no felony whatever of the Common Law, and any knowledge, so that it could not be tried, being out of all Counties and Cities, but was only punishable by the Civil Law; as by the Preamble it appears, the attainer by which Law we sought no knowledge of lands, or corruption of blood. Secondly, that this Statute did not alter the offence, or make the offence felony, but left the offence as it was before this Statute, viz. felony only by the Civil Law, but given a mean of trial by the Common Law, and inflicted such pains of death as if they had been attainted of any felony, &c. done upon the land. But per (as hath been said) the offence is not altered, for in the Indictment upon this Statute, the offence must be alleged upon the sea, so as this Act inflicts 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 extended not to it, by this is a special offence, and ought to be especially mentioned.

Upon this resolution these consequences do follow. 1. That by the attainer upon this Act, though there be knowledge of lands and goods, yet there is no corruption of blood. 2. Since the offence is not made felony by the laws of this Realm, there can be no Accracy of any felony by the laws of the Realm in this case, either before or after the offence, because the Principal is not a felony by our law, neither both the Act speak of any Accracy. 3. If there be an Accracy upon the sea to a Piracy, that Accracy may be punished by the Civil laws before the Lord Admiral, but cannot be punished by this Act, because it extends not to Accracyes, but makes the offence felony. Lastly, the Statute of 35 H. 8. cap. 5. makes not this Statute for treasons done upon the sea for the sake of gain,

* See the fourth part of the Inhabitants, cap. High Treason, &c. cap. 5. Vide supra, cap. High Treason. Verbo Ox per alios, i. 11.

* Concerning treason, see before cap. 2. Verb. Allin, fo. 25. 1 E. 6. cap. 11. 5 E. 6. cap. 11. Act. 4 Rot. Par. § H. 6. no. 4.

Vide familia to E. 3. Cor. 134. § H. 4. 3. § E. 4. 18.

Hill, 3 Jac. Regis, at Seafants Inn in Fleetstreet the resolution of the Judges.

Third points resolved.
Cap. 49.
Of Piracy.

Here, so as this Queer is now cleared by the resolution of the Judges; and question lets the Feature (intended of 2 & 3 El. 6, for there is no such thing in 5 & 6 El. 6, surnamed only, when a murder of felony is committed in one Count-try, and another person is accosted in another Country, as both were slain before, but in this case the offence was committed upon the sea, and not in any Country, and so one of the Statute; and therefore this part of the Statute of the Lord Die was not thought fit to be printed.

Butler and other Pirates in Summer recession robbed divers of her Majesties subjects upon the Coast of Norfolk, upon the high Sea, and bought divers of the gods to taken into the County of Norfolk, and there were apprehended with the gods. The question moved to Wray Chief Justice, and Justice Percy, Justices of Norfolk, was. Whether they might be indicted of Felony in Norfolk, as if one real gods in one Country, and carry them into another Country, he may be indicted in either Country; and it was resolved by them, that they could not not be indicted for Felony in Norfolk, because the original taking was no Felony whereof the Common Law took cognizance, because it was done upon the Sea, or of the reach of the common law, and therefore not like the case where one killed in one Country, and carried the gods into another, for there the original act was Felony whereof the Law took cognizance. But now let us pursue the words of the Statute.

[Where Traitors, Pirates.] This word, Pirate, in Latine Pirata, is derived from the Greek word πιρατης, which again is fetched from περατης, a transcending mare, of robbing upon the sea; and therefore in English a Pirate is called a Robber and a Rover upon the sea.

[Treason, &c.] Here, treason done out of the realm is declared to be treason by the Statute of 25 El. 3, and yet at the making of this Act of 38 H. 8, it wanted the (as by the preamble of this Statute it is rehearsed) in the Common law. And therefore to establish a certainty therein, the Statute of 35 H. 8, was made, as is aforesaid, in the exposition of the Statute of 25 El. 3. But it is thought that the Statute of 25 El. 3, if a subject had committed Piracy upon another (for to is the bond to be intended upon a fact done before 25 El. 3.) this was held to be petit treason, for which he was to be drawn and hanged; because Pirata est bonis humanis genere, and it was contra liceaniam sui debetum: but if an Alien, as one of the Normans who had revolted in the reign of King John, had committed piracy upon a subject, this offence could be no treason, for though he were bonis humanis generis, yet the crime was not contra liceaniam sui debetum, because the offender was no subject. But since the Statute of 25 El. 3, this is no treason in the case of a subject.

[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-later mark and the Low-water mark; for though the land be infra corpus comitatus at the falling, yet when the Sea is full, the Admirall hath jurisdiction super aquam as long as the Sea remains; so as on one place there is division imperium at federal 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 purity 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.

[As shall be named by the Lord Chancellor of England.] A nomination by the Lord Mayor of the great Seal of England was taken to be
Of Clergy.  

CAP. L.

Of Clergy.

What person shall have his Clergy, for what offences, in what places, 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 condict, and a Clerk arraigned, what a Clerk condict which both his Clergy shall forfeit; and what time, and thence that hard his Clergy allowed ought to make any purgation at this day: and that the King may pardon the burning of the hand, as well as in an Appeal as upon an Indictment.

a. If the principal had his Clergy before arraigned, the access?for 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. But for heeadle 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 in Tri. 2 E. 5. coram Rege, Rot. 173. Hertford, at Privilegium Clericale non competit sediis poteqnti cum armis placis & ceteris armis, per leges Angliae.

d. It is prohibited 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 therewith arraigned, and be found guilty, or stand mute, or challenge peremptorily above the number of twenty persons. 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 Judges, or by evidence given before them, or by examination, that such robbery or burglary in the same place where they were committed. If 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 extends not to Appeals by Writ or Bill, nor to the Appeals of the Approvers.

Or by examination.] By these words though the offender confesses the Indictment, or stand mute, or challenge above twenty, yet if by examination
CAP. LI.

OF ABJURATION AND SANCTUARY.

Abjuration by the course of the Common Law may be thus described.

When a man or a woman had committed felony, and the offender for some cause or other was not capable of this sanctuary, he could not take the benefit of it. And therefore it is laid, that he that committed the felony could not take the benefit or sanctuary, could not obtain it. The form of abjuration is the statute of abjuration, Ver. Magna Charta, cap. 1, fo. 167, b. The common law herein was very strict, and had given the king a great power, and continued without change until the Act made in the liberty second year of Edw. I, cap. 14, whereby it was provided, that the party abjured could not be banished out of the realm, but to some other sanctuary within this kingdom: and to this the Act of Edw. III, cap. 14, made by the act of the 1st year of Queen Elizabeth, concerning abjured persons, and repeated by the statute of 1 Jac. cap. 25, where the ancient common law concerning abjuration for felony was revived. But by the act made in the liberty second year of King James it is enacted, that none sanctuary of the sanctuary should be admitted or allowed in any case. By which Act, such abjuration as was in the common law founded (as had been fair) upon the privilege of sanctuary, is wholly taken away, and the statute in the Register, 129, a, De reliquione extract ab Ecclesia is become of no use.

And yet the abjuration by force of the statute of 35 Eliz. cap. 1, before Kyst, &c.

8 Ed. I, cap. 20.
9 Ed. I, cap. 6.
10 Ed. I, cap. 2.
11 Ed. I, cap. 2.
13 Ed. I, cap. 15.
14 Ed. I, cap. 10.
15 Ed. I, cap. 9.
16 Ed. I, cap. 33.
17 Ed. I, cap. 9.
18 Ed. I, cap. 25.
19 Ed. I, cap. 35.
20 Ed. I, cap. 5.
21 Ed. I, cap. 10.
22 Ed. I, cap. 4.
23 Ed. I, cap. 3.
24 Ed. I, cap. 2.
25 Ed. I, cap. 15.
Hue and Cry.

Cap. 52.

The one being an excrescence of the other. For hue in French (unde Hatesio) is to show 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. Hereupon there are two pursuivants, the one for the King, the other for the party by private suit.

Hue and Cry by the Common Law, to the King, is, when any Felony is committed, or any person grieved, and dangerously bountied, 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 cause, 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 protection of the offender; and if he be not found there, to give the next Constable warning, and be the next, until the offender is found: and this was the Law before the Conquest.

Si quis laeroni obviam dedicerit, cunctus quołoż edito clamorem abire permittat, quantumcumque fuerit latronis vita eximiatu extremaeae sedaret denarium, aut pleno perfectoque jure urjundario saeacore se nihil habuisse cognisi confirmat. Sin quis proslamanter exaudierit, neque vero fuerit inequitatus, hue in regem (communis) mi omen criminem spesponem dilectur) ponat dato.

In antiquo MS. Si quis furi obviavit, & sine vociferatione gratis eum dimiserit, eminent fœcundum Weratii ipsius fuisse, vel plena lada fes aliget, quod cum casaliun neciverit: si quis audito clamore superederit, reddat Overamiae regis, aut plene laederit. Bracton, who wrote before any Act of Parliament containing Hue and Cry, faith, Omnes tam mullis, quam aliqui sunt, 15 anotum
Huo and Cry.

Cap. 52.

7. 8. 16. 18. 24. 

See the statute of

Winch. 13 E. 1.

24 Af. 57.


5 E. 7. & 8. 9.

See the Custom

of Norm. c. 24.

2 Bracton b. 2. fo. 28 E. 3. c. 81.

Reg. c. 13. ver. 19.

Bract. 3. fo. 118. b.

Ca. Iun. m. c. 175.

3 E. 3. Cor. 333.

See 8 E. 2. Cor. 355.

Stat. de Wine.

watch.

2 H. 7. fo. 2. 18.


Magna Chart. fol. 118. 2

Forcitors.

i. Si quis Forefritarius, Parcarius, aut Warrenniarius in baliva sua malefactors aliquos inuenit vagantes ad damnum, idem eccles. & qui se Forefritarius aut Warrenniarius illis po11 Clamorex & Hucleum levatam ad pacem regis ad iudandum recte reddere noluerit, imo ad malitiam suam exsequend' & continuand' pacem regis diversis fectori, & vi & armis se defendere, lecti Forefritarius, Parcarius & Warrenniarius illis ahi quiqui ad pacem dominii regis exsiliend' in communitatis Forefritariorum, Parcariorum, aut Warrenniariorum illorum venientes ad tales malefactors fice inventos arreptens' & capiend', aliquem seu aliquos hujaeodem malefactors interfecerunt, non propter hoc occasionemcurr' coram dominio regis, & iudiciarum quibusque extant ait alios balivis dominii regis, ait aliorum quosdamque infra libertatem aut extra, nec propter hoc ammantet vitam aut membru, aut ali num punctum habeat, imo firmam pacem dominii regis inde habeant. Sed bene cavent Forefritarius, Parcarius, Warrenniarius, & alii quiquisque, ne occasionem contentiosis, discordes, contumelioso, aut aliquis malevolent' seu odii praehabito, aliquis per balivis suas transeund multofoe important, quod occasionem malefacti, in balivis suis intrant, cum hoc quem fecerint, nec ipsos vagantes aut maleficientes, nec maleficientes inventent, nec causam maleficii querentes, & sic cos occupant. Quod si fecerint, & de hoc faciat contentios, ex parte morte se interfecerunt, prout aliorum ad pacem dominii regis exclamavint, & prode jure, & secundum consuetudinem regni fuerit faciendo.

3. Wolsthune outlawed; 26 indicted of trewith by felons, that he into Herefordshire, shall be apprehended, & 40 the pursuance of those that do not pursue.

4. Huo and Cry shall be haled upon takers of carriage within the Marge of the Staple of that which pertained to the Stapel.

5. Where a man is robbed, upon hue and cry, or what remedy he shall have against the Hundred, & 40 how and in what manner the hue and cry shall be made in that case, & the statutes, & lib. 7. fo. 6. & 7. the nature of the case. And this robbery must be done in the day time, and not in the night, otherwise the party grieved shall not base his Action. And if there be a diversity between the hue and cry at the Common law, 40 for the King, and a hue and cry by statute to where the party grieved is to have his remedy by private Action. Note also a diversity in the prosecution at the Common law, 40 for the King, and by the statute which the party remedy by a prosecution to the next Constable is.
Of Mayhem.

CAP. LIII.

Of Mayhem.

Of Mayhem you may read at large in the first part of the Institutes, sect. 194, & 592. and in Justice Stanford. And where (as it is there cited) he saith, Castratio vero, quamvis latens sit, judicatur mahemium; hereof we find an example.

b H. Hull indictatus suitis de mayhemio, eo quod abscidit virilia Joannis monachi, &c. quem idem H. reprehendit, &c. cum A. uxore sua. Of the like accidents you may read in Camden.

c Dominus Robertus Nevill (cum numeroam prolem ex uxore suae pietate) ignorant in adulterio dextra, &c. &c. &c. Eo quod H. reprehendit, &c. cum A. uxore sua. Of the like accidents you may read in Camden.

d By the ancient law of England, he that assigned any man, whereby he took any part of his body, the delinquent would lose the life part, as he that took away another man's life, should lose his own.

And it is truly said, that Dacellum et Mahemium inceptum, and Mahemium et Homicidium inchoatum. And therefore in the Appeal of indictment it is said Felonice mayhemio.

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Of Premunire.

First, because it is newed to our laws, that the King, by the grievous and clamorous complaints of the poor poor soules and Commons, do foresee that divers of the people do, and have been driven out of the Realm, to answer of things whereof, the judgments were taken in the King's Court, and also that the judgments given in the King's Court be imposed in another Court, to the undoeing and destruction of the Common law, of the same Realm at all times used. Whereupon, upon good deliberation had with the Great men, and other on his said Council, it is authenticated and accorded by our Lord the King, and the Officers and Commons appointed, that all the people of the King's Realm of what condition the be, which shall have or use, the judgment or thing, whereof judgment is given in the King's Court, or which do lie in any other Court to defend or impeach the judgments given in the Kings Court, shall have day, &c.


The print being examined agreed with the Record.
See the first part of the Institutes Sect. 199.
Of Premunire.

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 Chancellor was one) and all the principal Judges concerning this matter, is too long for reading.

This offence is called a Premunire of the Words of the Act, grounded upon this and other Statutes for punishment thereof. For the words of the Act, see, see, etc. Premunire, etc. And rightly it is so called, for be that is premonious is premunire.

Before the making of this Statute of 27 Edw. 3 there were three great mischief's. First, that the King's subjects might suffer by the law of the Realm the matter of things, whereby the subjects complained to the King's Court. Secondly, of things whereby judgments have been given in the Kings Court. Thirdly, that after judgments given in the King's Courts of the common law, of matters determinable by the common law, were afterwards in other Courts within this Realm, to defeat or impeach those judgments. And these three mischief's had this unsubjectable evils. First, the prejudice and defection of the King and of his Crown. Secondly, the defection of all his subjects. And thirdly, the undermining and destruction of the common law of this Realm; so which appear in the preamble of this Act.

They are called other Crown's plagues because they proceed by the rules of other laws, as by the Canon of Church law, as by other rulers, than the common law, and with warrant. For the true warrant by the laws of England the matter of this Act, did by ancient matters before behope the Judge of the common law of matters pertaining to the common law, and not part of ecclesiastic or temporal in the Court of Equity. So as the curia, is either that place of religion or secular law, as the place of the judge or of the judge of the King. And if the matter be of the common law, he be called an alien, as the place of the judge or of the King. In the case of the subjects and the destruction of the common law at all times used, by which words of this Act it appeareth that all these mischief's were against the ancient common laws and all times used. And that they appear by the ancient writs or the common laws, called Ad juricat. In the writs of the King's Have been cited before, and which are worthy the reading; and also, the ancient writs of Parliament, as the statute of Artic, and 35 Edw. 3. Adjuricat the place where the judgment is given in the second part of the Inhabitants, and by the Statute of 35 Edw. 3. Despondens. And it is uncertain, that in 33 Edw. 3 within two years from the first Act of 26 Edw. 3, that there was called in such manner that a people, and all the people, and the destruction of the common law at all times used, by which words of this Act it appears that all these mischief's were against the ancient common laws at all times used.

By the Statute of 4 H. 4. cap. 22, it is ordained and established, that after judgments given in the Courts of this Realm, the parties and their heirs shall be thereof in peace, until the judgment be reversed by assize, or by error, if there be error, as hath been used by the Laws in the times of the Kings of England.

Also that which hath been said appears by our Books and ancient Records, as hereafter shall appear.

By 5 H. 4. 6. where the Statute of 16 R. 2. cap. 5. stated, In curia Romana vel aliis, Ecclesiastical courts within the Realm are within this Act [alibi].

And 11 H. 7. it was in engines by the whole Court, that a rule in the Ecclesiastical Court within the Realm for a temporal cause, was in case of Pretunire.
Of Premonstrate.

It was resolved, that the same in the Ecclesiastical Court for the
suspension of Armill and Lanham, incurred the danger of a Premonstrate, because
the party grieved might have his remedy by the common law. And in the same
year of 16 H. 7, Hurst's opinion was reported, that one Turvill, as well
for his own as for himself, did have a Premonstrate against a person for suing for
false in the Ecclesiastical Court, alleging the same to be derived from the
same point, and therefore was given against the Premonstrate.

It is declared, that the Admonitory Court is within this word [sejus] if he
bought six of any thing wherein he has done super alius mare, but in corpus-
communis.

The trial was held at Oxford, and Thomas Fawcett Gygert, and others,
were charged with the offence of Premonstrate, for that they were John Crefley Esq.
being Henry Duke of Öster, Admiral of England, by taking and as a Cross of
gold and other goods, supposing the time to be taken super alius mare, where in
true they were taken at Stratford in the County of Öster, where the statute of
16 H. 7 is recited, that none should sue in curia Romana eu aliis, and that
the constance of the plea belonged to the common law, not to the Court of
the Admonitory. And to this of the Conventible and Sparhall, if they hold plea of a
matter determinable by the common law.

Habel Wumington exhibited a Bill of Premonstrate against William Postwick
upon the statute of 16 H. 7, cap. 5, for suing in the Admiral Court before John
Carl of Huntingdon, Admiral of England, by a cause which belonged to the
common law, whereby the Premonstrate pleaded not guilty.

And the reason of all these cases is, because they hold matters triable by
the common law ad alium examen, and to be determined per aliam legem.

But some have made a question, whether since the Ecclesiastical Jurisdi-
cion was acknowledged to be the Crown, an Ecclesiastical Judge holding
plea of any temporal matter belonging to the common law, both incur the danger
of a Premonstrate. Though hereof there is no question at all, yet if any man
might be led into an error, in a case to dangerous, we will clear this point by
Newton, President and Authority. The reason of this is, to guard the matters
ad alium examen, etc. And the like question might be made for the Admiral
Court, which is, or rather that, the Kings Court, but governed per aliam legem;
and to the wise of the Court of the Conventible and Sparhall.

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. And after this, viz. 24 H. 8, it ap-
ppeared that the statute of Premonstrate remained in force against Ecclesiastical
Judges, no holding of pleas determinable by the common law.

In 25 H. 8, Richard Nick Bishop of Norwich was arrested for a Premon-
strate at the Kings Bench, and his case was this: Within the town of Norwich
there was a custom, that all Ecclesiastical causes arising within the said
Town should be determined before the Dean there, having a peculiar Ecclesi-
astical Jurisdiction, and that no inhabitant of the same Town should be driven
before any other Ecclesiastical Judge, and that there pertained ling contrary to
that custom, the same being presented before the Bishop of Norwich, should sup-
port it: Hillary eight pence; and that an Inhabitant of Norwich, for an Eccle-
siastical cause rising within Norwich, sued another before the Bishop of Nor-
wich within his common law court in Norwich; and this was presented before
the Bishop of Norwich according to the custom, whereby he decreed it; Hilli-
ary eight pence. The said Bishop cited the said Hillary for offending of the said
Premonstrate Proclamor to appear before him at his house at Norwich, where the
Proclamation appeared, and there the Bishop on terrors imposed him upon pain of
Communique to abate the said Proclamation before a day. And for this offence he was arrested in a Premonstrate upon his contention be-
fore Jux. James Chief Justice and the Court of Kings Bench, upon the nature of
of 16 R. a, the ancient abuse of the bai![...]

of the statute of the B. of Bangory cafe.

Lib. 1. cap. 3.

Fr. in Predict. 21.

1 Eliz. cap. 1.


Trin. 29 Eliz. in Communi banco, Roq. 787. Theo.
Souchoua cafe.

of 16 R. a, the ancient abuse of the bai![...]

Trin. 16 H. 3. conim. 
Rex & Rot. 9. B. of Bangory cafe.
Lib. 1. cap. 3.

B. of Bangory cafe.

Pr. in Predict. 21.

1 Eliz. cap. 1.


Trin. 29 Eliz. in Communi banco, Roq. 787. Theo.
Souchoua cafe.

St. 16 R. a, the ancient abuse of the bai![...]

Trin. 16 H. 3. conim. 
Rex & Rot. 9. B. of Bangory cafe.
Lib. 1. cap. 3.
to the prudence and discretion of the King and his Counsell, and all his subjects, and to the adhesion of the Common Law. And first the right speech of the Court of Equity. This Court cannot proceed in courts of equity after judgment at the Common Law, for their reasons. First, for that it had not the matter triable, and determinable by the Common Law ad alium examen, viz. to a trial by unknowns, which (as hath been said) is contrary to the ancient Law of the Realm, and against the Pursuit of this statute. Secondly, after judgment the parties ought to be in peace and quiet, not justice from requiuny juris dicti; and if the party against whom judgment is given, might after judgment given against him at the Common Law, go into Court of Equity for matter in equity, there either would be no end of suits, or every Plaintiff would leave the Common Law, and begin in the Court of Equity, whether in the end he must be bought, and that would tend to the utter destruction of the Common Law, as it is laid in the Act. Thirdly, the Court of Equity in the proceeding in courts of equity is no Court of record, and therefore it cannot hold plea of any thing whereas judgment 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.

In the case of Edmund Earl of Cornwall in Anno 6 E. 1. it appeareth, that after judgment given before Roger Lovelady, and Walter Winburn Judges 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 be not in the proceedings, &c. against the said Bishop and his tenants before the said Judges; and in this part of the record being ill read, it is said, La Corone & la dignity voitre, signifying the Roy ne doit per autre en Juicise xe guyne, &c. Et les choses que sont passées en la court per jugement, ou en autre manner, ne deviennent plus en autru court recentes, &c. Out of this record we may observe these things. First, that the ancient Law of this Realm was, before the making of this Act. Secondly, that [en autru court] which are the words of this Act, was to be another Court within the Realm. Thirdly, that the slightest before this Act, was the suits in other Courts within this Realm, after judgement given in the Kings Court.

And in 13 E. 3. there was a suit in the Court of Rome after judgment in the Kings Court, and in that record it is laid, in regno conspectum, & Coaevis spectaculum, ac judicis spectatori inviolabilitatem, &c. Ac quod judicia in qualsa Regis rite redditia privata reddituram, niti debitum forteinum, &c. Ac a Rector, qui patru sunt in traque, &c. Justice debent rata permanente, &c.corev. confidic, &que ad condignam leiusdictionem inviolabilitatem, &c. in autru court. And as a sparsam of the Common Law in the judicial. Register, fo. 12: 154: it is often said, Ea que in curia domini regis acta sunt, debita eadem mandari debeat.

Now let us say what hath been done. Once the Art. 6 Statuts de 4 Myl 6p. 23. hath been recited before, which is a judgment of Parliament. A judgment was obtained by coin and practice against all equity and conscience of the Kings Bench, for the Plaintiffs retained by cession and payment in the Defendant, (without the knowledge of the Defendant, they being upon they) the Attorney consulti the Action, wherupon judgment was given; a the 3d Epitaph, having the 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 judge in the case according to equity; which prætext that the Chancellor could and do it of himself without higher authority.

So a no instance after heret in the Common Law to be granted in honest Act, and if the Lord Chancellor should granting an instance in that case, the Judges
Judges said, that if the Chancellor appointed the party to proceed at the Injunction, they would grant the habeas corpus notwithstanding.

Amongst the Articles referred to the King by Sir Thomas More, Lord Chancellor of England, and all the Privy Council, and by Sir James Fitz Herbert, and Justice Fitz-Herbert, against Cardinal Wolsey, one in these words: [And the said Lord Cardinal had suddenly issued into many matters in the Chancery, after judgement thereof given by the Common Law, to the

Division of your Lords, and made some peremptory требі against the other party, condemned that they had in execution by virtue of the judgements of the Common Law] which I have seen in parchments under all his hands, and to be true.

In judgements given in the King's Courts should be examined at Chancery by the Judges of the said King's Court, their place or other place, the Plaintiff or Defendant should (as the effect of their act, and they shall not he bound, to see the diversity of Courts. Chancery.

Ralph Heydon, was indebted to a Pleumdrine upon the statute of 27 El. 3, for procuring of Sir Nicholas Bacon, Lord Keeper of the Great Seals, to grant an Injunction in Chancery after judgment given in an Ejectment for the same in Heresobis. And the record faith, Quod predictus Radius machinatus e unum aliosque et confectudines regin verticubere.

A writ of Pleumdrine upon the statute of 27 El. 3, by Richard Bean against Richard Lath, for being before the President and Council in Wales, after judgment given in the Court of Common Pleas, in an Action of Detente for 50s. and two pounds ten shillings, in libel on the pleuram legum antiquanet, et

Peter Dewis was indebted to procuring of Sir Thomas Brothotly, then Lord Chancellor, to grant an Injunction in the Chancery after a Judgment given in an Ejectment for the same.

John Heal of the Inner Temple London Esquire, was indebted to a Pleumdrine, for procuring a suit in Chancery after a judgment given at the Common Law, contrary to the statute of 27 El. 3. And the counsel of Heal said that appearing: one, that the Court of Chancery was not within the statute of 27 El. 3, another, that one of the parties to the suit in Chancery was united in the place by one name of baptism, and in the other part by the birth. The Court resolved that the Court of Chancery being within the statute of 27 El. 3, but found the other exception concerning mistaking to be true. And therefore they quashed the Judgment, but made a warrantum speciem good faith to the back of the Judgment, that is, bona the party by mistaking a name, and out for the matter.

Thomas Throckmorton established a Mill in the Chancery against the royal Finch after judgment given against him in the Court of Exchequer upon apparent matter of equity. Upon which Mill the Defendant denounced his suit, and for that Sir Thomas Egerton then Lord Keeper inclined to rule over the manor, saying the same would not abide with the judgment, but punished the unjust condition of the Defendant, in relieving the Plaintiffs in equity, upon a petition to Queen Eliz. (who ever laboured the due proceeding of her Laws,) she referred the consideration of the Commons to the Judges of England, who hearing the counsel debated on both parts, and upon view of the precedent in the time of R.3 and since of Illuminations granted after judgments, and finding happiness of them to warrant that which had been affirmed, and none of which to be made by the advice of any of the Judges, they all, after several hearings and conferences, and consideration of the laws and statutes of the King, unanimously resolved, that the Lord Keeper would not after judgment of the same be the party in equity, although it appeared to them that there was apparent matter in equity. And amongst others, the Judges argued this reason, that if the party against whom judgment was given might after judgment demand against him at the Common Law, the matter into the Chancery, it would lead to the subversion of the Common law, for that no man would sue at the Common law,
Cap. 54. Of Premunire.

law, but originally begin in Chancery, being in the suit he might be thought herfather, after he had recovered by the Common law; and therupon they all certified, that the Demurrers was good, and that Sir Mowll Finch the Defendant ought not to answer.

An Information upon this nature of 27 E. 3. against Sir Anthony Mildmay, for that he and other Commanders of Scotland dis-impeach a judgment in the King's Bench, he purchased a pardon from the King; and pleaded it.

Sir a Bishop hearin Teile 13 Julyi, Anno Domini 1616. to the contrary, obtained by the impregnity of the then Lord Chancellor being deeply afraid. Sed judicandum est legibus, and no precedent can prevail against an Act of Parliament. And besides, the supposed Precedents (which we have seen) are not authentic, being most of them in torn papers, and the rest of no credit.

1 Fient jour contenant le space de 2 moons per garnish-

ment a faire a eux, &c. By this it appeared that a Premunire (except as welling the party, as for the King, and they both may join in one suit.

If the Defendant come not at the day, &c. by the express letter of the law judgment 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 custody Marchall, 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 there with agree the Precedents; and the Defendant cannot be sued in any other Court, when they are in Custody Marchall. See the nature of 18 El. c. 5, but that nature extends to common Informers, and not when the suit is commenced by the party grieved.

But if the Defendant appear and plead, and the suit be found against him, or he appear in law, &c. judgment shall be given against him, that he shall be out of protection, &c. And so both this nature been interpreted, and judgment given accordingly. Peruse well the words of this Act for this point, and fix the book in 8 H. 4. 6.

By the nature of 38 E. 3. cap. 3. 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.

Q Avant le Roy & l'on Councell. Here Council cannot be taken, as most commonly it is, for his Judges of his Courts of Justice, who are said to be of his Council for proceedings in course of Justice, because the Courts of Justice are hereafter in this Act named: neither doth it intend the Kings Privy Council, but the King and the Lords of Parliament in Parliament, which is a court of Justice. See the First part of the Institutes, Sect. 164. Veigne les Burgesses al Parliament. There is Consueme Concilium, Magnum Concilium, Privatum seu continuum concilium, et Concilium Justiciariorum, le Council des Justices.

Ttis, tour. Procurators, Atonnies, Executors, Notaries, & Maingtainors. Note by this Act the Procurers, Attorneys, Executors, Notaries and Maintainers shall have the same punishment that the Principal shall have. Note in the nature of 2 R. 2. this word [attorneys] crept in, a word (berthy a favendo) 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, or the other accesseat but the damages shall be generally cared. He that procures one to sue to the Court Christian, shall sufile as much as he that sued, and is principal as well as the other, and is in equal degree of Premunire: but if they both be indicted, the one of the act, and the other of the
prosecution, and he that is charged with the proceedings is said guilty, and
the judge doth assess the certain specified penalty. Judgment shall never be gi-
ven against him which does not require the proceedings, because he cannot be
an offender but in respect of the offence of the other.

Hors de la protection le Roy. By these words the persons att
ained in a suit of demolition are divided in two different remonstrances by
the Kings law: 1. The Kings note, for the law and the kings there are the
things whereby a man is protected and aided: While that is part of the King's
protection, as well of the aid and protection of the King.

By the nature of 23 R. 3 it is declared, that he that purchased provi-
sion to the Kings, did obtain of the Kings protection, and that he may do with him as with the enemies of the King and his Realm, and that
he shall commit any thing, such as pleases him, in body of goods or other
positions, shall be excused against all people.

Ex lour terres, biens, & châteaux forsais, au Roi. This is intended of the lands that he hath in his simple, 22 for life, while the
Penity may last, and not lands in estate lost by estate which shall last only for
the life of his son, so that those all be sold by in his life at the making of this statute, either in case of Creation or Felony. And so it
was resolved by the Judges in the case of Trigg's of Pembroke, who were attainted of a Deminuir upon the statute of 8 Ed. 2.

Nota. This is a new kind of forfeiture, given by this law, and so cannot by equity extend further than the statutes, and therefore this Act is
extended not to the forfeiture of Fair, Barons, Manor charges, House or
Warrens, Annuites, or any other burden that is not within this word
[terre].

Lous corps impission, & rents al votre le Roy. The greatness of these punishments both show the greatness of the offences.

It is to be observed, that the said nature of 23 R. 3, is testified against all
offenders. For the Act extended to all persons of whatsoever quality or place
the words be [if any]. 2 To all persons of whatever profession, or body, so
that the body be in the form of the text, as he before it appeared. 3 To all things whatsoever:
[Where any thing,] which words be so general as cover. 4 Not only against the King, his Crown and dignity, but against the kingdom itself against
the King, his Crown and regality of Realm. 5 This Act extended not only to
pecuniae, abeters, maintenances, countesses, etc. which are known against
the King, but to seorautes, furcures, which body was largely extended in the reign of
H. S. Whereby it is to be observed how dangerous it is to bring into our matters words into any Act of Parliament, especially as it does as
preacher; for there it appeared that Cliff being a Parson of a Church, granted the Cathol
ical an annuity, so long as he should be Legate, ut decemviris & subdumus & gener-
va in authoritative tua Legativa; which the Cardinal had by Bull, and paid to
him ten marks in name of receipt: and he was absolved a churchman. But such
obligations were found out of this and other statutes as were made against abjurations and incursions upon the good and ancient common law; as pares,
and many statutes were made from time to time to meet with such obligations, which being many, and others which concern the offence of preminnis, do both
but name, and leave the reader to peruse the same at large, whereas (as we contrary to) he shall find a great light by which he might find his vaa,
7 R. 2. ca. 12. 12 R. 2. c. 15. 13 R. 2. Statu. 2. cap. 2. 16 R. 2. ca. 5. 2 H. 4. ca. 23 & qn
ca. 15. 26 H. 8. ca. 15. 28 H. 8. ca. 10. 35 H. 8. ca. 1. Note, Queen Mary
repeated
repealed all offences made to be in the case of Premunire since the first year of H.8. but some of them are redoubt by the Statute of 2 E. 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 or altered, but (as hath been said,) allowed of in Queen Maries time. 2 & 3 Ph. & Mar. ca. 8. 1 El. cap. 1. 8 El. cap. 1. 12 El. cap. 2, 27 El. ca. 2. 21 Jac. ca. 3.

And where the statute of 25 E. 3. De Provisione has provided, that certain offenders against the Act shall, before they be delivered, make full renumeration, &c. because we desire that our subjects may in all things understand what they read. 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 renumeration was to this effect, I renounce all the words comprised in the Pope Bull to me made of the Bishopric of A. (as 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 redution 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 cognizant jurisdiction, and though Queen Mary restored his supremacy in such sort as hereafter appeared, yet would she not repeal the said Statutes of Provisione and Premunire, but provided that they should stand in force. See the Statute of 2 & 3 Ph. & Mar. whereby it is enacted, That whoever should by any procures 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, inquir 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 he other 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 preriniche the 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 explained to diminish or take away any of the liberties, privileges, prerogatives, preeminency, 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 Pope Humbles to have such authority, presence 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 to cautiously reserve the Supremacy of the Pope, feudum guild, but not emptive, and bound his Supremacy within strict and legal limitations, as by the said Act appeared.

De Statuibus, Inquit, sanctorum et inchoarum de Premunire, viz. 3 R. 2. c. 12. 6 R. 2. cap. 2. 9 R. 2. cap. 12. 14 H. 8. cap. 12. 35 H. 8. cap. 19, 20. 1 El. 1. 25 H. 8. cap. 19. 28 H. cap. 18. 1 & 2 Ph. & Mar. cap. 1. 8 El. cap. 17. 13 El. ca. 8. 39 El. ca. 17. 27 El. ca. 2. See the Fourth part of the Anteater, cap. Chancery, the Articles at large against Criminal Wrongs, &c. 7.

We have been the longer concerning cases of Premunire, first, for that they be matters of great height and necessary to be known, and the to that, since pl. 12, 14, 18. the silence may never be committed. And secondly, for that Master Stanforte hath in effect but nothing Premunire.
CAP. LV.

Of Prophecies.

Prophecies upon declaration of Arms, Fields, Names, Cognizances & Sigges, were made felony without the benefit of Clergy: but this Act is twice repealed by general words of all Statutes made by any Parliaments since the first year of K. W.

In Am. 5. 11, a more moderate statute was made against Prophecies, by Constable. Proving, or other open speech or Deed, by the act of any Arms, Fields, Names, Sigges, or other like things accustomed in Arms, Cognizances of Arms, &c. by reason of any time, year or day, name blazoned or worn, 'to the intent thereby to raise any rebellion, insurrection, detraction, loss of life, or other disturbance within this Realm or other the Kingdoms Possessions. For the first offence, imprisonment of his body by the space of a year without bail, and forfeit to the Queen and Informer, ten pound. And for the second offence, imprisonment during life without bail, and forfeit to the Queen all his goods and chattels, real and personal; but he must be therefore imprisoned or secured within six months next ensuing the offence by him done. If 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 Judges of Assize, Judges of Oyer and Terminer, and Judges of Peace.

He hereafter, the Chapter of Errors, and the Second part of the Institutes, W. t. cap. 33. He that hath read our Histories shall find what lamentable and fatal events have fallen upon vain Prophecies carried out at the intentions of wicked men, pretended to be ancient, but newly framed to deceive true men and withal, both repugnant and inclinable our countrymen in former times to them have been, we will set down the truth concerning the same.

Certain it is, that to err in things to come, is a preposterous appropriated to the Holy Ghost, and that the Devil cannot predict, for tell of things to come, which notwithstanding, as Audit did sometimes hold that he could, but afterwords utterly retracted in his words. Rom. dist. ecclesiastum anglo-cæs. in Deut. ii. 17.

Now for the predictions and foretellings of the Sibyls, being Gentiles, long before the Incarnation of our Saviour Christ, and made directly and particularly of that high mysteries of the Incarnation and Passion of Christ. The coming of the Logia, the appearance of Christ, and the said mystery is, the same are by the true Prophets of Almighty God, and spoke by the Holy Ghost, till discovered, that while the Church was in the Cross, these predictions were fulfilled and set up upon the Gentiles, to the intent to make the doctrine of the old high Mysteries of the Gospel the most credible among the Gentiles. And if the high prophetick had been by the said Sibyl, or of opinion that great Lights of Nature amongst the Gentiles, Plato, Aristotle, the Platonick, or some other of those great Philosophers, that with great accuracy did see into the secrets of all kinds of learning, would have found them out and made some mention of them. But besides the said discover, such predictions by the Gentiles and Heathen persons are against the good of God.

Also predictions either of the time of the end of the world, or that it is at hand, are not lawful. For the first, see the first of the Acts. It is not for us to know
know the times and seasons which the Father hath put in his own power, &c. For the second, for the Second Spittle to the cbassitians, I beseech you, brethren, 3 Thess. 2. v. 13 &c. that you be not taken 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 that much, for that we have heard divers men boldly and confidently upon their numeral calculation to have said herein.

CAP. LVI.

Of Approver.

A Prover or Approver, in Latine Probaror, is a person indicted of treason or felony in prison for the time, and not disabled to accuse: he may upon his arraignment, before any plea pleased, and before competent Judges be indicted the indictment, and take a corporal oath to repeal all treasons and felonies that he knows, and pay a Coventer, before whom he is to enter his appeal or accusation against all those that are parties criminal, of his society in committing of treason or felony contained in the Indictment, whose partners being within the warrant, and upon his appeal other those partners be convicted, the king ex mercysullis and to prosecute him. But it is in the discretion of the Court either to suffer him to be an Approver, or after his appeasement to reduce judgment and execution until he hath convicted all his partners.

[Of A Prover.] It is by Bradon called Probaror, by Britton Prover, by the Sheriff Prover and Approver: and his name put him in mind of his duty, viz. to prove and approve his accusation or appeal in every point, for any other of truth establish him in nuncupate. And as he must affirm the truth, and the whole truth, before the Coventer and his appeal to the reheasal of the appeal before the Justices it must agree with the appeal; 36 Art. p. 19. & Bradon art. n.s. I in this Record find him called Approver.

[Of Person.] This extended not to a Per or Lost of Parliament, for it is against Magna Charta, cap. 29. for him to pay a Coventer.

g A man attainted of treason or felony cannot become an Approver, because if the hang (party) he is hors de la ley. Also though he be indicted, yet if he be out of prison, he cannot approve.

h The Sheriff said, that Wemen, Infants, Idiots, Lepers, or Procrases in order of Religion, or Clerks, or persons attainted of treason or Non compos mentis, cannot be Approvers; and师范大学 men abide the age of 70. or maisnes, because some of them cannot take an oath, and none of them can have batell.

[Of Indicted.] i. i.e. 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 approbation be false, no judgement (whatsoever be confessed) can be given against him, unless be he indicted, 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 laws to be understand.

k Ione be indicted and approve, if after an appeal be tried against him, the approbation ceased.

[Of treason or felony.] And that is only of that treason or felony that is contained in the Indictment, as hath been said. m De Trin. 3 H. 4. Rot. 19. Coram Rege Hertford. Probator in duello devicit appellat, de alta promotione.
pro quo devictus suspenderetur, decapitatur, & quarteria sua dividantur. Et simile ibid. Anglia.

[In prison.] a. albeit he be indicted, yet if he be at large, and not in prison, he cannot approbe, as before is said.

[Competent Judge.] b. as justices of the king's bench, judges of our and terminer, and of goal-delivery, but not justices of peace, because they have no authority by their commission to assize a coroner. and by the same reason the lord high steward of england cannot design a coroner in case of creation or felony.

[Corporal oath.] thought the oath be general of all creations and felonies, yet in course of law no approbation can be out 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.

[Particeps criminis.] for it cannot be of another creation or felony then is contained in the indictment.

[Within the realm.] for if it be out of the realm, it wanteth trial, and therefore the accusation or appeal not to be allowed.

[Ex merito judicii.] and the reason is, for that he rideth the country of wicked and hurstful midw monstrous, whereby the king's peace is kept, and the subject enjoineth his own in quiet. and therefore the king doeth in the mean time give him wages.

A man became an approver, and appealed alike, and three of them joined baterel with him: et duellum per oscinum habuit cum omnibus, & probator devictus omnes quinque in duello, quorum quattuor suspenderuntur, & quintus clamabat eis clericum, & allocutur, & probator pardonnatur: so as the approver did and ought to fight in that case with all the appellates. But if there be two or more approvers against one man of one felony, and be join baterel with them all, and banquish the first, he is acquitted against the other. Considering the parties upon an approbation, and other incidents, you may read in pt. justicet Stanford, which hath not here to be repeated.

*If the Appellee join baterel, on plea not guilty, and after the king parleys the Approber, the Appellee shall be discharged and shall not be arraigned at the suit of the king.

[Conviwed.] The Appellee may chance either to wage baterel with the Approber, or to put himself upon the country; and if the Appellee be found guilty by verdict, it verteth as well for the Approber, as if he had been overcome by baterel. And therefore the book in 19 H. 6. 35. is misprinted, or misreported: and the note of firsh, in aligning the case, it. Coron. pt. 6. in the end, is against law. vid. Rot. Parl. 17 E. 3. 11. 36.
Of Appeals.

If the matter of the Barre have been a good Barre of the appeal by the Common Law, as well as of the Clergy, and been allowed: for that the Defendant upon his confession of the Indictment has paid his Clergy, which the Court ought to have granted, and the barring of the Court to be advised ought not to prejudice the party defendant, when the appeal was com- menced before the assent of his Clergy.

The second point adjudged was, that the plea with the issue of the Statute of 3H.7. for that the words of that Act are,

If it be proven that the said Felons and Murderers, and Accessories to be arraigned, or any of them to be acquitted, or the principal of the slain persons, or any of them to be continued, the wife or next heir of him to slay, &c. may have their appeal of the same death and murder against the person so acquitted, or against the said principles if attainted, if they be alive; and partly the better of his Clergy there before be not had.

And in this case the Defendant Holcroft was not thereby acquitted by agitation, but convicted by confession, and the benefit of Clergy proved for in Agitation, as the Statute being penal concerning the life of man, and made in contrain of the Common Law, was not to be taken in equity, but in cases where, and left to the Common Law.

So to the Third, it was objected here every plea ought to have an issue consigned to, and that the conclusion in this case ought to have been, Ee petit judicium et procedit. Thomas Holcroft iterum de sedes mortis de qua strenuus est fuit, respondere compellit debeat. But it was adjudged that either of these conclusions is sufficient in Law: and therefore that exception was dismissed by the rule of the Court.

Nota, the ancient Law was, that when a plea hold, judgement to be taken in an appeal of death, that the wife and all the blood of the party slain should have the Defendant to execution. And Gallicaine laid, illfult in diebus nolebris.

Richardus de Crecey appellat quinque pro felonia, &c offerit disficientiam per corpus suum contra quernliber eorum separatim. Ipsispecie se allocari, quod ubi appellans dicit in appello suo, quod ipfi fregereunt officium Bracini, & non specificat ex parte domus illius, praeclaram officium fuit, & petunt judicium. Et Joh. Wanton unus defendant defendit felonia, & totum, & passus eis defendere per corpus...
Of Treasure Trove.

CAP. LVII.

Thesaurus inventus.

Treasure trove is when any gold or silver, in coin, plate or bullion, hath been of ancient time hidden, whereof ever it be found, whereas no person can prove any property, it doth belong to the King, or to some Lord or order of the King's grant, or prescription.

The reason therefore is belonged to the King, as a rule of the Common law. For such golds whereas no person can claim property, belong to the King, as such golds, etc. Quod non capiatur Christus, capiatur Fiscus. It is an act of the King's grants, or hidings of the treasure. And also let us peruse this description.

[Gold or silver. For if it be of any other metal, it is no treasure: and if it be treasure, it belongs not to the King, so it must be Treasure trove. It is to be observed, that being of gold and silver in the grounds of subjects being in the King by his prerogative, for they are royal mines, but not of the other metal, is hidings in subjects grounds.

Whereover.] 1. Whether it be of ancient time hidden in the ground, or in the rood, or walls, or other parts of a castle, a house, building, ruin, or elsewhere, be he the owner cannot be known.

[Of ancient time hidden.] d Et autem thesaurus vetus depositio pecuniae, etc. cujus non exist modus memoria, adeo ut jam dominum non habeat.

[Belong to the King.] e Whereof of ancient time it belonged to the

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* Inner leges, H. 1. cap. 11.
Of Wreck, False tokens, &c.

Under, as by the said ancient Authors it appeareth. And yet I find that before the Conquest, Thefæri de terra domini regis sunt, nihil in Ecclesia vel Coemeterio inventuritur; licet ibi inventiur aurum, regis est, &c. medietas argentis est medietas Ecclesie ubi inventum fuerit, quaeunque ipsa fuerit, vel dives, vel pauper.


The punishment of him that concealeth, &c. it. It appeared by Glanvill, and Bradon also, that occultatio thesauri inventi fraudulosa was such an offence as was punished by death. But it hath been resolved, that the punishment for concealment of Treasure trove is by fine and imprisonment, and not * of life and member.

To whom the charge thereof belongeth. It belongeth to the Coroner, as appeareth by the nature de officio Coronatoris, Anno 4 E. 1.

CAP. LIX.

Of Wreck.

CAP. LX.

Of false tokens, or letters in other mens names.

If any person falsly and deceitfully obtain into his hands any moneys, 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 mens name, &c. he shall suffer such correction by punishment of his body, fasting upon the pillory, or other corporal pain (except pains of death) as shall be to him adjudged by the person and persons before whom he shall be convicted, with a saving to the party grieved by such deceit, such remedy by way of Action or otherwise as he might have had by the Common law.

Here it is to be observed, that upon this nature, for this offence the offender cannot be fined, but corporal pain only inflicted.
CAP. LXI.

Of Theftbote.

Theftbote (described by Act of Parliament) or another, having either
theftbote or false concealment. Care "domino regis": and to much the word again, bot5 being taken for amen5, therefore, that is, amen65 for theft.

This offence is more the mitigation of felony, 29 that it is not a concealment of the state knowledge only; but Theftbote is when the person only knows of the theft, but taketh of the thief his goods again, as amen5 for the same to labour or maintain him, that is, not to prosecute him, in the intent to make escape: but in that case, if he receive the thief himself, and aid and maintain him in his theft, then he is accessory to the theft. And so note a diversify, when propriatus recipit latrocinium, & quando latorum. But if a man taketh his goods again that were taken, it is no offence, unless he labour the thief, as is aforesaid.

The punishment of Theftbote is ranomme and imprisonment: and being the punishment of Theftbote, which is greater then concealment of theft, is but ranomme and imprisonment, it hangeth with reason, that the punishment of "mitigation of felony should be but fine and imprisonment. Theftbote is sometimes taken pro ipso latrocinio, for the thing it fell stolen from pos.

You shall read in ancient authors of Redoubbar. Addoubar, despised of the French word addoubant, they are in law patches, hovers, as members of apparel, that taketh Theftbote of cloth (and change it into another fashion) and are dwelling out of Burgs and Cities, because in those days Burgs and Cities were so well governed, as such offenders were so soon discovered: for they were not then commended, for that they were populous, but for that the Governors were probate in governing 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 restiutions concerning Indictments, viz. Lib. 4. fo. 40. 41. 42. &c. hb. 5. fo. 129. 121. 122. 123. 1. 5. 6. 10. li. 8. fo. 57. 58. 37. li. 9. 65. 63. 116. 118.

We will add one point adjudged in the case between Baug and Holcroft before mentioned in the Chapter of Appeals, which was, that where it is prohibited by the statute of Artic. super Chartas cap. 3. En cafe del mort del home (dein le verge) ou office del Coroner appent as views, & enquiset de ceo faire, soit maunde al Coroner del pais que ensembly ove le Coroner del hotel le Roy face office que appent, &c. And in that case one man was Coroner both of the Kings house and of the Count, and the Indictment of manslaughter was taken before him as Coroner both of the Kings house and of the Count. And it was adjudged that the Indictment was good, because the mischief expressed in the nature 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 concurran in una persona, sequam cito ac si effect in divers.

Richard
Cap. 61.

Of Indictments.

RichardWelton. Pecman, late Servant of Sir Gervase Elwyn, Lieutenant of the Tower, and under the Lieutenant Reper 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 Iodesare in broth, which be the said Sir Thomas received.

Et ut idem Rich. Welton praetum Tho. Overbury magis celere intereceret & murdraret, 1 Junii An. 11 Ja. Regis supradict. gave to him another poison called White Arsenich, &c. and that a Junii An. 11 supradic. gave him a poison called Mercury Sublimat in Citrus, ut prae dic. Tho. Overbury magis celere intereceret & murdraret: Et prae dicis Thomas Overbury de sepulchro venenis-prae dicis, & operationibus inde, a prae dicis sepulchris temporibus, &c. graviter languet utique ad 15 diem Septem. Anno 11. supradict. quo die dicus Thomas de prae dicis sepulchris venenis obit 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 appeared, that Welton within the time aforesaid had given unto Sir Thomas Overbury divers other poisons, as namely the powder of Diamonds, Catnapides, 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 laid, whether he be 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, stoning, or other cause, because they are 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 are all under one Classis of cause. And afterwards, Ann Turner, Sir Gervase Elwyn, and Richard Franklin a Physician, (purposè of the poisons) were indicted as accessories before the fact done: And it was resolved by all the said Judges, that either the poison of the poisons contained in the indictment, or of any other poison, were sufficient to prove them accessories: for the substance of the indictment for the poison was, whether they did procure Welton to poison Sir Thomas Overbury: and because that not only Anne Turner and Richard Franklin, but some of the degrees of Affinity were indicted as accessories in another County, viz. in the County of Shropshire, divers notable points were resolved upon the nature of E. 6. 2 E. 6. cap. 14.

First, if the Accessory be in the County of Shropshire, where the Kings Bench is, and the principal did the felony, or in another County, that the Court of the Kings Bench is within the woods, or that &c., viz. (and that the Justices of Gaol Delivery, or Oyer and Terminer, or two of them, &c.) for the causes and reasons given in the Lord Zancher's 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 cited where the Accessory was in the County of Shropshire, where the Kings Bench sat, and the principal was attained in another County, that the Justices of the Kings Bench habe removed the Record of the attainer of the principal before them by Certiorari, and so it was done in the Lord Zancher's case, ubi supra.

The like precedent was handed in a case where the principal was attained in the County of Dorset, and the Accessory was in Shropshire, and the Kings Bench sitting there, the Justices of the same Court removed the attainer before them by Certiorari. Fourthly, it was resolved, that the Lord Chief Justice of England, who is a Judge in case of High Treason or felony committed by any of the Pers of the Realm, is within these woods, Justices of Gaol Deliver, 12
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Of Indictments. Cap. 62.

Every, y, of Oyer and Terminer, because he is a Justice of Oyer and Terminer, for his authority is by Commission, and the words of his Commission be after divers recitals, &c. superinde audient, examinand, & respondere complidend, & sine debita terminando; 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 is extended to him. As the Statute of Merton a 2. power being given to the Sheriff in case of Reduction, the words be, Assumpsit occum Coronarius placent in Corone, &c. in the plural number: And yet where there is but one Coroner in the County, the Statute extends therunto, and the Sheriff shall take that one. All the words of the Statute are further, That then the Justices of Gaol-delivery, or of Oyer and Terminer, or other there authorized, within which words [or other there authorized] the Lord Steward is included. Firstly, if the Record of the attainer were by Writ of Certiorari remov'd out of London into the Kings Bench, then there were another doubt upon the said Statute, if afterwards any proceeding should be had against any Person, 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 attain'd; and the attainer in this case was in London, and the Kings Bench was in Middlesex: so as if the Record should be remov'd into the Kings Bench in Middlesex, the Record should not be where the attainer was; and consequent 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 Oyer 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 attainer of the principal did, notwithstanding that Certificat, remain with the Commissioners of Oyer 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. Cart 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 Lower of London; and all that 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 Lower of London; and all that is on the East part of the Wall is in the County of Middlesex; and the Chamber of Sir Thomas Overbury was within the Lower on the West part of the said Wall, and therefore Weldon was tried within the City of London.

And where it is often said in many Acts of Parliament, by Records, and in Book-cases, that the King cannot put any man to answer, but he must be app'd by Indictment, Presentation, or other matter of Record: True it is, in Pleas of the Crown of other common offences, Offences, &c. principally concerning others, or the public, where the King by law must be app'd by Indictment, Presentation, or other matter of Record; but the King may have an Action by such wrong as is done to himself, and whereas none other can have any Action but the King, without being app'd by Indictment, Presentation, or other matter of Record, as a d Quare impedit; e Quare incumbravit, a Titre of Iat夤, g of Debet, h Derelict of Ward, i E common, k Scire faciatur repeller patent, &c.

19 H. 42. 15 Aff. p. 7.

Cap.
CAP. LXIII.

Of Councell learned in Pleas of the Crown.

Where any person is indicted of treason or felony, and pleaded to the treason or felony, not guilty, which goes to the fact not known to the party; it is shown that the party in that case shall have no counsel to give in evidence, or allege any matter for him: but point out to ex facie jus oritur, it is necessary to be explained, what matters upon his arraignment, after not guilty pleaded, he may allege for his defence, and pray counsel learned to utter the same in form of Law.

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 allege, that in the indictment there is no such statute open Act for 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 have some cause.

Secondly, in case of high treason by force of any statute, he may allege, that the indictment being grounded upon a statute, the statute is either mis-taken, or not punished.

Thirdly, of what matters he may take advantage equally concerning them both. He may allege, that there was not at the time of the indictment of high treason two lawfull accusers, that is, two lawfull witnesses.

Fourthly, of what matters he may generally take advantage in all cases of treason or felony. He may allege, that the offence is not certainly alleged 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.

Fifthly, after he hath pleaded not guilty, what advantage he may take upon the evidence. He may allege, that he ought to have two lawfull witnesses in case of high treason in Law, to prove the fact against him.

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 a case of murder, where the jury that tried him came out of a wrong place, and thereupon he had counsel learned assigned him, who indeed found that the verite facias was misdirected, and the court thereof by the council being informed, judgement was passed. And that the plaintiff may allege these or the like matters it is evident: because every matter in Law arising upon the fact, the plaintiff shall have counsel learned assigned him. Also it is lawful for any man that is in Court, to inform the Court of any of these matters, lest the Court should err, and the plaintiff unjustly for his life be proceeded with. And the reason whereas regularly in case of treason and felony, when the party pleads not guilty, he has no counsel, was for two causes. First, for that in case of life, the evidence to convince him should be so manifested 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 attest the plaintiff unjustly.

Robert Chetford counselled the Prior of the Priory of St. John in Southwark, that John of Leicester, the King's servient at Arms, coming to the Priory with the King's Writ of Priory Seal, should not be admitted to the Priory, for which counsel he was indicted in the King's Bench, and depending the Processe upon the Indictment, the King both pardon him: and in the pardon is contained a supersedes to the Justices, commanding them to proceed no further.


CAP. LXIV.

Of Principal and Accessory.

A. Leit Justice Stanfond hath well collected the Books concerning Principal and Accessory, per diversa dehenduratur: and necessary it is, that some things touching the same should be added, which are here necessary to be known.

It is a sure Rule in Law, that, in ala prudione nullus potest esse accessorius, sed principalis solummodo. This rule being well understood, will open the reason of other cases which are involved in darkness.

High treason is either by the Common Law, or by Act of Parliament: we will set down examples (which eber do illustrate) of both.

A. Doctor counterfeits the King's coin, viz. Shillings, and C. knowing the same doth receive, 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 yet that there is no Accessory in treason, therefore C. in the case before committed no treason, for then in judgement of Law he must be a counterfeiter of the King's coin within our Statute of 25 E. 3. which he is not: and therefore they say, this is Calus omisit, and not within any of the Thesdes or Heads of the said Act of 25 E. 3. But all agree, that procures 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 fact of counterfeiting.

A. But in an order also we hold, that if any man committed High treason, and thereby became 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. And to it was resolved in the case of Abingdon, who received, comforted and aided Henry Garner Superior of the church, knowing him to be guilty of the Powder treason, and accordingly Abingdon was indicted and attainted 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 content, and not a concealment only; otherwise, High treason being the highest offence, should have made labour then Felony, for the receiver and comforter in case of Felony is punished by death, and is not be that committed misprision of treason. And lastly, this is no new treason, but a parodying 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. I. c. 14. And concerning this there be also certain Rules. D. Nullus dicitur fidel principalis nisi auctor, aut qui præfert et abtranus, aut auxilius aorem ad felionem faciendam. But this Rule hath his exception: sae in case of poison, if one lapeth poison for one, or infeste it into body, or the like, albeit he be not present when the same is taken, and either the party intended, or any other is poisoned, yet he is a principal; and in that case both the principal, and procurer or accessoys may be absent. See the Books regis, and for accessorys before the Felony committed, and where, and in what manner the procuration shall be said in Law to be pursued: the learning thereof is to plainely set down, as the same was not herein to be repeated. D. Nullus dicitur Accessorius post feloniam, sed ille qui novit Principalem feloniam fecisse, & illum receptavi.
Cap. 65. Of Misprisons.

receptavit & comfortavit. And therefore if a man writes Letters for his benevolence, or in favour of him, or the like, he is no accessory, for that he received not the Felon.

b A Wicar which instrued an Approver which could not read, whilst he was in prison, to read, whereby he escaped, was adjudged not accessory to the Felon.

Catin and Browne. Juges of Ufcie in the County of Suffolk put this case to all the Judges. A Man committed Felone in the County of Suffolk, for which he was committed to the Goal; and an Attorney advised the friends of the Felone to pervert the warrants not to appear to give evidence against him, which was done accordingly. And it was resolved, that neither the friends nor the Attorney were accesseories to the Felone, but that it was a great contempt and misprisyon, for which they might be fined and imprisoned.

d The accessory cannot be guilty of petit Treason, where the principal is guilty of Murder. For Accessorium sequitur naturam sui principis.

e If others commit any murder, or other felony, one man may be both principal and accessory to the other.

His belege cap. Clergy, that if the principal before atterainde in his Cleri, the accessory is discharged. And note generally, where the principal before atterainde is gardened, or his life otherwise taken, the accessory is discharged.

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 remained now that we speak of other Misprisions.

Misprision is twofold: one is Crimen omissius, of omission, as in concealment, or not discovery of Treason or Felony; another is Crimen commissio, of commission, as in committing some venial offence under the degree of Felony.

Of Misprison is of two sorts, viz. Patrice, and Advice. Patrice is of the nature of concealment, whereas some be by the Common Law, and some by Statute. By the Common Law, as Patrice misprision that is concealment of High Treason, whereas we have spoken; and Patrice Misprision that is concealment of Felony, whereas we are now in this Chapter to speak. Some by Statute: as if any be minded to make composition or unlawful assembly, and do not within Twenty four hours declare the same to a Justice of Peace, Sheriff, Mayor, or Bailiff or the like. Concealment by Aures, 3 H. 7. ca. 1. 33 H. 8. ca. 6. &c.

Now we are 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; in case of Felony, whether the Felony 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.

And as the Concealment of High Treason is higher by many degrees then the concealment of Felony, the punishment for the concealment of the greater is heavier then of the lesser; and yet the concealment of Felonies in Sheriffs or Bailiffs of liberties is more severely punished then in others, viz. by imprisonment by one year, and certaine at the will of the King. From which punishment W. 1. cap. 9. See the expidion thereof, ubi supra.
Of Misprisions.  Cap. 65.

affirmation if any will take himself, he must follow the advice of Bracon, to discover it to the king, or to some judge or magistrate that for administration of justice supplied his place, with all speed that he can.

Non enim debet morari in uno loco per duas nodas vel per duos dies, nec debet ad aliqua negotia, quamvis urgentissima, se convertere, quia vix permittitur ei ut retrospicat.

And this is intended of a concealment, or not discovery of his own knowledge: For in case of high treason, he that knoweth it before he doth, and attenneth unto it, he participle in crime, and guilty of treason; and in case of felony, he that receiveth the thief, and assisteth to it, is accessory.

So before in the Chapter of Misprision of Treason, that every treason and felony doth include in it Misprision of Treason and Felony. See the Statute of 25 El. cap. 1. Of Misprision, that is, in crimes committed, Compellings or imaginations against the king by word, without an overt Act, is a high Misprision, as before is said. * in cogitatione tua nec detrahas Regi, &c. quia aecus ceclii portabunt vocem tuam, & qui habet pennas annunciatit fenuntram.

* If any man in Westminster Hall, or in any other place, sitting the Courts of Chancery, the Exchequer, the King's Bench, the Common Bench, or before Justices of Assize, or Justices of Oyer and Terminer, (which Courts are mentioned in the Statute of 25 El. 3 De Proditionibus) shall draw a weapon upon any judge, though he strike not, this is a great misprision, b for 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 rendereth an impediment to Legis terrae. * So is it, in Westminster Hall, or any other place, sitting the said Courts there, or before Justices of Assize, or Oyer and Terminer, and within the bird of the same, a man doth strike a judge or any other with weapon, hand, houlder, elbow, or for, he shall have the like punishment, but in that case he make an assault, and strike not, the offender shall not have the like punishment.

If any one in the King's Palace, where the King's royal 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 banished.

Note, the law makes a great difference betweene strokes or blowes in 02 before any of the said Courts of Justice, where the King is represented presently present, and the King's Court, where his royal person resideth. For in the King's house (as hath been said) blood must bedrawn, which needeth not in 02 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 attributed to Courts of Justice, when the Judges or Justices are doing of that which to Justice appertaineth: and the reason is, Quia Justitiae firmatur Sol omnem. * But note, that by the ancient Laws of this Realm, striking only in the King's Court was punished by death. Vide Lambert inter leges Ina 6. Si quis in Regia pugnaret, rebus suis omnibus mulcatur, & sine mora etiam pestendus, Regis arbitrium & jus effo. Inter leges Canum cap. 56. Si quis in Regia demurcat, capitale effo, &c. Inter leges Alvedici cap. 7. Qui in Regia dicamcar ferrumne definxerit, capitator, & Regem pecem arbitrium vitæ necique ejus effo, &c.

If Peter Buschet prisoner in the LOWER, struck within the Lower John Longworth his keeper (who stood in a window reading of the Bible) with a biller on the head behind, whereby blood was shed, and death instantly ensued: this being without any provocation, was adjudged murder; for which he was arraigned, and before his execution (which was in the Strand over against Somerset house) his right hand was first stricken off, by order of the Statute of 33 H. 8. for that the Lower was one of the Queen's landing houes or Palaces.

The King's Palace at Westminster hath this liberty and privilege, viz.

Mich. 32 El. in the cases of Peter Buschet, Esquire of the middle Temple.
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Nelle citationes aut summuniones licent fieri, cuique infra Palatium Regis
Welthein.

Like a pladishe hath Westminster-Hall, or other place where the Kings
Justices, &c. sit, as by these following Necessa appeared.

A quia Bedellius Universtatis citam fecti Will. de Wivelingham infra ostium aulae
Welthein, Juliciatoris sedentius, ad comparandum coram Cancellario, &c. pro quo fecer
pfedit in gratiam Regis, committitur Gaole, & Henricus de Harwood, ad caput
secum profectus est, commissarius Marshall, & finem fecit 49. a

b Matilda de Nyerford, sibiu Williemi de Nyerford militis defuncti, ob libel
against John Earl of Warren, and e Johan de Baro Countess of Warren the
Singe niece (in camriniin domine Regine Comitis dominii Regis) in a cause of
matrimonium et uitroge, and the fame Johan de Baro was cited in the Kings
Place at Wethamster, &c. It was upon full examination of the cause adjudged
in Parliament in these words, Quod praedictum Palatium dominii regis et
locus exemptum ab omnibus judicandone ordinario, tam regis dignitate & coronae
sae, quam libertatis Ecclesie Welthein', & maxime in praestantia ipsius dominii Regis
tempore Parliamenti sui ibidem: ita quod quifuos summuniones suae citationes
ibidem faciant, & præcipue illis qui sunt de feugium dominii Regis, quibus major
reverentia quam alius severebit et, &c. Considerato, et, quod officia committatur
Turni London, et ibidem custodiatur ad voluntatem dominii Regis.

Here two things are principally to be observed: First, that this roya3 pladishe
is not only appropriated to the Place of Wethamster, but to all the
Kings Palaces, where his royal person resides. Secondly, that this pladishe
is to be exempted from all Ecclesiastical jurisdiction, regis dignitate &
corone 4ae ratione, &c.

If any do rescue a prisoner in oz before any of the aforesaid Courts, com-
mitted by any of the aforesaid Justices, it is a great misprision, for which he
and the prisoner attending 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.

But it was resold to all the Judges, that where Thomas Oldfield, sitting
the Court of the Duxury of Lancastre, with a knife stabbed one Ferrer a Ju-
stice of Peace in the field of the said Court, that the Court of the Duxury was
none of the Courts to make it a misprision to lose his right hand, &c., but the of-
fender was to be indicted, and grievously fined.

And in 9 El. one Guiting struck another in the White-hall, sitting the Ma-
ers of Nequitas, and it was then resold by the Court of the Kings Wench,
that it was not any misprision for which he should lose his right hand, &c.,
but he was indicted and fined.

Quia Thomas de Holbroke manus violentas impo8it super Johanne de Loud-
ham, &c. ad Seccionem suam sedentem apud Gipwich, & cuin dementitio et,
committitur in Parliamentu Turri London, & finitur 20 l. & inventit sax milites
manucaptors pro bono gelif suau.

And where came of the books aforesaid day, that the offender shall forfeit his
lands, and some that he shall be dispossessed, per the forfeiture of his land is
only for tearm of his life. (as before he saith,) for being no felony, the blood is not
corrupted, nor his heir dispossessed to inherit. And this februe punishment is as
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 Whitenhead recovered

Britton fathue, Aflcuns trecpaffes font nequer dent plus punishiable; si come tref-
pas fait en temps de peace a " Chevaliers ou auters gens honorables, per Ri-
baws ou auters viles perfons; En quel case nous volons, que si Ribawe foy attrait
al fuit de cheufun Chivalier, que il eyt ferue per felony fans defart del Chivalier,
que le Ribawe perd fon pome dont il trecpaffa : to great a repect in tbotw dapes
was bad of honour and other. Ribawe is taken here for a Matell Kuiellan.
There is a great misprision when any renge is fought against a Judge, Ju-


Placita coram dom-

ino rege in Parlia-

mento suo apud

Wetham in praestantia
dominii regis, An.

21 E. 1.

e Ellenor daughter of

E. 1. married w.ili

William Earl of

Barry alias Baro in

France, and had

the said Johan, who married John

Earl Warren.

Trin. 8 Jac. reg.

Oldfields cafe.

Hil. 13 E. 3. Coram

rege, Rot. 104. Suff.


154 Medd.

Brito. ca. 15. 60. 47.

* Note for the digni-
ty of Knights.
Of Misprisons.

Cap. 65.

R. de Hetheham, and others, being justices of Oyer and Terminer, and sitting in the Exchequer chamber, gave judgment for Mary late the wife of William Brewes, plaintiff, against William de Brewes, defendant; which judgment was pronounced by Roger de Hetheham. William de Brewes demanded of Roger de Hetheham if he would give the judgment, and said, Roger, Roger, thou hast by thy will which of long time thou hast fought of whom Roger de Hetheham demanded, what is that? To whom William de Brewes said, my name and my life, and this I will reward or recompense, or I will think of it. Whereof being indicted and arraigned, and confessing the offence, the Record cited. Et quis, deo honor et seuerenti, qui ministris domini regis ratione officii sui faciuntur, ipsi regi attribuuntur; sic edecus et contemplus ministris suis faciant eodem domino regi inferuntur; Consideratum est quod praed. Willemus de Brewes, disiunctus in corpore, capite, nodo, tena depoenter, et e banco domini regis ubi placita teueretur in aula Welfin, per medium aula predica, cum curia plena fuerit, uide ad Scaccarium (ubi delicuit) et ibidem veniam petat a praefato Rogero, &c. et poteata committatur Turri Londoni, ibidem moratur ad voluntatem regis.

Note this exemplary judgment against a Gentilman of a great and honorable family. Quisque poena corporalis, quamvis minima, majus est qualibet poena pecuniarum. And in this Record it is said, Quod dominus rex ilium suum praeigneunt et charitatem, Edwardum Principem Wallis, pro eo quod quedam verba grossa cuidam ministris suo dixerat, ab hospicio suo fore per dimidium anni amovit, nec ipsum ilium suum in conspectu suo vendere permittit, quosque dicit unus ministro de dicta transgressione latissecrat.

Quia Petrus de Scales ministrus fuerit Richam de Worthingworth, qui dicit de consilio Johannis de Moten, de vita & membris, dictus Petrus inventit plegios de bono gesto suo.


Perclissio clericis curis in veniendo verius curiam, &c. Trin. 11 E. 2. Coram Regre Rot. 42. London. Not only these particular rebenges abode said, but all other of what kind better are great misprisons.

Alto when any rebenge is sought against any man for complaining in any of the Kings Courts, super gravaminibus, &c. for grievances, &c. Quia deterre homines a querelis super gravaminibus in forma juris. De his qui vindicat fermentum, eo quod alicuo modo super predictis gravaminibus in curia domini regis conquitis fuerunt.

Julicarii taxa verum damna 2 Mare super Wilhelimam Botesford, eo quod minabatur quandam Hafifiam de vita & membris, eo quod ipsa prolequebatur ipsum in placito transgressio.

We will conclude this point for private rebenge with an ancient law before the Conquest. Si quis privato contio illam libi injuriam vindicaret, antequam jus sequum libi dari posuaverit, quod nomine vindicea cripit reddito, integrum rei pretium prefato, & 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, 42.
CAP. LXVI.
Of Conspiracy.

Conspiracy is a consultation and agreement between two or more, to appear or to indicted innocent fancy and maliciously of felony, whom according they cause to be indicted or appealed; and afterward the party is lawfully acquitted by the verdict of twelve men: the party acquitted may be relieved, and the offender punished two ways. 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 freestone or franchise of the Law, to the intent that they 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 King's Courts, they shall come per solem, ut eft, by broad day, and make their Appearance, and forthwith return by broad day. And their houses, lands and goods, shall be seized into the King's hands, and their bodies and lands stripped and wounded, their trace rooted up and arrested, and their bodies to prison: all things retrograde, and against order and nature, in destroying all things that have pleased or nourished them; for that by falseness, malice and perjury, they sought to attain and overthrow the innocent. Which judgement in our Books is called a villainous judgement. First, in respect of the billany and home which the party hath which received it. Secondly, for that by the judgement he lost the freestone and franchise of the Law, and therefore underwent a kind of bondage and billany. And the reason of this beastly 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 have attained the innocent, he should have lost his life, (by an infamous death, his lands, his goods, and his posterity, for his blood thereby should have been corrupted), &c. All this falseness, malice and perjury is committed in placito Corone, in a suit for the King, which aggravates and increases the offence; for that the King is the Head of Justice, and a protector of the innocent: and therefore at the King's suit, and not at the suit of the party, this villainous 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 villainous judgement is given by the Common law, (as in the case of Arrears) and not by force of any Statute.

King E. 3. demanded of his Justices and Sergeants, whether others men being indicted of conspiracy, for the intending of R. of felony, were in apprehension or no. And they answered the King expressly, that they were not, in respect of the obdissence of the offence.

U 2 CAP.
CAP. LXVII.

Of Pensions, &c. received by Subjects of Foreign Kings, &c.

It is not lawful for any subject of the King of England to take a Pension or of any foreign King, Prince, or State (without the King's 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,
Que studii specie, fata necemque ferunt.

And this was (say they) the case of the Lord Hallings, Chamberlain to King E. 4, who in the Fifteenth year of his reign, received a Pension of two thousand Crowns yearly from the French King: who being informed by Catesby, his inward friend, and others learned in the law, that the receiving hereof was an offence against Law, being desired by Pierce Cerrere 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 carkalls 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 Historians.

See the case in 7 R. 2, of a Spencer Bishop of Rochester, and there also the case of b Pierce Cellingham and others, and of c Sir William Ellingham and others, punished for receiving of money, &c. of the French King, which by 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.

This word [Bribery] cometh of the French word Brider, which signifies to debauch, or eat greedily, applied to the debauching of a corrupt Judge, of whom the Psalmist speaking in the person of God, saith, Qui devorat plebem meam facit elam panis. Qui cognocit faciem in judicio, non bene facit: sicut pro buccella panis deferit veritatem.

But let us peruse the Branches of this description.

Of the great Misprision. But it may be objected, that Bribery in a Judge was sometime adjudged a higher offence. For whereas at the Assizes holden at Lincoln in the 23 year of E. 3, an Exigent was to have been awarded against Richard Salteley, Hildebrand Borefield, 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 Judges of Assize of the said County of Lincoln, he the said Sir William Thorpe, to lay the said Exigent against them, Cepit munera contra juramentum suum, viz. of Richard Salteley 10 li. of Hildebrand 20 li. of Holliland 40 li. of Derby 10 li. of Daldery 10 li. King Edward the Third appointed the Earls of Arundell, Warwick, and Huntingdon, and the Lords, the Lord Gray, and the Lord Burgers, to examine the matter. Before whom Sir William Thorpe being charged with the said Bribery, Non potuit dedicere, &c.

Now the Acces faith, Consideratam est per dictos Jusicarios assignatos ad judicandum secundum voluntatem Domini Regis, & secundum regale posse suam, quod quia predictus Williamus de Thorpe, qui facramentum Domini Regis quod erga populum suum habuit custodiendum, fregit maliciose, falsi & rebellii in quantum in ipsi su, & ex causis supradictis per ipsum Williamum, ut praedictum est, expresse cognitus, fulendatur, & quod omnia tria & tehita, bona & carulla sua remanent foris &c. This sentence seemed to have his foundation as well upon the oath of the Judges, (for the Acces faith) 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 pleased 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 suam, according to the laws of the Oath and Act of Parliament. And this judgement was repeated in Anno 25. to the Lords; and affirmed by them.

This precedent is not to be followed at this day for divers causes. First, it saith by the violation of the Kings Oath, and of this word [rebellii] and by the forfeiture of all his lands and tenements to the King, that this offence should
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 probitionibus, the fame
being none of them that are there expressed. And in all the Records this word
[isomine] is not to be found, as it ought to have been if it had been felony.

Neither by the words of the Statute, or the supposed Act of 20 E. 3. can the
judgement (good subsequent) be warranted for these words (I do be at the Kings
will for body, &c.) cannot be extended to lots of life, no more then the sta-
ture of Carlisle (sub foris &ca omnia que in potestate tua obiur) extended to
forfeiture of life, but to imprisonment, &c. viz. lots of liberty, &c.

But at this Parliament, viz. in Anno 20 E. 3. taking in band of quarters
other then their own, and maintenance of them, is prohibited upon the pains
and forfeits, 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 lots of life, &c. but to impris-
omp, as common experience daily teacheth. For Hic & voluntas Regis,
viz. per Jusiciarios suos & per legem, &c. Therefore, as by the Records appeared,
his William Thorpe was pardoned and restored to all his lands. And we were
be interval of the Record of the Act of 20 E. 3. cap. 1. but there is no Re-
ord of any such Act in the Parliament Roll. And the very frame and com-
pition of it tended to be but a rehearsal of a Commandment from the King:
for the letter of it beginneth. First, we have commanded all our Judges, that they
shall from henceforth do equal law, &c. and therefore justly omitted out of the
Parliament Roll of Acts of Parliaments: and yet the impetrating of it neces-
ary, for that the fourth Chapter of this Parliament hath reference to the pains
contained in it.

It is enacted by Parliament Anno 11 H. 4. in these words.

Item. Que null Chancelor, Treasurer, Garden del Privie Seal,
Counselor le Roy, Serins a counsell dell'oy, ne null auter
Officer, Judge ne minister le Roy permans fees ou gages de Roy pur leur
diz offices ou services, preigne en null manieres en temps a tenir auffin
manieres de done ou brocage de nulmy pur leur diz offices & services a
fair, sur peine de responder au Roy de la treble que afoins praignont, &
de saistir la partie, & pumps al volunt le Roy, & foit discharges de son
office, service &c counsell por toutours ; & que chescont que voitera pur-
fuer en la dit matter, est lay faite cibien pur le Roy, come pur lay mesme,
& est la tierce part del somme, de que la partie est duement convii.

By this Act of Parliament, which is the judgement of the whole Parlia-
ment it appeareth, that if that which is impetrating is the first Chapter of 20 E. 3.
had been an Act of Parliament, then this nature of 11 H. 4. would never have in-
listed this kind of punishment, which is other, and far less then that which is
mentioned in 20 E. 3. And whereas it is laid in this Act of 11 H. 4. [Et pump al vol-
ont le roy] that is, by fine and imprisonment by the Court where the condemnation
shall be, viz. as hath been said, Hic et voluntas Regis, viz. per Jusiciarios suos &
legem lum, &c. non per dominium Regem in camera sua, vel alter.

So as by warrant of this Act of Parliament we have laid, that Bribery is a
misprision ; for that it is neither treason nor felony ; and it is a great mispris-
sion, for that it is ever accompanied with perjury.

True it is, that Sir Thomas Wayland, Chief Justice of the Court of Com-
mon Pleas, was attainted of felony, but it was not of Bribery, but being guilty
of
Cap. 68.

Of Bribery, Extortion, &c.

This being execrable to murder, for which by the common law he was adjured the death.

Likewise Adam de Stratton, Chief Baron of the Exchequer, a man of great possessions and riches, was accused of felony by him committed: all which I call upon Records of Parliament, the usual guides. For in the Parliament before in 18 E. 1, in the same year when he was arrested, I find two petitions, one presented by him for these words, Adam de Stratton petit gratiam regis, quod reliquitur ad aliquid partem terrarum tuarum, & de bonis suis quae habuit tempestas quaui fuit ad 2000 f. 

The other by Margareta de Butler, Margareta quae fuit uxor Joh. de Butler, de qua Adam de Stratton, tenet 12 li. 10 s. in London, clamat habere ut sibi. Repons. Rex non concedit; quia in civitate nulla est eichera nisi regis. And at the same Parliament 60. it is resolved, non sunt nisi tres formae brevis de Eichara: Quia ut legatus, vel ius mensis, vel aburavit regnum. And by consequence Adam de Stratton being his lands etched, must have the judgment of one of these three, which we have added to answer secret objections that might be made out of the mistakes of our chronicles.

The rest of the Justices were removed, fined, and imprisoned, taking John de Mettingham, and Elias de Beckingham, who to their eternal memory and honour were bound upright, and free from all bribes and corruption. It was petitioned in Parliament, that the statutes whereby the Justices of the one Renouf and the other should take no reward, ne be of any manner, may be observed. The Kings answer was, [The king hath and will charge such Justices to maintain right, and will punish the contrary, and therefore will you that all Statutes made touching them and the Barons of the Exchequer be made bold.]

[When any man in judicial place, &c.] For the difference between bribery and extortion is, that bribery is only committed by him that has a judicial place, and extortion may be committed either by him that has a judicial place, or by him that has a ministerial office. And this offence of bribery may be committed by any that have any judicial place either Ecclesiastical or Temporal. Non accipies pecuniam nec munera, (and the reason is supported by the Holy Ghost) quia munera exsaxt at oculos piamet, & mutant verba judorum.

A bribery hath to great force as to blind the eyes of the wise Judge, and to change the words of the law. Beatus ille qui excitat manus suas ab omni munere. Judex debet habere duos Salis; Salem Sapiens, ne fit iniquus, & Salem Confluentes, ne fit diabolus.

Though the thie be small, yet the fault is great: and this appeared by a Record in the reign of E. 3. Quia diversi fucijiciarii ad audendum & terminandum afgnati. ceverut de Johanne Berners qui indicatus fuit, quod pro favore habendo die deliberationis sua, vicem revertere domino regi per viij m. marcas, fo as they paid for every pound a thouland marks. So before Sir William Thorspe cafe. Rot. Parl. 7 R. 2. the Chancellor was acquitted of a hire of ten pounds, and his man four pound and certain rid, which, though the things were small, yet it had been punished, lest it had been pressed.

[Take any fee, robe, gift, or reward.] This is warranted by the oath aboved. But admit the party offered a hire to the Judge, meaning to corrupt him in the case depending before him, and the Judge takes it not, yet this is an offence punishable by the Law in the party that doth offer it.

[Brocaage.] 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 aboved; so as bribery may be committed not
Of Bribery, Execution, &c. Cap. 68.

not only when a suit depended in foro contentioso (as it was in the case of Sir Fr. Bacon, Lord of S. Albans, Lord Chancellor of England, who for many exorbitant and licit bribes was sentenced by the Lords of Parliament, which you may read R. Parl. Anno 15 Jacobi regis) but also when any in Judicial place doth any thing virtuous or coloris officii, though there be no suit at all. For example, if the Lord Treasurer for any gift of hostages, shall make any Customer, Controller, or any Officer or Household of the King, this is bribery, for he ought to take nothing in that case by the statute of 12 R. 2, but that he made all such Officers and Ministers of the best and most lawful men, and sufficient for their estimation and knowledge. (An excellent Law, tending greatly to his Majesty's advantage, to the good usage and encouragement of Merchants, &c., and generally to the advancement of commerce trade and traffic, the life of this Island.) Read this statute, for it is of a large extent, and the statute of 3 & 4. 5. 6. for they are Laws made contra ambulum, and worthy to be put in execution, for they prevent bribery and extortion: for they that buy, shall tell.

Vendit Alexander clave, altaria facit:

Vendere juris potest, emerat ille prius.

And that nature of 3 & 4. 5. 6. both extend as well to Ecclesiastical offices as Temporal, which concern the administration and execution of Justice. And it was resolved in the case of Doctor Truex, Chancellor of a Bishop in Wales, that both the office of Chancellor, and Register of the Bishop are within that nature, because they concern the administration of Justice.

1. Earl of M. Lord Treasurer of England, took colore officii diversibus bribes, &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 bribes, and then he gave way to relieve them. For this and other his bribes, extortions, oppressions, 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 Sergeant at Arms, and kneeling till he was commanded to stand up) upon the petition of the Commons by the Speaker, gave this judgment against him by the mouth of the Lord Asper in these words: This High Court of Parliament both 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, or employment in this State and Common-wealth. 3. And that you shall be imprisoned in the Tower of London during the King's pleasure. 4. And that you shall pay to our Sovereign the King the sum of 50000. li. 5. And that you shall never sit in Parliament any more. And that you shall never come within the Jurisdiction of the King's Court; as by the said Roll of the Parliament appeared, which is worthy of your reading at large.

In anno 21 H. 8. by Articles under the hands of all the Lords of the Privy Council, whereas Sir Thomas More then Lord Chancellor was one) and of the principal Judges of the Realm, which I have seen, Cardinal Wolsey was charged with divers bribes, 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 the whole of their jurisdiction by prevention, not for good order of the Diocces, 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.

Many Ordinary, &c. having power by the Act of 21 H. 8. to grant the administration of the goods of him that died intestate, &c. as intestate, to the widow or heirs of him, &c. take any reward for preferring of any person before another to the administration, it is bribery.
Of Extortion, Exaction, &c.

This is another great a Spisition, because it is accompanied with perjury. Hereof you may read in the First part of the Institutes, sect. 710. Sealso 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 Wolsey, Artic. 3. Extortion of Ordinaries. b Ramilabores hominum, extorationes hominum: a Rancunier, an exetorioner of men.

c The Collectors of the Fifens were committed to prison, so that they took of every town eight pence for an acquittance.

d A Cozeuer was committed to prison, because he would not take the bill of the dead body, before he was received for himself 8 shillings eight pence, and for his Clark 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, so that every man is bound to do to the King, as to his liege Lord, all that appertained to him, without any manner of writing (note the generality hereof) and such writings are to be cancelled, as by the Act appears.

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 action is punishable by fine, &c. the Record to be long, but worthy to be read. See Rot. Parl. Anno 8. H. 4. nu. 15. 16. 17. 18. 19. 20. excellent matter concerning les in Courts of Justice, and in the Kings household.

h Officialis indicatis de citando & affligendo plurimos, non potest dedisse, & petit quod admittatur ad finem.

i Contra sequiturres, commissariis, & alios offici episcoporum pro captione secludorum, priscquam debent, pro testamentis prabandis.

The extortion of the Clergy and of their Ministers to be enquired of by Justices of Peace.

Resolutions upon the nature 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 transferred in parchment, and bringeth bond to the Ordinary, &c. to be proved, it is at the election of the Ordinary whether he shall do 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, in the whole but the shillings, and not above, viz. two shillings six pence to the Ordinary, &c. and his Ministers, and two shillings six pence to the Hire
Of Bribery, Extortion, &c. Cap. 69.

For punishment of Ecclesiastical Judges for Extortion, See Rot de Inquisit. in Com. Eboræ, Somer-
50 E. 3. num. 9. 3 R. 4. num. 40. 3 R. 2. num. 38, 39, 7 R. 2. num. 53.
The Statute of 3 H. 5. ca. 4.


I 50

faz registering the same; or else the said service 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, whereas every line to contain ten inches, one penny.

If the Executor 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 service be for writing of the probate six pence, so the said testament be exhibited in writing with box thereunto affixed ready to be tested. 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 twice shillings six pence, whereas to the ordinary, &c. two shillings six pence, and twelve pence to the scrivine for registering the same. Where by custom less hath been taken in any of the cases aforesaid, there fewer is to be taken. And where any person requires a copy or copies of the testament to prove, or inventories to make, the ordinary shall take for the search, and making of the copy of the testament or inventories, 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, 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 inventories made, as to 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 public 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 Irish, as not guilty, the clark of the crown of the kings bench ought not to take for the venire facias, or for the entry of the plea, above two shillings, but the said clark did take for every such name by extortion two shillings. It is ordained and established, that the said clark of the crown shall take no more than half a shilling of old time. And moreover our soveraign 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 chorographer of the king in the common bench for making and writing of every fine levied for shillings, and no more, upon pain (if he take more) to lose his office, be expelled the court, one year imprisonment, and to pay to the party grieved his treble damages.

The fees to the marshall of the parliaments of the kings house, you may read in the statute of 2 H. 4. Vide 9 R. 2. cap. 5.

33 H. 5. ca. 39.

If any auditor of the exchequer, Duchy of Lanc., or court of wards take more than twice shillings four pence for the enamint of any letters patent, decree, grant, or indenature of lease, be shall lose for every pence to taken six shillings eight pence.

Manera sec capias, unus later habitus in eca.

Nulla parent vide maneria, virus habent.
CAP. LXX.

Of Usury.

Usury is a contract upon the loan of money, or giving dapes for forbearing of money, debet usury, by way of loan, credit, fines, sales of leases, or other dotes obligated. Usura dicitur ab utri & eae, quia datur pro uli aris; ut usura dicitur, quia ignis urae.

And first, Usury is directly against the law of God. And the reason wherefore it was permitted by the law of God for an Hebed to an Indid, was, because it was a mean either to exterminate, or to despaminate, as they should not be in bondage or injury to Gods people.

c And it is adjudged by authority of Parliament, that all Usury being forbid by the law of God, is sin, and detestable. And it is also enacted by Parliament, that all usury is unlawful, that is to say, against the laws of the Realm. Let us therefore see what former laws have prohibited herein.

d Si quis de usura convictus fuerit, omnes res suas amittat.

e Usurarii omnes res, sive teatatos sive inestatos decesserit, domini Regis sunt vivus, autem non solut aliquid de crimine usurae appellari, nec convinci, sed inter easeras regias inquisitiones solut inventur & probari aliquem in tali crimine decesserit, per 12 legales homines de vicino & per eum sacramentum. Quo probato in Curia, omnes res mobiles, & omnia cella, qui fuerunt ipsius usurarii mortui, ad usus domini Regis capientur, genes quemcumque inveniantur re ille. Heres quoque iphus hoc cadem de causae exhaereditur fecundum jus regni; & ad dominum vel dominos reverto turre hereditas. Sciemum tamen quod, si quis aliquo tempore usurarii fuerit in vita sibi, & super hoc in patria publice defamatus, si tamen a delicii ipso ante mortem suam defixerit, & pereuntiam egerit, post mortem iphus illi, vel res ejus, leges usurarii minime censebuntur. Oportet ergo confitare quod usurarii decesserit aliquid ad hoc, ut de eo tamquam de usurario post mortem iphus judiciatur, & de rebus ipsius tanganque de rebus usurarii dispotonat.

Vide leitatur de Merton cap. 5, & Fleta lib. a, cap. 50. f Manifetnus usurarii est inestabilis.

C Et inter les constitucionis ordines les viers royens Alked, &c. ordines que que les chartes des usurers fuissent al Roy, & que les heritages des usurers remeillent echeats al seigniors des fers, & ne fer inre echanut. s Item, arrest inius eit, que omnium mobilium amissionem conferet, & legem liberauen auter, que locum habet in usurarius Christianis.

A Ad 16 Artic. de usuris respondentur: Quod licet Episcopis pro pecocato illo pereuntiam usurario in jumere autaratem. Sed quia committendo usuram, usurarii furnum committunt, & super hoc eit convidus, cella et usurarii, securi cella furis, sunt regis; & si qui sequi voluerint contra hujusmodi usurarium, resituantur eas bona sua, quae ipsi usurario in usurae exorterent.

B Et invenitur prout Bracta, pro quod erat an Article of the charge of Inquery by Justices in Eire De usuraris Christianis mortuis, qui fuerunt, & qui cella habuerunt, & qui se habuerit. Et quod nullus recipiet usuram arce vel ingenio, et quod nullus recipiet usurae usus. And libera were indicted for taking usury by Justices in Eire, and some were pardoned by the King, and others not.

In ancient time a great revenue by reason of the usury came to the Crown: for between the 50 years of H. 3. and the 2 years of E. 1., which was not above seven years complete, there was paid into the Kings Cohest Four hundred and twenty thousand pounds of and for the usury of the Jews. And that excellent King, for liberae weighty reasons worthy to be written in letters of gold, did by Authority of Parliament wisely prohibit the same, in these

Words:


Of Usury. 

Cap. 70.

words: Forasmuch as the King hath perceived that many evils and disensions 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 fines and enforcements 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 imprisonment Outwards, where they was resolved. By which Act it appeared that the suppression of Usury tended to the honour of God, and the common good of the people.

By which Authorities and Records, and by many others that might be remembered, it appeared that in the ancient laws of this Realm Usury was unlawful and punishable, although the punishment was not always one, but sometimes greater, and sometimes lighter. And therefore at the Parliaments olden in the sixteenth year of E. 3. it was enacted and declared, according as it had been sometime before, that the King and his Heirs should have the power of Usurers after their death, and that the Ordinary of holy Church should have the power of Usurers aforesaid, continuing as to them it appertained, to compel them by the custom of holy Church, for the sin, to make restitution of usury taken against the law of holy Church. But this nature being afterwards repealed, as heretofore shall appear.

Johannes Hop presentus per Juratares pro Ultera eandi aetatis 15. 5. d. pro 80. s. pratiand, &c. de terminibus.

Many of the Citizens of London being under trade and traffic (which is in the life of the Commons-wealth, and especially of an Island) being breaking 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 by the execution of laws, and by 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 horrid vice of usury, might be observed throughout the whole Realm.] Whereunto the King answered, That the old law should continue.

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 to good success, as the Commons in Parliament petitioned the King in these words, The Commons pray, that against the horrid vice of usury (then termed Schektes) and profaned 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 to be necessary, then the same be then observed. And here it is to be observed, that at an yeat time the notable Merchants of London detested Usury and Dye exchange. By the statutes of H. 7. 11. H. 7. and 11. H. 7. all Usury is dammed 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. Utra contra naturam est, quia ultra sua natura est finem, nec fructuum habe.

But now by the statutes of 37. H. 8. and 13. Eliz. all former Acts, Statutes and Laws obtained and made by the abiding of punishment of Usury, are made void and of none effect. So as this day, neither the Common law nor any nature is in force, but only the statutes of 37. H. 8. and 13. Eliz. and 15. Jac. 3. and the Ecclesiastical jurisdiction in tides by the said nature of 34 Eliz. as thereby appeared. For the Exposition of which statutes of 37. H. 8. and 13. Eliz. is in my Reports, viz. Lib. 3. fo. 80. St. Lib. 5. fo. 67. 70. Lib. 9. 26.
Of Simony and corrupt Presentations.

Simony described by the Act following. Stat. de 31 Eliz. cap. 6. See the s. part of the Inflit. in the exposition of the said Act of 31 Eliz. in Actum de illo quod evertit qui gratias adjuravit &c. Vide Matt. cap. 10, ver. 8.

* * * * *

Nora, the statute does not make the bond or promise, covenant or other assurance void, but the presentment, &c., and if it was adjudged, Pach. 40 Eliz. Rot. 1745.

in Communi Banco, between Gregory Plaintiff, and John Baptist Defendant.

Nota differential inter malum in se against the common law, and malum prohibitum by statute law, and malum in se against the common law and malum prohibitum by the Civil or Canon law; whereof the Judges of the Common law in these cases take no notice.

It is the sixth 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 all where any person or persons, bodies politic and corporate, do usurp, and have no title to present or collate. And to it was adjudged in case where the usurpation was to a Church of the King.

Sed quando presentato & jus patronatus sunt temporaria, queritur quomodo sit Simonia per donum pecuniae pro illis. Respondendum est, quod jus patronatus & presentatio dicuntur spiritualia respectu rei ad quam presentatur, quae spiritualia. Vide Linwood cap. de Jurejurando, fol. 80.

[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 both corruptly present or collate, by the express letter of this Act the King shall present but where one hath usurp, and corruptly present or collate, there the King shall not present, but
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 doing of the usurper maketh the benefice, &c. bold, but taketh not away the lawfull title to present from the rightfull Patron and so was adjudged in the case abovesaid.

Also upon these words, [If any Patron without the notice of the person to presented or collated, doth take reward, &c. yog by the express Letter of this branch the Church, &c. is bold, 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, bold. And so it was resolved in the case abovesaid, as it hard bin formerly adjudged in the Common pleas. But where the presentee is not priy nor contenting 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. to be not be notables, unless be priy to the corrupt contract. And upon the criminal penning of these several branches, the diversity of the abovesaid is resolved, Mich. 13 Jac. 1 ubi supra.

If Shall forfeit and lose the double value of one years profit.] This double value shall be accounted according to the true value, as the same may be letter, and shall be tryed by a Jury, and not according to the extent of the taxing of the Church; whereas 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. 35. F. N. B. 176. & Polochron. lb 7. ca. 38. Rot. Parl. 18 E. 3. 44. l. R. 2. 1 2. 17. 3. 7. 1. 6. 6. 7.) and the other taxing was made in 9 H. 8.

Be adjudged a disabled person in law.] It was resolved in the case of Mich. 13 Jac. 1 ubi supra, that the King could not dispence with this disability by a Non obstante, for when an Act of Parliament is made that disabled any person, or makes any thing bold or notorious for the god of the Church of Common-wealth, in this law all the Kings subjects have an interest, and therefore the King cannot dispence therewith without more than with the Common law: but where a statute prohibits any thing upon a penalty, and giveth the penalty to the King, or to the King and Informer, there the King may dispence 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 Censor of the Kings house, by reason of which office he hath the receipt and payment of 40000. li. of the Kings treasure yearly, and paid the wages beneath the Stairs, &c. his 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 hold by force of the nature of 5 E. 6. ca. 15. The second was, fixing 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 dispence with that [disabled.] And upon mature deliberation and hearing of counsel learned, they resolved, and so certified the said office was hold by the said bargain and sale, and that the King could not dispence 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, Burgess, 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 entret into the Parliament without taking the said oath, shall be deemed no Knight, Citizen, Burgess, or Baron, nor shall have any voice, but shall be as if he had been never returned or elected. Here be words that amount to a disability, and therefore that according to the former resolutions the King cannot dispence with the same.

* Anno 12 Jac. reg. Sir Arthur Ingrams cafe upon the nature of 5 E. 6. cap. 16.

5 Eliz. cap. 1.
It is further enacted, that if any person shall for any sum of money, reward, &c. (as supra) other than usual fees, adme, institute, install, induct, invest, or place any person in or to any Benefice with the curse of souls, dignity, Prebend, or other Living Ecclesiasticall; That then every person so offending shall forfeit and lose double value, as supra; and that thereupon immediately from and after the investing, installation, or induction thereof had, the same Benefice, &c. shall be ettoons meerly void, &c.

The reason of this clause (for I was of this Parliament, and obserb the proceedings therein) was to avoid busy and precipitate Admissions, Institutions, &c. to the prejudice of them that had right to present, by putting them to a Qua-re Impedie, and to such haste as precipitation is used, but for reward, &c. as it is to be presumed.

Where be two great enemies to justice and right, viz. Precipitatio, & motora Cunctatio.

And albeit the Church is full by the Institution, &c. against all but the King, yet the Church became not hold by this branch of this Act until after induction.

And that the Patron, &c. shall and may present, &c.]
This is intended of the rightfull Patron, of the better right to present.

And be it further enacted, that if any Incumbent of any Benefice with the curse 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, sum of money, or benefice 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 year's profit.

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. as supra, (ordinary and lawful 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 sum of forty pounds, and the party so corruptly made Minister, shall forfeit and lose the sum of ten pounds; and if at any time within seven years after such corrupt entering into the Ministry he shall accept or take any Benefice, Living, or promotion Ecclesiastical, that then immediately from and after the induction, investing or installation thereof, or thereunto had, the same Benefice, Living, and Promotion Ecclesiastical, shall be ettoons meerly void, &c.

[Take a Benefice.] This word Beneficium Ecclesiasticum extendeth not only to Benefices of Churches Parochial, but to dignities and other Ecclesiastical Promotions; as to Benefices, Archdeaconries, Prebendes, &c. And it appeared in our books that Benefices, Archdeaconries, Prebendes, &c. are Benefices with the curse of souls; but they are not comprehended under the name of Benefices with the curse of souls within the nature of this Act, as E. 3. 8. by reason of a special Proviso; which they had been, if such Proviso had been added, viz. Benefices, Archdeaconry, Chancellorry, Treasurers, Chantries, Prebend, or a Parson where there is a Clear Inducation.

If any person or persons, bodies politic or corporate, which have election, nomination, voice, or assent in the choice, election, presentation
sentation or nomination of any Scholar, Fellow, or any other person to have room or place in any Church Collegiate or Cathedral, Colledges, Schools, Hospitalls, 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.

[Which have election, presentation, &c.] This Act being a law perpetual, these words extend not only to such persons and persons, &c. as at that time had election, presentation, &c. but to all and every person and persons that at any time hereafter shall 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 extends not only to Churches, Colledges, Schools, Hospitalls, 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 summ 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 Writs concerning Simony, and other corrupt entries into Churches, which are not unnecessary, in derogation of them, to remember.

Quatuvor Ecclesiae portis intraverit in omnes,
Casars & Simonis, Sanguinis argae Dei,
Prima patet magnis, nimmeo patet altera, charis
Tertia, sed paxiis quartae poterit solei.

Four doors hath every Church, and all but one forebod.
(Whereof unfitten some may be peradventure)
Of Cesar, Simony, of Kindred, and of God:
And each Church-man by one of these doth enter.
Great mens command doth open wide the卤fth,
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 loco of a Sonne, wheresoever an Adbolition is appendant, shall not present to the Church, because he can take nothing for the presentation, for which he may account to the heir; and therefore the heir in that case shall present of what age soever. And it an heir of tenant in capite

* Latro est qui cum ex religione sectatur.

And the Common law would have the Patron so far from Simony, as it denied him to recover damages in a Quius Imperdiet, or Affile of Darnett Presentment, before the statute of W. 2. cap. 5.

Simony is the most odious, because it is ever accompanied with Perjury, for the present, &c. is sworn to commit no Simony, CAP.
Of Monomachia, Single-combate, Duell, Affrays and Challenges, and of Private Revenge.

This single combate between 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 belonged to the Sagittary, who is God's lieutenant. And the law herein is grounded upon the law of God. Vindicae eum mihi, & ego retribuam, dicit Dominus, Vengeance is mine, and I will repay it, saith the Lord. Quis vindicare vult, inveni tecum vindicam a Domino, & peccata illius servans servavit, He that will revenge shall find vengeance from the Lord, and he will surely keep his sins in remembrance.

It is also against the law of nature and of nations, for a man to be judge in his own proper cause, Judge in proper causa, especially in Duello, where fury, to rage, malice and revenge are the rulers of the judgement. All more of private revenge, cap. Multiplication in [Crimen commissum.

But it is objected, that this single combate may be undertaken for revenge object, and pretension of the honour of the party grieved.

1. The honour or estimation of the party may more suitably and notoriously be recovered and repaired by the Sagittary in public 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 laws of God is impius and dishonourable. 4. The eminent danger of the parties taking private revenge first, concerning the fumes of both of them, as well of him that biteth (who is vir languinis) as of him that is slain and died in his malice; and, as to the world, he that biteth in private case then he that is slain, for the murderer loner not only his lands and gods, but his life also, and his honour which he so much respected; for by his attendant his blood shall be corrupted, and if he were noble or gentle before, he thence becomes ignoble and base; and he that is slain, by law loner none of them: so as bereft it is truly said, Infelix pugna, ubi majus periculum incumbit victor quam victo. 5. Not only the soul of man, but the body also, was originally made to the image of God. Quicunque effudicit humanum gesset linguam, factum linguas 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. Salus Deus qui visum dat, Vice est Dominus; sic potest quisquam ex juicio avertre nisi Deus, vel regens auctoriae Dei, ut Iudicet. And this was the reason that amongst Christians it was not lawful for the Lord to kill his Sislain.

An ancient time to which the law did respect honour and order, as hereafter Britton Eth. Si trespass foret fit per pacem de Chivalers ou a altere gentis homines per Ribandus ou anceres vile perfone, fi le ferre foit per felony, &c. saus defert del Chivalier, que le Riband perdra fon poine douant i trespass.

And many Opinions, Laws, and Acts of Parliament which do prohibit the pardon of wilful murder, are also grounded upon the law of God, to the end that he should offend in hope of pardon: Non accipies pretium ab eo qui requisitam, statim minet & ipse mortetur. Ne poeulatis terram habitations velam quis cruore maculat; nec alter expiari potest, nisi per ejus linguit.
Of Monomachia.

Cap. 72.

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became to by the Act of God. And if the Appellee after battall waged became blind upon any occasion, the Appellee in favor of the Appellant go quit. When issue is joined to be tried by battall, and the trial by battall is become impossible by the Act of God, or by the default of the Appellee, the Appellee goeth free.

And this kind of battall, in case of Appeals and Suit of right, is by public authority and course of law, whereunto all the people by an implied consent are parties, and (as some hold) bard his warrant by the word of God, by the single battall between David and Goliah, which was granted by public authority.

King E. 3. In the twentieth year of his reign, baking war with the French King for his right to the Kingdom of France, out of the greatnes of his mind, for love of his subjects, the taking of Christian blood, and a speedy trial of the right, offered the kings combat with the French king, but he refuseth 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 taking of Christians guilless 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 Rex dedit potestat. Johanni Ducii Lancali Avunculo suo de certis requellis seu oblationibus Carolo Regi Franci faciendo, viz. quod negotium bellum inter predictos reges finitur, 1. Per certamen peronarum suarum. 2. Vel aliter inter personas suas cum tribus Patris et ipsi utique utrique adjunctis. 3. Aut alioquin quod dicta congrua aegadietur & locus, quibus sub universali certamine potentiarum suarum finis bello imponi valeat. The Duke of Lance according to his Commission made these offers from the King of England to King Charles of France, but he was audacious, fed non exanditus; for King Charles liked none of these offers.

b And in Anno Domini 1196. Anno Regni Richardi primo ostavo, Philip King of France sent this challenge to Richard the first, that King R. would chuse the for his part, and be the King of France would appoint the for his part, which might sight in like for trial of all matters in controversy between them, for the avoiding of shedding of more guilless blood. King Richard accepted the offer, with condition that either King might be of the number, but this condition would not be granted.

c These and the like offers, as they proceeded from high courage and greatnes of mind, to had been lawfull, if they had been warranted by public authority.

Y 2 C A P.
CAP. LXXIII.

Against going or riding armed.

It is enacted, that no man, great or small, of what condition soever be, (except the Kings servants in his presence, and his ministers in executing des mandements 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 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 prision at the Kings pleasure, and to make fine and ransom 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 appeared by a Record in 29 E. 1. quod non licet tumcare, bodecare, judas facere, aventuras guereare, seu ad arma presumer, sine licentia regis, &c Britton fo. 29. b. It was called quemadmodum decursus, of turning and winding, in respect of the agility as well of the horse as of the man. For in those days this bed of Chivalry was at random, whereupon great peril ensued. Therefore in the reign of E. 3. for safety the Elit was devised. See the statute of 7 E. 2. de defensione portandi arma, and the nature of W. 1. cap. 9. & cap. 17. W. 2. cap. 39. and the expositions upon the same.

It is Lex & confectudo Parliamenti, that wheresoever the Parliament is holden, proclamation should be made prohibiting wearing of armor, and exercise of places 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 consent do use Jults or Turneaments, or to play at sword and buckler, or any other sorts of arms, and the one hit the other, this is felony, for that it is not lawful to use them without the Kings license; which agreeith with the record abovesaid, of 29 E. 1.

b Williams Jordan inventus fuit vagans armatus de platis, armatorium, &c. commodum eft per Juratores, quod minus fuit per quodam ignotos, & quod pro salvatio vnit sito, platis prudicas apposuit super corpus fltum, tamen invent inventit feruas tertem pro bono gefitu foto.

c The clause of the statute of 25 E. 3. concerning this matter, we have referred to this place, viz.

And if percase any man of this Realm ride armed covertly or secretly with men of arms against any other, to fray him, or rob him, or to take and keep him till he be hath made fine or ransom, 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 see shall have the ethos 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.
Agains going or riding armed.

ving alwayes to our Lord the King the year and the waft, and the for-
feitures 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
fait. And that of the lands which be in the Kings hands, writs be grant-
ed 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 Laws of the Realm of old time used in such case, when
any purposed to slay, and declared by such other act, voluntas reputabatur pro
facto, as hard had been before; and so is this branch concerning that point to be
understood.

And that writs of Scire fac. be granted.] Here it may appear
what speedy remedy by Scire fac. the makers of this Law gafe for restitution to
be made, where any of the Justices had any of the cases mentioned in this
branch judged it treason, which is declared by this Law to be against Law.

But let us peruse the words of the said Act of 2 E. 3.

This ministers in executing.] By the order of the Common Law
and Statutes of the Realm, the Sheriff, or of other minister of the King, in execution
of the Kings writs, or process of law, might, after resistance cause posse co-
mitutus. For, Sequi debet potestia legem, & non antecedere.

Des mandements de Roy.] That is, of the Kings writs and
pieces of law, secundum legem & confutadidem Anglie. Though in this Act
there be three special exceptions, yet the Lord both 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.] Bradon
both notably writ of the liberty of forces, viz. that there is his 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
dejectam dico quatercinque fuerit vis armata) non solum si quis venerate cum taliis, verum etiam omnibus illos dicimos armatorum, qui habent cum quo nocere possunt. Telorum autem appellatione omnia in quibus quinquis hominum nocere possunt accepitur; sed si quis venerate fine armis, & ipsa concertatione ligna, sumptetrix, fus-
ñas & lapides, tales dicitur vis armata. Si quis autem venerate cum armis, armis
tamen ad dejectionem non usus fuerit; & dejectis, vis armata dictur eie fata, su-
fficit enim terror armorum, ut videatur armis dejectis. Agreed with that of
the Poet.

Jamque facis & saxa volant, furor arma ministrat,
Britton falsis, Nos volones, quae touts gentes plus ulter judgmente qua force.

Not to bring force in affray of the (pails, i. 1. Country.

This Act is notable expounded by the writ in the Register, and F.N.B. 249. by
that writ it appeared, that if any both enter this, or detain with force any house,
lands or tenements, the party grieved may have a writ upon this statute
directed to the Sheriff, by force of which, if the Sheriff find the force, then if
any after proclamation made, (which proclamation is by reasonable construc-
tion to be made for abiding of bloodshed) shall dispute, as if it be found by inquisition,
the Sheriff is to seize their arms and weapons, and to arrest and take the offe-
nders and commit them to prison, &c. But note, the Sheriff cannot restore the party
grieved upon this writ to his possession, no more than he can upon the writ de
vi laica removenda, but restitution must be made by force of the statutes of a & 21 Jac. b. And yet in some cases a man may not only use force and arms, but
assemble

Vide cap. High treason, verb. Fact
summis, fo. 5.

Scire fac.

Note, for restitution. See hereafter
caption. 75.

W. 1. 9 & 17.
W. 1. cap. 19.
18 E. 1. Execution
31.
15 E. 2. ibid. 247.
3 H. 126. 1 & 10b.
5 H. 7. 8.
Lib. 5. fo. 91. Sem
maynes cafe.

Bracon. lib. 4. fo
46a.

Virgil.

Britton 166. 4.

See the chapter next before, verb. Affray.

Regimimum.

F. N. B. 249. f.

Nora.

Vide lib. 5. fo. 9.

Seymasyes cafe.

F. N. B. 14.

4 & 5 H. 6. cap. 9.
21 Jac. cap. 35.
5 E. 3. c. 30.
305.

16 Aff. p. 31.

21 H. 7. 358.
Against going or riding armed. Cap. 73:

21 H. 7. 39.
Lib. 5. fo. 91. b.
Semaynes calce.

24 E. 3. fo. 33.

24 R. 3. ubi supra.

vid. se 4. part of
the Inhabitants, cap.
L 6.
20 R. g. cap. 1.
vid. in dorff. claus.
2 E. 1. 19. 21.

Regimium
F. N. B. 249. f.
24 E. 3. fo. 33.

Vide 35 E. 3. cap. 9.
Simele.

Attire the company also. As any may assemble his friends and neighbours, to keep his house against those that come to rob or kill him, or to offer him violence in it, and to be construction excepted out of this Act: and the Sheriff ought not to deal with him upon this Act, for a many house is his castle, & c. Ex parte Citrius Regimen, &c. where shall a man be safe, if he be not in his house? And in this sense it is truly said,

Armato in armarum superi juris sanitat.

But he cannot assemble force, though be extremely choicearmed, 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, [sic] Sir Thomas Fuggete 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 debates between him and Sir John Trevor Knight in the same bedch, at Pauls in London, who menaced him, &c. and therefore for doubt of danger, and safeguard of his life, he went to armed. Notwithstanding the Court upon their being advised, that the arms were fetched, and therupon the same were offered, and he commanded to hand in the Wardrobes during the Kings pleasure. Sir Thomas played to find maintenance, which was denied, until the pleasure of the King was known, because he was in possession during the Kings pleasure, according to this nature.

Upon pain to forfeit their armour, &c.] It appeared before the case of Sir Thomas Fuggete, that the offender was to be punished according to this Act, but he forfeiture of the armour and imprisonment; but the nature of 20 R. 2. cap. 1. forbids fine and imprisonment.

And that the Kings Justices, in their presence, &c.] So did Sir William Shardishill, as is abovemented.

And other ministers in their bailiwicks, &c.] There is to the Sheriffs, Bailiffs of liberties, &c.

Lords of Franchise. And their Bailiffs, Mayors, and Bailiffs of Cities and Boroughs, within the same Cities and Boroughs, and Boroughholders, Constables and Wardens of the Peace within their boards, 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 when they find, that have not done that which was required to their office. Sec. 12 R. 2. cap. 6.

It is to be observed, that upon this nature by the resolution of the Lawmen: when was framed, and entered 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, erecting the force, and our Act, and faith, No naturum prudet. Sum inviolabiliter observari; sed idem insinuantes juxta vim & effectum epulis statuti castigari facere violentia & poenam. Ibi provocamus, &c. publice proclamari faciam; &c. as in the writ. And here is a Creat in Law, that upon any nature made for the Common peace or good of the Nation, a writ may be devised for the better execution of the same, according to the true and effect of the Act.

Note. Proclamations are of great force which are grounded upon the Laws of the Nation.
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 wilful and corrupt perjury in any matter or cause depending in effect 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, shall unlawfully and corruptly procure and suborn any witness to refute in perpetuum 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 wilful perjury by their deposition in any of the Courts aforesaid, or being examined ad perpetuum 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 mainprice, &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 and subornation was severely punished by the ancient Laws of this Realm, perjury is still being forbidden by the Law of God, a Non perjurabis in nomine meo, nee polius non me Dei tui. And again, Non perjurabis, sed super Domino salutamenta tua.

A false witness is called Perjurus, quia perpiram jurat. The Conquest was punished sometime by death, sometime by imprisonment, and sometime by corporal punishment, &c.

Aulcuns sont punis pour avoir de faux témoignes. But to enfreire tabg sont non d'executer. Afterwards it came to be more mild, viz. d Fleta faith, Atrox injuria est qux omnium incolitum spectat

Afterwards it came to fine and ransom, and other to bear testimony. Et quezze le voillont perjurer pur lower, qui par douce de neert, & ceux sont reints a nostre volunt, & mens no furent crus per nostre. And it appears in 7 H. 6. that et that is perjured shall be fined and imprisoned.

Thomas Vigers & duo ali sunt culpables, &c., perjurati pro fraude est, &c., iniuriam, &c., in aiure de Hastingfield.

Qui testes de perjurio convincentes fatagis, multis illis pluris, producere ceceles haber.

The punishment of Perjury in Europa &c., a false verdict was to be thereto by the Common Law, as few of no Juries were upon just cause excused, &c., for the

Of Perjury.  

Cap. 74.

Judgement against them was. 1. Quod amodo amittat liberam legem imperperium. 2. Non trahantur in tellimonium veritatis. 3. Bona & castra tua forisuis. 4. Terra & tenementa tua capiantur in manus regis. 5. Quod uxorres & liberi tu modis amovansi. 6. Quod tere & tenementa tuo egressur, &c. 7. Quod capiantur & in Gaolam derudantium. Which hedewby how obvious perjury was in the eye of the Law: and this Law work be remain in force; but a milder punishment is fix' done by the nature of 23 H. 8. wherein the party grieved had election to ground his guilt of Atraim upon this nature, to take his remedy at the Common Law.

For perjury concerning any temporal act, the Ecclesiastical Court hath no jurisdiction; and if't be concerning a spiritual matter, the party grieved may sue for the same in the Star-chamber. See the statutes of 11 H. 7. c 23:2 H. 8. cap. 9. And when you have read the case in Mich. 7 & 8 Eliz. Dier 242, 243, you will consider how necessary the reading of ancient Acts and Records is, and the continual experience in the Star-chamber is against the opinion conceived there.

And Mich. 10 Jac. in the Star-chamber in the case of Rowland ap Eliza, it was proved, that perjury in a witness was punishable by the common law, and hereafter shall be shewed more at large. But now let us premise the words of the nature.

[By any Writ, Action, Bill, Complaint or Information.]

Out of these words are perjury and subornation of perjury upon an indictment for the King (by example of Kite) as it was resolved in Flowers' case, because that perjury upon an indictment is not within the nature. But seeing perjury was an offence punishable by the Common Law, though the indictment of Flower grounded upon this nature was overthrown, yet in such perjury upon an indictment punishable, and most commonly punished in the Star-chamber.

[Information.]

By this it appeared, that perjury committed in an Information exhibited by the Kings Attorney, or any other for the King, by any witnesses produced on the behalf of the King, is punishable either by this Act, or by the Common Law. And to it was resolved in the said case of Rowland ap Eliza, which was this: The Kings Attorney preferred an Information in the Chichester against Hugh Namys Squire the father, and Hugh Namys the son, and others, for intrusion and curting down a great number of trees, &c. in Penrith in the County of Merioneth. The Defendant pleaded not guilty, and the trial being at the bar, Rowland ap Eliza was a witness produced for the King, who depoited upon oath to the Jury, that Hugh the father and Hugh the son joined 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 Namys the father exhibited his bill in the Star-chamber at the Common Law, and charged Rowland ap Eliza with perjury, and when the jury, in that he the said Hugh the father never joined in fall, nor commanded the Wendes to cut down the trees, &c. And it was resolved, 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: for upon an indictment of information, of 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 premise or describe what perjury is in legal understanding, both upon this nature, and at the Common Law.

Perjury is a crime committed when a lawful oath is ministered by any that have authority, to any person, in any judicial proceeding, who knows absolutely and falsely in a matter material to the issue, or cause in question, by their own act, or by the instigation of others. Now let us premise the branches of this description.
Cap. 74.

Of Perjury.

A lawful Oath.

This word Oath is derived from the Hebrew word Ḥet, and is expressed by these several names, viz. 1. Sacramentum, a seal, &c. mean, because it ought to be performed with a sacred and religious mind. Qui jurare, et Deum in talem vocare, &c. est adus divini cultus. 2. Juramentum, a note, which signifies law and right, because both are required and meant, or because it must be done with a just and rightful mind. 3. Jusjurandum, composed of two words, a jure & jurando. In the Common law Sacramentum is most commonly used; in our books and ancient statutes published in French, Sacrament, 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 usual, either asseritum ut de præterto, sicut testes, &c. seu promissorium de futuro, sicut judices, iudiciarii, officiarii, &c. so as an oath is to sacred, and so deeply concerned the confidences 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 coeval oath, because he toucheth with his hand some part of the holy Scripture.

The Oath of the Kings' Body Council, the Justices, the Sheriff, &c. was thought fit to be altered and enlarged, but that was done by Authority of Parliament. For further juridical, 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 vail'd 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.


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 any witness, &c. by this Parliament I attended, being then Attorney General. And oaths that have no warrant by law, are either 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.


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 say Christians that had spoken against the worshipping of Images, were by the Bishops sworn to worship Images: this oath was against the express law of God, and against the law of the Land, so that they had no warrant.


rant
rant to minister the same. Let the children of the Church be called and intruced by the testimonies of the holy Scripture, that nothing made with hands may be worshipped. See the second part of the Institutes, Marbridge cap. 14. & 19. concerning arts, and specially out of Glanvile, concerning the Nobility of this Realm, and W. 1. ca. 38.

[By any having authority.] For where the Court hath no authority to hold the plea of the cause, but it is coram non judice, there perjury cannot be committed. For, as Bracton saith, Sacramentum habet in tres comites, Veritate, Judicia, & Judicium: Veritas habenda est in jurato, judicium & judicium in Judice.

And all this is grounded upon the law of God, Jurabis, Vivit Dominus, in veritate, & judicio, & in jutitia.

[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 sedit for aggravation of the offence, as general Oaths given to Officers or Sinisters of Justice, Civitates, Bursegesch, or the like, or for the breach of the Oath of Oaths or Allegiance, ye 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 sedit 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 false-worn man, no Action oth 126; because the false-wearing may be extrajudicial. If the defendant perjured himself in his answer in the Chancery, Exchequer-Chamber, &c. he is not punishable by this statute, for it extendeth but to witness, but he may be punished in the Star-Chamber, &c.

[Who swears absolutely.] For the deposition must be direct and absolute, and not ut purat, neque fideliter, neque ut credis, &c.

[And falsely.] Herein the law taketh a diversity between falsity in express words, and that is only within this statute, and falsity in knowledge of 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 previously 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 swore was true, yet because they knew not it, he was a false oath in them, for the which both the procurer and the witnesses were sentenced in the Star-Chamber.

For (as Fleta saith) Ad rectum juramentum exiguitur, tria, veritas, conscientia & judicium: truth and conscience in the witness, and judgement in the Judge. And herefrom agreed Bracton, that a man may swear the truth, and yet be perjured. Dicunt quidam verum & mentitur, & pejorat, & quid contra mentem vadunt. Ut si ludeus juraverit Christum natum ex virgine, perjurium committit, qua contra mentem vadit, qua non credit, et sic ut jurat.

By the ancient law of England, in all Oaths Equivocation is utterly condemned by Britton & Stark, Serment est honet & leal, quam sa confacence demeuse accord a checun point a la bouche, ne plus ne moins, & fil ad disord, dongs eti perlou. And this is grounded upon the law of God. Nunquam Deus indiget mentacio verit et pro ulo loquamini deos, aut decipetur ut homo veritis fraudulentus? Perjurunt sunt qui servatis verbis juramenta decipunt aures corum qui adhibunt. Nequivocation should be permitted tending to the subversion of truth, it would shake the foundation of Justice.
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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 concerned not the point in suit, and therefore in effect it is extrajudicial. Also this Act gibbet remedy to the party grieved, and if the deposition be not material, he cannot be grieved thereby. And Bacon saith, Si autem Sacramentum satum sanctum, licet fallum, tamen non commititur perjurium.

By their own Act; & c.

This clause of the nature, although it be more general than the clause of procuration, yet being the first clause concerning procuration extended not to perjury upon an Indictment, this clause by construction shall extend no further than the former. See Lib. Intr. Coke Co. 164, 165; 361.

Or by the subornation of other. Subornation is derived of sub and orno, and ornam in one of his significations is to prepare, so as subornar is as much to say, as to prepare secretly or understand. Esi autem subornare quasi subitus in aure ipsam male ornam; unde subornatio dicatur de falsi expressione, aut de veri suppressione. And here is to be noted, that in the judgment of the Parliament Plus peccat author quam actor; for the subornor est peccat 40 l. Fleta 5, ca. 27, and he that is subornet est 20 li. Fleta 5, ca. 28.

In an Action of perjury brought upon this nature, the plaintiff counted that the defendant falsa dixit & deputavit, &c. and in what action, upon what plea, and in what Court, &c. and concluded, &c. committit voluntarum & corruptum perjurium. And it was ruled by the whole Court, that the Court was hitius and insufficiens for two causes. First, for that in this Act of 5 Eliz. as here it appears, there be two distinct clauses, one if he be perjuris of his own proper act; the other, if he be perjuris by subornation, &c. and the plaintiff ought to declare in certainty, within which of them the defendant is perjuris. The second cause was, where the Act stated [willfully and corruptly commit any willful perjury, &c.] and the words of the Court be, falsa dixit & deputavit; and first not voluntary & corrupt; and the said clause, &c. committit voluntarum & corruptum perjurium, falseth not the former insufficiens, because it is but a conclusion upon the former matter.

And the like judgment was given in this Court as to this latter part, as to this latter part, An. no 27 Eliz. in the case of one Mellers of Lincolnshire.

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 commenced 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 perjuries, and to examine the defendant upon oath upon interrogatories before this Act, for then such jurisdiction had been taken by a Prior in this Act, and when issue is joined, it shall be tried in the King's Bench, as by Law it ought: &c. &c. fide similitud.

If a man be taken the a supect, and he be not indicted, nor in there any certain cause to arraign him, the Court may give him the Oath of Allegiance, viz. Quo ille certus, & loyal, &c. Vide 45 Eliz. 3, 17. a simile devante cap. 7. De Conjurati-01, &c. in fine. 2 Eliz. 4, 36. 20 H. 6. 37. Attestor adiur.

Be 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.

Z 2
Of forging of Deeds; &c.

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 falsely forge, or make, or subtilly cause, or wittingly attempt 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 remembered, 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 falsely forge or make, or wittingly, subtilly and falsely cause or attempt to be made or forged, any false Charter, Deed or Writing, to the intent that any peron or persons shall or may have or claim any estate or interest for term of years, of, in, or to any Manners, 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, Acquisition, Release or discharge of any debt, account, action, suit, demand, or other thing personal, or shall pronounce, &c. as supra; 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 esquire commit or perpetrate any of the said offences in form aforesaid, that then every such second offence or offences shall be adjudged felony, &c.

The same spoken of forgery or counterfeiting of the Great Seal of the Kings Coin, &c. which are declared by the statute of 25 E. 3. to be High Treason. Say 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.

The Spiriz faibh, Afcuns peches font-punies p fade de poulice, comme dit de faux notoires, &c. peccans membreum puniendaeur. (Car pur fauter de faile ne fu des judgement mortel.)

Britton
Forging of Deeds.

Britton lib. 1, c. 20, sect. 3. When a deed is forged, it is held to be void. The same rule applies to a false writing. A false writing is defined as one in which the signature is false, or where the writing is not signed. Where a false writing is used, it is considered as a forgery. The same rule applies to a false writing in general. A false writing is defined as one in which the signature is false, or where the writing is not signed. Where a false writing is used, it is considered as a forgery. The same rule applies to a false writing in general.

Forgeries are generally considered to be fraudulent and punishable as such. The penalties for forging a deed or a false writing are severe. The punishment for such an offense is imprisonment or fine, or both. The penalties for forging a deed or a false writing are severe. The punishment for such an offense is imprisonment or fine, or both. The penalties for forging a deed or a false writing are severe. The punishment for such an offense is imprisonment or fine, or both.

To make a false writing under seal, the false writing must be signed by the party to whom it is intended to be given. The false writing must be signed by the party to whom it is intended to be given. The false writing must be signed by the party to whom it is intended to be given. The false writing must be signed by the party to whom it is intended to be given.

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Or if it be made by two persons, the seal is valid. If a false writing is made under seal, it is considered valid. If a false writing is made under seal, it is considered valid. If a false writing is made under seal, it is considered valid. If a false writing is made under seal, it is considered valid.

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forging of Deeds.

Cap. 73.

allowed and permitted by the Lords of the Mannors; or which was not false, was required to be within these words [a false writing sealed.]

Court-roll, or the will of any person or persons in writing.] Here be two kinds of instruments that shall not be sealed, because they may take effect without any seal, for that they be not deeds; as Court-rolls concerning grants, surrenders, admissions, &c. of Copy of 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, falsly without any warrant of direction of the Testator; albeit he did not forse, or falsly make the 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 Dice.

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 doubts 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, or charged; whether if one did forse, or 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 rentcharge for years in the title 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 or, 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 mere estates of freehold or inheritance, &c. might be of little or no value; and accordingly it was resolved, Pach. 38 Eliz. in the Star-chamber between the Lady Gresham Plaintiff, and Roger Booth Plaintiff of London, Markham and others, Defendants, for the forgiving of a grant of a rentcharge by deed bearing date anno 21 Eliz. for twenty-nine years to the said Markham out of all Sir Thomas Gresham lands of inheritance, and for publication thereof, and sentence given upon the said branch accordingly against Roger Booth for publication of the same.

And the said branch after inducing is to be understood when the forgery, &c. is to the molestation of a Manor. As if A be possessed of a lease of lands for years, and B in his name hath forse and 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 joined therewith under the same punishment.

Or the right, title, or interest of any person or persons in or to the same.] These words were added, for that the nature of 1 H. 5. being to undo and void the possession and title (in the Contumacies) of the said King's liege people, doubt was made whether 4 forgery to bar one that had but a bare right or title, and no possession, was within that nature; and therefore this clause of 5 Eliz. added this clause in the Contumacies, as here it appeared. But made by a special branch of this Act the nature of 1 H. 5. cap. 5. being doubtfully penned, is repeated by a clause in this Act, and greater punishment inflicted by this statute.

Or
Forging of Deeds.

Or shall pronounce, 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: 1st, what it is to pronounce or publish as true. Secondly, what knowledge is sufficient.

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 believe B that such a deed is false and forged, and yet D will after pronounce or publish this to be a true deed, and afterwards it fall out by proof that the relation of A was true, and the deed in truth was forged, B is in the danger of this nature: and so was it resolved in the abovesaid case of the Lady Germain, 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 or discontinue the punishment, &c. but only costs and damages: and yet it was resolved that the Queen might pardon the corporal punishment, which proceeded to common example.

And upon the nature of W. 2. cap. 25. which gibed two years imprisonment in a bastardy of ward, the King may pardon the said corporal punishment of imprisonment. And the punishment of finding of tumor, and forjuring the Realm, &c. upon the nature of W. 2. cap. 28. De malefactoribus in parvis, may be pardoned by the King.

Any false charter or deed.] This must be intended to be sealed according to the 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 nature.

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 charter staple, or a recognizance in the nature of a charter staple, that is, acknowledge them or either of them in the name of another; there are obligations within this Act, or 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 Common.

Or writing.] This extends to a testament in writing, whereby a term for years, or goods and chattels is devised, and the former branch extended to a will in writing concerning freehold and inheritance.

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 wrote 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 general release in few words to be written above Hinde's name, and took off Hinde's seal, and fixed it under the release; so there was Hinde's hand and seal to this release.
Forging of Deeds.

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release. Hinde being not paid his hundred pounds, brought a Scire facias upon the recognizance, whereunto Grevill pleaded this release. Hinde pleaded non est factum, and tried his issue, whereupon judgement was given against him, whereby Hinde was barred of his debt. For this forged release Grevill was sentenced in the Star-chamber upon this nature.

[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 pounds, or of the hundred pound, the due debt appearing in the condition of the recognizance. 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 Law Dier, and approved, and since omitted out of the print.

[Being hereafter convicted or condemned of any of the offences aforesaid, shall, &c. eftsions commit, &c. any of the said offences.] Here be four kinds of offences. The first concerning malversation, &c. of the crown and inheritance. Secondly, the publication of the same knowing, &c. The third concerning a term for years, annuities, and demands personal. 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 Rogers and others were charged in the Star-chamber with the forging of a deed of settlement in the name of Sir Thomas Grahame, bearing date 20 Eliz. but forged long after: whether this second forgery was felony or no, within this branch; and the double did rise upon the said words [eftsions] commit any of the said offences. And it was objected, that by reason of this word [eftsions] iterum, the second offence may 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 quid iterum unum, that is to say, per idem iter, and it is to be taken for the second time. Primo quidem decipi, incommode et, iterum autem, certa turpe. Which doubt was referred to the considerations of the two Chief Justices and Chief Baron, who upon hearing of Council learned of both these, 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, eftsions commit any of the said offences: So as by reason of these words, any of the said offences, this word [eftsions] 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 [eftsions] the second forgery, &c. must be committed after the first conviction, or else it is no felony.

[Provided alwayes, &c. that if any person, &c. hath of his own head, &c. forged or made, &c. Or if any person, &c. hath hereunto published or shewed forth any false deed, &c. Handford before this nature forged a lease for years of the land of the Lord Williams of Lame, which lease after by Weyman [which had married one of the daughters and heiress of the said Lord Williams] was impeached, but not as forged, and by composition for two hundred pound was redeemed by Weyman, and the lease was cancelled. And after Weyman perceiving the lease to be forged, sued Handford in the Chancery to have restitution of the two hundred pounds, and]
Cap. 75. Forging of Deeds.

and there Hainford after this nature of 5 Eliz. maintained the lease as good and true: whereupon Weyman sued Hainford in the Star-chamber, where by the opinion of the Chief Justices it was holden, that it was not within this nature, because that the deed was cancelled, and Hainford made no title to the interest of the tenant.

Provided always, &c. that this Act, or any thing therein contained, shall not extend to any person that shall plead or show 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 fet to such Deed, Charter, or Writing enrolled, not knowing the same to be fals 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 said Abbot of Abbington, and all his predecessors, &c. held certain land in the parish of Saint Elinga, &c. discharg'd of the payment of tributes: and the Plaintiff offered to show in evidence to prove the said land to be discharg'd of payment of Tribes, a Vidimus &c. Innoteciumus under the Great Seal in these words, Vidimus quendam antiquum librum in pergamento, intitulatum Volumen de copia munimentorum seu diversorum gestorum & clorum monasterii de Abbington. In which book was a copy of a Bull of the Pope, for the discharge of the said land for payment of tributes, which was part of a book among 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 Juré, for these causes. First, because that which was exemplified was not of record; for neither Deed, Charter, &c. nor 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 public, whereunto every subject may have recourse, to counter the exemplification with the Record it self, and Records be in the custody of two or Officers, and therefore no inconvenience can follow upon the exemplification of them. But a Deed, Charter, or other Writings are private, and remain in the custody of the party, and may be rated, interlined, or corrupted in points material, and if they should be exemplified, the nature, interlineation and corruption will not appear therein. Also the Deed, Charter, or other Writing may be forging, and if they should be exemplified, then the exemplification might hence be given in evidence, and not the Deed, &c. it self, and to the forgere and falsere 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 public should be taken away; for then the forged Deed, &c. it self might never be published, or given in evidence, but the exemplification, and to this statute in that point relished; and therefore where this statute or any other statute or book speaks of an Exemplification, Vidimus or Innoteciumus of a Deed, &c. it must be intended of a Deed enrolled, viz. the Exemplification, Vidimus or Innoteciumus 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 made and enrolled with Certorari, &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, as
Of Libels and Libellers.

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 Stegesia, viz. Lib. 5. to. 124, 125. Lib. 9. to. 59. In these you may add two notable Stegesia. By the one it appeared that Adam de Ravenworth was indicted in the King's Bench for the making of a Libell in writing, in the French tongue, against Richard of Snowhull, calling him therein Roy de Raveners, &c. Whereupon he being arraigned, pleaded thereunto not guilty, and was found guilty, as by the Stegesia appeared. So as a Libeller, or a publisher of a Libell, committed a publick offence, and may be indicted therefore at the Common Law.

John de Northampton, an Attorney of the King's Bench, wrote a Letter to John Ferrers, one of the King's Council, that neither Sir William Scot Chief Justice, nor his fellows the King's Justices, nor their Clerks, any great thing would do by the commandment of our Lord the King, nor of Queen Phillip, 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. Judicia Curiae. Et quia praedictus Johannes cognovit dixisse litteram per se scriptam Roberto de Ferrers, qui eft de concilio Regis, que littera continent in le nullam veritatem, prae textu cujus Dominus Rex erga Curiam & Judicarius suis hic in cælo habeat, recte posset indignationem, quod est in scandalum Juliæ & Curiae: ido dicitus Johannes committitur Mærek', & posse invenit 6 manuscriptos pro bono gestu.

CAP.


CAP. LXXVII.

Of Champerty, Imbracery, Maintenance, &c.

See the first part of the Institutes, Sect. 701. Verbo. 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, Rox. Parl. 17 R. 2. nu. 19. John de Wincors case; and the fourth part of the Institutes, cap. Chancery. Whereunto you may add, that whereas by the statute of 6 H.6.cap. 4. it is recited, that others in times past have been deprived of right and title by the act of the party that the Assises shall be demanded; which is a sequel of the Common law, but to be understood, that both parties, plaintiff and defendant, must be present when such information is given, and continuing therewith: otherwise, if one of them imagines the absence of another, it is unlawful, and a good cause of challenge of such of the Jury as shall be to on the one part informed; for every Jury must be indifferent, as he stands upright.

CAP. LXXVIII.

Of Barretory.

See the first part of the Institutes, Sect. 701. Verbo. Barretory. De the statute of Ragman temp. E. 1. whereby the Commission of True Bill is made. Et que, estoit ainsi que la grant du court le roy et favorable, voit le roy, et enjone les Justices, qui au enchevalant ne reposant ne fut tarpe de mesdames par Hocquetons, ou Barrerours, qui qu'il le veritable soit enfe.
CAP. LXXIX.

Of Riots, Routs, Unlawful Assemblies, Forces, &c.

Riotum comedit of the French word Rieter, i. Rixari: and in the Common law signifies, when they or more do any unlawful act, as to beat any man, or burn his house; Chase or Warren, or to enter or take possession of another man's land, or to cut or destroy his crops, or other profit, &c.

* Riota is derived of the French word Rout, and properly in law signifies when these or more do any unlawful act for their own or the common quarrel, &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 these or more assemble themselves together to commit a Riot or Rout, and do it not. Fraddones autem nominamus utique numerum septem virorum; deinde (quouque numerus 35 coaevacens) *Turmann (Saxonice blab) dicimus: numerum si exceruiserit, exercitum vocamus, blabboras, 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.

Intercell regi habeare subditos pacatos. Vis legibus eft inimica. *St. Lib. 5. fo. 91. & 42. Lib. 11. fo. 82. *At the first part of the Institutes, Sect. 431, 440. Cuthmon. de Norm. cap. 32. fo. 64, 67.

CAP. LXXX.

Of Quarrelling, Chiding, or Brawling by words in Church or Church-yard.

The offender being a Lay-man, is to be suspended by the Ordinary ab ingesso Ecclesia; and being a Clerk, from the ministration of his Office, so long as the Ordinary thinks meet, according to the fault.
Cap. LXXXI.

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 Christ's congregation.

Cap. LXXXII.

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 death of twelve men, or by his own confession, or by two lawful inquirers, before Judges of Assize, Judges of Oyer and Terminer, or Judges of Peace in their Sessions, shall lose one of his arms; and if he hath no arms, to be marked in the cheek with a red Iron with the letter F, and ipso facto be excommunicate.

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 first and Chapter of Misdemeanor, that is, Crimes Commissionis.
CAP. LXXXIV.

Against Fugitives, or such as depart out of the Realm without leave, and such as are beyond Sea, and return not upon command.

Ovidian.

It is first to be seen by Acts in Parliament published by print, which of them are advocacy and repealed, and which of them stand in force. The nature of 5 R. 2. cap. 2. is repeated by the nature of 4 Jac. cap. 1. And the statutes of 16 Jac. cap. 2. are repealed. The Act 4 & 5 R. 2. such as pass the sea, or find out of the Realm to provide or purchase any benefit, is declared void, and not to be of any force or effect of such a Parliament. No person resident within any of the King's Dominions shall depart out of any of those Dominions, to any alienation, congregation, or Assembly for Religion.

"Ann 2 Jac. cap. 2. quam 2 Jac. cap. 3. videlicet unus cum omnibus, being training of children in any Dominions beyond seas and against the expectation of the Realm, without licence or by chance not being molliharrum or partners, sections, or other misprision or injuries, or any statute, law, or article. And anno 5 Jac. cap. against imposing felony upon any subject, that shall depart this Realm, to reside any Prince, State, or Potentate; or shall pass over the seas, and there shall voluntarily serve any such person Prince, State, or Potentate, not being before his or their going so abroad, have the Commission in that Act. And likewise imposing felony upon any Gentleman or person of higher degree, or any person which hath been, or shall bear any office, or place of Captain, Lieutenant, or other place of birth, in Capp. 20 Jac. 2. or Commission of Footmen, or Conduits of soldiers, that shall go or pass voluntarily out of this Realm, as to the Duke of York, Prince of Orange; or shall voluntarily serve any such person Prince, State, or Potentate, before he be bound by obligation with two duties, as he lost the fidelity. But it is provided that upon the attainer of any such felony, no forfeiture of dower or corruption of blood shall arise on account of any such proclamation, or any judgment, sentence, or order of any Court of Justice in England.

First unto this, two things fell into consideration; First, that Acts of Parliament not published in print in our Books of Statutes do prohibit men to pass the seas without licences. And secondly, that may be done therein by the Common Laws of England.

At the Parliament holden at Clarendon, Anno 10 H. 4. called the State of Clarendon, factum est recognitione quoddam partis consuetudinis & libertatum antecedentium Regis: & cap. 4. &c. in recognitione eft. Archiepiscopos, Episcopos, & perfomis regni non licet extraneum regnum abique licentia Dominii Regis; & fì exierint, fì Regi placuerit, fæcúrum eum facient, quod nec in cundo nec in redeundo, nec moram oderint, perquirant malum fæc redam Dominum Regi vel regno.

This appeared in it self to be but a recognition, & declaration of the Common laws: and this is manifestly proved by the Writ in the Register at the Common law, purging in effect the very words of the said Act of 10 H. 2. Breve de securitate inviendia, quod fì non redierat ad partes extranas sine licentia Regis.

And bodeupon there ariseth a diversity between one of the Clergy, and one of the
Cap. 84, Against Fugitives.

the Latiy: for a man of the Church may be compelled to put in surety, that he shall not depart from the realm without the King's leave, nor shall these attempt anything in contempt of his malice or of his people. And this writ is directed to the sheriff, and faith. Qui datur est nobis italii, quod A. B. Clericus versus partes extradas ab quamplurimis nobis & quampluribus de populo nostro prejudicia, & damnum ibi, prosequi, &c. Wherein it appears, that this writ is only in the case of an Ecclesiastical perjur, as a man of the Church, and thus for these reasons. First, that they had the care of souls, and therefore ought to be resident. Secondly, so that they, maintaining their authority, impugned many of the Kings laws to the great prejudice of the Latiy. Elocubly, they had no temporally lands, the time when they found firments.

There is another writ in the a Register, that is to be directed to the party himself, viz. either to the Clerk, or to the Layman, wherein the King requiring, quod datum est nobis italii, quod tu veris partes extradas abique licentia nostra clam defenias te diventerere, & quamplurima nobis & coronis nostrae prejudicialia ibidem prosequi, &c. sub peculio quod incurrit probihimus, ne veris partes extradas abique licentia nostra speciali alqualiter te diventeres, nec quiquam ibidem prosequi, &c. And upon this writ the party is not to find any surety, for there is no hope of surety in this writ. And if the 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 those jurisdictions as we find in Records of Books of Law in former times, taking some few examples for many that might be cited.

1. Wilhelmus Marvinn Clericus proiectus est ad Regem Franciam sine licentia Dominii Regii, & propter eam neminem, &c. more the going over without any prohibition precedent unlawful.

2. Nul grand Seignior ou Chvalier de nostra Realm ne doit prendre chemin (daler hors de Realm) fans nostre congé, car uint pourtoit le Realm remain disgarne de fort gens. And the noblese and Herse of the are of the King great Council. By this it appears, that these are prohibited to go beyond sea without licence: but others of the inferior Latiy may go without licence, if they travel not to the abroad prohibited ends. But those of the Latiy, and men of the Church also being beyond Sea, may be commanded by the King's writ, either under the Great Seal, or Picty seal, in this & licentia, &c. to return into the Kingdom (though he be not there of the abroad prohibited ends); and he return not, for his coming into his lands and goods shall be seized, quoique, &c. H Commandment was given to an Ecclesiastical person residing at Rome to return into England.


i. Rex proclamati secat in omniis comitatibus Anglia, quod ne quis comes, baro, miles, religiosis, figiugaris, aut operarios, exicio in Rome, &c. &c. through out the Realm.

Herein it is to be observed, that being by law, no Gene, Baron or Knight, by Britton sale, is religious, &c. ought to go out of the Realm, a general proclamation declaring the King will seize their offence but otherwise it to all those that are not prohibited by law, they shall have a particular writ of Proclamation as is abodebeal.

Now Matthew Gourry Knight was prohibited by the King's writ to depart the Realm, and to serve in wars expressly inhibited by the King, which notwithstanding he did. Now the writs, or Gourry miles contra defensionem Regis transforent, & le guerrier his presegeem inhibitis immutant, tam in corpore quam in bonis, et foriscat Regis mandatum de Cornallit simul cum una Carucat terre, &c.
Against Fugitives.  

a Rex licentiam deduct Aberati de E, quod proficiici posset ultra mare ad vi-

sandum captur Sancti Johannes Riparuni, corpora trium regum Co-

loniae, Certamen Sancti Franciscici in

& Sanctum Jacobum in Galicia, ita quod non prosequetur aut procurabit quicquum in prejudice regis, aut leg-

sum fuerat, licet idem Abbas in presentia Cancellarii regis per juramentum

promit.

Note: Ecclesiasticall persons could not go beyond sea on Pilgrimage

without licence, nor do any thing in prejudice of the King, or his

Laws.

And it is to be observed, that the King may grant licence to travel be-

yond the seas, either under the Great Seal, Viz. Seal, or Pipe Sigerus;

for he cannot recall one that is beyond sea, but by the Great Seal, or Pipe

Seal:

But for avoiding of tediousness, and sparing many to one end, let us de-

cribe to divers times.

The Letters under the Great Seal of Pipe Seal to recall any from be-

yond sea, ought to be served by some messenger, who upon his oath is to

make a certificate thereof in the Chancery, and from thence a Matimms to be

sent into the Exchequer, and thereupon & Commission to be granted to seize the

lands and goods of the Delinquent.

Also it was set forth to the Judges (except two) that a Merchant of London departing the Realm, to the intent to live free from the penalty of the Law, and out of his one obedience to the Queen, and not for any Merchandize, 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 bolden, and to sbath been refolde, that devised Kingdoms under se-

veral kings in League one with another are sanctuaries for servants of sub-

jects, 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 bold) is grounded upon the law in Deuteronomy, Non trades servum

domino suo, quod ad te fugaverit.

When Queen Elizabeth sent Ambassador to 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

Queen Ambassador in truly related in these words. Si quid in Gallia machi-

nurentur, regem ex jure in illos animadverurum; in Anglia quid machiabi

fuerint, regem non posse eodem cognoscere, & ex jure agere. Omnia regna pro-

lucsi ex libera: regnum interesse, ut sui quique regni libertates tuerat. Ino Eliz-

abetham non sit pridem in suo regni Mountegomerium, principem Cendareu,

& alios e gente Gallica admissiti, &c. and to it replied.

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 Ambassador to the French King, of whom King H. 8. demand-

ed the said Cardinal being his subject, and detained of treason, and to that

end caused a cause to be made (which I have seen) that it might to done

jury certain: said non prejudit. But Ferdinando King of Spain, upon request

made by H. 7. to have Edmund de la Pool Earl of Suffolk, detained of High

Treason by Parliament anno 19 H. 7. at the first intending to abate the pri-

vilege and liberty of Kings, to protect such as came to him for favour and

position, delivered 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 de-

liberated unto him, who kept him in prison, and continuing the promise to be

personal to himself, commanded his Son Henry after his decease to execute him, who in the third year of his reign upon cold blood performed the same.

We could add more examples of this kind; but (to speak twice for all) having

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pursued to give the same rate of every thing pertinent or incident to such things as we have undertaken to treat of, these shall suffice.

* See the nature of 3 Car. an Act to restrain the making and lending of any to be Popish bred beyond the seas.

* S. 1. Proprietor, live, operator, interpreter, Catalla fugitivorum.

CAP. LXXXV.

Against Monopolists, Propounders, and Projectors.

It appeared a 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.

b A monopoly is an institution, or allowance by the King by his Grant, Commission, or otherwise to any person or persons, bodies politic or corporate, or to the sole buying, selling, making, using, of any thing, whereby any person or persons, bodies politic or corporate, are sought to be restrained of any freedom or liberty that they had before, or hindered in their lawful trade.

c For the word monopoly, dictur, &c. vel alios, i. folio, S. Monopoliis, i. vendere, quod eft, cum manum solus aliquod genus mercaturae universum vendit, ut solus vendat, pretium ad laum libitum fiat: hence you may read more at large in that case. And the law of the Realm in that point is founded upon the law of God, which saith, Non occupiet loco pignoris insectorum & superiorem molam, quia animam eum approbit. I. There shall not take the rather or upper millione to pledge, for he taketh a mans life to pledge. Whereby it appeared that a man trade is accounted his life, because it maintaineth his life, and therefore the monopoly that taketh away a man trade, taketh away his life, and therefore is so much the more obious, because he is in the. Against these Inventors and Propounders of such things, the holy God hath spoken, Inventores malorum, &c. digni sunt morte.

What monopolies are against the ancient and fundamental laws of the Realm (as it is declared by this Act) and that the monopoly 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.

Whereby 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 King is proved by this declaration in Parliament.

The liberty that the subject hath to go to any Clare in the Kings Court cannot be restrained but by Parliament.


W 1. cap. 27.

Rom. 1. 30.

Comm. reitutur juris gentilis communes offici.


C. 59. Comm. reitutur juris gentilis communes offici.

W 1. cap. 27.

Rom. Par. 50 E. 3. nu. 33.

Rot.Par. 50 E. 3. nu. 33.

4 H. 6. nu. 36.
Against Monopolists.

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King Philip and Queen Mary by their Letters Patent granted to the Mayor, Bailiffs and Burgesses of Southampton and their Successors, (for that King Philip first landed there,) that no wines called Patentis, brought into this Realm from the parts beyond the seas by any Lige-man or Alien, should be discouraged 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 otherwise upon pain to pay treble custom. 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 customs of this Realm, viz. Magna Charta, 29. 30. 9 E. 3. cap. 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 treble custom was against law, and merely void. And after the Parliament holden in Ann. 5. E. 4. the Patent as to Aliens, was by a private Act sanctioned by Parliament, but not for English.


The judgement in the said case of Monopolies cited before, Trin. 44 Eliz. was the principal motive of the publishing of the King's Book mentioned in the preamble of this Act, and that Book was a great motive of obtaining the royal consent to this Act, and Parliament, whereas we are now to speak. This Act makes from the house of Commons: the law is long and in print; and not here to be rehearsed; yet well do. perse and explain the words in the federal 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 therefore extent not only to all Prolaminations, Injunctions, Rescripts, and warrants of assent of the King, but all Injunctions, Rescripts, and warrants of assent of all or any of the Phyis Council; or any other; and all other matters or things whatsoever either of the King, or of all or any of his Phyis Council, to the instituting, erecting, strengthenishing, furthering, or countemancing of the sole buying or selling, &c. of any of them, are declared to be altogether contrary to the laws of this Realm, &c. in name. This Act herein, and in the residue thereof, is specially and beautifully penned for the suppression of all Monopolies; for Monopolies in times past were therer without law, but never without friends.

Sole. This word [sole] is to be applied to the federal things, viz. buying, selling, making, vending, and using, four of which are special, and the last, viz. [sole using], is in general, as no Monopoly can be raised, but shall be within the reach of this nature, and no more than those words [or of any other Monopolies] are added: and by reason of these words [sole using] other prohibitions are made by this Act, as hereafter shall appear.

Of any thing. As the words before were general, to these words [of any thing] are of a large extent. Res comm. generalis habet significacionem; quia tam corpora quam incorporea, quanquamque sunt generis, naturae, live speciei comprehendit; and this word caussen some exceptions hereafter to be made; whereas we shall speak in their proper place.

Whereby any person or persons, &c. [For this see the nature 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 Purpos.

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 monopoles,
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lies, &c. to be void by the Common law, but not 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, Star-chamber, Chancery, Ordequater-chamber, or any other Court of like nature, but only according to the Common laws of this Realm, with woods, rules, and not otherwise. For such bastards the Monopolists take, that often at the Council, Star-chamber, Chancery, and Ordequater-chamber, petitions, informations and bills were continued 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 uncapable, &c.] This branch for further extirpation of all Monopolies, disabled all men, &c. to have, that is, to take any Monopoly, &c. to use, exercise &c. to put in use, any Monopoly, &c. where the wish and desire of the Poet is granted.

Funditus extirpa Monopolas & Monopolas;  
Hic labor, hoc opus est; Hercule major eris.  
Paucorum nuncuti Feliciter licentia multis,  
Argento mutat dum Monopola piper.

If any person or persons after the end of forty days next after the end of this present Session of Parliament shall be hindered, grieved, disturbed, or disquieted, &c.] By this branch, it is provided and enacted. 1. Remedy is given to the party grieved at the Common law by action &c. actions to be grounded upon this nature. 2. This remedy may be had in the Court of the Kings Bench, Common Pleas and Exchequer, &c. any of them, at the election of the party grieved. 3. The party grieved shall recover treble damages, and double costs. 4. No eftain, proscription, wager of law, aid paper, privation, injunction, or order of restraint to be allowed in any such action. By aid paper is intended as well the Writ de domino rego in consolito, as the usual form of aid paper, for both are to one end; and order of restraint was added, for the Council, 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 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 extended 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 Habeas and Attain, the person or persons offending shall incur the danger of Premunire, &c.

This clause is more general than the former, being the first clause, for this extended 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 before.
Against Monopolists.

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There be in this Act concerning Monopolists, or sole buying, &c. many Provisions. The first is, That this Act shall not extend to any Letters patents or grants of priviledge heretofore made of the sole working or making of any manner of new manufacture, but that new manufacture must have been properties. 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 manufactures, 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 priviledge, it is declared and enacted to be hold by this Act. Fourthly, the priviledge must not be contrary to law; such a priviledge as is consonant to law, must be substantially and essentially newly invented; but if the substance was in esse 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 Patch, 15 Eliz. in Bircots cafe for a priviledge concerning the preparing and melting, &c. of lead; 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 according to law, yet no old manufacture in use before can be prohibited. Firstly, the mischief to the state by raising of prices of commodities at home. In every such new manufacture that deserves a priviledge, there must be Urgens necessitas, and evident utilitas. Secondly, to the hurt of trade. This is very material and evident, and generally inconvenient. There was a new invention found out heretofore, that Bonnets and Caps might be thicken in a killing-mill, by which means more might be thickned and filled in one day, than by the labour of four hundred men, who got their livings by it. It was ordained that Bonnets and Caps should be thickned and filled by the strength of men, and not in a killing-mill; for it was holden inconvenient to turn so many labouring men to idlenesse. If any of these seven qualities fall, the priviledge is declared and enacted to be hold by this Act; and yet this Act, if they have all these properties, let them in no better case then they were before this Act.

The second Proviso concerns the priviledge of new manufactures hereafter 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 before laid; 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 Purden and penalty of this Law.

The caufe wherefore the priviledges of new manufactures either before this Act granted, or which after this Act should be granted, having these seven properties, were not declared to be good, was, for the reason wherefore such a priviledge is good in law is, because the inventor bringeth to and for the Common-wealth a new manufacture by his invention, cost and charges, and therefore it is reason that he should have a priviledge for his reward (and the encouragement 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 partake thereof: and such as served such priviledges persyns by the space of seven years in making or working of the new manufacture (which is the time limited by law of Apprenticehood) must be Apprentices or Servants still during the residue of the priviledge, by means whereof such numbers of men would not apply themselves therunto, as should be requisite for the Common-wealth, after the priviledge ended. And this was the true caufe wherefore, both for the time past, 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 priviledge, power or authority heretofore made, granted, allowed, or confirmed by any Act of Parliament now in force, so long as the same shall continue in force. This was added, for that the City of London, or other Cities or Boroughs, &c. have
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bade some privileges by buying, selling, &c. by Acts of Parliament. For example, the nature of 1 & 2 Ph. & Mr. gift a privilege to Cities, Boroughs, 1 & 2 Ph. & Mr. London corporation and Parcet-towns for the sole by retail of certain wares and mercantibles, and some other Acts of Parliament in the 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.]

The said Proviso. Proved 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 purpose of this Act both extend to Commissions, Grants, Licences, Charters, and Letters Patents.

The first Proviso doth except out of the Purvien and penalty of this statute four things, which is evident from the like force & effect, and no other, as if this Act had never been made. First, the privilege concerning printing made, &c. hereafter to be made. Secondly, Commissions, Grants and Letters Patents made, &c. hereafter to be made, &c. for concerning the begging, making, &c. of committing of Salt peter or Gunpowder, &c. or concerning the calling or making of Gunpowder, &c. for Gunpowder. Fourthly, Grants and Letters Patents heretofore made, &c. hereafter to be made, of any Office or Offices heretofore erected, made, &c. ordained, and now in being, and put in execution, &c. (other than such Offices as have been declared by any his Majesty's Proclamations,) so as to the thing by this Act excepted. Fourthly, 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, &c. Thirdly, that it be now in being, &c. pretended that the Office were erected before this Act, yet if it were not in being, &c. pretended that the thing by this Act must be in mind of his duty, &c. That which is void and against Law, is now but, unless it be not to use them. Fourthly and against Law, are Monopolies and Omissions of the people, and no Offices. In Acts of Parliament lawful Offices are intended, as in like cases hath been often adjudged: therefore unlawful Offices are all taken away by this Act, and lawful Offices remain and continue.

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, &c. Thirdly, that it be now in being, &c. pretended that the Office were erected before this Act, yet if it were not in being, &c. pretended that the thing by this Act must be in mind of his duty, &c. That which is void and against Law, is now but, unless it be not to use them. Fourthly and against Law, are Monopolies and Omissions of the people, and no Offices. In Acts of Parliament lawful Offices are intended, as in like cases hath been often adjudged: therefore unlawful Offices are all taken away by this Act.

First, that if in any Office as such not been declared before this Act, is not as in the printed copy by any of his Majesty's Proclamations: for all such Offices as be declared, that is, either forbidden or prohibited by any of his Majesty's Proclamations, or where the party grudged is left to his remedy at the Common law by any Proclamation, they be also declared, &c. being contrary to the laws of this Realm, as it is declared and enacted by this Act, they are also declared with a witness, and can never be granted hereafter.

The first Proviso concerning the making of Allom, or Allom-mines, needed not, so they belong to the subject in whole ground for the bare is 1: and therefore any privilege thereof cannot be granted in the King's own ground. The first Proviso concerns the Bonmen of Newcastle, &c. This clause was inserted in respect of these words [sole using.] The rest of the Provisoes concern particular persons, and do excuse and except certain imposed privileges out of the Purvien and penalty of this Law, but leave them all like force and effect as they were before the making of it.

But it is to be observed, that all the Provisoes after the fifth, extend only to the imposed privileges therein particularly mentioned, already granted, and not to any to be granted hereafter.

See the Proclamation bearing date 10 July An. 19.

J. Coggin, and another Proclamation bearing date 20 Mar. 1 Anno 19 Jac Regn.
CAP. LXXXVI.

Against those that obtain power to dispense with penal laws, and the forfeitures thereof.

It appeared by the Preambles of this Act, that all Grants of the benefit of any penal law, or of power to dispense with the same, or to compound for the forfeitures, 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 four malvices counsel deficient cco q le Roy ad grant p Parliament p bone advice.

In 56 E. 3. Richard Lions a Merchant of London, and the Lt. Latimer, were severally sentenced in Parliament for procuring of Licences and Dispensations to transport Witches, &c.

It is declared and enacted, that all Commissions, Grants, Licences, Charters, and Letters Patent, 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 statute or purpose 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 attaint, and all other matters and things whatsoever, any way tending to the incurring, erecting, strengthening, furthering or confounding 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.

Provided also, that this Act shall not extend to any Warrant or Provis 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, or the time being, having power to hear and determine, &c. to compound, &c.

This Act stood, from the House of Commons. Now let us peruse, first, the words of the Preambles of this Act, and secondly, of this Preamble.

In and by the Preambles five things are declared and enacted, and that 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, whereby the other part...
Penall Laws.

1. To give or make any warrant for any such dispensation, licence, or toleration. [This branch also, as the said case of penal statutes, supra]

2. Or to agree or compound with any others for any penalty or forfeiture limited by any statute. [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 Laws of the Realm. The great inconvenience thereof appeared in the prosecution of King and Blythe, in the reign of King J. 7, who had the Office of Master of the Revenge; and by colour of their Commission and Office, did most intolerably and unlawfully oppress, burden, and depeuate the Subjects. Let them which follow their steps be afraid of their steps and, Quocumque sequens, contra exanimus perhorreant. The like opposition 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 drucken at the root, and published this mischief for ever hereafter.]

3. 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 judgment thereupon had. [This branch declared not only the grant to be void, and against the laws of this Realm, (for the which, the resolution of all the Judges in the said case of penal statutes, supra) has the promise thereof also. And the reason that the Judges pleas 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 judgment 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, of any man to be beggared, before he be only and lawfully attained. 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 punishers for blood the Prophet spakeeth thus, Penit sanctus de terra, & rectus in hominibus non est, omnis in sanguine inicidatur, vit fratrem suam ad mortem venatur. There is not a godly man upon earth, there is not one righteous among men, they all lie in wait for blood, and every man hangeth his brother to death.]

4. And all Proclamations, Inhibitions, Restraints, Warrants of absence, 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 Prohibts, 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 of the Prohib, or compound, or for the King only, after plea pleaded by the Defendant.

There is another Prohib concerning Letters Patent, or Commissions for licensing of keeping of any Tavern, or selling, or of Wines, or for the making of any compositions for such licenses, so as the benefits of such compositions be referred, 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 King's Book, mentioned in the preamble of this Act: and that Book amongst other just and weighty causes moved the King to give his Royal assent to this Act of Parliament, &c. whereof we have spoken.
CAP. LXXXVII.

Against Concealours (turbidum bonorum genus) and all pretences of Concealments whatsoever.

That the Kings Majesty, his Heirs, or Successors, shall not at any time hereafter sue, impeach, question, or implead any person or persons, bodies politic or corporate, &c.

The Act is long, and need not here be rehearsed. Let it be perused and explain the several branches and parts of the Act.

Before the making of this nature, 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 nature 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 Documents, making good the estate and interest of the Subject, either by statute or negligence of Officers by deceasing time were not to be found, by means wherein certain indirect and indigent persons crying into many ancient titles of the Crown, and into some of later time concerning the possessions of others and sundry Bishopricks, Dean and Chapter's, and the late Monasteries, Chanteries, &c. of persons attainted, and the like, had passed unprofitably 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; so that 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 consists of these parts. First, that part which above is in part rehearsed, concern'd on these Branches.

Fifthly, That the King, his Heirs or Successors, shall not at any time hereafter sue, impeach, question, or implead any person or persons, bodies politic 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 all things are to be understood.
1. This clause extends to all manner of suits, &c. either in Law, or in Equity.
2. To all manner of Courts whatsoever. 3. It extends not only to all manner of suits, but to all imputations, 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 extends to the ancient domains of the Crown, which are mentioned to be restrained by an Act of 11 H. 4. 6. So as all Writs of Scire facias or other process upon any Record, all informations of introduction, or charging any man as Delinquent, all finding of Officers, either of initiating 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 kind or nature either. But this Negative clause must have four incidents. 1. The King's right and title must accrue unto him above threecore years past before the Nineteenth day of September in the year of King James, which was the day of the beginning of this Parliament. The reason thereof was, that if any title of coven, forcible, &c. accrued within threecore years, then it should be out of this Act: so generally the time of limitation to bar the King was threecore years, but such right or title must now be in eff. 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 threecore 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 of pretext of Wardship, prime leison, etc. of the title, 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 virtue of any such right or title, whereby the King impeached 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 threecore years. Duly in charge in judgement of law, to the roll of the pipe; for although a note before the Robert 02 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 threecore 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; the quidem materia nuper fuerunt a nobis conceleta, subtrada, vel injudicate 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 Mary's 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 compositions of defective titles, preceding the same to be for the King's 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 heredaments 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 subtle devices to deceive the King, to rob him of his tenures, and to the infinite subversion and trouble of the subject: all which mischief 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 by excepted.

And that every person and persons, bodies politic 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.
Against Concealours.

Cap.87.

This is the second part of the body of the Act, and as the first part is negative, and consists of the right and title of the King, so this part is affirmative, and establishing the care of the subject.

The mischief before this Act was, in two forts, viz. either when the King had any unlawful rents or continued in him, or where the King had a bare right.

For example, y the King's tenant held lands, &c. in fee, he is attainted of felony; and thereby, the King has a real estate in him: but if before the felony the King's tenant were dispossessed, and after is attainted, and dieth, how hath the King a bare right? In both these cases, &c. in finibus, the subject is prejudiced by this Act, both by the first part, and by this part. For where in this part it is laid, according to their and every of their several estates and interests which they have or claim; if they have an estate, and the King has a bare right of title, then are they within those words, which they have, and if the King has a real estate in him, therefore they within those words, for claim; so as the remedy is applied to both the mischief. Again, the words in this part are further, have held, or enjoyed; That is, whereby the subject hath an estate, and the King has a bare right of title.

[Or taken the rents, issues, revenues, or profits thereof.]

These words extend to all cases where the real estate is in the King. Hereby it is understood the actual holding of the rents, issues, revenues or profits by one that claims an interest in the land; for about the King may be set charge of him as tenant, yet without question, de facto, he did take the rents, issues, revenues and profits, and that sufficed to answer the letter and meaning of this Act.

Moreover, the words of this part, viz., against him, his heirs or successors. So an admit in the case put before, the King's tenant being dispossessed, is as aforesaid, before his attainer of felony, that is dispossessed, or had morgaged the land before this nature, this Act in this case barred the King of his right and title, and to that end was wrought upon the same; the dispossessed, as by act of Parliament in such cases, may re-enter: for the words of this part do (against the King, his heirs and successors) to as the bar is only against them, and every subject shall take benefit of this Act, for the King's right and title is thereby utterly barred; and there is a taking hereafter in this Act to all persons, &c. other than the King, &c. all such right, &c. as they ought to have had before this Act.

This part extended not to liberties and franchises.

Now followed the third part of the Pardon of this Act.

And furthermore, that every person or persons, bodies politic and corporate, their heirs and successors, &c. shall quietly and freely have, hold, and enjoy all such Manners, &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 Manners, &c. no verdict, &c.

This part secures the subject against the subject, viz. against Patentees and Grantees 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 Patent 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 extended to Liberties and Franchises, which the former two parts did not.
Cap. 88. Against Vexatious Informers.

The two first Prohibito are plain, and in effect are included in the body of the Act. The second Prohibito was necessary to preço-retenues: the taxing needed no explanation. The third Prohibito is particular and evident. The fourth Prohibito, Provided also, and be it enacted, that where any se-farm rent, &c. This was enacted for the preserving of the King's se-farms and rents out of such Mannors, &c. which are established and made sure by this Act. For example, King Ethelred grant the Mannor of D. which came to him by the nature of Charters, to his heirs, reserving a se-farm, or any other rent, which grant to-for some imperfection was insufficient in law to pass the said Mannor, and yet is established and made sure by this Act. This Prohibit made good the se-farm or rent to the King, if he had been answered the same by the greater part of fifty years last past.

The last Prohibito is particular and evident.

Of the benefit of this Act the pox do participate as well as the rich, for hereby (amongst other things) above an Hundred Lay-Hospitals being badisches within them in those days to pay and sing for souls, &c. (if new were) are established against all heredities and pretences of concealments.

As all excellent Act made against these Harpies of Hollownes, that under obsolete words, endeavoured surreptitiously in a Patent of concealment to have swallow'd up the greater part of the possessions of that ancient and famous Bishops of Notwicch, which by the industry and prosecution of the then Attorney general was overthrown; and perpetually more surety in a matter of so great weight, a Bill preferreid in Parliament for establishing of the Bishops ofwich, which in the end passed as a law, anno 59 El. ubi supra.

Tristibus haeu illis monstrum, nec Savior uilla
Petrus & in Dei hygii sede extulit undis:
Virgini volucrum vulitus, forisima ventris
Proluvies, unicaque manus, & pallida temper
Ora fame.

CAP. LXXXVIII.

Against vexatious Relaters, 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, plaining, suit or information, &c., shall be commenced, said, prosecuted, &c., before the Justices of the Assize, Justices of Nisi prins, &c., in the Counties where the offences were committed, and not elsewhere.

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 Queen's reign, which pest stood and remained in force: yet these Acts did not meet with all the mischiefs and grievances offered to the Subject by the Relaters, Informers and Promooters, but these four mischiefs and grievances remained still.
Against Vexations Informers.  Cap. 88.

First, many penal laws obsolete, and in time grown apparently impossible, or inconvenient to be performed, remained as snares, whereunto the Relate 2. Informer or Proctor did his, and intragule the Subject, such as were the statutes made and 37 E. 3. cap. 3. concerning the prices of Woolen, and 34 E. 3. ca. 20. concerning transportation of Coen, and 3 E. 4. ca. 2. concerning Coen not to be brought into the Realm, and 4 H. 7. c. 9. concerning the prices of Yarn and Crape, and 14 K. 2. cap. 7. concerning the selling of Linen out of the Realm, and 15 K. 2. cap. 8. concerning the carriage of Linen to Calais, and 4 H. 5. cap. 3. concerning making Yarnets of Alp, and 4 H. 7. ca. 8. concerning the prices of Bath-clot, etc. and 11 H. 7. ca. 2. concerning Tagabonds, unlawful games, and Alehouses, etc. and one other statute in the 19. year of H. 7. cap. 12. concerning those matters, and 11 H. 6. cap. 12. concerning Merchants 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 Monasteries, concerning keeping of houses and households upon sites of Monasteries, etc. and 4 H. 7. cap. 19. concerning houses of husbandry, and tollage, and 7 H. 8. ca. 1. concerning letting down of towns, and 27 H. 8. ca. 22. concerning decay of Yarnets and Incloritures, and 5 E. 3. ca. 5. for the maintenance of tollage, etc. and 5 Eliz. cap. 2. for maintenance and increase of Tollage, and 14 R. 2. cap. 4. 8 H. 6. ca. 23. and 5 E. 6. cap. 7. concerning the buying of Wool, woolen yarn, etc. and 33 H. 8. cap. 5. concerning the keeping of great horses, the statute of Winchester, in the time of E. 1. concerning Yarnets and Arms, Artic. super Chart. c. 20. concerning making of Kings' Crafts and Locks, and 37 E. 3. cap. 7. that masters of white Yarnet should not guild, and 2 H. 5. ca. 4. Stat. 2. that Goldsmiths should not take more then 7s. 3d. for Billings, sixpence, for a pound of Silver guild, and 2 H. 6. ca. 14. that no Silver shall be bought for more then thirty Billings the pound of Copper, and 2 H. 4. c. 6. against the bringing in of Coin of Flanders, Scotland, and other Foreign Coin, and 13 R. 2. c. 8. and 4 H. 4. cap. 35. concerning the prices of Yarn and Oats sold by Yarnets, 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 roving of woollen cloth, etc. and 18 Eliz. ca. 16. for toleration of certain Clothiers to dwell out of towns corporate, and many other unnecessary statutes until this time, about the number of the Stroke, repealed by an Act made at this Parliament in the 21 year of the reign of King James, as by that Act appeared; and many like Acts are not continued, as by the difference between that Act and other former Acts of continuance may appear, so as these statutes that might have been laid upon the subjects, by this and other former statutes either are repealed or not continued.

The second mischief was, that common Informers, and many times the Kings Proctor, drew all Informations for any offence in any place within the Realm of England against any penal law, to some of the Kings Courts at Westminster, to the intolerable charge, taxation and trouble of the Subject; and it was feared that Westminster-Hall would labour of an Apotheosis by draving up all suits unto it, as the natural body both abominable when the mumours of the body are drawn up unto the head, which in the end (if it be not prevented) turns to an Apotheosis.

The third mischief was, that in Informations, etc. the offence supposed to be against the penal law, and to be committed in one County, was at the pleasure of the Informer, etc. alleged 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 to the county 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 often 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.
Cap. 38. Against Vexations Informers.

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by this Act, which maked from the house of Commons. And to doe the Act of
continuing and rebuing divers naturues, and repeale of divers others.

The first part of the Purbien beginning thus: For remedy whereof
be it enacted by the authority of this present Parliament, that all of
fences, &c.

This clause consisted upon these 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 Judges of Assize, Judges of Nisi prius, 2. Judges of God-sit-
ting, Judges of Assize, &c. to whom was he brought in their general or
quarter sessions; there a common Informer may inform, &c. 2. Before what
Judges; this Act opposes no new Judges, but such as former penal laws ap-
pointed, &c. the Judges before mentioned, &c. any of them, according to the
former Act.

The second part is restrictive, restraining any Information, &c. to be com-
menced, sued, &c. either by the Attorney General, &c. by any Officer, common,
Informers. &c. any other person whatsoever, in any of the King’s Courts at
Westminster. So as the King’s Bench, Star-chamber, Chancery, Common-pleas,
Exchequer, &c. Exchequer-chamber, cannot receive or hold plea of any Informa-
tion, upon any penal statute, either by the King’s Attorney, any com-
mon Informer, or any other person whatsoever; but the matter shall be heard
and determined before such Judges as are appointed in the proper County
where the offence was committed.

The third part gives the like process upon every popular Action, Bill, Plaint,
Information &c. suit to be commenced or prosecuted by force of, &c. according to
the purpose of this Act, as in an Action of Treason. 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 both met with the second of the said three
mischief, and handed upon those branches.

First, that in all Informations, &c. exhibited, &c. either for the King or any
other, &c. the offence shall be alleged and asseid, &c. in the said County where
such offence was in truth committed, and not elsewhere.

The second branch is, that if the Defendant pleads the general 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 com-
mitted in that County, otherwise the Defendant shall be found not guilty.

The third branch is, that for more surely that the offence shall be alleged
truly in the proper County where in truth it was committed, no information,
&c. shall be received, filed or entered of record, until the Informer or Relator
shall first taken a copy of the &c. before some of the Judges of that Court, which
consisted of two parts; First, that the offence is alleged in such informa-
tion, &c. were not committed in any other County then where the same are al-
ledged in the Information, &c. Secondly, that he believe of his conscience
that the offence was committed within a year before the information or suit,
and this suit is to be entered of record. And all this is to be done before the
Information be received, filed, or entered of record.

The third part of this Act meted with the last mischief: so by this part the
Defendant may plead the general 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.

There is a very beneficial clause, and cleared many question of the Common
law. And where it may be objected, that for want of sufficient Clerks the pro-
cessing according to this statute will be erroneous, and to be rebuked by Mr. of
Sour, as if it will deter Judge to inform, &c. and in so doing lay aside all penal laws:
So that it may be answered, First, that it shall be the fault of the Informer himself; &c.
If he inform before Judges of Nisi prius, &c.
Against Vexatious Informers.

Cap. 38.

They have sufficient Clerks. Secondly, I persuade my self that the lower Justice will in discharge of their conscience and duty, provide sufficient Clerks. And lastly, that few if 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 penal statutes of either sorts, concerning 1. Lawful Remedies for not coming to Church, 2. Maintenance, Chantry, or buying of titles, 3. The licence of Marriage and Porrages, Wills, &c. 4. The demanding the King of any Custom, Leasing, Porrages, Subsidy, Impost, or Postage, 5. Transportation of Gold. Silver, Powder, Scurf, Quantity of all sorts, Wool, Malleable, &c. Leather: but that every of these offences may be laid 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 extends only for the laying or alleging of any of these offences in any County that he will.

In 1664 Wideline & Clark Hayes of Nottingham, the case was this: Wideline being arrested in Nottingham by Precept in the nature of a Capias, he was incarcerated in the custody of the Hayes, being keeper of the Goal within the same town, and before the return of the Precept Wideline escaped to the Hayes sufficient security to appear, &c. and he refused to accept the same, whereupon Wideline brought this Action by Bill upon the nature of 23 H. 6. cap. 10, whereunto the Defendant pleaded the general issue and it is found by verdict against the Defendant. In arrest of judgement it was decreed, that by the said nature of 1 Eliz. cap. 5; it is provided, that none shall be admitted or received to pursue against any person upon any penal nature, but by way of information or original action, and not otherwise: in respect of the said negative words it was adjudged, that for the said action was brought by Bill, and not by Information or Original, Quod quercus nihil capiat per bulam. For the rest of the nature of 1 Eliz. concerning Informers.

You have heard of our vis spearman, which endeavored to have eaten out the doors of the Church and Common-wealth: This whereas, viz. the Monopolist, the Dispenser with public and private penal laws for a private, and the Conspirators are blown up and exterminated. And the fourth, viz. the Vexatious Informer, well regulated and restrained, who under the rebus Sante de Labo and Justice, instituted for protection of the innocent and the god of the Common-wealth; did here and elsewhere the Subject, and commonly the paper forged, as private or public 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 poor when his Subjects are rich.

George Hammond informed upon a penal nature concerning dipping of Cloth in the name of another, Qiu ram, &c. against Edw. Griffin, Defendant. Hammond the Informer dies, and upon motion made by the Attorney General, it was the opinion of the whole Court, that the Attorney General might proceed by the Queen's Proctor after the death of the Informer.

Between Scretton, Qui ram, &c. and Taylor, Defendant, that after a popular Action commenced, although the Attorney General will enter an Ultra us non vulgo prolocuti; &c. if the Defendant plead a special plea, although the use be, that the Attorney (to the end that there may be no judging of 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 full 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 two remaining popular, wherein the King only, and no Subject
Of Forestalling, Ingrossing, &c.

It was a rule of the Judges and Bishops of the Exchequer upon consideration brought them, that small was a trivial, the boughing and telling thereof was within the nature of 5 E. 6. As it was not of necessity of it self for the soul and health of man, but it dammson and indecency wholefruit, Tut, Popp, &c. Butter, Cheese, &c. and other Manna. And Fervum Justice laid, 9 Hil. 26 El. in Common baner, that it had been lately adjudged.

1 Mich. 6 Jac. in Scaccario, an inquisition by Baron against Boy, upon the nature of 5 E. 6. cap. 14 of Ingrossed for buying and selling of Apples, the defendant pleaded not guilty, and was found guilty. But the Baron gave judgment against the Inquisitions, and causd an Entry to be made in the Margins of the Records, that the judgment was given upon matters apparent to them, that Apples were not within the said Act, for the Act to be intended of virtually necessary for the soul of man, the words of the Act being [Corn, Grain, Butter, Cheese, Fish; or other dead vitalis] which is as much as to say, of other dead vitalis of the quality, id est, of the necessary and common use. And therefore see the first part of the Inquisition.

Sect. 250.

Domesday.

a Kent. Dover ter; Wiceter.

b This place is doubtful.

c Here ib. 12.

cap. 12. §. fordhill.

cap. 11. §. 11.

Britton fo. 32. 33.

77. 2.

De Vet. M. C. pars 2. 246 b. 2

De 4. 1. de Pistor, Bacillatibus & al. Magistri & Ecclesiastici, & de Forestellariis, luc infra.

§. 51 H. 3. Raff. weigh and measures, 4.

§. 5 E. 3. c. 3. flate. 5

§. 5 E. 5. c. 11.

lat. flate.

28. 3. §. cap. 13.


11 Eliz. cap. 11.

13 Eliz. cap. 15.

For the word

Regatus, for Regators, &c.

17 Eliz. c. 5. flate. 1. 17

Eliz. c. 5. flate. 9.

For this word

Regatros, for Regators, &c.

9 H. 3. weigh and measures.


8 H. 6. c. 5.

Regators or Choppers, and in some Countries called Jobbers.

G. M. 44 & 45 El. at Sergeant Lane in Fleetstreet.

9 Hil. 36 Eliz. judgment the per Person Justice.

M. 6 Jac. in Scacc.

Int. Baro & Boy.
therefore Apples being rather of pleasure then necessity, are not within the said statute, no more then Plums, Cherries, or other fruit; and no intoxication hath ever been exhibited for ingroeting of Apples, Plums, Cherries, or other fruit: but the statute of 2 E. 6. cap. 15. doth forbid concupiscence of Costermongers and Fruterers, and made such concupiscence unlawful. And the said judgement of the Baron was affirmed in a point of Error in the Erchequer-chamber.


It was upon conference and mature deliberation resolved by all the Judges, that any Merchant or Subject or Strangers, bringing vitals or merchandizes into this Realm, may sell them in grapes; but that vendors cannot sell them again in grapes, for then he is an Ingroeter according to the nature of the word, for that he buys in grapes, and sells in grapes, and may be twisted thereof at the Common law, as 2 offense that is malum in se. That no Merchant, or any other may buy within the Realm any vitals or other merchandize in grapes, and sell the same in grapes again, for then he is an Ingroeter, and punishable; of supra. For by this means the price of vitals and other merchandize shall be inbounced, to the grievances of the Subject; for the more bands they pass through the hearer they grow, for every thousand after gain, virodam titum lucrum. And if these things were lawful, a rich man might ingroet into his bands all a commodity, and sell the large at a faire price he will. And every practice of deceit by set, conspiracy, words or names, to inbouce the price of vitals or other merchandize, was punishable by law; and they reached much upon the nature aforesaid. Natura fortellarii, &c. which be before in this Chapter: and that the name of an Ingroeter in the reign of H. 3. and E. 1. was not known, but comprehended with in this word (fortellarii) lucrum-sires virodam; and ingroeting is a branch of soffetting. And for that fortellarii was pauperum depressor, & totius Communis & patriarch publicus immiquus, he was punishable by the Common law.

They had also in consideration the Book in 43. Act. where it was pretended, that a Lombard did procure 99 promente and inbouce the price of merchandize, and inboced how: the Lombard demanded judgement of the presentment for two causes. 1. That it did not found in soffetting. 2. That of his endeavour to attempt by words, no will was put in ware, that is, no price was inbounced, & non allocatur, and therefore be pleaded not guilty. Whereby it appeared, that the attempt by words to inbouce the price of merchandize was punishable by law, did found in soffetting: and it appeared by the Book that the presentment was by fine and random. And in that case Kniver reported, that certain people (and named their names) came to Costermold in Percashire, and laid in declar of the people, that there were such wares beyond the Seas, as no Wall could pass or be carried beyond Sea, whereby the price of wools was abated: and upon presentment before made, they appeared, and upon their confession they were put to fine and random. See the nature of 25 E. 8. cap. 2. whereby the Lords of the Council, Judges, &c. and all of them, &c. have power to set prices on vitals, and the same to be proclaimed under the Great Seal.

For preventing of all ingroeting and soffetting, it was the ancient law before the Conquest. Decrescimus porro, nec quis extra opudum suo quaeam 20 Darnitarii carus sinitum emat, verum intra portum praeclari oppidi praeclari, atque viro fideli, aut ipso denique preposito regio, in celebri plebis concursu, & hominum oculus quisque mercator.

Interdicimus etiam ut nulli pecudes emantur nisi infra civitates, & hoc ante tres fideles telles, nec alia necessaria sine fidei justitate & warrants, &c. Item nullum mercatum vel feria siti, nec hec permitatur, nisi in civitatis regni nostri & in burgis, &c.
Against Robertsmen.

Commisso facta fuit Roberto Hadham ad vendenda blada & alia bona diversarum Abbatarum alienigenarum; qui venit & cognovit quod vendidit blada Prioris de Tickford in garbis in duabus * tales existent pro 10 li. quæ venditio facta fuit contra legem & confuetudinem regni Anglie, vendenda in garbis, prisci quam tributat fuerunt, quod fieri debuit per menorum post eorum tributationem;Ideo committitur prifone, & adjudicatur, quod ab omni officio Domini Regis amovatur, & quod inimic faciat cum Domino Regis.

Other be well this judgement that it is against the Common law of England to sell corn in heaps before it is threshed and measured: and the reason thereof seemed to be, for that by such sale the market in effect is forestalled.

Against Robertsmen.

If is an English Robber, that many men talk of Robin Hood, that neither shot in his bow: and because the statutes and ordinances hereafter mentioned cannot well be understood, unless it be known what this Robin Hood was that hard railed a name to these kind of men called Robertsmen, 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 Wob to and devaters, by robbery, burning of houses, stealing, haste and spoil, and principally by and with Wagabonds, idle wanderers, night-walkers, and draw-latches; so as this notable thief gave not only a name to these kind of men, but there is a way called Robin Hoods Way, in the River of Poshiaire. And albeit he lived in Poshiaire, yet men of his quality took their designation of pishie and were called Robertsmen, throughout all England.

Against these men was the nature of Winchester made in 13 E. 1. for preventing of robbery, murder, burning of houses, &c. Also the nature of 5 E. 3. which recited the nature of Winchester, and that there had been divers manslaughter, felonies and robberies done in the times past by people that were called Robertsmen, Widders, and Draw-latches; and remedy is provided by that Act for the arresting of them.

At the Parliament bolden 50 E. 3. it was petitioned to the King that Kibau and sturdy Beggers might be banished out of every town. The answer of the King in Parliament, was, quelling Kibau, The nature of Winchester and the declaration of the same, with other statutes of Robertsmen; and so such as make themselves Gentlemen, and men of Arms and Archers, if they cannot to prove their selves, let them be driven to their occupation of service, or to the place from whence they came.

It is provided by the nature of 7 R. 2. that the statutes made in the time of King Edward, Grandfather of the King, of Robertsmen and Draw-latches, be firmly bolden and kept, and further provision against Wagabonds wandering from place to place. See a law made in the 12th Parliament of Queen Mary, Anno Dom. 1555. In Scotland against Robert Hood, Little John, &c.
Cap. 91, 92, 93, 94:

CAP. XCI.
Of Bankrupts.

Vide in the fourth part of the Institutes, Cap. The Court of the Commissioners of Bankrupts.

CAP. XCII.
Of Recusants.

First, the Acts of Parliament that are made against them are 1 Eliz. cap. 2.
27 Eliz. cap. 1. 28 Eliz. cap. 6. 35 Eliz. cap. 8, 9. 3 Jac. cap. 4. 2 Jac. cap. 6.
Lib. 10. 34. the Chancellors of Oxfoirs cafe.
Lib. 11. 56, 57, &c. Dr. Fother's cafe.
Lib. 5. fo. 1. Candies cafe.
Dier 3 Eliz. fo. 203.

CAP. XCIII.
Of Newes, Rumours, &c.

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 Wolsey, Artic. 52. Convicia, tibi furturis, tua divulgas; spreta ex flagrante: If you seek to revenge flanders, you publish them as your own; if you despise them, they banish.

The law before the Conquest was, that the author and spreader of false rumours 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. XCV.

Of Apparell.

Other Acts of Parliament have been made against the excesses 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 tending both to the pleasure of the Promoter & the Parliament holden Anno 1 Js. all Acts of Par. 1 Js. R. ca. 25. Parliament before the time made concerning Apparell are repealed and abrogated, and since that time no Act hath been made concerning Apparell, and to hander the law at this day. These costly things there are that do much immoderately the subjects of England, viz. costly Apparell, costly diet, and costly building. The best mean to repel costly Apparell and the excess thereof, is by example, for if it would please great men to shew good example, and to wear Apparell of the cloth and other commodities bought within the Realm, it would be sure this bane and consuming ill, which is a bane of prodigality, and hereunto few wise men are taken. If you will look into the Parlaments kept of 1 H. 6. you shall see what plain and frugal Apparell that renowned King H. 5. after he was King did wear, his gown of jets value then 40. 4.

Magna corporis cura, magna animi cura.

Non indutur mulier vestes viriles, nee vir uterus vestes feminas: abominabilis est. Deo. 21. 5.

apud Deum qui facit hoc.

Dd 2
CAP. XCVI.

Of Diet.

There was an Ordinance made by King E. 2. by advice of his Counsell against the exces of Diet; but because it had not the strength of an Act of Parliament, it wrought no effect.

It is provided by statutes made in the reign of E. 5. and Queen Elizabeth, that no beef shall be eaten on Fish-days, viz. Friday, Saturday, Ember-days and Maundy, and the time of Lent; and for licences to eat beef on Fish-days, &c. the preamble of the nature of 2 E. 6. c. 19.

Embry days, so called because in former times when they failed they put Alpes or Embry on their heads, Job 2. 12. Jer. 6. 26. 2 Sam. 13. 19. And as the natural convulsion of the head of the body is to dis, so the sins of the soul (unrepented) are turned to fire, and this was shadowed under Embers that ever keep fire.

These Ember days are the week next before Quadragesima, so called, for that it is the forty days before Easter, and is the first Sunday in Lent. So Quinquagesima the Sunday fifty days before Easter, Sextagesima fifty days before Easter, and Septuagesima seventy days before Easter.

Before these latter Acts the eating of flesh on Fridays 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 men's body, and to obstruct the faculties of the mind, as the understanding, memory, &c. in men, especially to Christian men, there needed no law at all to be made, ever being mindful of that Caduce, a Attendite autem voce, ne forte gravemur corda vestra in crupula & bibriquet, &c.

Vigilia, &c. cholera, &c. torturavis viro infrinuis; Sommius sanitatis homini parco, dormiet utique in manu, & animus illius cum ipso delictuabitur. The moral heathen men by the Light of nature agree bereuntes. Tantum cibi & potus adhibendum est, ut rehciantur vires, non opprimantur.

Accipe tu vitius tenuisque quantasque succum Aferat: imprimis valeas bene. Nam variar res Ut nocent homini credas, memori illius ece Que simplex olum tibi sedebit: At simul aulis Misercius elixa, simul conchylia turgid; Dulcia fe in bilem vertent, flomasque cumulatum Lenta feret pituisc: vides, ut pallidus omnis Cena desfigurat dubia ?

Ex plethudine generantur morbi, qui susceptant medicorum artem.

King Edgar permitting many of the Danes to inhabit here (e who first brought into this Realm excessive drinking) was in the end constrained to make a law against this excess (which never came to) by which certain nails into the sides of their cups, as limits and bounds, which no man upon great punishment had to make for as to transgress.

William of Palmesbury, comparing Englishmen and Frisians together, said, that in his time the English manner was to sit dining whole hours after dinner, & that the Frisian fashion was to walk the streets with great tropes, with idle and low biting-men following them; both of which were causes of many disorders and outrages.

If the excess of drinking extend to the loathsome and odious vice of unkinnets, it is punishable by Act of Parliament. And to the truth, the ancient Britains were free from this crime.
Eccle Britannorum nos et laudabilis iste,
Ut bibat arbitrio pocula quique suus.

And the Laws against drunkenness are very new,
Nothing is here laid against that great Peacemaker and branch of liberality,
 soberly Hospitality, but against the bawdy and bloysterly excess of meats and drinks, which is a species of prodigality; for it is provided by Act of Parliament

that the grace of Hospitality shall not be withdrawn from the needy.

See the Statute of 37 E. 3. cap. 8. against excessive apparel and diet; but it was repeated 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 boating evil, whereunto some wise men are subject. But the Common
laws both prohibit any subject to build any Castle or house of strength imbambled,
or without the King's 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. Edifice in two proprios solo non licet, quod alteri nocet.

b In Deuteronomy it is said, Cum edificaveris domum novam, facies e murum
tech per circumvum, nec effundatur fanguis in domo tuae, & & reus, labente alio, & in
precepto ruente.

c I like well the Countell to a Nobleman, whatsoever gave it, Si vis (aut ille)
edificare domum, indicat te necessitas, non voluptas; cupiditas edificandi edifi-
cando non tollitur; nimia & inordinata cupiditas edificandi expectat adicii
venditionem: Turris completa & aera evacuata faciunt tarde hominem ap-
ientem.

Edificare domos multas, & paucere multos,
Eit ad paupcrum semta laxe nimis.

Lo build many houses, and many to food,
Lo poverty that wdy both reduly lead.

Of these there it bard ben truly said, Vehiium, Conviviorum, & Edificiorum
luxuria &c civitatis sunt indicia, & species prodigialris.

But by the Common law, and general custom of the Realm, it was law-
full for Bishops, Earls, and Barons, to build Churches or Chapels within
their Sees: and hereof King John informed Pope Innocentius the third (name-
ing only, honoris causa, the Bishops and Barons of England, albeit this li-
iberty 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 con-
scriptudine regni Anglicorum procedere regia Serenitas per suas literas intimavit, ut
licent tam Episcopis, quam Comitibus & Baronibus Ecclesias in seculo suo fun-
dare, laicis quidem principibus id licere nullatenus denegatus, dummodo Dioce-
si Episcopi ei suffragiis attentus, & per novam structuram veterem Ecclesiarum
justitia non laetur.

Whereas the Baronage had absolute liberty before, now
the Pope added the content of the Bishop; but that addition bound nor, say-
ing 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 part
what the general custom of the Realm was concerning the building of
Churches
Of Buildings.

Cap. 97.

Churches by the Baronage of England. And albeit they might build Churches without the Kings licence, yet could they not erect a spiritual publick body to continue in succession and capable of indwelling without the Kings licence: but by the Common laws before the Statutes of Augmentation, they might have induced this spiritual body once incorporated, perpetually lasting in perpetuity, without any licence from the King or any other.

And as the law gives rates of Prebends and Religions, so is it in cases of Charity: Any man may erect and build a house for an Hospital, School, Working-house, or house of Correction, or the like, without any licence, for there is but a preparation, and may be done as owner of the soil; but by the Common laws could not incorporate any of them without licence, but now by may, and endow them with lands in certain cases, by the Natures of 39 Eliz. cap. 5. and 3 Car. c. 1. as in the second part of the Indulgence in the exposition of those Natures it appeared.

Concerning the building or erecting of Tombs, Sepulchres or Monuments for the deceased, in Church, Chancell, Common Chappell, or Churchyard, in convenient manner it is lawful, so is it the last work of charity that can be done for the deceased, who bodes be lived, was a holy Temple of the holy Ghost, with a reverend regard and Christian hope of a fullfill resurrection. And the decorating them in punishable by the Common law, as it appeared in the book of 9 E. 4. 14. a. And so was it agreed by the Whole Court. In Mich. 10 Ja. in the Common plea between Corven and ley. And by the deposing thereof, they that build or erect the same shall have the action during their life, (as the Lady Wicke had in the case of 9 E. 4.) and after their deceases, the bequest 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 church of the Church be in the Parson, yet is a Lord of the Property, or any other that hath an house within the town or parish, and that he and all his whole estate be hath in the manor-house of the Property, or other house, hath had a feat in the life of the Church or him and his family only, and have repaired it at his proper charges, it shall be intended that some of his successors, or of the parties whose estate be hath, did build and erect that the use to him and his family only; and therefore if the Ordinary endeavour to remove him, or place any other there, he may have a Prohibition. If it was further resolved, that if any man hath a house in a town or parish, and that he and those whole estate be hath in the house, had 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 makes certainty, the mother of acquity) and if he do, a prohibition shall be against him. But where there is no prescription, there the Ordinary shall both the care and charge of ours, or 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 Prebendaries in the Church or Chappell publick, which is dedicated and consecrated to the Service of God.

Note. Funeral expenses according to the degree and quality of the deceased, are to be allowed at the goods of the deceased, before any debt or duty whatever, so that it is to be paid by the executors.

Amongst the people of Almighty God, as it appeared in the Holy Hister, Sepulchre, was ever had in great reverence, not only of Kings, but of other men; as amongst many others, good old Bazailla, when he had predicte himself for not going with the King to Jerusalem, he concluded, Observe at several terms, and mortaries, and sepulchral Juza, Swathium, and martyres, &c.

And also the mighty Ptolemies had building and erecting of Sepulchres of Monuments in great account; as it doth appear by the seven wonders of the world, which memory may be expressed in these few verses.

1. Pyramids
Of Buildings.

Cap. 97.

Of Buildings.

1. Pyramids Memphis. 2. Babylonis montis culpa,
3. Templum ingens Ephedi, virgo Diana, tuum,
4. Mauolfi Caria monumentum, 5. Rarake Pharo,
Tarris, 6. Olympioci splendida Iapgo Iova,
7. Desique spad Rhodosi splendidentis Iatus Phocii;
Hec saltem mundus mira, viator habet.

Before the religious and Christian regard aedes, whose monuments do
serve for four good uses and ends. First, for evidence and proof of ancient and
pious persons. Secondly, what time that is there buried deceased. Thirdly, for
example, to follow the good, as to submit the evil. Fourthly, to put the living
in mind of their end, for the sons of Adam must die. Heannum et hominibus
femal morti.

Monumentum aedificiis aliis memoriam alter institutum, cantaque nobis re-
preseatur: et hanc Monumentum a Homothesi.

Monumentum dictum a monumento, quasque creationis non monet et monumentum,
aut sepulcrum, quod non sumus mortales.

Cum tumulum cernis, tum in mortalia spernis:
Et in memor mortis, sique ad coelestia fortis.

It is to be observed, that in every sepulcher there is a monument, two things
are to be considered, viz. the monument, and the sepulture or burial of the dead.

"The sepulture of the Cadaver (that is, evo disa vermaculus) is nullus in honis,
and belongs to Ecclesiastical cognizances, but as to the monument, action is
given (as shall be said) at the Common laws for defacing thereof.

In the year of our Lord 1526, and in the 29 year of the reign of that glorious
Queen Elizabeth, was the old gate called Longae in the City of London (as
Stow said, taken down to be new built): There was found cached within
the old wall thereof a stone, wherein was written by the Hebrew tongue and
Characters an Epitaph, signifying in English, This is the Land of Rabbi
Moses son of the illustrious Rabbi Isaac: which certainly was before the 23 year
of the reign of H. 1145 Anno Domini 1777. For before that time all the Jews
in England were buried within the City of London, and in that year, 1582, Hove-
den, Domini rex pater dedit locum tali Judaeus terrae fuit habendi cementum in
qualibet civitate Anglia, extra murus civitatem, ubi possunt rationabiliter & in
competentia loco eran, ad sepulcrum demonstrare & prius erant omnes Judaei mortui
Londoniis ferreantur sepulchris.

And above Churches or Chappels may be built by any of the Kings subjects
(as hath been said) without licence, yet before the said knowledge of them to
be Churches or Chappels, the Bishop is to consente and dedicate the same: and
this is the reason that a Church or a Chappel, as not a Chappel, shall be tried, and certified by the Bishop.

Secundus hic dedicatione consecrationum 43 capitulum Ezekiel, 23 chapter
of Genesis, the 90 Psalmis, the 24, 26, 27, 84, and 174 Psalmis, the 2 of Samuel 6.
10 of Saint John vers 49, to the end.

Vide inter reges Edwardi Confessoris cap. 3. Similitud ad dedicationes, ad Syno-

dos & ad Capitula venientes, &c. In hane Servandum et summa pax.

We finde in ancient times, that Chauze, hollow places, or Subterranea under
the ground were made by men for receptacles or receptacles for keeping of their
valuables, children, money and goods secret, to avoid violence and rapine in time
of hostility or rebellion, and we finde no law against them.

These kind of buildings we had from the Germans, as we finde it in Tacicius,
who treating of the old Germanes, saith, Solers & Subterraneos specus aper-
are; & si quando hollow appears, aperta popularis, abdita auctem & deoffa aut igno-
rantur, aut eis profusum, quod quadransunt. They use to build Walls under
the earth; and if the enemies come, he sequester all upon and above ground,
but such things as lie hidden in the cave, either they lie unknown, or at least
they deceive him, in that he is enforced to finde them out. Neither do we found

De subterraneis sat-

in Scripturis &

cryptis.
Of Buildings.

Cap. 97.

Any licence of the King to make them, not punishment of any that made them without licence, and yet many have been made by many subjects, some whereof we have them.

A wise read of Alexander Bishop of Lincoln, in the reign of H. 1. and King Stephen, a Norman born, who was infamis subrubicionibus ad inaniam delictus.

No person can build or erect Light-houses, Pharos, Sea-marks or Beacons without lawful warrant and authority.

Lumina nocturna tollit Pharos annuam Lune.

In Light-house top is read the light.

As high as the Moon that walks by night.

Prohibition was made by authority of Parliament for building and erecting Block-houses, Bollards, Piles and the like for without Parliament subjects cannot be charged with building or erecting of them: and that Act is expired.

The Lord of the soil may build a Windmill, Shrickett, Dairy, enlarging of a court necessary, or a cartilage in grounds, where men have common of pasture.

A man cannot erect any building upon his own ground in the Kings Forest, but it is a purpurelate, and may either be demolished or arrested to the Kings use, ec. at a Justice Star.

Concerning houses of husbandry and tillage, the statutes of 4 H. 7. cap. 19. 7 H. 8. cap. 27. H. 8. cap. 22. E. 6. cap. 5. E. 6. cap. 2. are repeated 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 Labyrinth, with such intricate windings and turnings, as little or no fruit proceeded of them.

No man can erect an house or building to the Subsidy of any other.

Sec where a man had any houses or will, ec. and having any privilege of thing appurtenant thereto, pulls it down, and builds a new, where the privilege of appurtenance remains, and where not.

Concerning the erecting, ec. of Courtyards, 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 9 years) against buildings in the Cities of London, Westminster, & within three miles of the gates of the City of London, and against the building and coveting of any dwelling-house or building into others habitations, and against Inmates; but that endured but for seven years, and until the end of the next Session of Parliament; which Act, being bolden dangerous, was not continued at the Session of Parliament bolden in 43 El. by 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, as. which then was a warrant, and since that has been a colour for others proceedings in Courts of Justice, not observing the expiration of that law, but hence that law was long since lost his force, and the ancient and fundamental Common law is to be followed.

Sylliva, 02 Sullivan, in a word, derived from the Mason Syllve, and signified a pole or plate fixed in the ground: the Mason word is not yet out of use, for every man knows what a ground-stile is.

Pera, a Per, derived from the Latin word Peter, Place, Me. The English word Plants, for buegos or tablets, addede also at this day.

Dicing spoken of erecting of houses and buildings; ec. we shall tell post what we find in our Books and Records of Disputation, and decay of buildings.

k Dilapidation of Ecclesiastical Palaces, houses, and buildings is a good cause of dehoration.

It appeared by the statute of 4 H. 4. cap. 2. that Depopulators agrorum were great offenders by the ancient law, and that the Appeal to Sublimen thereof ought not to be general, but in special manner; and it probises, that the offenders therein might have their Clergy. They are called Depopulators agrorum, for that by protrating or decaying of the houses of habitation of the kings people, they depopulate, that is, dispeople the towns.

Prohibition
The keeping of them is against the law of God, on which the Common
law of England, in that case is grounded. Non offers mercedem profu-
sec pretium suum in domo Delui, &c. Quid abominatio est autrumque apud Domi-
nymum Deum tuum.

And the harper, or the of such houses is punishable by indictment at the com-
mon law by fine and imprisonment: for although adultery and fornication be
punishable by the Ecclesiastical law, yet the keeping of a house of broth-
eries, or brothel-house, being as it were a common nuisance, is punish-
able by the Common law, and is the cause of many mitchiefs, not only to the ob-
strual of men's bodies, and wasting of their livelihoods, but to the endangering
of their souls. For the mitchiefs ensuing hereupon, see 11 H. 6. cap. 1. H. 7. 6.

* Ring H. 8. approved all the stews, or brothel-houses which long had con-
tinued 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 wo-
men were not buried in Christian burial when they were dead, nor permitted to
receive the rites of the Church, which they loved.

The word Emus of stews is French, the having no English word for it.

* Before the reign of H. 7. there were eighteen of these infamous houses, and
H. 7. 13 a time forbade them; but afterwards twelve only were permitted, and
had signs painted on their walls, as a Bear and a Horse, the Sun, the
Castle, the Crane, the Cardinals Head, the Bell, the Swan, &c.

Many wicked and common women had treated themselves in a lane called
Water-lane, next to the house of the Friars Carmelites in Fleet-street: this be-
ing an open and known whoredom, King E. 3. to the end these Friars might
perform their works, one of which was, to live in perpetual chastity, took order
for removing of these women. The Record faith, Rex præcipit Majori Civitatii
London quod amoeriti faciat omnes multieres meretricies in venella prope Fratres
Carmelitarum in Fleetstreet inabitantes.

Read 1 Regum cap. 14. ver. 12. codem lib. cap. 15. ver. 12. & a Regum
cap. 23. ver. 7.

And by the Common law it appertained to the Marchall of the Kings House
to seize the Court from fences put in, which is more particularly ex-
plained by Fleta, who faith, Marchallius interdixit vigaram a meretricibus omnibus,
protcgere & deliberc, & habet Marchallius ex confuetudine pro qualibet mer-
trice coi infra metas hospitii inventa 4. primo die; quæ si iterum in bulla sua in-
veniatur, capitatur, & coram Seneschalo inibieatur ci hofpitium Regis, Reginae,
& liberorum subrnum, ne iterum ingrediatur, & nonima earum imbriciari;

Ece:
Of Brothel-houses, Stews, &c.  Cap. 98.

que si iterum invente fuerint hoscipicæ secturicæ, tune aut remissant in pristina in vinculis, aut spouæ predictæ hoscipia abjurentur que si autem tertio invente fuerint, considerabitur quod amputetur eis trelloria, & tundentur; quod quidem si quarto inveningetur, amputetur eis super labia, ne de cetero conspicuantur ad libidinem.

14 R. 2. It is enacted that no Stews or Brothel-houses should be kept in Southwark, but in the Common places therefore appointed.

So odious and so dangerous was this infamous vice (the dirti end whereas is beggary) that men in making of Leaves of their houses did add an express condition, that the lesse, &c. should not suffer, harbour, or keep any Female within the said houses, &c.

So the case of 1 H. 7. the custom of London for entring 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 Lurnes and Letis by the name of Lothenwite. We find in Domestay De adulterio vero per totum Chent habet Rex hominem (i. amicicium hominis) & Archiepiscopus mulierem, (i. amicicium mulieris) &c.

Vidua, si alicui de non legitime copulasset. 20. s. emendabit, puella vero 30. s. pro continent causa.


But now these offences belong to the Ecclesiastical Court.

Legrewius, &c Legrewius, Legergeld, &c Logergeld, of Legre of Logre for a bed and Wite amerciament by common speech Lerenwite &c Lueterwite, Lieuwite, Lothenwite.

Childewite is for the Logreda take a fine for his bondwoman deceased and begotten with child.

Bawdry, Lenocium, unde Ribawdry & Ribade, i. Impudius raba. 42. 50 E. 3. 51. of Ribaudi and Robertmen.
De Aversione, Fucologia, Pleudologia, Flattery.

We find a law before the conquest against Flatterers, in these words, 

"Verex quia contra terram, captatio, imperium, quod eximian Habban, &c."

Whitherfore, because Flatterers are such men, deceivers, malicious, prevaricators, &

respondibiliter Deique videlicet inimici, &c.

Whitherfore, because Flatterers are such men, deceivers, malicious, prevaricators, &

respondibiliter Deique videlicet inimici, &c.

...and both in public and in private, the Flatterer is a seducer; some private end, by false praise and humbling his victim, whereby he gains an enduring advance of himself, his state and actions, is due and seducible. 306

In modern times, this law hangs; that, the character had been induced by Flatterers, who had his best ideas brought out in a false light, making the grandest parts of him own errors, and mistakes, so that the victim made him confess himself a Cassandra, a great prophet, who was, and his adversaries felt then in truth they were. And while meditating on how he wanted Flatters, assumed to him, who knew his power and authority, by coming from him, he set his will on the sea brand, as the same power, and commanded the sea not to ride to test his might and might be accepted. The sea hearing his address, ascribed his words to a simpleton; and, not meaning anything, he repeated his presumptions, which he had undertaken by wicked intentions.

And well it is the Flatterers are called, in his last, did, lies, falsehoods, and

Flatterers, for the deceitful advice Flatterers give his state. Qui colunt alium, &

animus uti sit aliquam tempestas humana. Que si. It is perfecta vitium, it geteth

doubly much, and is hurtful. 307

And the Holy Ghost hath glorified Flatterers, nullum pecus, that is, the eye of

the inner. 407. Nor there is, obtain that the great others in him, and both af-

fected greatest: that is, the head, which is greater and more prosperous

is is, as you may read in the Book David. Contra, me juexit in nifericordia &

increpabi, nullum ueste, westerne non impavidus capitum neum. Whereby

he being both King and Prophet, thereby, the reason, and the hard re-

bands of the sun and storms, before the month humouring of the Flatterer (per

namu) and his states. Etiam, noster pecus, is mel venenatum & venenum meli-

num, and commonly affectedgreatness, and is called Lapdrape.

And again, Describing of the Flatterers, faith, His words are in another

then oil, and yet are they here words. Hec dicit Dominus Deus, Ve qui con-

stant pulhibus fuit arnis millato manu, &c. Suae caricia lib capite, universe

waits as aspired animus, &c. Thus they the Lord God, to them that two

potentos incredibles armidos, and put besicles upon the heads of every age to

harm souls. They make the king glad with their kinsmen, and the Prince

with their lies, in multum latus, &c. In Regem, &c. In mendace fuis

Principes.

The flattering mouth workseth much. And those Kings and Emperors have

been overthrown by the means of Flatterers, than by public hostility. And this

is the cause that he be mentioned the false ancient law for their punishment,

they be lawfully banished from Prince's Courts, and subjects houses.

...ur violencia, uti sit judicis praeda iconi:

Res genua cornus, cum lacropanta perit.
What scarsefull ends flattering fawourites, corruet of their sobredign Ledg Lords, aving their fawours in subverion of their labors, have bad, apperead in our Parliament-Kolls, Kerpoyes &听见生.

A Beige. 3. bad Hubert de Burgo Chief Justice and Earl of Bent, and many others: but this was his lattest, goodman just occassad without any gread grief he could fogg a Favourite. Pe in the Prettce to the second part of the Instutuc, his pensh in H. 3. fo burn Magna Charts.

L. a bad P. Pierce de Garthen, the Speaker, &c. and bad the Speaker's proceedings against the grand Charter by name (among other things) attending to the subversion of labors, &c.


H. 8. bad t. William the 4. Pole Duke of Sufyria, &c. who exhaushed to hate brought in the labors, which was the occassion of the Chief Justice Forretoque in the commendation of the labors of England, preferring them for the governement of these lands by the Chief Justice: This Duke with others plotted the death and destruction of Humfrey the good Duke of Gloucester, who died in this way.

E. 4. bad t. William Lords Huggins the King Chamberrain, and C. of C. All these came to scarsefull and untimely ends.


H. 7. bad t. Richard Empson, Edward Dudley, &c. t. Richard Empson was bound,Quad Ipi, confavbari allciarefifici principi Henrici, suos reges Anglie, etippini, Deum pro oacenia hainbus, sed ut bene diabicam fata diiser annogins honorum, dignitatis et profectis diueri luec, ac dominorum regni Anglie minime valler, sed ut bene majus regno favores dicent: super Regis adhaerent, unde magista fieri poteritt, ac nulam aegren Angliesubstans quas voluntatem gubernari, saepe, derection, & prodigios: leges Anglies subversens, diversas leges ipsi super regis, et suis suis corona & subduens ingenia, contra commens legem regni Anglie, de diversis solonis, &c. ideoque, &c. per quas plures & diversi populi dieri super Regem suis gravaminibus & indebitis, div reported, multiplicaier torquemabantur, in instans quod populli dieri super Regem Perus, ipsa super Regem multiplicaier thurmarbarat & mignabata; &c in magnas present legum ipsi super regis, regni Anglie, sae ubvitio ad legum & constructos: eis dignem, regni, &c. and the like indictment was against Dudley.


We wott for some cause donte no letter: Quo coem vegiurifidans, corum exitus perhorrerat.

But that right be done to him who was a faithful favourite and countenanced to this King, we have ten a Manuscript that related, that Charles Brandon Duke of Suffolk, a wise and warlike person, was for many years before he became the greatest favoiire the King had, upon whom he chiefly relied in all his backbitch 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 late with his Counsell, 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 intrusted to mitigate my displeasure, and never spoke to me of any of them. And the King looking upon the Lords of his Counsell one after another, said, and (to my Lord) cannot you say, persuading them all throughout. A royal commendation of this great Duke, and a great argument of his piety and honour,
Of false Imprisonment.

See the Second part of the Justice of the Peace, cap. 31, of the 12th and 13th of Charles II, and the 8th and 9th of James II. See also the 5th part, of the Justice of the Peace, cap. 30, of the 18th of Charles II, and the 1st of James II. See also the 6th part, of the Justice of the Peace, cap. 31, of the 12th and 13th of Charles II, and the 8th and 9th of James II.

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If the plaintiff cannot distrain him, because it is a public offense wherein the king hath an interest, or may after his death by the plaintiff be arrested as the laws direct.

There are two great obstructions to the due execution of these laws (as before hath been hinted) especially in criminal cases, viz. Preludiation & mora in executio. Preludiation is a man of position to be committed to prison, and within a short time to be indicted and arraigned, as it is not possible for them to hold by their writs till after this certainty is obtained, for the law hath no personal and real actions but gives the parties. Testament of Deben, which is a judgment nisi without any precept to arrest, &c. more might be made to the contrary. Nor is the common law of public acts effaced by the public, quainum in judiciis publicis quia pendit periculum, qualis quoque publica ritus subsequit, &c. Causa in delictis delinquentibus judicii mature siunt, in accelerato processu nunquam. And in the case of life, As for mora in executio, intrados oj wayward delay, &c. The Second part of the Institutes. See 26. And we will conclude this chapter with the rule of law, Quod in criminalibus probabione debet esse circulares.

Judgment in High Treason.

By virtue of that degree, &c. and see before in the chapter of treason.

Pl. Com. 187. b.

See Stat. 2d. e.

Lib. Int. Co. 367.

* See the Book of Judges cap. 19, sect. utl. Consider, nothing, and give sentence. 13 Ib. 47. Treason, perjury, &c. dishonor.

Bred. lib. 3. fo. 118. R. Crime, se est moe, &c. because of the public, it is not for the public, good golden crime oust a crime civile; good peram. Milne 1. p. 404. b. no such intention of executed, &c. &c. Parliam. 2. R. 2. inter placita Coron. 10. 50.
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ventrem fumum capitatur, ipoque vivente combusturant, & caput suum amplius, quoque & corpus suum in quatuor partes dividatur, & quod caput & quarta illa popantur ubi dominus rex ca alligare vult.

Implied in this Judgment is, First, the securitie of all his Manns, Lands, Tenements and Prebendaments in si-simple, &c. &c., of whomsoever they be boldon. Secondlie, his wife to lose her Dower. Thirdlie, he shall lose his children (for they become late and ignoble.) Fourthly, he shall lose his posterity, for his blood is tainted and corrupted, and they cannot inherit to him or any other person. Fifthly, all his goods and chattels, &c. And reason is, that his body, lands, goods, posterity, &c. should be roas, pulled aunder and destroyed, that intended to tear and destroy the Majesty of government. And all these severall punishments are found in holy Scripture.

1 Reg. 2. 28, &c. Job 21. 35.
Either 2. 22, 23. Bithan suspenderius, &c.
Acb. 1. 18. Judas suspenderius crepat medius, & disfusa lint viscera ejus.
Sam. 18. 14, 15. Injicit tres lanceas in corde Absolon cum adhuc palpitaret, &c.
Sam. 20. 22. Absciitum caput Sheba filii Bichri.
Sam. 4. 8, 12. Interteretum Baanah & Rabah, & suspenderunt manus & pedes corum super paulicum in Hebron.

Corruption of blood, and that the children of a Traitor should not inherit, appeared also by holy Scripture.

Phil. 109. 9, 10, 11, 12, 13. Mutantes transferatitur filii ejus, & mendicent, & ejiciantur de habitationibus suis, & deserpent de terra memoria ejus.

The judgement of a woman for high treason is to be drawn and burnt.
Sir Andrew Hakley Earl of Carlisle, consuited, degraded and attainted of treason.

Judgment in Petit treason, where he is convicted thereof by verdict or confession.

Super hoc viis, &c. ut supra, Consideratum est, quod praedictus R. ufque fures de T. trabatur, & ibidem suspenderat per collum, quouaque mortuis fuerit.

But a woman is to be judged 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 comparatur ei uxor et, &c. igne Britannii interficitur.

Bragton lib. 3b. fol. 105. a. Ignem concremantur qui salutis dominorum suorum insidiaverint: idem fol. 104. b.

Judgment in felony, where he is convicted thereof by verdict or confession.

Ut super hoc viis, &c. ut supra, Consideratum est, quod praedictus R. suspenderat per collum, quouaque mortuis fuerit. Bragton lib. 3b. fol. 104. b. Speathed De laqueo.

And it is a maxim in law, that execution must be according to the judgment, Ea que in curia nostra rite acta sunt, debit exectionem demandari debent: & for express authority, non licet felonem pro feloni decollari; & yet some examples are to the contrary.

True it is, that the Lord of Hungerford of Pottebury was in 32. H. 8. attainted of Burgery, and bad judgement to be hanged by the neck until he was dead, and yet on the twenty eight day of July in the same year was beheaded at the Lawter-hill. But as true it is, that Thomas Fines Lord Speaker of the South, in anno 32 H. 8. was attainted of murder, and had judgement to be hanged by the neck until he was dead, and according to the judgement was hanged at London the twenty eight day of June in the same year. And true it is, that Edward Duke of Toomer was attainted of felony in anno 5 E. 6. and had judgement to be hanged by the neck until he was dead, and on the twenty res.
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... and of February in the same year was beheaded at the Liver-hill. And as true it is, that 3 & 4 Ph. and Mar. the Lord Stuart was attainted of murder, and had judgement to be hanged by the neck until he were dead, and according to the judgement, the third of March in the same year he was hanged.

In case of High treason, beheading is part of the judgement, and therefore the King may pardon all the rest being beheadings, as is usually done in case of Murder. But if a man being attainted of felony, he is hanged, it is no execution of the judgement, because the judgement is, that he be hanged until 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, burning to death, &c. To conclude this point, judicandum est legibus, non exemplis; et judicium est juris dictum, &c. 

The forfeiture in case of Petit treason and felony (which is implied in the judgement) is all one, which you may read in the Part of the Institutes, Sect. 747.

Quando pecaverit homo, quod morte plebendum est, & ad iudicium morti appensum fuerit in patibulo, non permanebit ejus Cadaver in ligno, sed in cœdium die sepeleatur. And the reason that Sibyls yield hereof is, that by the execution of the judgement by death, the law is satisfied, and abated its cruelty, and in that case, Mors dictur ultimum supplicium.

And herein this is observable, that in Creton and Felon, the judgement is only of the capital and corporal punishment, and nothing of the forfeiture, which is implied, but in Common Pleas the judgements are more particular.

Judgement in Appeal, when the Defendant joining battle is vanquished in the field, &c.

If the Defendant in Appeal be vanquished in the field, the Record recited the vanquishing in the field. Ideo confideratur actum quod fuerit per coll. and so it is when the Defendant is vanquished and slain in the field, præter judicium id est sparsam. Otherwise there should be no obsequium. See the Second part of the Institutes, W. 1. cap. 14.

Judgement in Treason or Felony, wherein neither any corporal punishment nor forfeiture is expressed.

In case of Treason or Felony, if any person be outlawed, the judgement upon the Accused at the sith Court Court upon default of the party is, Ideo, &c. per judicium Coronatoris Domini Regis Comitis prædicti utragatur actum. Which being duly returned of Record by the Sheriff, the party shall have the like corporal 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 utragatur) both the corporal punishments and forfeiture also are implied: and if the proceeding therein, or the judgement be erroneous, and upon his appearance upon the Capas utragatur, if it appear to the Court (whereof any man, as amicus curiae, may inform the Court) that the party may either avoid the outlawry against him by justice of error, or by plea, the Court ought not to award execution against the party, but adjourn him to his counsel indexed, and require him to say by his advice either to bring his justice of error or plea; if the party refuse to bring his justice of error or plea after convenient time be given, if the outlawry be erroneous and not void, the Court may award execution. And so it was refused, Termino Hil. Anno 3 Jacobi Regis, by the whole Court in the King's Bench, and others precedents thereof indexed in the reigns of H. E. and one in the reign of Hen. Eliz. which we take, so long as the attainer by outlawry answered in face, 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; so for Auctore.
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attaint for the same offence is a good plea to set him from answer in that case, albeit the record be erroneous. But if the Attainer or Outlawry be held against him, then may he be either arraigned upon the former indictment, or appeal, or newly indict, &c. if there be cause. And therefore the judges are to take due consideration of the whole of the Attainer or Outlawry, that they may be truly judged of the true state of the cause, before they award execution of death against him upon the Outlawry.

Vide Bracton lib. 3. Tract. 2. cap. 14. and Britton cap. 3. p. 20. 21. excellently treating hereof, and Fleta lib. 1. cap. 27. 28. 29. regarding this further.

And by the Common law Auterfoitz acqutize, &c. of the same felony was a good plea, as well in an indictment as in appeal by the Common-law. So the nature of such appeals was to be held at the suit of the party; Auterfoitz arraign de mesma le mort, as no plea at that day; but in case of an Indictment of death at the suit of the King, Auterfoitz arraign de mesma le mort in appeal is a good plea. Auterfoitz arraign de murder is a good plea to an Indictment, &c. of Petit treason of the same death, &c. in effect it hath the same judgement, and the same forfeiture. So like wise if a man be arraigned of manslaughter, it is a good bar to an indictment of murder of the same death, &c. converso.

By the Common law if a man were arraigned of a felony done by him, and admitting he were thereupon, he cannot at the suit of the King be impeached for any felony whatsoever before his said arraignment by him committed, soz by the Attainer he was mort in ley; and in that case the judgement for felony, viz. Suf. per cell. But the party may bave his Appeal of Robbery, for a robbery done before the felony bebefore was arraigned, because in the Appeal he is to have restitution of his goods, besides judgement of death. And if the party arraigned of felony be committed High treason before his Attainer, he shall answer to the treason notwithstanding his Attainer of felony, because the King by the treason was intended to have the forfeiture of all his lands, of whomsoever they were held. Alsa for High treason there is another judgement, being an offence of a higher nature: but being arraigned of felony, if the commit treason afterwards, he shall answer thereunto, because it is of higher nature than the felony, but he shall not be the right of Sceat, which lawfully was by the felony botten in the Lords, contrary to the opinion of Justice Stanard in that case, for the act and offence of the party shall not be the lawfull Sceat of the Lords: but if a man be arraigned of treason, he cannot be after arraigned of a former treason, causa supra.

Where a little before it is said, that a felony by his Attainer is mort in ley, it is to be understood of such former offences as require poenam mortis: for notwithstanding the Attainer, his body remains subject to arrest and execution for debts, &c. Vide hic paulo post, Truftell and Prelates cafe in margin. 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.

If a man be arraigned of Petit Larceny, he may be after arraigned of felony, for the which he shall have judgement of death, because it is an higher offence, and is to have another judgement.

Auterfoitz acquitze, and the judgement thereupon.

But Auterfoitz acquitze must be of the same felony, and albeit he be acquit of the latter felony, yet may be arraigned of any former felony: and to it is in case of treason, Auterfoitz acquitze of treason must be of the same treason, for it acquit the law, because he ever remained a person able.

And albeit at this day in an appeal of death, Auterfoitz acquitze upon an indictment of the same death is no bar, yet in an indictment of death, Auterfoitz attain de mesma le mort in an Appeal is a good bar.

In an Indictment of Appeal of death, if it be found that he killed him in

his own defence, he is acquitted of the felony.

It appeared in Vauzis case, that if a man be erroneously acquitted of felony by verdict and judgment thereupon given, yet if the indictment, &c. be insufficient, he may be indicted again for the reasons and causes in that case reported you may rest there at large, and not yet here be repeated: And therefore: this we will add, that the reason aherese upon an erroneous judgement of condemnation, the party (as hath been said) is obliged 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. in this. That in the case of condemnation, the judgement is, Quod su- ptestat, &c. which is the judgement of law due for the offence: and ought to be given thereupon, and can take no other interment: but in the case of acquittal the judgement is, Quod est sine die, &c. and which may be given as well by 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, Idea consideratum est quod est sine die; which upon that report, and this addition implied therein, we hold may satisfy the curious reader.

Auer foils convicte de mesme le felony devant judgement.

For this division & Holcros cas,, which in the chapter of murder, and Lib. 4. fo. 45, 46. where the nature of 3 H. 7. cap. 1. is well explained and the second part of the Institutes Art. 3. art. cap. 2. Lib. 2. &c. Lib. 4. fo. 50. Wherehers case. Scanl. lib. 2. cap. 37. &c.

* Before the nature of SEliz. cap. 4. and 18 Eliz. cap. 6. if a man had committed other offences, 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 offences, as he 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 offences, for which he could not have had his Clergy.

Judgement to reverse an outlawry for treason or felony.

The judgement to reverse an outlawry of A.B. in case of treason or felony in a Writ of Error is, Idea consideratum est quod utulagria predicta ob erroREM Predict & alias in recordo & process predict. caperit revocetum, adnueltur, & penitus pro nullo habetur, & quod predict. A.B. ad communem legem & omnia que occasione utulagria predict. amitt. rellatiatur. & c. & quod ipse eant sine die.

If the outlawry be abridged by plea, then the judgement is, Idea consideratum est quod predictus A.B. de utulagria predicta exoneretur, & quod ipse ad communem legem, & omnia que occasione utulagria predict. amitt. rellatiatur, & ce occasione non moleletrur in aliquo, nec gravetur, fed sit, & cat 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 remitted into the Kings Bench, and by Places out of the Kings Bench be in erroneously outlawed and for returned, a Writ of Error may be brought in the Kings Bench for reterual thereof.

And whereas 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 reterual of that attainer, by reason of these words of the nature of 33 H. 8. cap. 20. viz. And if any person or persons shall be attainted of High Treason by the court of the Common law, &c. that every such attainer 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 Ano 28 Eliz. that a Writ of Error should be maintained for the reterual of erroneous attainers of High Treason by the Common law: for that nature of
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33 H. 8. is to be intended of lawfull attainers by the due course of the Common law, and not of erroneous void attainers. And therefore at that Parliament helden anno 28 Eliz. an Act was made, That no Record of attainer 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 writ 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 until execution remains his own. And therefore before execution, if he be slain without authority of law, his wise shall have an Appeal; so notwithstanding the attainer he remained his husband. And after such attainer was made at the suit of a subject he taken in execution upon a judgement of nature, &c. And he may be executed for treason or felony, notwithstanding such execution made him. And in the Act of debt, or other Action brought against a person attainted, he cannot plead the attainer, and demand judgement, if during the attainer he shall be put to answer:

[...]

For upon consideration both of the laws in 11 Att. 27. 2 E. 4. 1. 4 E. 4. 8. 6 E. 4. 6 H. 4. 6. 8 Eliz. Dic 245 &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 attainer of treason or felony, and entry into religion; for he that is attained of treason or felony hath capacity, and may purchase lands to him and his heirs, but cannot to that effect enter 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, &c. to take advantage of his own doing. And if the person attainted be beaten or banished, or a woman attainted be ravished, after pardon they shall have an Action of battery, Appeal of mayme or Rape. &c. Lib. Intr. Co. 247. 248.

H. in ancient time a man indicted or appealed as a witness, or member, or impeached, &c. should not be compelled to answer at another writs but (as before it appeared) these opinions have been fully changed.

There was a notable case adjudged in the Kings Bench, Mic. 26 & 27 Eliz. wherein as I was well acquainted, concerning the matters of outlawry and executors before spoken of, which was in effect as followeth.

Ninianus Melvina nuper de Stedwick in Com' Dunelm' &c Anno 1 & 2 Ph. & Mar was indicted in the Kings Bench of High Treason, and yet broke he was outlawed, and to return, and his daughter and bethe 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. Fag, that point is 30 H. 6. 36 H. 6. 35. 1 E. 11. 10. the book of Entries Rall. 50. 52. Stanpl. cor. 68. 69. & 70. Vid. 19 H. 6. 31. H. 6. 31. But the Court gave no opinion concerning this Error. The other Error who was assigned, was, that the Sheriff returned upon the said Capias, that at his Court helden 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; so Queen Mary began her reign the 6 day of July, and the 25 day of July in the 2 year of her reign the marriage King Philip; so as between the 2 day of July, and the 25 day of July, the Queen bore 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 that was the clear opinion of the whole Court. But then it was objected, that be the said Act of 35 H. 8. and Stanpl. Opinion thereupon, that the attainer by outlawry being an attainer 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 attainers: And after great deliberation the outlawry of treason was reversed. And I take it, it shall not be altogether imperative, sure I am it shall not be impossible, to report the consequent of this reversall. In the next Term, &c. Term. Hl. anno 27 Eliz. for that Queen Eliz. had the lands whereof the said Ninian was seized in fe. his wife

F 2

[...]

Nota, this Act extends only to attainders of treasons before the Act of 28 Eliz. where the party hath been executed, and no attainers of treasons afterwards.

What interest the King hath in the body of the attainted before execution.


b Ibid. Sect. 199. 300. mort in ley.

f 3rd part Inlitt. Sect. 405.


4 See the Stat. of 8 H. 6. cap. 10.
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by petition of right, which comprehended the title of the wife, and the title of the Queen, claimed her dowry, 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 Maurice led a fine with proclamation to another, whose estate the Queen had by lawful conveyance thereto 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 Marie of Eracy, as is above said. Which petition being understood by the Queen, Sert droit fair al partie, and delivered into the Chancery, Sir Thomas Bromley, a man of great gravity and judgment in law, then being Lord Chancellor of England, by advice of all the Judges resolved these four points to follow. 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 limited by office (which she might otherwise, or cannot and abate) but by concessione, which she affirmed. Secondly, that a fine with proclamations, and she years past after the death of the husband both bar the title of her dowry, and that the convicts shall take advantage thereof, and of the attainer also. Thirds, that albeit the years and many more 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 she is attainted of treason found in force, she was barred of her dowry, and could not use any remedy, or pursue her title, until the outlawry were reversed, and then her title of dowry 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 word of the taking of the Act 4 H. 7. Fourthly, albeit an attainer 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 to abdicated thereby, as Nuliel 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 heeded, 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, but as she had no mean to pursue her right to long as the outlawry remained in force, which it did, until it was reversed by error. But admit the wife had been (in a remote degree of contanguity) bel to her husband, 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 dowry, and reversed not the outlawry within the five years: I hold in this case that the shall have five years after this reversal, and that within the said taking of the nature of 4 H. 7. for then did her title of dowry (as hath been said) first grow unto her, and as it was not in her power to reverse the outlawry when she should. And in this law of S. Hillary, Popham Attorney General, according to the said resolution of the Lord Chancellor and Judges, consulted the petition to be true; and thereupon Judgement was given, that she should be indemnified, and was indemnified accordingly.

*Nota.*

6 26 E. 8. cap. 13.
5 E. 6. cap. 11.

These statutes not only extend to all treasons by the statute of 25 E. 3. by the Common law, but by another statute, Vid. Dier 12 Eliz. 187. accord.

First part of the Institutes, Sect. 479.

Judgement in case of abjuration for felony, while it was of force.

After the lying of a felon for any kind of felony whatsoever, perjured excepted, (but in case of high treason of Petit treason a man could not abjure, because the Conyerter 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 Conyerter,
Cap. 107. Of Judgments and Execution.

Caput 1. a aud his voluntary and particular confession of the felony before the Coroner, naming the certain time, the judgment was, etc. 4 E. 7. 13. A Jell Mallons cafe.


Peine fort et dure.

In case of Petit treason & felony, etc. when the offender knideth mut, etc. and reduce to be tried by the Common law of the land, etc. Peine fort et dure, and in the Second part of the Institutes, W. 1. cap. 2. but this holothet but in case of Petit treason and felony, etc. In case of High treason upon standing mut, etc. A Jell Mallons cafe.


In case of Petit treason & felony, etc. when the offender knideth mut, etc. and reduce to be tried by the Common law of the land, etc. Peine fort et dure, and in the Second part of the Institutes, W. 1. cap. 2. but this holothet but in case of Petit treason and felony, etc. In case of High treason upon standing mut, etc. A Jell Mallons cafe.


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 fultigationem, & sic calligatur dimittitur. In Bracton's time, sometime by the Pilloz, sometime by the loss of the ear: and Italia, Litt enim ilium de re magna & parva, pro minimis tamen latrocinio 12 denariorum & infra, nullus morti condemnator; pro hujusmodi modicos delictis inventa liuentur judicialia Pilloria, & deliberase corporum, ut scilicet auriculam.

But in and since the reign of E. 3. no person lost any member for Petit larceny, but were sometime punished by imprisonment, and sometime by other penance, as whipping, &c. If the Delinquent speak for Petit larceny, and so be found by the Jury, he forfeits his goods.

Judgement in case of Misprison of High Treason.

That the offender shall by the Common law hall for this concealment forfeit all his goods, and the profits of his lands during his life, and suffer imprisonment during his life. Vide Stanford P. Coron. fo. 38. 1 & 2 Mar. cap. 10.

Judgement for Striking in Westminister Hall, &c.

That the offender shall be imprisoned during his life, forfeit all his lands, tenements, goods and chattels, and goods in supererogation, and this judgement is given by the Common law. Bracton lib. 3. 104 b. Penemur quodam admunnt membrum, & corporem coercionem, f. imprisonment, vel ad ten pos, vel imperpetuum.

Judgement for striking and drawing, blood in the Kings Court, &c.

The offender shall have his right hand struck 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. 35 H. 8. Paine Br. 16.

We cannot omit to touch on the way an Act made in 1 & 2 Ph. & Mar. intitled, an Act against defamatory words and rumours; by a breach of which Act, he that should set forth any book, rhyme, ballad, letter or writing containing any false matter, clause or sentence of slander or reproach, and disfigure the King and Queens Majesty, or either of them, should have his or their right hand struck off; which Act being but a Probationer at the Parliament in 4 & 5 Ph. & Mar. was continued until 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 praed. R. sit extra protectionem dominis Regis, & terrar, & tenementa, bona et cæstala domino Regi forisfaciat, et quod corpus ejus remaneat in prigiona ad voluntatem Regis, as in the book of Statutes, Rall. Judgement 465. And this Judgement is given by the statutes of 25 E. 3. cap. 22. 25 E. 3. de Provisoriis. 27 E. 3. cap. 1. 16 R. 2. cap. 5. And if be not in prison, Quod praed. R. sit extra protectionem dominii regis, & terrar et tenementa, bona et cæstala domino regi forisfaciat, et quod cæpiatur.

Judgement in case of Theftobe.

What the offender be fined. And it is to be observed that whenever the Delinquent or Defendant is to be fined, the Judgement is quod capiatur, that is, to be imprisoned until he hath paid his fine: but when the Defendant is to be amerced, and not fined, then the Defendant is in misericordia, whereas you may
Pillory is a French word, and it is derived from the French word Pillare a Pillar, column. Et eft ligna columnar, in qua collum infertum premitur, and thereupon in law it is called Collinbriqum, qui in eo collum hominem confringit. This punishment is very ancient, for the Sarons called it Hubertaux, and called it for training the neck. Britton fo. 24. faith, that thofe that have been adjured to the Pillory, 92 Lumber, are so infamous, Come if we took receivables al remure face in juries, enquest, ou en teftimoignant, and Jere with agréed Bracond. vet. Mag. Chart. 2. parte, fo. 23, 24, 45.


Tumbrel.

Lumberland is a word in use this day for a Dungcart. Bracond calleth it Tumborablen.

Inthigitar poeno corporalis, & pillorali vel tumberali cum infamia, secundum regni statuta. It is called tumbrillum, there being no proper Latin word for a Dungcart.

Force, Plloe & Tumbrel append al View de Frant pledge. And every one that hath a Lot or Market, ought to have a Pillory and Lumberland, &c. to punish of fenders, as Shooters, Haters, Forestallers, 9c.

Trebuchet.

De culigatory, in the statute of 51 H. 3. signified a Cucking-seat, and Trebuchet properly, named in the statute of 51 H. 3. signifies a Cucking-seat, and that falled down into a pit of water, for the punishment of the party in it. And Cuck, 22 Cuck, in the Sarons tongue, signified to stoofe or帐篷, (taken from the Cuchabou, 92 Cuchabou, a bird qui odoco jurat & rixatur) and Inge in that language (water) because he was for her punishment tossed in the water; and orders such it from Cucquit, 1. pellex.

Note for that the judgement of the Pillory or Lumberland (as it hath appeared before) doth make the Delinquent infamous, and that the rule of law in Judicium de majore poeno quam quod legibus statutum eft non infamum facit, fed per breve de errore adnuata potest; and again, poena gravior ultra legem polifica estimationem conferre, that the Judicium of Alize, Oier and Terminer, Gooldenbery, and Justice of Peace, would be well advized before they give judgement of any person to the Pillory or Lumberland, unless they have good warrant for their judgement therein; fine and imprisonment for offences punishable by the Justice abovedaid, is a fair and sure way.

And it is to be observed that thofe kinds of punishments of Pillory, 9c. have been given by Acts of Parliament in cases of enormoues and exorbitant offences, as by the statutes of 51 H. 3. 31 E. 1. De pilloribus, &c. 21 E. 1. De forestallario, 11 H. 7. cap. 4. 33 H. 8. cap. 7. & 2 Ph. & Mar cap. 10. 2 E. 6. cap. 15. 5 E. 6. cap. 5. & 14. 7 E. 6. cap. 7. Eic. 7. 5 El. 9. 16. 18 El. cap. And therefore the latest way for them, is to follow thofe Acts of Parliament in cases provided by the fame: 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 beft understand) we lay with the Poet, Haec nec metus rerum, nec tempora ponit, (for judicial precedents of grave and reverend Judges are good guides to direct men in the right way) we will enumerate some of them.


Saxonick Helmfang, or Halifang; Halt collum fac proficio. It is also called an amercement for commutation of such a punishment. 51 H. 3. Judicium Collinbrigii &
Of Judgements and Execution.

Cap. 101.


Be the fourth part of the Institutes, Cap. Star-Chamber, for punishment by Pillogy, &c. for enormou and exorbitant offences, which require more exemplary punishment than an ordinary course of the Laws of the Realm born in it. Nobles magis plecuntur pecunia, peculi vero in corpori, which is ob- tervable in all the tales natures. And Bracdon facta, Queilibet poena corporalis, quamvis minima, major a qualibet poena pecuniaria. Carcer ad continendos, non ad puniendos haberi debet, &c. Poena potius mollendam quam exasperandam furt. Restipicendum est iudicandi, quod aut durius aut remissius contineretur quam caussa deposcit; necemini aut severitatis aut elementiae gloriae asserenda eti. Alter seu punantur ex cedem factionibus servi quam liberi; & alter qui quidem aliquid in dominum parentemve committit, quam in extraneum; in magistratum, quam in privatum.

Death of a man per infortunium.

Of this mischief there is no express judgement to be given, but the offende- in to sue out his pardon of courts, as it appeared in the second part of the Institutes, Gloc. cap. 9. And hereof Bracdon facta, Caeo, cum per infortunium, ut si aliquis venando per teum in team miscum hominem, inter rector & familie pervererit, &c. But albeit there be, no express judgement given upon such a breed, yet the law giveth a judgement thereupon, viz. that he shall forfeit all his goods and chattels, debts and duties whatsoever, as in the second part of the Institutes, ubi supra, it appeared.

Of the death of a man he defendingo.

Upon such a breed given the Court giveth no express judgement, for he is also to be pardoned of courts: but the law hath given a judgement, that he shall forfeit all his goods and chattels, debts and duties, as in the second part of the Institutes, ubi supra, it appeared. But the Jury cannot find that the party killed him generally he defendingo: but they ought to find the case specially, so as the Court may judge whether in law it be he defendingo, so no. 84 Stat. fo. 15.

Of the death of a man that offereth to rob, &c.

If it be found by bredeit, that the party indicted or appeareth for the death of A, A attempted to have murdered 02 a robbed him in 02 night any common Highway, Cart-way, Pool-way, Roof-way, 02 tow-way, 02 in his b manion 02 dwelling-house 02 for the killing of him which attempted Burglary to break his dwelling-house in the night: the judgement upon such a breed shall be, that he shall be acquitted of the death of such a person paying his fees, and he shall forfeit nothing. And so it is declared and enacted by the Statutes 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 general breed of no guilt. And where it is rehearsed in the said Act of 24 H. 8. that beside that Act it was a question and ambiguity whether evil disposed persons attempting, ut supra, should for- feit their goods and chattels; the reason that question and ambiguity was in none
none of those 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 him by inevitable necessity, the party 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 in law, and a warrant 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 resists, 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 abovedescribed warrant in law, there must be a felony done, and this diversity appeared in our Books: * and so it is, if after arrest for felony the party arrested resists or flyeth, and in pursuit is slain by inevitable necessity, they do in killing him forfeit nothing.

An Apprehend that kills the party accused in baile, * a Champion that killed the other Champion in a Write of Right, or the Plaintiff or Defendant in an appeal that killed the other in due course, according to the Common law, or in combat according to the Customable and Martial in the Court of Chivalry, the party killing shall forfeit nothing; for such cases are due trials, as the law appoints in such cases. For, faith Flota, Duellum et singulares pugna inter duos ad probandum veritatem inters; & qui victor, probabile intelligitur: & quumvis judicium Dei expectabitur ibid. quiaque tamen non monacham, i. singularem pugnam, sponte flecterit, ut obtulerit, homicidae et, & mortale contra inter i. & ut. But before we lead these Champions, it is to be observed that whatsoever taken 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. & Glanvill lib. 2, cap. 3) if he become recreant, that is, a crying Coward or Craven, he shall for his perjury lose liberam legem. a Craven is derived of the Greek word κράβαναν, a vociferation: others never being, of crying and wishing for mercy and forgiveness. And recreantia is derived of the French word recreance, of giving back or cowardise. And sometimes it is called creantia e perantiphain, because he that uttereth it is not faithfull, but beareth his oath. And do the Appellate upon baile, and cry Craven, he shall also lose liberam legem for the cause asfoated, but if the Appellee cry baile, 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 logeth 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 same and credit, he is called Liber, and legalis homo; and such men ought to be of Juries and Witenesse, because they do enjoy liberam legem. & And Champion ought to be liber homo, and fo is the Entry, per corpus liberii hominis, & quam infamiam victus incurrit, s. Glanvill lib. 2. cap. 3. & lib. 14. cap. 1. and he further faith, Tals deber Cambio petronis eis, quibus, eis & positiv inde talis idoneus. So no man by the ancient Common law could be a Champion but he knew the right, and was a witness thereof, and therewith agreed the statute of W. 1. cap. 40. wherein is described what the oath was by the Common law: Aliquando patria frater campione, & aliquando in brac de recto campo flat pro patria. Cambio 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 that one that striketh a legal Camp-fight, or Combat in another man's quarrel: in Latin he is called * Pugna, e 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 cause belongs to the Common law, are to be directed by the Judges of the Common law secundum legem, & consequentiamAnglicam, and not by the Customable and Martial by the Civil laws, as all our ancient Authors and Books abovedescribed do agree, which also is apparent from the nature of R. 2. cap. 2.

* See in the Chap. of Hue and Ctrv. Rot. pat. H. 5. part 3. Glanvill p. 298. * See in the Chap. p. 55. H. 6. 10. 21. See before in the Chapter of Approver. a Glanvill lib. 1. cap. 31. 21 E. 2. p. 55. 22 E. 3. cor. 161. * E. 3. Cor. 318. 23 E. 4. lib. 158. 289, 129. * 3 E. 4. 4. 17. H. 6. 20. 21. See before in the Chapter of Approver. a Glanvill lib. 1. cap. 31. 21 E. 3. 41. 30 B. 3. 10. 29 E. 1. 12. 13 Eliiz. Dier. 301. a Mirror cap. 3. a Comitatur & a Juramento duelli. & a Ordinatione phantnnm. a Judicium in law against a Recreeant and Craven Champion is perpetre liberam legem. a See a notable Record hereof. a R. pa. 55 H. 3. 3. a Glanvill li. 2. c. 3. a lib. 14. cap. 1. a Mirror cap. 3. a Ordinandum pugnandum, I Horribilis morte de Cread. a £. 4. 3. cor. 98. a Creat exirecurt. a Brail. lib. 3. f. 141. a Brail. fo. 43. 81. a Flota lib. 1. cap. 34. a H. 6. fo. 35. a 21. H. 6. 34. a Mir. c. 3. 8 ubi lap. a Glanvill lib. 2. a cap. 19. Legem terre amittere perpetuum indemnitate non inderemini incurrenc. a See the first part of the Inf. Sect. a 14. 27 Aff. 39. a Liber legem qui. &c. a H. 6. 6. a H. 6. 55. a See the oath in appeal, Bractton lib. 1. fo. 141. a Bratin fo. 42. a Flota lib. 1. cap. 32. a Glanvill lib. 2. a cap. 3.
Judgement in an Indictment of Conspiracy, &c. where the party indicted is legimtimo modo acquietatus.

Notes. The judgement in this case is, as in case of attain against a Jurp, (whereof we shall speak hereafter) viz. Quod committantur Gaiole Domini Regis, & quod omnia terre & tenementa præd. R. & C. capiantur in manum Domini Regis, & devallentur, & exterritur, & ut xores & liberi corum amovantur, & omnia bona & curalla corundem R. & C. foris faciant Domino Regi, & amodo amittant liberam legem imperio.

Nota in his judgement Fide sehor se punishmentes. 1. That their bodies shall be impoinished in the common Sool. 2. Their wives and children amoned out of their houses. 3. That all their houses and lands shall be seised into the kings hands, and the houses wasted, and the trees extirpated. 4. All their goods and chattels seised to the King. 5. That they other body take the freedom and franchise of the law. That is, First, they shall never be of any Jurp or Recognition of Allis. Secondly, they ever be received for a witness in any case. Thirdly, they shall never come into any of the Kings Courts, but make Atomys, if they have any thing to do there. And this is called a *hilianous judgement, because of the sinister and infamy which they dererbe against whom it is given: And all is indizned by the Common law, for that the offenders by falsi conspiracy under the pretence of law, by indiznement of freedom of felony, and legal proceed thereupon, sought to do the greatest injustice by falsi conspiracy to shed his blood, who afterwards is thereof legimtimo modo acquietatus.

But in a Writ of Conspiracy at the suit of the party grieved, the Judgement is, damages to the party, due 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 compirse in the Kings name, and at the King's suit, by indiznement, to do the greatest injustice and thereby at the Kings suit they shall be beakly punished. Secondly, for that as it is said in 3 E. 2. De excito 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 disheritage of the great men, and destruction of the people. Thirdly, for that the judgement at the Kings suit is by the Common law, and the Action of the party is given by Nature, which givel not 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 b. & 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 indiznement of felony.

It is enacted, that such as be attainted of Confederacy or Conspiracy, shall have no office of the grame of the King, When, or other office, neither shall be sherif of that county.

Judgement in an Attain.

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.


Note. By the nature of 23 H. 8. cap. 3. the severity of the punishment is moderated.
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deriseth, if the Writ of Attaint be grounded upon that nature: but if the party
gritted may at his election either bring his Writ of Attaint at the Common
law, or upon that nature: but all attaints either at the Common law or upon
the nature 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. prohbiteth for divers mischiefes which were at the Common
law, and giveth to those of the jury Jury divers pleas which they could not
have at the Common law, and hath been well expounded. 7 E. 6. Decr. 81. b.
Sir John Ailis cafe. 24 & 4 Ph. & Mar. 129. b. Heydon's cafe. 3 Eliz. 204. Clovils
cafe. 3 Eliz. 262. Aultens cafe. 7 Eliz. 25. b. Stephens cafe. See the Records there
upon the nature 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. 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, 5, 38, 58, 62, &c.

Judicium de corrupto Judice.

We could not pass over a strange judgment of Suspendatur, &c. as in case of
felony (which we have touched before in the Chapter of Felony) given against
Sir William Thorpe, lately before Chief Justice of England, which we find of
Records in these words. Procesulis lacus An. 24, E. 3. contrale Willielmu Thorpe
chivaler nuper capitalem Judicatorium coram Ricci Comite Arundel, T. de Belasco
campo Comite Warw. Willielmo de Clinton Comite de Hunt Joh. de Gray de
Rothersfield Seneschallo hospitis Regis, & Barthol. de Burghers Camerai Regis
Pro eo quod idem Willielmus Thorpe nuper capitalest Jadhicarium Domini Regis ad
placita coram ipso Rege tenenda, dum silet in officio, cepit munera contra juratu
mentum suum, viz. de Richardo Saltley 10 l. de Hildebrand Boreward 20 l. de
Guilberto Hollyland 40 l. de Tho. Darby Sancti Botulphi & de Roberto Dalderby
10 l. qui pio diversis feloniam, falsificationem, & transfregtionem coram ipso Wil-
lielmno in felione sua apud Lincoln Anno 23. fuerint indiciati, & per ipsum
Willielmum fide de exendoza veri. eos respetaet fuit; qua omnia & lingula dedicere
non potuit: ideo a jugicidate fuit prout fecisit, viz. Conferendum est per di-
ducto Judiciariis singularum ad judicandum a secundum voluntatem Domini Re-
gis, & secundum regale poesie fuam, quod quia praecepta Willielmus de Thorpe
Sacramentum Domini Regis quod erat populum habuit cultuendum fregit b mal-
iciole, falsi, & rebeliter in quantum in ipso fuerit, & ex causis supradictis per ipsum
Willielmum, ut praedictum est, expresse cognovit, suspensu. Et quod omnia c terrae & tenementa, bona & catalla sua Domino Regi remanente forisfassa. Et
postea Dominus Rex mandavit fide fuam sub privato pigilio, in France, &
there entred to verbo in verbo. Ideo conferendum est quod executo Judicium pra-
dictum de suspensione ejusdem Willielmi omnino cesset & eis pardonetur. Et quod idem
Willielmus remittatur prouise Turris prae dost. ad gratiam Domini Regis expectan-
dam, &c. Et non est intensioni Domini Regis quod huissimodi judicium in constru
cau verius quomunque alium ex quasquique causa & teneat vel extendat, sed solu-
modo verius eos qui praeceptum d Sacramentum fecerunt, & fregerunt, & habet
leges regales Anglie ad custodienie.

c We have also found, that at a Parliament held at Westminister in Oc-
bis Purgitum beste M. Anno 25 E. 3. helden before Lionel Duke, of Clare-
now in force of the King's Commission, &c. Commandement was given, that
the Records 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 bear 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 poesie fuam, and that his lands should be subjected
to the King, & praeject. Sacramentum, were grounded upon the oath of the
Kings Justices in Anno 18 E. 3: the conclusion of which Barthol. (upon pain to
be at the Kings will, body, lands and goods, thereof to be done as pleased him.)
We desirous to satisfy 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, he entered into the said Roll, yet this is not; so that it has 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 said not at the Parliament, etc. but after it came to be printed: and that which is printed in anno 20 E. 3. cap. 1. is but a recital made by the King alone, and no Act of Parliament; for it appeared by that which preceded, and by the oath itself, that it was the Act only and commandment of the King, for it beguneth: First, we have commanded all our Justices, etc. which former part was not but a recital of some precedent Act: and then followeth, We have ordained and caused our said Justices to be sworn, etc. so as the oath was declared by the King, and the Justices sworn before this Parliament. Lastly, it is there said, and concluded, And for this cause we have enacted the fees of our said Justices, etc. 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. It appeared by Flota, that the punishment of a corrupt Judge, that receiveth gift or reward, was, Si inde convidus facit, quod imp. rectum a concilio regis excludatur; t. i. race, res, redditus, & proventus bonorum fuerat amputat. per annum annum: qui lic proventus non habuerit, punatur per discretionem regni & confirmatiorum regni. And that which Flota called Sacramentum Iustit, in Vet. Magna Charta is named Juramentum confirmatorium regni: for the Judges of England are of the Kings Counsell (as elsewhere had appeared) 63, in, and concerning the laws of the Realm, in which oath also the said fatal clause is omitted.

Sax the Mirror cap. 4. 5. de fauc Judges, & cap. 5. 6. 7. 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 bard been long since desire and antiquated, and per may be for a memorial of the time past.

The offence of Bishops was punished by fine, and random, and lost in the reign of E. 1. as in the Chapter of Erodon and Bishop before appears: only Sir Thomas Weyland Chief Justice of the Common Pleas took Sanctuary, and before a Corporation confessed himself guilty of murder, and according to the course of the Common law abjured the Realm, so as indeed he was attained of felony, (which case bard been vehemently urged) but it was not for bishop, but for murder, as any other man might have been.

But to winde up the threads of this discourse with these Acts of Parliament. First, with the nature of 8. 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, would not take gift or reward, and to sycle, as in Veteri Magna Charta, (without the said fatal clause.) That Act prohibited, that the oath without that fatal clause, would extend as well to the Barons of the Escheuer, as to the Justices, and expressed the penalty shall be (according to the Common law) viz. loss of office, fine and random. But at the next Parliament, viz. 9. 2. the fatal Act of 8. 2. for that it was a herry hard, and needed declaration, was made of no force till it be declared in Parliament. Afterwards at the Parliament helden 11. 4. it was debated what punishment great Officers thereof named, Counsellors of the King, and Judges, etc. should have, which should take any gift, reward or basage for doing of their offices or services: in the order it was declared and enacted by Authority of Parliament, in these words following. Item que nul Chancellor, Treasurer, Garden del Privy Seal, Counsellour du Roy, S. evintes a Counsell du Roy, ne nul autre Officer, Jugge ne minister du Roy, pronoit fees ou gages de Roy pur lour dites offices ou licèves, prêne en nul maner en temps averien aucun maner de c done ou basage de nulleuy pur lour ditz offices & licèves asserer, fur peine de 1 responder a Roy de la treble de ceo
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que sili preignont, 2 & de satisfier la party, 3 & puis al volunt le roy, & 4 soit discharges de son office, service, & counell pur tous jours; & que chizcun que verra purfuer en la dit matier cait la suite cibien pur le Roy come pur lui meffme & cait la tiecre part del summe de que la partie foit duement convié. Resp. Le Roy le voet.

This Act being by Authority of Parliament, hath limited the punishment (amongst others) of corrupt Judges, of whom now we treat, as the former example of Sir William Thorn is not now to be followed, which we affirm not in favour of Godin butheres, (which we hate, as in the paper chapter there of before appeared) but in advancement of Justice and right, which is the end of our labour in this and other of our works; b and therefore base caused that a good Act that hath lived to 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 Sergeant of the Parliament Hall of this Act, it is written, Respectuar per dominum Principem & Consilium: A Strange presumption, without warrant of the King his Father, and of the Parliament, to cause such a reservation to be made to an Act of Parliament.

The like he did to another Act in the same Parliament, nu. 63. concerning Atrociies, the like whereas was never done in any former Act latter Parliament. This was that Prince Henry, who keeping ill company, and led by ill counsel, about this time assault'd (some say) and strode Gaiginch Chief Justice sitting in the Kings Bench, for that the Prince endeavouring with strong hand to rescue a prisoner, one of his unthriftiness minions indent and arraigned at the Kings Bench Bar for felony, was prevented of his purpose by the perversion and commandment of the Chief Justice; for which the Chief Justice committed the Prince to the Kings Bench, whereas some of his followers instantly complained to the King his Father; who inditing himself of the true state of the case, gave God infinite thanks, that he had given him such a Judge as search not to minister justice, and such a son as could suffer tembably and over justice. And this is that Prince, who abandoning his former company and counsel, and following the advice of grave, wise and expert men, whom he made choice of to be of his Counsel, became a virtuous and virtuous King, and prospered in all that be too in hand, at home and abroad.

For the duty of Judges, it is truly said (as before hard been said) that Judex debet habere duos tales, viz. fakim scientia, ne fit inipidus, & fakim conscientia, ne fit diabolos. And what persons should be Judges, see Blackon lib. 1. cap. 2. & lib. 3. fo. 160. & Fleta lib. 1. cap. 17. s. caveat, and the Mirror cap. 2. s. 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 Spiritual and Temporal, and the Commons by authority of Parliament (amongst many other excellent provisions worthy of observation) that the said Prince should not promove, admit or receive to any office, administration or benefit 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 noble Prince should do nothing whereby any thing might be inhabited in the state or right, either publick or private, 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.

And it is there further provided for the future, as that if the said Prince should have issue male or female, the order of succession is there declared, but with this Proviso; Provided nevertheless, and expressly reseked in all and singular the above-declared cases of succession, that whatsoever he or the heirs that shall succeed in them, they shall lose to every of the said Realmis, Lands and Dominions whole and entire their privileges, rights and customs, and the same Realms and Dominions Hall admiters and cause to be administered by the Court of Justice where the matter shall depend (as hath been often observed) by fine and imprisonment.

In the oath of the Justices in Wales, that fearful clause is omitted, neither is it in the oath of the Barons of the Eschequer of England. & Veritas nihil vere

Notâ four punishment,

by the Court of

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matter shall depend

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& Veritas nihil vere
Of Judgements and Execution.  

Cap. 101.

by the natural born of the said Realm, Dominions and Lands.

By this, Philip (after King of Spain) could not prefer any stranger born to any office of Judicature, &c. within the Realm of England, or Dominions of the same, nor all the time he was within this Realm did he ever attempt the same.

And in the Articles, De matrimonio praecario inter Regimm Elizabeth & Ducem de Alagon, amongst others it was expressly provided, Quod dux millium extraeum ad aliquid officium in Anglia promoverit, &c. in jure mutatis, &c.

A law 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 Realm of England, and that of the Realm of Scotland, it appeared 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, whereas they are born and inheritable; and by and before the natural born Subjects of the same Realm, if they be there apprehended. And by the next clause it is provided, that offenses committed by Englishmen in Scotland shall be enquired of, heard and determined before Justices of Assize, or Commissioners of Oyer and Terminer and Goal-delivery, being natural born Subjects within the Realm of England, and none other. And the like in another clause, with an addition of Justices of Peace to be natural born Subjects within England; and God blessed and prospered this Act with happy and desired success.

But contrariwise, Petrus de Rupibus, of the Lords, being a Gallican born, preferred to the Bishop of Winchester by King John, and being a principal Counsellor about King H. 3. both in his young years, did after in his ripeness prefer to offices about the King such Gallicans as were of his blood and alliance, (whereof one of his kindred, some cap his son, Peter de Orival, Treasurer of England,) to the great grief and discontent of the Nobility of England to have a Gallican born in place above them. And what heavy blame ensued thereupon, let Englishmen inform you, so 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 Alien or strangers, laid 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 Carilue. 3 R. 2. cap. 3. 7 R. 2. cap. 12. Rot. Parr. 13 R. 2. not in print. 1 H. 5. cap. 7. 4 & 5 Ph. & Mar. cap. 6.
CAP. CII.

Forfeiture, Confiscation, &c.

N.\textsuperscript{o}ta, confiscare & forisfacere are Synonyma, and bona confiscata are bona forisfaca. Ficinus properly signifies a Person or Hamper of Others, wherein the Romans kept their treasure, and by the figure of Metonymia continentis pro contento, it is taken for the treasure itself, unde confiscare and bona confiscata; and thereupon it is said, Quod non capit Chiridus, capi

Ficinus.

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. Where the forfeiture of some of them must appear to be found of Kecod, and therefore these cannot be claimed by prescription; of other some the forfeiture need not appear to be found of Kecod, and therefore these may be gained by prescription.

b. Of the former let be bona & catta proditorum, feloniam, infiagium, in exigendtia postorum, fugitives, deodand\textsuperscript{As} annus, &c. & volum, &c. and all other forfeitures which must appear to be found of Kecod.

c. Of the latter let be creature trobo, bona, & catta waviar, extrahur, wrecum maris, &c.

d. If a traitor or Felon either refuse himself, or will not submit him to be arrested, but resisteth, and in resistence is slain; upon pretitement hereof he forfeited all his goods and chattels.

e. If a Felon in pursuit take his own goods, they are forfeited, yet are they not bona waviar.

In appeal of robbery the Plaintiff omit any of the goods slain, they are forfeit to the King for the labour which the law presumed the Plaintiff beareth to the Felon; and for that he cannot have restitution for more then is in his appeal.

In appeal of robbery of goods, if the Jury find that the Defendane found them in the high way, in this case the Plaintiff for his false appeal in taking 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, be forfeited his goods, and judgement of Pain for & dure shall be given against him, as one that refuse the trial of law, by challenging these false Juries, and like unto one that hanged more, and will not put himself upon the trial of the law.

By the nature of 22 H. 8. it was prohibited 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 nature of 33 H. 8. cap. 22, 23. and petit treason, notwithstanding the Act of 22 H. 8. he may challenge thirty according to the Common law, for it is enacted by the nature of 1 & 2 Ph. et Mar. cap. 10. that all trials hereafter to be awarded, for any treason, shall be bad and void only according to the due order and course of the Common law, so as 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 the challenge above twenty

For the designation of forisfacere. See the First part of the Institutes, Sec. 74.

19 E. 3. 39.
43 E. 3. Cor. 100.
3 E. 3. Cor. 367.
368.
3 H. 7. 18.
3 H. 3. cap. 3.
See before Peter for & dure in the next preceding chapter. See before in the chapter of Petit treason, fo. 166.
Seizure of goods before conviction.

Cap. 103.

...and under thirty 3z, he forfeited not his goods and chattels, so no law gibed 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 these Juries; so the Act of 22 H. 8. extended not to any conviction, but to the challenge only.

If the party Defendant be attached or detained by process out of any Court of Record, County, or Force of a Justice, or Hundred Court, or other Court Baron, and make default, the goods or slaves 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 bailiff; and it is not sufficient to return that he had attached or detained the Defendant: by goods to such a value, and to upon default to be forfeited.

What a person convicted of Felony before arraignment Hall forfeit, see the First part of the Institutes, Sed. 745. Verb. Attainit, fo. 391.

De Supra in the Chapter of Deeds, 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 fame be forfeited.

2. The same cannot be inchoated, 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, or carrying away, only to make an Indenture, and to charge the Town; and the other an actual seizure and taking away the same.

As to the first, the same is manifested by Bradsho and all our ancient Authors: and let Bradsho speak for them all.

Prisons imprisoned, ante quem convictus fuerit, de terris suis distincte non debent, a nec de rebus suis quibuscumque spoliari; sed dum fuerint in prisco debent de proprio in omnibus sustentari, donec per judicium deliberati fuerint vel condemnati, &c. And fo. 136. He saith thus. Qui pro b crimine vel felonia magna, sicur pro e morte hominis, captus fuerit & imprisonatus, vel sub custodia detentus, non debet spoliari bonis suis, nec de terris suis distincti, sed debet inde sustentari donec de crimine sibi imposito se defendatur, vel convictus fuerit, quia ante convictionem nihil forisfacit; & si quis contra hoc securit, fiat Vicecom 'tale &c. Rex vic' sitatem. Scias quod f provisum est in curia nostra coronam nobis, quod nullus homo captus pro morte hominis, vel pro alia felonia pro qua debet imprisonari, distinctur de terris, tenementis vel catalisis suis, quouque convictus fuerit de felonia de qua g reatus est, sed quam cito captus fuerit per vium custodiam plicatorum coronae no firge, & per vium tumum & legalam hominum, appecientur carilla ipsius capti, & imbriventur, & falvo custodiante per h ballivos ipsius qui capitur, & qui bonam inventam securitatem...
Cap. 103. Seisure of goods before conviction.


By the statute of 1 R. 3. cap. 3. it is enacted and declared, That neither Sheriff, Escheator, Bailiff of Franchises, nor other person take or seize the goods of any person arrested or imprisoned, before he be convicted or arraigned of the felony, 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 of other things of any offender cannot be searched, inventored, or in any sort seized; nor after indictment seized. And removed so taken away, before conviction or arraignment. Secondly, that the begging of the goods or fate of any Delinquent accused or indicted of any treason, felony, or other offence before he be convicted and arraigned, is utterly unlawful, because before conviction and arraignment, as hath been said, nothing is forfeited to the King, nor grantable by him. And besides, it either makes the prosecution against the Delinquent more precipitate, violent and undue, then the quiet and equal proceeding of Law and Justice would permit; or else by some underhand composition and agreement, stops so as binds the due course of Justice for exemplary punishment of the offender. And lastly, when the Delinquent is begged, it discourageth both Judge, Juror and witness to do their duty.

It was an Article of Inquisition, De huii qui aliquid agat per quod veritas & justitia suffocantur.

See Lib. 7. 1. 36, & 37. the case of penal statutes, & nota bene: & also the nature of 21 Jac. cap. 3. a tortori 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 acquittatus, let such as beg him and prosecute against him be relieved by the billious judgement against Conspiratores, which you may read before cap. Judgments and Execution.

Hh

CAP.
CAP. CIV.

Of Falsifying of Attainders.

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 August. Anno 31 Eliz. whereunto Syer pleaded not guilty. And upon the evidence it appeared that the Burglary was committed 1 September. Anno 31 Eliz. so as at the time alleged 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 did relate to the day in the Indictment, and to avoid Feoffments, Leases, &c. for that (as it was also conceived) the Feoffee, Lessee, &c. when the assailant 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 September 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 Auctor foris acquire for the same burglary, (for being the offender is allowed no counsel, the Court ought to do him justice, and assign him counsel in favorem vitæ, 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 Affizes being at hand, he acquitted the Affizes of Affize, 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 Judges 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 for down in the Indictment being before or after the offense done, the Jury ought to find him guilty, if the truth of the case be so; and if it be alleged before the offense done, to find the day when it was done in rem veritate, for they are two ad veritatem dicendam, and then the forfeiture shall relate but to the day in the verdict, which was the day of the offense done, and not to the day in the Indictment. 2. That if the triers find the offender guilty generally, yet the Feoffee or Lessee, &c. if the offense be alleged in the Indictment before it was done to their prejudice, may falsifie in the time, but not for the offense. For being 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 offense it self, God forbid but that the Subject might falsifie as concerning the time of the offense. 3. If the offender be found not guilty, he in that case might plead upon a new Indictment, Auctor foris acquire: and to Syer in the case aforesaid did, and was therefore dischargeth according to the said resolutions. Notes, three notable points resolved, that never were resolved in any Book that we have read and remember.

If a man infested another of his Land, and after is indicted of a felony supposed to be committed before the seoffment, and thereupon he is outlawed; the party himself is bound hereby, and cannot traverse the stoln, but the Feoffor, &c. may, because he is an Stranger thereunto; for a false indictment without any trial by verdict shall not bind the Feoffor, but that he may falsifie, either by traversing of the felony it self, or of the time of the Feoffment.
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And so it is if a man make a testament of his land, and after takeeth Saintuarz, and counterfeit the felony before the Coroner by him to be done before the testament, and adjureth the Seale: so the Seale shall falsifie the attainer by traversing of the felony. And so it is if a man be indicted of felony, and is attainted by his own confesston, the seale shall falsifie the attainer by denying the felony. But otherwise it is if it be attainted upon a verdict given by twelve men, so then the seale shall not falsifie by traversing of the offence, but of the time only.

Where the case in effect is, that 19 January Anno 1 Marie, a Commission of Oier and Termier in London was directed to Sir Thomas White the Lord ... give judgment, and upon the confession of the said Sir Robert Dudley, gave judgment against him in cause of High Treason. In this case it was adjudged, that Sir Robert Dudley, then Earl of Leic, might falsifie the said attainer by plea, because it was void, and Coram non judice; 2d: that the said latter Commissioners had no power to proceed upon an Indictment taken before 8, but before 15, and so the judgment was void, and Coram non judice; 3d: Whereupon the judgment is void, and Coram non judice, the party is not disinherited in his Writ of Error, but may falsifie the attainer by plea, showing the special matter which proved it void, 2d Coram non judice. In which case the party forfeited neither lands nor goods, by which case it appeared how necessary it is for Judges, especially in causes of treason and felony, to look into the whole record, and the proceedings thereupon, before they give judgment, lest they give an unjust and unjust judgment, by means whereof the said party may lose his life, &c.

A and B were indicted, A as principal of felony, and B as accessory for receiving him. A was and was attainted of the felony by outlawry. The accessory being seized of lands in fee, he was arraigned upon the indictment, and found guilty by verdict, and was banished. C the Lord entered as Lord by Escheat. The principal reentered the outlawry, and to the felony pleaded not guilty, and was banished, and thereupon was by judgment acquitted. The heir of B brought an Affidavit of Spontaneous of the Lord by Escheat, who pleaded the outlawry of the principal, and the attainer of the accessory, his feoff in se, and the execution, and his entry as Lord by Escheat. The Plaintiff showed the re-entry of the outlawry by the principal, and his acquittal by verdict and judgment; whereupon the Lord demurred in judgment. And it was adjudged that the Plaintiff in the Writ of Spontaneous should recover against the Lord. Upon which judgment we shall draw the conclusions.

1. That the attainer of the accessory had a kind of dependency upon the attainer of the principal. For it is a Privy Law, that the accessory ought not to be put to answer before the principal be attainted; and by the reentry and acquittal of the principal, the dependency judgment against the accessory cannot stand. 2. That this attainer of the accessory may be falsified and abounded by the heir by plea, and is not driven to his Writ of Error; for that the attainer of the accessory is by matter intrado abounded by Record of as high nature as the attainer of the principal 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 belted shall by this matter be null. 4. Though there were no immediate defects to the heir, yet upon the judgment of the accoutlement of the principal the Writ of Spontaneous was maintainable. Lastly, that albeit the attainer of the accessory is abounded by judgment of law, yet the

11 H. 4. 49.
12 H. 5. 68. 91.
13 E. 4. 11. 2.
14 Vid. Rot. Parl.
15 H. 6. 66. 32.
16 Pl. com. f. 390.
17 Le Courde de Leic. cafe.
18 Trin. 3 El.
19 V. for this point.
20 Aff. p. 64.
21 39 El. 3. 31. 34.
22 Aff. p. ult.
23 Aff. p. 55.
24 Aff. 56. 2.
27 H. 6. 32.
28 3 H. 6. 10.
30 2 El. 4. 3 Co.
31 2 El. 4. 10. H. 7. 11.
32 1 H. 7. 69.
33 Vide Rot. Parl.
34 E. 1. Rot. 11.
35 Montgom. Bogo de Knowl. &c.
36 See this case temps.
37 E. 1. Rot. Mandanc. 46. but not fully there reported.
38 Vide id. 9. 50. 119.
39 Lord Zanchers caile.
40 Where the ancestor of the accoutlement was lawfully and in due form attainted of the felony, and yet the heir shall inherit by matter of full satisfaction.
41 V. 11. 5. 10. 119. b.
42 Lo. Zanchers cafe.
43 Debiti fundamento superfluo.
44 R. 1. fo. 12.
45 1 B. 3. 57.
46 7 H. 4. 4. 43. E. 3. 3.
47 4 El. 3. 36.
48 4 H. 4. 6.
49 9 H. 6. 38. 8.
50 H. 6. 4. 10 H. 6. 5.
51 6 El. 8. 8 H. 7. 10.
52 13 El. 3. 44.
Of Falsifying of Attainders.  

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Lord by Charter remains tenant of the land, until it be evicted from him by action at entry. And so it is if the principal be attainted of felony, and after the attainder is also attainted, if the principal reverts to his attainted by Writ of Error, the attainted of the attainder dependant thereupon is reversed.

A man commits treason of felony, and is thereof attainted in due form of law, and after this treason of felony, is pardoned by a general pardon; hereby the foundation is self, viz., the treason of felony, being by authority of Parliament disfranchised and pardoned, the attainted (being bullied therewith) 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 heirs: the one having issue, a daughter, and being seized of lands in fee, devised the government of his daughter and his land, until she came to her age of fifteen years, to her brother, and died. The Uncle brought up his niece very well both at her Lord and House, &c., and she was about eight or nine years of age; her Uncle for some reason correcting her, she was heard to say, Oh good Uncle kiss 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 so that he was her next Heir, was upon examination Anno 8 Jac. Regis committed to the East for Perjury of murder, and was admonished by the Justices of the place to send out the Child, and thereupon they bailed him until the next Assizes. Against which time for that he could not find her, and having what would fall out against him, he took another child by like unto her both in person and years as he could find, and appareled her like unto the true child, and brought her to the next Assizes; but upon view and examination he was found not to be the true child: and upon these pretences he was indicted, found guilty, had judgment, and was hanged. But the truth of the case was, that the Child being beaten over-night, the next morning when she had gone to school ran away into the next County, and being well educated, was received and entertained of a stranger; and when she was fifteen years old, at what time she could come to her land, he came to demand it, and he did directly pretend to be the true child. Which case we have reported for a double caveat: first to Judges, that they in cases 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) overthrows himself, as the Uncle did.

Falsifying concerning goods.

If a be indicted before the Coroner for the death of another, and that a lied for the same; hereby are all the goods and chattels of a forfeited which he had at the time of the body given: and this cannot be falsified by traverst. For if the party be arraigned upon the same indictment before Justices of Oyer and Terminer, and is by verdict acquitted of the felony; and that he did not lie for the same, yet he shall forfeit his goods and chattels, but yet a such a fugam ficti may be falsified by matter in law; for if the indictment be bad 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 add further that he lied for the same, his goods are forfeited which he had at the time of the body given; and it being also found in particular what goods he then had, that may be traverst by any that had property in those goods.

There is also a fugam ficti in law. As if a man be indicted and affirmed of felony, and Process continued against him, upon his default of appearance, and an Esquire awarded against him, whereupon he appeared, albeit he be after acquitted of the felony, yet all his goods and chattels are forfeited by the awarding of the Esquire upon this fugam ficti in law. 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 Esquire, the same may be avoided by exception, and no forfeiture of goods. And there is no Book to warrant the opinion of Justice Stanford.
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Of Pardons.

For in this case: for in 43. E. 3. the original was good. Quod adnoto, non ut argument, sed ne ipse arguer. And also by matter in deed, we know he may excuse his absence, as if he were in prison, or beyond the sea, at the time of the Exigent awarded, or if the King before the Exigent bestpard pardon him.

A is indebted of Peter Larcen, and upon his trial is found not guilty, and that he did for the same, he shall forfeit his goods. And so it is if an Exigent be upon such an Indictment awarded against him: but he may discharge the same to the him of the forfeiture of his goods by such means as is abovesaid. See the last part of the Institutes, Sect. 745. to. 391. a.

He leges vitam vel fratrum (generosa Juventus)
Indituent, quia sunt fugienda sequendaque monstrant.

C A P. CV.

Of Pardons.

We have spoken of the royal and establishing virtue of Justice: royal and establishing I say, because Justice is established. We are now to speak of his mercy: for the same Holy Spirit, faith, Misericordia & Veritas custodient 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 ipsius debet esse Rex, sed & misericors, ut sum sapientia misericorditer sit, justus, &c. Quibus tamen & qualiter est misericordiam, docet sum merita vel immeteitas pernorum, &c. Of this Royal mercy we shall speak the most willingly, for that (as it hath appeared before in the Charter of Sanctuary) all Sanctuaries and places of Refuge for the safeguard of life are taken away, and where formerly the same place, speaking of the Kings mercy, third, Nihil tam proprium ed imperium quam legibus vivere, it is to be observed, that the laws of this Realm have in some part 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 Statute in E. 4. where it is shown A checum Roy apert per realon de non officio a faire Justice & gracie; justice in execution des leys, &c. & gracie de grant pardon, &c.

A Pardon is a work of mercy, whereby the King either forgive or草莓, sentence or conditio, or after, forgotten any crime, offence, punishment, execution, right, title, debt or duty, Temporal or Ecclesiastical. All that is forgotten by the King may be forgiven by his Charter: but if by the attinder the blood be corrupted, that must be revved by authority of Parliament.

We call it in Latin Pardinatio, and render it a per & dono: per is a Profession, and in the Baron tongue is for or vor, as to forgive is thoroughly to remit, and so it is to be shewed, as it is said, Leve est ferre, peremere grave.

All pardons of Creation 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 Clauses in some cases shall take notice) or by the Charter of the King, (which must alwayes be pleased.) And these are either absolute, or under condition, exception, or qualification.
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for some of those pardons last mentioned the party may have a writ of allowance, or take an abatement in certain cases; in others the party may be aided by abatement only, where no writ of allowance doth lie.

And first of general pardons. General pardons are by Act of Parliament: if any of those 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 dates the general pardons have to 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 of advantage thereof, unless he plead it. And for that it may concern the safety and quiet of many a subject, we have expected the form of the pleading of a general pardon, and habeus set 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. (as in p. opera persona) & dicit quod dominus Jacobus Rex nunc ipsum A. occassione præmissa impetravit, ut occasionare non debet: quia dicit, quod per quendam Aëum in Parlamento dicti domini Regis nunc tent' apud Weîm in com' Mid' nono die Februarii anno regni sui septimo, inter alia, inæquat & stabilitat e juris dicti domini regis, tam spirituales quam temporales, hujus rægni Angliae, Waluis, Infularum Jenke et Garnley, & ville Barwick, hareides, successeores, executorum & administratorem sui, & corum quilibet, ac omnia & fingula corpora aliquo modo corporata civitatis, burgi, comitatis, Riding, Hundred, Lath, Rape, Wapentag, villæ, villar', Hamlet & Tithing, & corum quilibet, ac sucession & successeores eorum, & cujuslibet eorum, authoritate ejusdem Parlamenti acquiescentur, perdonantur, relaxantur, & exoneratione verius dictum dominum Regem, hareides & successeores suos, & quemlibet coro de omnibus productionibus, Donis, officinis, contempt, tranfgredi, inrationibus, injuris, deceptionibus, maleficiis, forisactus, penalitatis, & fummis pecunia, poenis mortis, poenis corporalius & pecuniarios, & generaliter de omnibus aliis rebus, causis, querelis, feitis, judicibus, & executionibus in praedicto Aëum non exceptis, neque forprisi, quæ per ipsum dominum regem aliquo modo, quæ per aliquem modum perdonari potuerunt ante & utque nonum diei Novembris tunc ultim' præterit' anteditionem Aëum prædicti, cujuslibet, aut aliqui suorum subditorum, corporum, corporat', civitatis, burgorum, comitatis', Riding, Hundred, Lath, Raparum, Wapentag, villæ, villar', & Tithing, vel aliqrum aliorum, prout in Aëum prædicto plenius continentur. Et idem A. dicit quod officina praedicta verius ipsum in forma praedicta objecta non est in Aëum praedicto excepta, neque forprisi; & quod ipse est, & tempore editionis Aëum prædicti fuit subditus & ligeus dicti domini regis nunc natus sub obedientia sua, videlicet apud Weîm prædicti, quodque ipse nöh est aliqua persona in Aëum prædicti, except', neque forprisi. Et hoc paratus est verificare: unde non intendit quod dictus dominus rex nunc ipsum A. occassione præmissa impetravit, ut occasionare velit, unde petit judicium, & quod ipse de præmissa prædicta exoneratione, & quod generalis perdonatio praedicta vi allocatur, &c. &c. &c. before cap. of Fallstipping of Attainers.

By the general pardon of 28 El. all felonies are pardoned, Burglary excepted. Hil. 29 El. it was resolved by all the Judges, that a man being attainted of Burglary was excepted, for the Burglary remaining, and is made more apparent by the attainer, and the offence of Burglary is the foundation.

The most beneficial general pardons for the subject were those of the fifteenth and sixteenth 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's 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 reheard.

And now of particular pardons. As particular pardon, be it at the Coronation or any other, of any offence or offences whatsoever, that is absolute without any
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any condition, 

but when the pardon is condition
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. that the party may plead the finding of the writ, and

The most large and beneficent pardons by Letters Patentes 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 who often offend both of them) and that other to Thomas Woolley Cardinal which are learnedly and largely penned.

But let us turn our eye to ancient Charters of pardon, and consider well of them.

Edwardus De gratia Rex Anglie, Dominus Hibernie, & Dux Aquitan', Omnibus balivis & fidelibus suis, ad quos presentes uisse pervenerint, Salutem. Scitis quod pro bono servitio quod Johannes Chaumprona de Thorton in Pickering in partibus Scotiae nobis impendit, perdonavimus eis fecam pacis nostrae, que ad nos pertinet,

* pro mores istelle, quondam uxorius uae, unde indicarus est, & fiam pacem nostram et inde concedimus. Ita tamen quod itet retico, si quis verius cum eto loqui voluerit. In cujus rei testimonium has literas nostras fieri fecimus patentes. Telle me ipso apud Rouchesborge, nono die Febr. anno regni nostri tricesimo.

Edwardus De gratia Rex Anglie, Dominus Hibernie, & Dux Aquitan', Omnibus balivis & fidelibus suis ad quos presentes litera pervenerint, Salutem. Scitis quod pro bono servitio quod Galf. filius Warum in partibus Scotiae impendit, perdonavimus eis Galfo fecam pacis nostrae, que ad nos pertinet de homicidio, robetia, latrocinis, fraudemus domorum, felonis & alius transfregiionibus contra pacem nostam in regno nostro, unde indicatus est, & similiter transfregiionem quam fecit ad Ecclesiam de Wafford, in qua aliquamdiu pro timore inimiciormorum nostrorum non tenuit legem & confectudinem regni nostri justiciae non permittendo, et etiam utlagariam, spha in ipsum eu occasione fuerit promulgata, & fiam pacem nostram et inde concedimus. Ita tamen quod et retico in caria nostrae, si quis verius cum eto loqui voluerit de homicidio, robetia, latrocinis, fraudemus, felonis & transfregiionibus pradictis. In cujus rei testimonium has literas nostras fieri fecimus patentes. Telle me ipso apud Linumfeci usecimo secundo die Januarii, anno regni nostri tricesimo, per breve be privato ligillo.

It appeareth by this Record, that the said Jeffs was indicted for the death of a man, and of divers Burglaries and Felonies, and being thereupon arraigned played his Clergy, sed falvo fuisse privilegio clericali polet ci 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 doth ´* de homicidio, and not de murder, neither do we seek any pardon of murder by any King of England by express name. Secondly, by these ancient modes the King doth pardon fecam pacis nostrae, que ad nos pertinet de homicidio, &c. &c. &c. pacem nostram et inde concedimus. This fecam pacis is by indictment; which is the Kings full, and as it were his declaration. Thirdly, that the King of ancient time did not pardon homicidio, &c. but fecam pacis nostrae que ad nos pertinet de homicidio, &c. &c. &c. when he pardoned and released the full and mean. viz. fecam pacis, &c. the offender was discharged of the homicide it self, in diebus illis, but at this day the offense it self is pardoned, which is the surest way.

The King bought an action of debt upon an obligation, the Defendant pleaded non est factum, and at a nisi prius was found the debt of the Defendant; and before the day in bank, the King pardoned the Defendant all debts, queral, &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 cause he might plead the same, though he had no day in Court, because he could not have an Audite queral, &c. a Scire fac against the King, and there-
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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 auditor quæreli, or a sure fact. And in this case it is observable, that although the judgment a new title to the said deed is annexed to the King of beasts after the pardon, the obligation at the time of the pardon being but a matter in fact, for in that the obligation was the foundation of the debt, and the matter whereupon judgment was given, and by the pardon the debt by the obligation was extinct, the judgment thereof cannot bind, but is to be avoided by pleading the pardon.

What things the King may pardon, and in what manner, and what he cannot pardon, follow now to be treated of.

1. In case of ?ead of man, robberies and felonies against the peace, others.

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 oat, and 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 set to maintain doth put in good sureties, as Esquires or Gent. and that no pardon be granted but by Parliament.] Thirdly, for that the charters of pardons of felons upon false suggestions, c. it is provided, that every charter of felony which shall be granted at the suggestion of any, the name of him that made the suggestion shall be committed in the charter, and if the suggestion be found untrue, the charter shall be disallowed. And the like provision is made by the nature of 5 H. 4 cap. 2. for the pardon of an oppressor.

2. Fourthly, it is prohibited, that no charter of pardon for murder, treason, or rape, shall be allowed, or, if they be not specified in the same charter.

Before these natural of 13 R. 2. by the e pardon of all felonies, treason was pardoned, and so was murder, or. 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. But it hath been cancelled, (which we will not question,) that the King may dispense with these laws by a non obstante, be it general or special, (albeit we find not any such clause of non obstante, to dispense with any of these statutes, but of times.) These statutes are excellent instructions for a religious and prudent King to follow, for in these cases, in summe potestatis regis et poëlicium, quantum velit, & magnitudinis ut velle quantum possit. Hereof you may read more in Justice Coward, lib. 2. cap. 35. in all other places of that Charter, of his grave advice in that behalf. Most certain it is, that the word of God hath for many this indisputable general rule, & Quia non proferit cuiusque hominem libertatem, sed liberatam sine teneo ullo perpetuante mala. And therupon the rule of law is grounded, i Spes impotens continens affectionem tribuere debenturi: Et venientiae incipientem et delinquendi. This is to be observed, that the statutes of the 2d Act of 13 R. 2. does not that the King should grant a pardon of murder by express name in the Charter, but because the whole Parliament concurred, that he should never pardon murder by such name as the cases supposed, therefore was that provision made, (as in other cases I have observed,) grounded upon the law of God. Quicunque essedet hominum sanctiti, fundtur fangus illius; ad imaginem quippe Dei creatus est homo. Nec alter expiarit potest, nisi per ejus fangum qui alterius fangum essedenti. And the words of every pardon are after the recital of the offence, Nos pieceret mot, &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 morttum, &c defending, vel per lunaticum, vel per foriunium.

By the ancient and constant rule of law, Non poterit Rex gratiam factarum oribigen, et semper aliorum quod autem alium sit, dare non potest per sua gratiam.
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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 rebusce by death; and whether the Defendant be acquitted by Judgment, &c., or by outlawry, the pardon of the King shall not discharge the Defendant. In an Appeal, the Defendant owes bail, the Plaintiff counterpleads, for that the Defendant breaks prison, if the King pardon the breaking of prison, the counterpleads fails. Note the breaking of prison is a collateral act: and in such cases as the only suit of the party, when the Defendant either by the Common law, or by any nature 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 attainee 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 be libram legem, their wives and children call out of their houses, their houses burned, their trees pruned, their sheep dogs ploved 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 render not to the restitution or satisfaction of the Plaintiff.

How to take an example upon a statute. De pueris masculis sine femmis (quorum matrinagium ad alaquem parteire) reptis et abduts, ut ille qui rapuit non habet jus in marritagio, licet pothomodum resituation puerorum non maritratur, vel de marrito falsitate, pinnarum tamen pro transefessione per prifonam 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, pinnatur, &c. And this both notably appear by a Charter of pardon which King E 2 made after this statute. Rex de gratia sua speciali personavit Goditha, qua fuit uxor Roberti de Waldich, id quod ad ipsum pertinet, de transefessione quam ipse Goditha fecit Agatha, qua fuit uxor Johannis de Waldich de Ellam, rapiendo et abdendo Johanne fili et heredem Johannis de Waldich infra etatem excentenem, cujus maritam id ipsum Agatham pertinet, unde ipse Goditha coram domino E. quodam regem Anglie patre ipsum regis convicens cujus fuit, & per considerationem Curit diem patris prifonn adjudicata per biennium ibdem moratur, & etiam tempus impresaionem quod adhuc restat de biennio pradicto. Ideo vult idem Rex quod præfata Goditha de eo quod ad ipsum pertinet pro transefessione predicta sit quiesci, & quod a prisione predicta, si pro eo quod ad ipsum regem inde pertinet, & non alia de causa detentur in eadem, deliberat. Tefie Rege apud Wefin. 8. die Maii anno regni fui primo. Ideo ipse Goditha inde quiesci quod hoc, ad dominum regem inde pertinet, &c.

Of the more of this matter, 3 El. Dies 201, 202. 9 El. Dies 261. Mulgrave, etc. 16 El. Dies 323. Tavener, etc.

The Defendant in an Appeal upon an appeal upon a suit not guilty pleaded, was found guilty of manslaughter: and it was resolved by the Justices upon conference between them, that the Queen might pardon the burning of the hand, for that is not part of the judgment at the suit of the party Plaintiff in the appeal, but it is a collateral and exemplary punishment inflicted by the nature of the suit. 4 H. 7. cap. 13.

In some actions wherein the subject is sole party (as appeared by that which hath been said) there is 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 highways, high-wates, &c., the suit (for abiding of multiplicity of suits, which the law allows, and that nulli magis vici emptum indicium erat quod regis) is given to the King only, for redress and regulation thereof: but the King cannot pardon or discharge either the nuisance, or the suit for the same 5 Ed. 4, Bracton, Non potest Rex gratiam facere cum injuria & damnno alienum. See Glanvill lib. 7. cap. 17, de crim.
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The Customer, albeit the bond and surry be made to him for the importing of Bullen according to the statute of 14 E. 3. cap. 1. per cannot be releaseth, quia pro bone publico. If one be bound in a recognizance, st. 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 releaste the recognizance, 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 scripio, according to any statute, the King can discharge but his own part, and cannot discharge the Informer's part, because the bringing of the action be both an interest therein: but before action brought, the King may discharge the whole, (unles it be prohibited to the contrary by the Act) because the Informer cannot bring an action of 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.

And that party which informeth not the King truly, is not worthy of his grace and forgiveness, and therefore either supplication or expression falls both abode the pardon.

A man committeth felony and is attainted thereof, or is absolved for the same, the King pardonth him the felony without any mention of the attainer, or absolution, the pardon is void. But if a man be attainted of burglary, and by the general pardon all felonies, st. are pardoned (except all burglaries) the the attainer and burglary be excepted, as before is said.

The King pardoned as a felony whereas he shall be indicted, or indicted and attainted, st. and in truth he is not indicted, nor attainted, st. 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 indited of felony, and the King recited the same, and pardonth 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 alleged, and the King not certainly informed.

The King may pardon one convict of hereafter, or of any other offence punishable by the Ecclesiastical law. In all proceedings in the Ecclesiastical Court of the King, the King may pardon the offence. The King may also pardon piracy upon the sea, but by what word, and in what manner, he before in the Chapter of Piracy.

All the Justices of England being assembled at Spenace Inn in Fleet-street, when I served Queen Eliz. as her Attorney general, I mused this case into them. A man sold in fee of the Saxon, the one holden of the Queen by Knight's service in Capte, and the other holden of a common person, aliened both, and the Aliené forth a pardon for both, in which pardon the words are, quæ de nobis tenentur in capite per servitium militare, ut dicitur; and after this pardon being transcribed into the Exchequer, proceas goeth out against the Aliené, who pleads the pardon, per quam dixit, Quibus levis et audita, idem A. quærum et colorum premissorum gravissimum vexatum & inquietum fore, & hoc minus jusse; quia dicit quod easdem domina regina per Litras suas Patentes, &c. pleades the Letters Patentes of pardon; as they be with the said clause of ut dicitur; and after he aliened the Saxon, which in effe veritatem was not holden. The question was, whether the second Aliené may plead the truth of the matter, or ought to be concluded by the pardon and plea of the first Aliené. And that the Justices had consideration of the books in 29 Ala. pl. 32. 46 Eliz. 13. 38. Eliz. cap. 30. 38. Eliz. cap. 31. 38. Eliz. cap. 32. And in the end it was resolved by all the Justices, that the pleading of the pardon op
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of a licence, as it is no conclusion, for no more then the pardon of a licence being not possible or affirmative, but (ut dictur) is a conclusion, no more is the pleading of them with the clause of (ut dictur) any conclusion. And conclusions shall not be brought by inference or implication of a thing that is not directly alleged. But if the pardon of a licence had been affirmative and direct without the clause, ut dictur, it had been a conclusion, and so had the pleading thereof been also. Lastly, it was resolved, that in case of the pardon of a licence with the clause, ut dictur, if the party confesses the tenor that pleads the same, as to cap. Bene & verum eil, that the land is helden by Knights servite in Capite, and plead the pardon of a licence, this shall conclude: and some of the Barons said, that according to these resolutions it had been used in the Archbishop, and many precedents be there accordingly: and by these resolutions the Robus absoluistit 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, so in that case the release to one discharged both. 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 be 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 pardonomavit utlagaram cum promula et quicquid ad eum pertinent: notwithstanding the Defendant shall make fine, so it seemeth that these words, quicquid ad eum pertinent, without any reference, are to general to dispense with the fine:

We find also a discharge of further proceeding directed to the Judges of the Court, viz. not by any pardon of the offence, but by the King's acknowledge- ment under the Great Seal of the parties innocence, with commandment to the Judges, that in former proceedings and Proces, viz. they shall altogether suspend: wherupon the Court shall absolve that the party shall go free and, 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 Regis & consilio suo, in Anno 2 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: Licer venerabilis pater Willielmus Archiepiscopus Eborac. & Stephanus London Episcopus, per diversa nos nostra coram nobis ad eum nostrum implacamentur de eo quod ipse Edmondus super comitii Kantei adhibebat deberrant: Quija tamen praedicti Archiepisopus & Episcopus de adhesionis praedicti omnino immunem reputamus, Vobis mandamus, quod placi praeidis coram nobis ulterior tenem omnino superadditis. Tene me ipso apud Wenlo. 12 die December. Anno Regni nostri 4. The absolv of the Court that is given thereupon is very obesterable, viz. Cujus brevis praemittitur, confiteratur ad ipsum, quod praedicti Archiepiscopus coram fine dies, &c. Est uterius non procedatur versus cum.

Stephen Gravelend 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 at supra, by the same writ. These men (it may be) thought that the making of the pardon should be an implied confession of the fault, therefore were a new way: but no man that is wise, and well advised will refuse God and the Kings pardon, bow often soever he may hate it; for there is no man but offendeth God and the King almost every day, and the pardon is the best and surest way.

If a man be indicted of felony, and found guilty, and being in prison, the King may under the Great seal excute 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 indicatus de felony, & inde culp, dicit quod Rex eum conductit, & inde producit chartam, quod Rex eum conducit.
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There is another book of grace and mercy, that is, when any man of woman being attainted of High Treason, Petit Treason, or Felony, (whereby the blood is spilt, or he, or her heir is reduced.) And doing 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; he shall now treat of the restitution of the Delinquent, as to his or her heirs by Parliament. Strainers 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, or her not of his life. Generally, Restitutio nihil adiuvat quam in primum statutum reducere.

Restitutions by Parliament, come in blood only, (that is, to make him restore an heir in blood for the party attainted, and other his ancestors, and to any dignities, inheritance of lands, &c.) and this is a restitution fecum quad fem in partum. Restitutio in integrum.

There is another book of grace and mercy, that is, when any man or woman being attainted of high treason, petit treason, or felony, (whereby the blood is spilt, or he, or her heir is reduced.) And doing 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; he shall now treat of the restitution of the delinquent, as to his or her heirs by parliament. Strainers 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 adiuvat quam in primum statutum reducere.

Restitutions by parliament, come in blood only, (that is, to make him restore an heir in blood for the party attainted, and other his ancestors, and to any dignities, inheritance of lands, &c.) and this is a restitution fecum quad fem in partum. Restitutio in integrum.
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make restitution of his blood, he cannot do it but by Act of Parliament. Nor
it should be to the prejudice of others.

In chartis benigna lasciandae est interpretationi; in fundationibus donorum vel legat
rum, hospitalem, & aliorum operum charitablem; beneficiis in testamentis magis ben
igna; in restitutionibus benignissima. A Fo? it is helden in our books, that in re
stitutions the King himself hath no labour, rog his prerogative any restrained,
but the party refused is favoured.

b King H. 3. was intituled, gr. to the lands of William de Albo Monatlierio by his
attainder, and granted the same to Robert de Mars and his heirs; also the
cededict rectis hereditibus by voluntatem iam, vel per pacem. And at the
making of this grant William de Albo Monatlierio (being dead) could have in re
spect of the attainder and corruption of blood no right here; per because it was
to make restitution, it had a most benign interpretation.

William Lo Zouch of Mortimer and Elianor his wife prayed to be released to
their land of Glannor and Morganon in Wales, the Manor of Haslevy in the
County of Wescot, the Manor of Tewksbury in the County of Gloucester,
being the inheritance of the said Elianor; two by the extent means of Roger
late Earl of March, were intituled to pass to the same to the King by fine, in con
sideration of ten thousand pounds; the King refused them thereto as in their
former estate.

* Henry Courtey Marquey of Gercer, and Earl of Devon, buying from Ed
ward Courtey, his only son, was attainted at the court of
the Common Law in Anno 31 H. 8. and in the same year was also attainted by
Anno 1 Regni sui granted the Manors of Sand &c. in the County of Devon,
gr. to the said Edward Courtey and his heirs: and afterwards 5 Octobris
in the same year, at a Parliament then sitting, the said Edward and his heirs
were therefrom by Authority of that Act released and enabled only in blood,
so as son and heir of the said Lord Marquey of his father, as to all other
feudal and life interests, and adverse and adverse of the said Edward; and
that the sceleral attainers against the said Lord Marquey for the attainder
of the said Lord Marquey, be not in any wise prejudicial to the said
Edward or his heirs, for the corruption of the blood only of the said Edward;
but that the sceleral attainers, and either of them be against him and his heirs for
the corruption of blood only, utterly void. Prohibed altogether that the said Act,
ne any thing therein contained, should not in any wise extend to give any benet
or advantage to the said Edward, ne to his heirs, to demand, claim, or chal
enge any Husband, Cables, gr. ne any other hereditaments whatsoever, whereas
unto 11. 8. and 6. 02 either of them was intituled, 02 ought to take and enjoy
by reason of the said sceleral attainers of the said lord Lord Marquey, of either
other of them. Edward Courtey died 10d of the said manors without issue,
18 Septemb. Annis 3 & 4 Ph. & Mar. and Reinold Mohun. Alexander Arundell,
John Vivian the younger, John Trelawny Ellis, and Margaret Buller Windlow,
were his collateral Cousins and Heirs: and therfore the said restitution extend
d to the Heirs collateral of the said Edward, was by the Munus command
ment referred to the consideration of the two Chief Justices Popham and And
son, Peryam Chief Baron, and to Egerton Attorney, and to the Solicitor Gen
eral. And it was resolved, that by reason of the attainer of the Lord Marquey,
it there had bin 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 attainer 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 released and enabled in blood only as Son and heir to his said Father,
as all his ancietas 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 attai
ners of the Marquey 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, Sed. 6 40, 647.
745. 69. 931. verb. Lact. of europ.,
See to El. Dier.
ubi lup.
41 E. 3. 5. b.
47. Aff. p. 43.
77 E. 3. 40.
5 B. 3. 56.
39 E. 3. 7.
30 Eliz. Dier 360.
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14 E. 3. 47.
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14 E. 3. 19.
40 E. 3. grant 56.
49 Mich. 8 E. 1. in
Rancho, Rot. 62.
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Rot. Par. Anno
4 E. 3. nu. 18. on the
backside of the Roll.

An example of
restitution in only
blood.
11 H. 4. 42.
13 H. 4. nu. 59. 42.
Of Restitutions. Cap. 186.

consideration bad 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 should extend to the heirs collateral of the said Edward, (having no heir living) as to the clearing and refunding of the blood, and abating 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: therefore he and his heirs, as well collateral as lineal, might make their demand of refund from the Marquess (for there was the drop and corruption) and from all other the ancestors of the said Edward, lineal or collateral, and ex abundante; the other clause also is added, for the more manifestation thereof.

Margaret Plantagenet was Daughter to George Duke of Clarence attained 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 elder Daughter of Richard Nevil Earl of Warwick and Salisbury, which Edward was attained 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. referred to the title, state, name, title, honour and dignity of the Counties of Salisbury, (she was the last of the surname of Plantagenet) which Act is very well penned, and worthy the reading of many respects, and the Preamble thereof, inter alia.

Wills 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 nature 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 enowt found that the party had made fresh suit. But restitution was to be made upon an Appeal, which is the suit of the party.

Note Stanford add fo. 167 a. b. thereunto you may add Lib. 5. fo. 110 a. & lib. 6. fo. 50. where you shall find, that though this nature of 21 H. 8. speak only of the party robbed, yet his Executors are within the nature, and so are his Administrators. For it is a beneficial law, and gives a more speedy remedy to the party robbed, &c. then the Common law gave by way of appeal, and therefore ought to be continued beneficially.

Vide the Register 68 b. that in some cases when the King ought ex merito justiciary to make restitution to the party, yet for the honour of the King the Latin faith, fine dilatation reruitarus 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. As by the nature of 8 H. 6. restitution is to be made, when he that hath an estate of inheritance of free-hold is disfranchised by forcible entry or forcible detainer. By the nature of 31 Eliz. there shall be no restitution by the nature 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 committed possession, and his estate not ended, according to the true meaning of a Prohibita in the said nature of 8 H. 6. as it is declared by the said Act of 31 Elizabeth.

By the nature of 21 Jac. Regis, such Judges, Justices, &c Justice, as are enabled to give restitution of possession unto tenants of any estate of free-hold, &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 with-holdings before them duly found, to give the possession unto tenant for years, tenant by copy of Court-Roll, guardians by Knights service, tenants by Elegist, Statute Merchant, &c. by Statute People.

And
Cap. 106. Of Restitution.

And so far as it hath been said, no restitution ought to be made where the defendant or party indicted in case of re-void 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 aforesaid, cannot give restitution or possession, where the party indicted hath been in quiet possession by the space of three whole years. Note, this Act of 21 Jac. extends not to a guardian in socage, nor to a Guardian or Keeper of a Park, nor to a tenant (as some hold) both it extend to him that by a last will hath an interest in lands or tenements, until debts and legacies be paid, because certain tenants be particularly nominated, and this is casus omisitus. But this being a beneficial law to redress him that right hath to his possession of lands, &c. whereas he was wrongfully by force dispossessed, &c. by force with-holden, &c. and being in like case, and equal mischief, others do hold, that this Act extends to this case of such a division, &c. and so is for a tenant for a year, &c. for an half, &c. three quarters of a year.

De the nature of 32 H. 8. cap. 3. where the particular tenant charged with more than the land is bound, may after his term expired hold over until he be satisfied, &c. in equal case with such a division.

Note, there be divers precedents in the Chancery for restitution by writ to be made after execution upon a naturale staple.

Auno 25 H. 6. Execution was sued upon a statute staple, and for that no certificate of the nature, &c. appeared of record, the Commissor had a writ of supersedeas out of the Chancery with restitution to be made, and the form of this writ appeared 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 supersedeas granted, execution was done upon a statute staple, whereupon a supersedeas 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 rected no special cause, but pro diversis causis & considerationibus) a supersedeas with restitution was awarded.

FINIS.
THE EPILOGUE.

Hath we by the great goodness of Almighty God, per varios causas, per suas 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 persuaded) 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 express 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. severa puniens, & vera preveniens, that is, Justice severely punishing, whereof we have spoken, and truly preventing, or preventing Justice, (quia abhinc 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.

True it is, that we have found by wofull experience, that it is not frequent and often punishment that doth prevent like offences, Melior est enim justitia vera preventiens quam severa puniens, agreeing with the rule of the Physician for the safety of the body, Praeas cauta quaemudae: and it is a certain rule, that Videbis ex fape commissi, qua fape vindicasti, Thoës 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 triangled on that cursed tree of the gallows, inasmuch 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 velbo informante, the outward man will be the easiier reformed ade ra reformante.)

This preventing Justice consistseth 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...
The Epilogue.

Parents are poor, might at the age of seven years earn their own living: for _Ars sit 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 channels that lead into _mare merseum_;) 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 in 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, _prudenter et 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.

_Primus inter omnes, ut paix in regno conservaret, & quaecumque paci adversus fuerat proinde deventer._
11 Mar. cap. 12. 32 H. 8. cap. 9. See the fourth part of the Institutes, fo. 312. b.

_Et pergrata Deus nobis hæc ostia fecit._
_Optimus est patria firma referre labor._

_Deo gloria & gratia._

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FINIS.
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